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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-002071-ME

T.M.C. (F/K/A T.M.K.)

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 14-AD-00027

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
M.K.C.; AND K.N.C.

APPELLEES

AND

NO. 2014-CA-002072-ME

T.M.C. (F/K/A T.M.K.)

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 14-AD-00028

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
M.K.C.; AND K.R.C.

APPELLEES

AND

NO. 2014-CA-002073-ME

T.M.C. (F/K/A T.M.K.)

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 14-AD-00029

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
M.K.C.; AND K.A.C.

APPELLEES

AND

NO. 2014-CA-002074-ME

T.M.C. (F/K/A T.M.K.)

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 14-AD-00030

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
S.V.; AND K.L.L.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; TAYLOR AND THOMPSON, JUDGES.

TAYLOR, JUDGE: T.M.C. f/k/a T.M.K. (T.M.C.) brings Appeal No. 2014-CA-002071-ME, Appeal No. 2014-CA-002072-ME, Appeal No. 2014-CA-002073-ME, and Appeal No. 2014-CA-002074-ME from orders and judgments entered November 13, 2014, in the McCracken Circuit Court, Family Court Division, terminating T.M.C.'s parental rights as to four of her biological children. We affirm.

T.M.C. is the biological mother of K.R.C., who was born May 18, 2008, K.N.C., who was born July 3, 2009, K.A.C., who was born July 10, 2010, and K.L.L., who was born June 21, 2012. On May 17, 2012, T.M.C.'s adult cousin initiated a petition for custody of K.R.C., K.N.C., and K.A.C. in Graves District Court.¹ K.R.C., K.N.C., and K.A.C. had been living with T.M.C.'s cousin since February 2012, as both T.M.C. and the children's biological father were incarcerated in Kentucky penal institutions at that time. Following a hearing on the petition, the court found the three children to be dependent and awarded temporary custody to T.M.C.'s cousin on May 29, 2012. In September 2012,

¹ The petition filed on May 17, 2012, was filed in the Graves District Court because the three children were then located in Graves County. Following the birth of T.K.'s fourth child and his subsequent placement in McCracken County, the actions involving the three older children were transferred to McCracken Circuit Court, Family Court Division, on December 4, 2012.

T.M.C.'s cousin notified the Cabinet for Health and Family Services, Commonwealth of Kentucky (Cabinet) that she could no longer care for the children. On December 4, 2012, the court committed the three children to the care of the Cabinet.

During the pendency of proceedings in Graves County, T.M.C. gave birth to K.L.L. on June 21, 2012.² K.L.L. tested positive for methamphetamine at birth. He was born prematurely and had medical complications related to his premature delivery. Approximately one month after his birth, K.L.L. was removed from T.M.C.'s care by the Cabinet and placed with an adoptive foster family in McCracken County, Kentucky. After the birth of K.L.L. in June 2012, T.M.C. failed to regularly visit with any of her children. Also at the time of K.L.L.'s birth, T.M.C. was cohabitating with another man who was not the father of any of her children. And, T.M.C. had failed to complete a reunification case plan prepared by the Cabinet. The family court then placed temporary custody of all four of the children with the Cabinet in December 2012. Over the next several months, the children were placed in several different foster homes. Eventually, K.R.C., K.N.C., and K.A.C. were placed together in an adoptive foster home.

After K.L.L.'s birth, T.M.C. was incarcerated for three weeks in October 2012, sixteen days in December 2012, and thirty days in March 2013. In June 2013, T.M.C. was charged with manufacturing methamphetamine and with two counts of possession of a controlled substance. She pleaded guilty to these

² T.K. was incarcerated during most of her pregnancy with K.L.L. and was released from jail in May 2012.

charges in October 2013 and was sentenced to ten-years' imprisonment in February 2014. T.M.C. remained continuously in prison after October 21, 2013, and was incarcerated at the time of her termination hearing in October 2014.³

On June 4, 2014, the Cabinet filed petitions for termination of parental rights as to all four children, K.R.C., K.N.C., K.A.C, and K.L.L., in the McCracken Circuit Court, Family Court Division. The Cabinet named T.M.C. and the biological father(s) of the four children as parties to the action.

