

RENDERED: AUGUST 5, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000575-ME

S.L.H.

APPELLANT

APPEAL FROM CLARK CIRCUIT COURT
FAMILY DIVISION IV
v. HONORABLE JEFFREY M. WALSON, JUDGE
ACTION NO. 14-AD-00027

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; A.M.; AND B.S.M., AN INFANT

APPELLEES

AND

NO. 2015-CA-000576-ME

S.L.H.

APPELLANT

APPEAL FROM CLARK CIRCUIT COURT
FAMILY DIVISION IV
v. HONORABLE JEFFREY M. WALSON, JUDGE
ACTION NO. 14-AD-00028

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; A.M.; AND R.C.M., AN INFANT

APPELLEES

AND

NO. 2015-CA-000577-ME

S.L.H.

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
FAMILY DIVISION IV
HONORABLE JEFFREY M. WALSON, JUDGE
ACTION NO. 14-AD-00029

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; A.M.; AND S.K.M., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, J. LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: S.L.H., mother, appeals from the Clark Family Court's order terminating her parental rights. In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012) and *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), S.L.H.'s counsel filed an *Anders* brief stating that no meritorious assignment of error exists. The brief was accompanied by a motion to withdraw, which was passed to this merits panel. After careful review, we agree with counsel's assessment, grant her motion

to withdraw by separate order, and affirm the circuit court's order terminating S.L.H.'s parental rights.

Relevant Facts

S.L.H. is the biological mother of B.S.M., R.C.M. and S.K.M.¹ The children were removed from S.L.H.'s custody based on allegations of S.L.H.'s substance abuse and placed in the custody of their grandfather. The children's grandfather later became unable to care for them, however, and they were placed in the custody of the Cabinet for Health and Family Services (the Cabinet).

Chelsea Packard testified that the children reported to her that they had witnessed some domestic violence while living with S.L.H., but that each child was doing well in his current placement. Teresa Brand, an employee of the Powell County Division of Protection and Permanency at the Department of Community Based Services, testified that the treatment issues identified for S.L.H. were stable housing, substance abuse and financial stability. Though S.L.H. stated that she went for treatment out-of-state, she did not go to a treatment center; she went to stay with two friends of hers in the military. Brand also testified that S.L.H. had no source of income except S.K.M.'s social security, and she was unemployed. S.L.H. moved to Clark County shortly after she met B.R., her boyfriend at that time, and they married shortly thereafter. B.R.'s criminal history included substance abuse and domestic violence, and he was physically and verbally abusive to S.L.H. She is still married to B.R., but they are estranged and she is

¹ These cases were consolidated on appeal.

currently living with her new paramour, J.M. Brand testified that while she had S.L.H.'s case plan, S.L.H. was non-compliant. Brand also testified that the children's father, A.M., and S.L.H. both previously stipulated to neglect in the Powell Family Court. Nicki Howell, an employee of the Clark County Division of Protection and Permanency in the Department of Community Based Services, testified that S.L.H. had not made progress with her case at the time that she had responsibility for S.L.H.'s case, although S.L.H. began to make progress later.

After the Cabinet filed petitions to terminate S.L.H.'s and A.M.'s parental rights for each of the three children in this case, A.M. voluntarily consented to the termination of his parental rights. S.L.H. objected, and the matter was heard in the Clark Family Court on March 5, 2015. On March 23, 2015, the family court terminated S.L.H.'s parental rights as to each of the children. This appeal follows.

Counsel has filed a notice of appeal on behalf of S.L.H. and submitted an *Anders* brief. In the *Anders* brief, counsel asserted that no meritorious issues exist on which to base this appeal. Counsel also filed a motion to withdraw, which is granted by this Court in a separate order.

