

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-001565-ME

F.B.

APPELLANT

v.

APPEAL FROM FAYETTE FAMILY COURT  
HONORABLE JOHN P. SCHRADER, JUDGE  
ACTION NO. 12-AD-00073

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; AND C.N., A CHILD

APPELLEES

OPINION AND ORDER  
AFFIRMING  
AND GRANTING MOTION TO WITHDRAW

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

MAZE, JUDGE: F.B. is the mother of C.N., born in March 2000. C.N. was removed from F.B. on November 24, 2010, for physical abuse. At that time, the

child was committed to the custody of the Cabinet for Health and Family Services (the Cabinet) and has been in foster care since then.

F.B. has mental health issues which hamper her parenting abilities. The Cabinet has provided F.B. with several treatment plans, but she has been unable to fully comply with any of them. While she has received some treatment for her mental illness, F.B. has been unwilling or unable to consistently take her medication. She is also prone to outbursts of bizarre, disruptive and self-destructive behaviors. Furthermore, despite assistance from the Cabinet, F.B. has been unable to follow through with the Cabinet's goals toward self-sufficiency and reunification with her child.

On March 27, 2012, the Cabinet filed the current petition for termination of F.B.'s parental rights.<sup>1</sup> The trial court appointed counsel for F.B. and a guardian *ad litem* for C.N. The matter came before the court for an evidentiary hearing on July 25, 2012. Following that hearing, the trial court entered findings of fact and conclusions of law granting the Cabinet's petition for termination of parental rights. The court found that C.N. was an abused and neglected child; that F.B., for reasons other than poverty alone, failed to provide or is incapable of providing essential parental care for the child; that the Cabinet had provided all reasonable services to F.B.; that F.B. had failed to make sufficient progress toward improvement; and that there was no reasonable expectation of

---

<sup>1</sup> F.B. executed an affidavit of paternity indicating that the child's father is deceased. Since F.B. and C.N. emigrated as refugees from the Democratic Republic of the Congo, no additional information about C.N.'s father is available. For purposes of this appeal, there is no dispute that C.N.'s father is deceased, and the trial court so found.

significant improvement in the immediately foreseeable future. The court also noted that C.N. was doing well in his current placement and had expressed a desire to remain there. Based upon these findings, the trial court found that it was in the best interests of the child that F.B.'s parental rights are terminated and that custody be transferred to the Cabinet with authority to place C.N. for adoption. The trial court executed a separate order terminating F.B.'s parental rights in accord with its prior findings of fact. F.B. filed a motion to alter, amend or vacate pursuant to Kentucky Rules of Civil Procedure (CR) 59.05, which the trial court denied on August 23, 2012.

As a preliminary matter, F.B. requested and was granted the appointment of counsel on this appeal. However, her appointed counsel filed a brief stating that he was unable to find any ground of error by the trial court which would entitle F.B. to relief. *Anders v. State of California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). In accordance with the procedures set forth in *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), the motion to withdraw by F.B.'s appointed counsel is granted and this appeal shall proceed *pro se*.

On review of an order terminating parental rights, we ask whether the trial court's findings were clearly erroneous. *Cabinet for Families and Children v. G.C.W.*, 139 S.W.3d 172, 178 (Ky. App. 2004). The trial court's factual findings will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d

420, 424 (Ky. App. 1986). Kentucky Revised Statutes (KRS) 625.090 provides for the involuntary termination of parental rights upon the court's finding that clear and convincing evidence establishes that “a child is or has previously been adjudged, abused or neglected, and that termination is in the child's best interest. Then, the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2).” *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 851 (Ky. App. 2008). In determining the best interest of the child and the existence of a ground for termination, the court may consider mental illness, as certified by a qualified mental health professional, to the extent that the condition renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time. KRS 625.090(3)(a).

In the prior dependency proceeding, C.N. was adjudged to be abused or neglected. The trial court made detailed findings concerning the Cabinet's efforts to provide reunification services and F.B.'s inability to comply with her assigned goals. The court also recognized that F.B.'s untreated mental health issues severely limit any expectation of improvement in the immediately foreseeable future. Under the circumstances, the trial court's factual findings are sufficient as required by KRS 625.090 and are amply supported by clear and convincing evidence. Based on these findings, the trial court did not clearly err in finding that termination of F.B.'s parental rights would be in the best interest of C.N.

Accordingly, the order of the Fayette Family Court is affirmed.

IT IS FURTHER ORDERED that the motion by appointed counsel,  
Tony L. Boyd, to withdraw is GRANTED.

ALL CONCUR.

ENTERED: December 20, 2013

/s/ Irv Maze

JUDGE, COURT OF

APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Tony L. Boyd  
Lexington, Kentucky

Terry L. Morrison  
Lexington, Kentucky