RENDERED: AUGUST 26, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001813-ME

R. F. H. APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DOUGLAS BRUCE PETRIE, JUDGE
ACTION NO. 15-AD-00002

CABINET FOR HEALTH
AND FAMILY SERVICES; AND
I.M.A.H., A CHILD APPELLEES

OPINION AND ORDER
AFFIRMING

** ** ** ** **

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

NICKELL, JUDGE: R.F.H.[1] (mother) appeals from an order of the Boyle Circuit Court, Family Court Division, entered on October 26, 2015, terminating her parental rights (TPR) to her minor daughter, I.M.A.H. Having independently

[1] To protect the child's identity, all parties will be referenced by initials only.

reviewed the record of this appeal, we affirm termination of mother's parental rights.

Mother's appointed counsel filed a notice of appeal on mother's behalf, but unable to find any meritorious claim to pursue on appeal, counsel filed an *Anders*[2] brief and moved to withdraw from the case. Mother was given leave to supplement the *Anders* brief but filed nothing. We address the motion to withdraw in the Order following this Opinion.

FACTS

I.M.A.H. is a female born to mother on January 4, 2011. At the time, mother was unmarried and incarcerated in the Kentucky Correctional Institution for Women. No putative father is known.

In August 2014, the Cabinet for Health and Family Services (CHFS) received a referral from law enforcement saying a three-year-old child was discovered in the rear seat of a parked car with the mother passed out in the driver's seat and the driver's front door standing open. Upon being awakened, mother was determined to be under the influence of drugs and the child to be in great risk.

On August 23, 2014, I.M.A.H. was committed to CHFS as an abused and neglected child and has remained in foster care ever since. Mother stipulated neglect in the juvenile action. Mother was charged with endangering the welfare

[2] *Anders v. State of California,* 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

of a minor to which she entered a guilty plea under *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (U.S. 1970).

At trial on September 11, 2015, mother testified to a lengthy struggle with substance abuse, but admitted she had not advised doctors of her drug usage. At trial, she provided the only medical evidence and predicted she could recover from lingering medical issues and take custody of her daughter in three months. She told her attorney she would do everything differently if given the chance, but at the same time, thought she had done nothing wrong the night her daughter was removed from her care.

Mother suggested I.M.A.H. be placed with a friend. Upon completion of a home evaluation, with placement in the friend's home imminent, it came to light the friend had been convicted of driving under the influence (DUI) and R.F.H. had been with him when the DUI occurred. In the court's view, mother did not appreciate the risks associated with DUI since they were essentially the same as those leading to removal of the child from her own care. I.M.A.H. is one of six children born to mother, none of whom are in her care—three older children having been removed from her custody due to issues of neglect or abuse.

Mother received a settlement check of about $9,000 of which she had spent about $4,000—none being used for I.M.A.H. or her needs. Mother ceased communicating with the child in November 2014 and since that time she has sent her daughter no letters, cards or gifts.

The court found CHFS had developed a case plan for mother to allow safe return of the child to her care. While mother had made some headway on the plan, it was not of a prolonged nature. Ultimately, she failed random drug screens, did not maintain stable housing, did not complete meaningful substance abuse therapy and treatment, violated probation in March of 2015, and did not maintain current contact information with CHFS. The court found CHFS had provided or offered mother all reasonable services.

The court then found, for a period of not less than six months, mother had continuously failed or refused to provide or was substantially incapable of providing I.M.A.H. essential parental care and protection and there was no reasonable expectation of mother's improvement in light of her daughter's age. Furthermore, the court found, for reasons other than poverty alone, mother had continually failed or refused to provide or could not provide essential food, clothing, shelter, medical care or education reasonably necessary to her daughter's well-being, and there was no reasonable expectation of significant improvement in mother's conduct. Additionally, the court found mother had engaged in substance abuse for no less than ninety days, making her incapable of caring for her daughter's immediate and ongoing needs.

On February 23, 2015, CHFS petitioned for involuntary TPR. In the order entered October 26, 2015, the court determined TPR was in the child's best interest because I.M.A.H. is abused or neglected and has been adjudged a neglected child; mother has not cared for the child's needs for not less than six

months; mother has not provided essentials to the child for reasons other than poverty alone; mother has abandoned the child for not less than ninety days; mother is incapable of caring for the child due to her pattern of substance abuse for not less than ninety days; and, CHFS provided or offered all reasonable services to the family. As a result, the court terminated mother's parental rights and awarded the child to CHFS to be placed for adoption. It is against this backdrop that we evaluate the case presented to us.

ANALYSIS

TPR is governed by KRS[3] 625.090(1). With the exception of a parent who stands convicted of a criminal charge stemming from abuse or neglect of a child, TPR is prohibited unless the circuit court finds, based on clear and convincing proof, a court of competent jurisdiction has previously adjudged the child to be abused or neglected, or finds in a current proceeding the child is abused or neglected. *Santosky v. Kramer*, 455 U.S. 745, 770, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). As an appellate court, we accord the trial court much discretion in a TPR proceeding and apply the clearly erroneous standard of review set forth in CR 52.01. In addition to the threshold finding of abuse or neglect, the trial court must also determine termination would be in the child's best interest. *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 324 (Ky. 2006). Here, mother had already stipulated to neglect.

[3] Kentucky Revised Statutes.

No claims having been raised on appeal, as directed by *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), we have independently reviewed the record. Our review convinces us I.M.A.H. is neglected—as found by the trial court—and termination of R.F.H.'s parental rights was in her daughter's best interest. There is no reason to set aside the trial court's findings. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

As counsel for R.F.H. argued in the *Anders* brief, no meritorious grounds exist upon which to grant relief. The order terminating mother's parental rights to I.M.A.H. is affirmed.

ORDER

WHEREFORE, counsel for R.F.H. having moved to withdraw from the above-styled appeal under *Anders* after conscientiously reviewing the record and finding no meritorious issue to raise; said motion to withdraw along with a copy of the *Anders* brief having been mailed to R.F.H.'s last known address; R.F.H. having been advised she could file a *pro se* brief if desired but none being filed; said motion to withdraw having been passed to this merits panel for resolution; opposing counsel having agreed the appeal is without merit; and R.F.H. having filed no response thereto, we hereby GRANT the motion to withdraw.

DATE: _____ _____
Judge, Kentucky Court of Appeals

ALL CONCUR.

BRIEF FOR APPELLANT:

Brian D. Bailey
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BRIEF FOR APPELLEE:

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