Analysis

When a party files an *Anders* brief in a termination of parental rights case, it does not “require appellate courts to flesh out every conceivable argument appellant could have raised on appeal; instead, our review is akin to palpable error review requiring us only to ascertain error which ‘affects the substantial rights of a party.’” *A.C.*, 362 S.W.3d at 370. An appellate court will only reverse the lower court’s determination if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

Under KRS² 625.090(1)(a)(1)-(2), a circuit court “may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence” that “[t]he child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1) . . .” or “[t]he child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding[.]” The Clark Circuit Court determined that the children in this case were abused or neglected children, and they had previously been adjudged to be abused or neglected children by S.L.H.’s previous stipulation to neglect in Powell Family Court.

KRS 600.020(2) reads, in relevant part, that “[n]o termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

² Kentucky Revised Statutes.

...

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

...

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

...

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

The circuit court made a finding in this case that each of the factors listed above was satisfied for each of the three children. Subsection (j) was satisfied because the children had been in foster care for fifteen of the most recent twenty-two months prior to the filing of the petition. Subsections (e) and (g) were satisfied because S.L.H. failed to comply with her case plan, which included random drug screens,³ obtaining and maintaining a stable home, obtaining steady employment, completing substance abuse and mental health assessments and

³ S.L.H. apparently did make efforts to comply with this provision eventually, although the trial court stated that she did not make efforts for the first 14 months of her case.

completing parenting classes. S.L.H. failed to obtain any employment from the time her children were removed from her custody. She also failed to maintain stable housing, instead relying entirely upon support from her paramours.

Having considered the trial court's findings in regards to KRS 600.020(1) and (2), we cannot say that they are clearly erroneous. KRS 625.090 provides the following factors for a trial court to consider in determining the best interests of the child in a termination of parental rights proceeding:

...

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

The circuit court made a finding that S.L.H. had failed to provide necessities to the three children in this action. The circuit court also noted that the Cabinet attempted to provide all necessary services to S.L.H. in order to keep the

family together. Finally, the circuit court noted that the children are doing well in their current placements. Therefore, we cannot find clearly erroneous the circuit court's determination that termination of S.L.H.'s parental rights would be in the best interests of the children.

The parties below discussed the applicability of *D.L.B. v. Cabinet for Health & Family Servs.*, 418 S.W.3d 426, 429-30 (Ky. App. 2014). In *D.L.B.*, this Court discussed our Supreme Court's holding in *Colvard v. Commonwealth*, 309 S.W.3d 239 (Ky. 2010), which held in part that it was error for the trial court to allow testimony from children who described sexual abuse by their parents under the medical treatment exception to the hearsay rule. *Id.* at 247 (footnote omitted). In *D.L.B.*, this Court distinguished *Colvard*, stating as follows:

Here, the Cabinet sought to introduce the testimony of the children's treating therapist regarding the children's out-of-court descriptions of the sexual/physical abuse and neglect committed by their parents. The therapist testified that negative disclosures made by a child about a parent, regardless of the veracity of the disclosures, are therapeutically significant because they demonstrate a poor attachment with the parent. The therapist further testified that these children's "belief systems" about their mother presented a barrier to reunification. The Cabinet sought to admit the therapist's testimony concerning the children's disclosures of abusive acts committed by their parents, not to prove that the acts occurred, but to show the emotional state of mind and mental health of the children and to demonstrate the likelihood for improvement in the children's well-being if termination occurred.

D.L.B., 418 S.W.3d at 430-31. We believe that *D.L.B.* is controlling in this case.

The trial court carefully questioned counsel below in regards to the admissibility of

Packard's statements. Packard testified that she believed that witnessing domestic violence affected the well-being of the children's mental health, and that their mental states would likely improve with an alternative placement. Therefore, we cannot conclude that the circuit court abused its discretion in allowing Packard to testify that the children told her that they had each witnessed their mother's former paramour be violent with her.

Conclusion

Because no meritorious issues existed on appeal, the Clark Family Court's order terminating S.L.H.'s parental rights is affirmed.

ALL CONCUR.

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