

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001902-ME

E.M.B.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-AD-00022

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

APPELLEES

NO. 2013-CA-001903-ME

E.M.B.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-AD-00023

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND O.N.J., A MINOR CHILD

APPELLEES

NO. 2013-CA-001904-ME

E.M.B.

APPELLANT

v. APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-AD-00024

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND H.B., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND MOORE, JUDGES.

ACREE, CHIEF JUDGE: E.M.B. (Mother) appeals the Campbell Family Court's October 2, 2013 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*¹ brief conceding that no meritorious assignment of error exists to present to this Court, accompanied by a motion to withdraw which was passed to this merits panel. After careful review, we agree with counsel's assessment, grant his motion to withdraw by separate order, and affirm the family court's orders terminating Mother's parental rights.

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

Mother is the biological parent of three children: O.J., born May 22, 2008; J.J., born September 8, 2009; and H.B.², born February 11, 2012. The children's putative father, W.J., IV, died on May 3, 2012.³

The Cabinet filed its petition for involuntary termination of Mother's parental rights on June 17, 2013. The action was tried before the family court on September 30, 2013. Mother did not appear or participate. However, her court-appointed attorney was present and acted on her behalf.⁴

Stephanie Condrey, a social worker for the Cabinet for Health and Family Services, was the only testifying witness at the hearing. According to Condrey, Mother has a drug problem. When H.B. was born in February 2012, Mother tested positive for methadone. The Cabinet prepared a safety plan, and Mother agreed to weekly drug screens. The Cabinet also initiated a dependency, neglect, and abuse action. Mother admitted to neglect of all three children on March 1, 2012.

Less than two weeks after that, on March 12, 2012, Mother tested positive for cocaine. The children were committed to the Cabinet two days later and placed in foster care, where they have remained since. Initially, H.B. was placed in a different foster home than O.J. and J.J. However, in March 2013, H.B. was reunited with her siblings. Condrey testified the children are happy, healthy, and

² Mother identified H.B. by another name with the initials H.S.M.J. to the Cabinet for Health and Family Services. However, we have chosen to use the name stated on the child's birth certificate. Should confusion arise, we reiterate that H.B. and H.S.M.J. are the same child.

³ In 2012, Mother executed an affidavit of paternity naming W.J., IV as the father of all three children.

⁴ Mother's counsel notified the court that Mother was aware of the hearing date and time because he informed her of such around the end of August 2013.

well-cared for by their current foster parents. H.B. is thriving with the First Steps program; O.J. recently started preschool; and J.J. is in daycare and doing well. The children have bonded with their foster family.

Condrey testified Mother has not seen the children since January 31, 2013. Mother was previously ordered to complete three clean drug screens to visit with the children. She refused to do so. Mother has also failed to provide for the children's basic needs. She failed to pay the modest court-ordered child support of \$20 per month; failed to provide the necessities of life, such as food and clothing, for the children; and failed to secure social-security death benefits for the children following their father's untimely demise.

The Cabinet made numerous efforts to provide Mother with services, case plans, and rehabilitation options to address her two primary areas of concern: that is, her substance abuse and her poor parenting skills. The services offered included: a UK TAP assessment; mental health counseling; an inpatient drug treatment program; parenting classes; drug screens; AA meetings; and supervised and unsupervised visitation. For a short period, Mother worked her case plan. She completed parenting classes in November 2012 and consistently visited with the children. Her visits with the children suddenly ceased in January 2013. Additionally, Mother completed the UK TAP assessment, but refused to follow-up with the recommended treatment options. Mother also entered an inpatient treatment program in June 2013, but only lasted a scant 24 hours before she abandoned the program. Mother only drug screened twice between October 2012

and February 2013. She tested positive for opiates on October 9, 2012, and tested positive for methadone on February 11, 2013. Mother missed numerous random drug screens before, during, and after that time period. She stopped cooperating with the Cabinet in October or November 2012, and has had little contact with the Cabinet since, despite efforts by the Cabinet to get in touch with her.

Condrey testified Mother is incapable of providing essential parental care and protection for the children because of her substance issues, and Mother has made no lasting lifestyle changes which would render reunification feasible in the foreseeable future. Heroin is Mother's current drug of choice. She is unable to maintain sobriety on her own, and refuses to participate in long-term and/or inpatient drug treatment programs. Mother also has several drug-related criminal convictions, including a 2005 DUI conviction; a 2006 possession of marijuana conviction; and a 2012 theft by unlawful taking conviction. As of the date of the hearing, Mother did not have stable housing.

On October 2, 2013, the family court entered findings of fact, conclusions of law, and orders terminating Mother's parental rights to all three children. The family court found each child had been previously adjudged neglected, KRS⁵ 625.090(1)(a)1, and that terminating Mother's parental rights was in the children's best interests. KRS 625.090(1)(b). The family court further concluded: Mother abandoned the children for a period of not less than ninety (90) days (KRS 625.090(2)(a)); Mother, for a period of not less than six (6) months,

⁵ Kentucky Revised Statutes.

continuously or repeatedly failed, refused to provide, or was incapable of providing essential parental care for the children, and there was no reasonable expectation of improvement in parental care and protection (KRS 625.090(2)(e)); Mother, for reasons other than poverty alone, had continuously and repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being, and there was no reasonable expectation of significant improvement in the parental conduct in the immediately foreseeable future, considering the children's ages (KRS 625.090(2)(g)); and the children had 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 (KRS 625.090(2)(j)).

Mother appealed.

After vigilantly 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

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

In this case, Mother’s counsel fully complied with the mandates of *A.C.* and *Anders*.⁶ As directed by *A.C.*, we have also cautiously 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. 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. By orders entered March 1, 2012 in the related dependency, neglect, and abuse action, Mother admitted she had neglected her children. Mother then abandoned the children for no less than ninety days. In fact, Mother has had no contact with them since January 2013, and has

⁶ As required by *A.C.*, counsel certified that he 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.

not financially contributed in the slightest degree to the children's care since they were placed in foster care in March 2012. The children have 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 June 2013. Further, the Cabinet certainly made reasonable efforts to facilitate reunification by offering Mother various services and treatment options. Mother deliberately chose not to take advantage of those opportunities. Instead, Mother has elected to engage in a drug-enhanced lifestyle that is not conducive to parenting three young children. She has made little effort, if any, to adjust her circumstances and conduct such that she can properly care for the children. Since residing in foster care, the children's well-being and prospects have improved; their foster parents are open to adopting them. After considering the totality of the circumstances, we are fully convinced Mother has neglected and abandoned the children, is unfit to parent them, and it is in the children's best interests to terminate Mother's parental rights.

We affirm the October 2, 2013 orders of the Campbell Family Court terminating Mother's parental rights to her three children, O.J., J.J., and H.B.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kirk Pfefferman
Newport, Kentucky

BRIEF FOR APPELLEE, CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY:

Cynthia Kloeker
Florence, Kentucky