

RENDERED: DECEMBER 23, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2015-CA-000388-ME

E. W.

APPELLANT

v.

APPEAL FROM METCALFE CIRCUIT COURT  
HONORABLE W. MITCHELL NANCE, JUDGE  
ACTION NO. 14-AD-00011

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEATH AND FAMILY  
SERVICES AND A.N.T. (A CHILD)

APPELLEES

AND

NO. 2015-CA-000421-ME

P. F.

APPELLANT

v.

APPEAL FROM METCALFE CIRCUIT COURT  
HONORABLE W. MITCHELL NANCE, JUDGE  
ACTION NO. 14-AD-00011

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEATH AND FAMILY  
SERVICES AND A.N.T. (A CHILD)

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \*\* \*\* \*\*

BEFORE: ACREE, CHIEF JUDGE; J. LAMBERT AND MAZE, JUDGES.

ACREE, CHIEF JUDGE: E.W. (Father) and P.F. (Mother) appeal the Metcalfe Circuit Court's February 6, 2015 orders terminating their parental rights to their child, A.T. (Child). Under *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother and Father each filed an *Anders*<sup>1</sup> brief conceding that no meritorious assignment of error exists to present to this Court, accompanied by motions to withdraw which were passed to this merits panel. After careful review, we agree with counsels' assessments, grant their motions to withdraw by separate orders, and affirm the circuit court's orders terminating Mother's and Father's parental rights.

Mother and Father<sup>2</sup> are the natural parents of Child, born August 8, 2012. Upon her birth, Mother placed Child with relatives. Father acquiesced to the placement. All agree that Mother and Father have had limited involvement in Child's life. They have not seen Child since December 2013.

The Cabinet for Health and Family Services filed its petition for involuntary termination of Mother's and Father's parental rights on July 28, 2014. The action was tried before the family court on February 5, 2015.

---

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

<sup>2</sup> Father's paternity was conclusively established on February 20, 2013 in Cumberland District Court, Civil Action No. 13-J-00006 (R. at 53).

A social worker with the Cabinet testified the Cabinet removed Child from the relatives' care in October 2013 upon discovering Child had a severely fractured arm, a dislocated elbow, and a healing fracture in her arm. The Cabinet also had concerns about Child's failure to thrive, other marks on her body, and the fact that Child's head was shaved. The Cabinet filed a neglect and abuse action. Mother and Father each stipulated to neglect.

With respect to the relatives, the Worker testified the male relative is a registered sex offender, having been convicted of rape and sodomy of a thirteen-year-old child. The Worker stated the relatives' home is not appropriate for Child.

At the time of removal, Mother and Father declined to execute case plans. The Cabinet granted Mother and Father supervised visitation with Child which they exercised.

The Worker met with Mother and Father again in December 2013. They again declined case plans, stating they were homeless, unemployed, and could not provide for Child. Additionally, they no longer wished to visit Child.

In December 2014, Father had a change of heart. He contacted the Worker and requested a case plan. He wanted Child back. Father met with the Worker in early 2015 and a case plan was developed. He partially worked that plan up to the termination hearing in February 2015.

Mother has had no contact with the Cabinet since December 2013. She has declined at all times to work a case plan. She has expressed no interest in reunification.

A registered nurse employed by the Cabinet testified Child had two broken bones in her lower arm. Only a forceful blow could have caused such a severe injury. A fall would be inconsistent with Child's injuries. The nurse also observed a healing fracture in Child's arm.

No one has admitted to harming Child. It is not known how her injuries occurred.

Child's foster mother also testified. She stated Child was neither crawling nor walking when she came into foster care. The foster mother described Child as extremely small with easily discernible ribs, and stated Child had dark circles under eyes; barely had hair; had jagged toenails and fingernails; would stiffen when hugged; could barely feed herself; and did not know how to waive hello or goodbye. Within a few months, the foster mother observed meaningful improvement in Child's development. Child had also gained weight. The foster mother described Child as currently "fantastic" and developmentally "on target."

