

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001491-ME

J.C.D.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DEE MCDONALD, JUDGE  
ACTION NO. 15-AD-500015

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; AND C.R.G., A MINOR

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KRAMER, CHIEF JUDGE; ACREE AND MAZE, JUDGES.

ACREE, JUDGE: J.C.D. (Mother) appeals the Jefferson Family Court's August 26, 2015 orders terminating her parental rights. In accordance with *A.C. v.*

*Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*<sup>1</sup> brief conceding that no meritorious assignment of error exists to present to this Court and requesting to withdraw as counsel. After careful

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<sup>1</sup> *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

review, we agree with counsel's assessment, grant her request to withdraw by separate order, and affirm the family court's order terminating Mother's parental rights.<sup>2</sup>

Mother is the natural parent of C.R.G. (Child), a female child born on July 19, 2002. C.G. (Father) is Child's putative father. In July 2013, the Cabinet for Health and Family Services filed an abuse and neglect petition alleging Father had sexually abused Child and Mother failed to protect Child from the abuse. The Cabinet obtained emergency custody of Child and placed her in foster care.

Mother ultimately stipulated to abuse or neglect, admitting Child told her that Father was "having sexual contact with her and [Mother] failed to be protective and continued to allow [Father] to have contact [with Child]." (R. 77). To foster reunification, the Cabinet determined that Mother needed to complete protective parenting classes, complete counseling, and attend supervised visits with Child upon Child's completion of a forensic interview. Mother was unable to complete any of the treatment required by the Cabinet.

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<sup>2</sup> Pursuant to Kentucky Rules of Civil Procedure (CR) 73.08, CR 76.03, CR 76.12, and the policy of this Court, cases concerning child custody, dependency, neglect, abuse, and support, as well as domestic violence, are to be given priority, placing them on an expedited track through our Court. That did not occur in this case. Both human error and obsolete case management software resulted in an administrative delay in assigning this case to a merits panel for decision.

On June 24, 2016, after discovering the administrative error, the Clerk of the Court informed the Chief Judge and Chief Judge-elect who, together, assigned the case to a special merits panel of sitting Court of Appeals Judges who have given it the highest priority to offset any delay to the greatest extent possible. Additionally, the Court has sent a letter of explanation and apology to the parties and placed that letter in the record.

Finally, the Court has undertaken efforts to put into effect procedures to ensure that such an error is not repeated.

The Cabinet filed its petition for involuntary termination of Mother's parental rights on January 13, 2015.<sup>3</sup> A two-day termination hearing was held on June 3, 2015 and July 14, 2015.

The testimony at trial revealed that the Cabinet, in 2013, had referred Mother to Seven Counties Services (SCS) for protective parenting classes and individual counseling. Rebecca Dail, a clinician and supervisor with SCS, testified that, despite over two years of participation, Mother failed to make meaningful therapeutic progress. Dail explained that Mother was removed from the protective parenting program on three separate occasions – December 2013, March 2014, and September 2014 – due to her failure to complete assignments and pass group tasks, and, perhaps more importantly, due to her inability or unwillingness to accept responsibility for her failure to protect Child from Father's sexual acts and abuse. Mother reported she was conflicted about what she believed happened between Child and Father. In fact, quite disturbingly, Mother admitted in April 2014 that she was still having contact with Father.

Despite her various suspensions from the protective parenting classes, Mother's individual therapy continued. At one point, Child sent questions to Mother, and Mother provided written responses. A second round of questions followed from Child, but Mother's responses, which appeared to blame Child for the abuse, were deemed inappropriate and not therapeutically appropriate by

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<sup>3</sup> The Cabinet also sought to involuntarily terminate Father's parental rights. On April 3, 2015, Father waived his right to a trial on the merits of the Cabinet's petition and, instead, consented to the voluntary termination of his parental rights. The family court, satisfied Father's petition was made knowingly and voluntarily, granted his voluntary-termination petition.

medical professionals. Dail testified Mother failed to successfully complete protective parenting classes or individual therapy, and was ultimately discharged from all services in March 2015.

Child's therapist, Melissa Hayden, a licensed clinical child psychologist, testified next. Hayden testified Child had participated in individual, trauma-focused therapy since her removal in 2013. During their therapy sessions, Child disclosed experiencing five years of sexual abuse by Father while in Mother's care. Child stated she repeatedly informed Mother of the sexual abuse, but Mother did not limit Child's exposure to Father and the sexual abuse continued for at least three years after disclosure to Mother. Child stated she felt Mother failed to protect her from Father. Not only did Mother fail to prevent the abuse but, according to Child, she would facilitate it in that she would physically carry Child, who suffers from spina bifida, to Father's van and leave her there, with Father, unsupervised. Hayden also testified Child often expressed her love for Mother and her desire to be reunited with Mother, but Child was conflicted because Child felt she could not trust Mother.

Hayden further testified Child exhibited symptoms of post-traumatic stress disorder (PTSD), such as nightmares, aggressive behaviors, depression, and anxiety. Hayden diagnosed Child with PTSD and as a child victim of sexual abuse. Hayden testified Child, who was eleven years old at the time she entered foster care, did not regularly bathe herself and her foster parents had to wash her hair and assist her with bathing. Child's hygiene and self-care improved and

within two months of entering foster care she had gone from a wheelchair to walking independently. Child's performance in school also improved after she was placed in a smaller, self-contained classroom and she has proven to be a capable student.