Following an extensive hearing upon the termination petitions on October 13, 2014, the family court terminated T.M.C.'s parental rights as to K.R.C., K.N.C., and K.A.C., and K.L.L. by four separate orders and judgments entered November 13, 2014.⁴ In the family court's Findings of Facts and Conclusions of Law, the court noted that the Graves District Court previously found T.M.C.'s three oldest children to be dependent and had placed the children with T.M.C.'s cousin by order entered May 29, 2012. The family court also found based upon the evidence that the youngest child, K.L.L., was born addicted to methamphetamine and severely premature, weighing only two pounds and twelve ounces at birth. The court specifically found that T.M.C.'s situation was unstable, she had a consistent history of drug abuse, she repeatedly failed to complete case plans for reunification, failed to provide the necessities of life for her children, and was currently incarcerated with no possibility of parole until at least April 2015.

³ The earliest date for parole eligibility for T.M.C. was the late spring of 2015.

⁴ The November 13, 2014, orders terminating parental rights also terminated the rights of the children's biological fathers, but the fathers are not parties to the instant appeals.

The court determined that K.R.C., K.N.C., and K.A.C. were abused or neglected by T.M.C. and that K.L.L. was both abused and neglected by T.M.C. The family court then concluded that it was in the children's best interest that T.M.C.'s parental rights be terminated as to all four children. This appeal follows.

Appointed counsel for T.M.C. timely filed Notices of Appeal from the November 13, 2014, judgments and orders. Thereafter, counsel filed a brief in each appeal on behalf of T.M.C. pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d. 493 (1967) and alleged there were no meritorious issues to present to the Court of Appeals. In the *Anders* briefs, appointed counsel for T.M.C. conceded:

[T.M.C.] was incarcerated during 2011 because of felony drug convictions, and her cousin had to intervene to protect the three oldest children who [T.M.C.] had left with inappropriate caregivers. When [T.M.C.] was release[d] from prison, she returned to a life of substance abuse, instead of regaining custody of her three oldest children. Her substance abuse continued to the point that she gave premature birth to K.L.L. who suffered from methamphetamine addiction at delivery. Despite the horror and revulsion of that experience, [T.M.C.] did not work her case plan to regain custody of her children. Instead, her substance abuse continued to the point that she tested positive on three occasions to drug tests ordered by the district court. Finally, [T.M.C.] was arrested and convicted for manufacturing methamphetamine. Following her incarceration in 2014 on those charges, she has started working on her case plan by attempting to address her substance abuse. However, that effort was only completed within weeks of the TPR Hearing. Further, given the answers [T.M.C.] provided to the trial court on cross-examination, many reasonable people could conclude that [T.M.C.]'s effort

to address her substance abuse problems had been inadequate.

T.M.C.'s Brief at 6-7. The *Anders* brief in each appeal states that it would be difficult to present an argument to rebut the circuit court's conclusion that it was in the best interest of K.R.C., K.N.C., K.A.C., and K.L.L. to terminate T.M.C.'s parental rights and that no meritorious arguments can be presented in these appeals.

When appealing a termination of parental rights, appointed counsel for a biological parent is permitted to file an *Anders* brief if after a good faith review of the record, counsel believes the appeal is frivolous. *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). If counsel files an *Anders* brief, the Court of Appeals is bound to "independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal." *Id.* at 372.

In Kentucky, parental rights "can be involuntary terminated only if there is clear and convincing evidence that . . . it would be in the best interest of the child to do so." *Cabinet for Health and Family Serv. v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. App. 2006) (citing KRS 625.090; *Santosky v. Kramer*, 455 U.S. 745, 769-770, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982); *N.S. v. C & M.S.*, 642 S.W.2d 589, 591 (Ky. 1982)). KRS 625.090(1) also requires before termination that a child be adjudged to be neglected or abused and that at least one of the conditions set out in KRS 625.090(2) be established by clear and convincing evidence.

In this case, we have thoroughly conducted an independent review of the entire record in all four cases and conclude that more than sufficient evidence supports the family court's orders terminating T.M.C.'s parental rights as to each of the four children. The family court rendered detailed findings of fact, which we adopt herein by reference. The family court complied with all relevant statutory mandates for involuntarily terminating T.M.C.'s parental rights as to each child, and further conducted an evidentiary hearing in all four cases where T.M.C. was present and testified on her own behalf. We can find no legal ground or reason to set aside the family court's judgments. We agree with counsel that no valid basis exists to warrant relief from the judgments by this Court. *See A.C.*, 362 S.W.3d 361. Accordingly, we conclude that the family court's judgments terminating T.M.C.'s parental rights as to K.R.C., K.N.C., K.A.C., and K.L.L. were supported by clear and convincing evidence and it was in the childrens' best interest to terminate T.M.C.'s parental rights.

For the foregoing reasons, the orders terminating parental rights of T.M.C. and orders of judgment entered thereon by the McCracken Circuit Court, Family Court Division, are affirmed.

ALL CONCUR.

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