

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1467-ME

J.F.

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 20-AD-00010

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; D.G.J.; AND
I.A.S.J., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

COMBS, JUDGE: The Appellant, J.F. (Father), appeals from the order of the Muhlenberg Circuit Court terminating his parental rights with respect to one minor child.¹ After our review, we affirm.

¹ The child's mother is D.G.J. Her paternal rights were also terminated. She is not a party to this appeal.

Father's counsel, Marcus R. Little, has filed a motion for leave to withdraw as counsel and to file a brief pursuant to *A.C. v. Cabinet for Health & Family Servs.*, 362 S.W.3d 361 (Ky. App. 2012), and *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). By order entered on February 14, 2022, this Court passed the motion to withdraw to this merits panel, ordered that the tendered *Anders* brief be filed, and permitted Father to proceed *pro se* and to file a supplemental brief within 30 days. No supplemental brief has been filed. We now proceed with our review.

The Appellant, J.F., is the father of a female child, I.A.S.J. (the child), born in 2015. On June 9, 2020, the Cabinet filed a petition for the involuntary termination of parental rights (TPR) in Muhlenberg Circuit Court. The case was tried on November 12, 2021, and we have reviewed the recorded proceeding. The Cabinet presented testimony from the child's foster parent as well as from the two Cabinet workers, Ms. Matthews and Ms. Williams. Father testified in his own behalf. On November 16, 2021, the court entered an opinion and order setting forth its findings of fact and conclusions of law. On November 30, 2021, the court entered an order terminating parental rights of both parents.

Where, as here, counsel files an *Anders* brief and a motion to withdraw, "we are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal." *A.C.*,

362 S.W.3d at 372. That is, we must determine whether the case is lacking in any meritorious ground that might justify a reversal.

In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014), our Supreme Court explained as follows:

KRS^[2] 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

The standard of our review is whether the trial court's findings are clearly erroneous. CR³ 52.01.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. . . . [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.

C.A.W. v. Cabinet For Health & Family Services, Commonwealth, 391 S.W.3d 400, 403 (Ky. App. 2013) (internal quotation marks and citations omitted).

² Kentucky Revised Statutes.

³ Kentucky Rules of Civil Procedure.

In the case before us, the circuit court found that a petition alleging neglect and abuse was filed in 2017 in Muhlenberg District Court, No. 17-J-00149-001. At that time, the family was homeless and was living in a tent at a campsite. The parents were engaging in domestic violence in front of the child. The child suffered from bruising and bug bites. The circuit court found that the child at issue in this case was determined to be a neglected child in the underlying juvenile proceeding as reflected in the district court's September 12, 2018, order. The first prong of the tripartite test is satisfied. KRS 625.090(1)(a)1.

The second prong requires that the court find by clear and convincing evidence that termination would be in the best interest of the child. KRS 625.090(1)(c). In conducting its best interest analysis, KRS 625.090(3) requires that the court consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(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.

At pages 3-4 of its opinion and order, the circuit court found that although the Cabinet had made reasonable reunification efforts prior to the filing of the TPR petition, its efforts had been unfruitful. The court found that both parents repeatedly refused to cooperate with the Cabinet, that they were argumentative and confrontational with the Cabinet's social worker, that they had taken few steps to achieve reunification, and that they had lived a transient lifestyle inconsistent with the child's best interests (for example, living in a motel known for criminal activity). The circuit court found that the living conditions about which Father testified were unsuitable for the minor child. It also found that Father had failed to comply with the "stable housing" requirement of the Cabinet's plan, to undergo a mental health evaluation, or to comply with any other substantive directives of the plan. The circuit court considered the parents' neglectful actions -- as well as their

lack of effort to demonstrate that it would be in the child's best interests to return to their care within a reasonable period of time. The trial court found that the child's behavior and mental health had improved significantly since she had been in foster care and that her physical, emotional and mental health, and overall welfare will continue to improve *only if* termination of parental rights is ordered.

We are satisfied from our review that the circuit court properly considered the applicable factors in conducting its best-interest analysis and that the testimony of the Cabinet's witnesses provided a substantial evidentiary foundation to support the circuit court's findings. The second prong of the tripartite test has been met.

The third and final prong, KRS 625.090(2), provides 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 [several enumerated] grounds.” We note that only one ground is required. At page 2, paragraph 9 of its opinion and order, the circuit court found that the child had been in foster care under the responsibility of the Cabinet for 32 months prior to the filing of the TPR petition. That finding alone satisfies KRS 625.090(2)(j): “[t]hat the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]”

Having independently reviewed the record, we conclude that there are no “nonfrivolous grounds” (*i.e.*, meritorious grounds) for reversal. Accordingly, we affirm. By separate order we grant counsel’s motion to withdraw.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET
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