Stacy McAlmont, a supervisor with the Cabinet for Health and Family Services, echoed Dail's testimony related to Mother's therapeutic failings. McAlmont also noted ongoing issues with the cleanliness of Mother's residence. McAlmont testified she conducted regular visits to Mother's home and observed the home frequently had a foul odor, dirty floors and toilets, trash piled in the kitchen, rotted food in the refrigerator, and/or disconnected utilities. A few months prior to trial Mother moved into a new home and, as of the Cabinet's last home visit, it was cleaned appropriately, but McAlmont clarified historically Mother rarely maintained a clean home for long.

McAlmont testified the Cabinet offered Mother a psychological evaluation in February 2015 to assess her therapeutic progress or lack thereof, but Mother declined it. McAlmont further stated Mother never paid any child support for Child and, while she did provide some clothing and books, she did not provide food, clothing, shelter, educational or medical assistance sufficient to meet Child's daily needs. However, Mother visited regularly and consistently with Child after removal until Child was moved to a foster home outside Jefferson County, at which time Mother maintained consistent phone contact with Child. McAlmont testified Mother has two other children (now adults) who were removed from

Mother's care in the 1990s due to allegations of physical and sexual abuse by those children's natural father. Mother's parental rights to those children were ultimately terminated.

On August 26, 2015, the family court entered findings of fact, conclusions of law, and orders terminating Mother's parental rights to Child. The circuit court found Child abused and neglected. KRS<sup>4</sup> 625.090(1)(a). It also found that termination was in Child's best interest, KRS 625.090(1)(b), and found that Mother was unfit to parent Child because: (a) she failed to provide basic necessities for Child; (b) she caused or allowed Child to be sexually abused or exploited; (c) she failed to offer essential parental care and protection for Child; and (d) Child has been in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition. KRS 625.090(2)(e), (f), (g), and (j). Mother appealed.

After cautiously reviewing the record, counsel for Mother filed an *Anders* brief in compliance with *A.C.*, *supra*. In *A.C.*, this Court adopted and applied the procedures identified in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967) to appeals from orders terminating parental rights wherein counsel is unable to identify any non-frivolous grounds to appeal. *A.C.*, 362 S.W.3d at 364. Those procedures require counsel to first engage in a thorough and good faith review of the record. *Id.* "If counsel finds his [client's] case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and

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<sup>4</sup> Kentucky Revised Statutes.

request permission to withdraw.” *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400).

In this case, Mother’s counsel complied with the mandates of *A.C.* and *Anders*.<sup>5</sup> As directed by *A.C.*, we have also carefully examined the record, and agree with counsel that no grounds exist that would warrant disturbing the family court’s orders terminating Mother’s parental rights.

Termination of a party’s parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. *Cabinet for Health and Family Serv. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the child must have been found to be an “abused or neglected” child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child’s best interest. KRS 625.090(1)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). The family court’s termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

The record contains sufficient evidence to support the family court’s decision to terminate Mother’s parental rights. Child is undoubtedly an abused and neglected child. KRS 625.090(1)(a). Mother admitted as much during the dependency proceedings. The testimony at the termination trial revealed Child

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<sup>5</sup> As required by *A.C.*, counsel certified that she furnished Mother with a copy of the brief and informed Mother of her right to file a *pro se* brief raising any issues she deemed meritorious. 362 S.W.3d at 371. Mother chose not to file a *pro se* brief.

suffered sexual abuse at the hands of Father for over five years and Mother was aware of the abuse for three of those years and did nothing. She wholly failed to protect Child and allowed Child to be sexually abused. KRS 625.090(1)(a), (2)(e), (2)(f), (3)(b). Mother has not contributed, financially or otherwise, to Child's care, beyond nominal tokens, since she was placed in foster care in 2013, KRS 625.090(2)(g), (3)(f), and Child has indisputably resided in foster care under the responsibility of the Cabinet for at least fifteen of the most recent twenty-two months preceding the filing of the termination petition in January 2015. KRS 625.090(2)(j).

Further, the Cabinet made reasonable efforts to facilitate reunification by offering Mother various services and treatment options, including protective parenting classes and individual therapy. KRS 625.090(3)(c). These therapies were vital to minimize the risk that Child would continue to be exposed to abuse or neglect if returned to Mother's care and control. While Mother participated in these opportunities, she was unwilling or unable to admit her role in Child's sexual abuse and to accept responsibility for failing to protect Child from Father. Mother also continued to maintain a relationship, to some degree, with Father. All of this contributed to Mother's failure to make therapeutic progress. It is clear to us, as it was to the family court, that Mother was unable or unwilling to make meaningful adjustments to her circumstances and state of mind that would have allowed her to make decisions in Child's best interest such that Child could return to her home within a reasonable period of time. KRS 625.090(3)(d).



Furthermore, since being placed in foster care, Child's well-being, self-care, school performance, and behaviors have improved. KRS 625.090(3)(e). After considering the totality of the circumstances, we are fully convinced Mother has neglected Child, allowed Child to be sexually abused and molested, is unfit to parent Child, and it is in Child's best interests to terminate Mother's parental rights.

We affirm the August 26, 2015 orders of the Jefferson Circuit Court terminating Mother's parental rights to Child.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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