On February 6, 2015, the family court entered findings of fact, conclusions of law, and orders terminating Mother's and Father's parental rights to Child. The circuit court found Child neglected. KRS<sup>3</sup> 625.090(1)(a). It also found that termination was in Child's best interest, KRS 625.090(1)(b), and found three grounds of parental unfitness. KRS 625.090(2)(a), (e), and (g).

Mother and Father each appealed. Mother's court-appointed counsel, after scouring the record, filed an *Anders* brief on Mother's behalf in compliance with

---

<sup>3</sup> Kentucky Revised Statutes.

*A.C.*, *supra*. Father’s court-appointed counsel followed the same course. Both attorneys also moved to withdraw as counsel.

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, counsel for Mother and Father fully complied with the mandates of *A.C.* and *Anders*.<sup>4</sup> 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 circuit court’s orders terminating Mother’s and Father’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 Services 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

---

<sup>4</sup> As required by *A.C.*, counsel for Father certified that she furnished Father with a copy of the brief and informed Father of his right to file a *pro se* brief raising any issues he deemed meritorious. 362 S.W.3d at 371. Mother’s counsel did likewise. Neither Father nor Mother chose to file a *pro se* brief.

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. *K.H.*, 423 S.W.3d at 211. Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.* "Due to the fact that 'termination decisions are so factually sensitive, appellate courts are generally loathe to reverse them, regardless of the outcome.'" *Id.* (citation omitted).

The record contains more than sufficient evidence to support the circuit court's decision to terminate Mother's and Father's parental rights. Child is undoubtedly a neglected child. KRS 625.090(1)(a). Mother and Father both admitted as much.

It is equally clear that Mother and Father abandoned Child for a substantial part, if not all, of her young life. KRS 625.090(2)(a). They have not seen Child since December 2013, well past the ninety days required for abandonment. *Id.* They were not prevented from visiting with their child; they *chose* to forego visitation.

Further, they have never provided Child essential parental care and protection, or provided for her essential needs. KRS 625.090(2)(e), (g). Mother and Father have played no role in Child's life. They have never cared for Child. They left Child with relatives from birth. While in relatives' care, Child sustained severe injuries. Yet, Mother and Father continued to advocate for Child to be

placed back in the relatives' care and control – that is, back to the care and control of a registered sex offender who had previously committed sexual offenses upon a minor.

Mother and Father consistently told the Cabinet that they did not desire custody of Child. They declined to execute case plans,<sup>5</sup> declined to work toward reunification, and declined visitation with Child. At no point, and in no way, did Mother or Father provide financially for Child. They have paid no child support. Mother and Father admitted to the Cabinet they were each unable to maintain stable homes. In fact, they admitted they had been homeless for over a year. They further admitted they did not have steady jobs. If they are incapable of providing for themselves, how are they going to provide for Child? There is no evidence in the record that they are taking steps to improve their circumstances.

There is nothing in this case that convinces us in the slightest degree that it is in Child's best interest to be placed in Mother's or Father's care and custody. The Cabinet asked Mother and Father on more than one occasion to work case plans with the goal of reunification. They each declined. Without their cooperation, there was little the Cabinet could offer Mother and Father. It exercised reasonable efforts. KRS 625.090(3)(c). During the trial, Mother and Father failed to show any steps they had taken to adjust their circumstances which would make it in Child's best interest for either Mother or Father to obtain custody. KRS 625.090(3)(d). Additionally, Child has flourished since being placed in foster

---

<sup>5</sup> We recognize that a few weeks prior to termination Father did attempt to work a case plan.

care and her improvements in all areas has been dramatic. KRS 625.090(3)(e).

We are confident she will continue to improve and flourish.

After considering the totality of the circumstances, we are fully convinced Mother and Father, each and individually, have neglected and abandoned Child, are unfit to parent her, and it is in Child's best interest to terminate Mother's and Father's parental rights.

We affirm the February 6, 2015 orders of the Metcalfe Circuit Court terminating Mother's parental rights to child, A.T. We affirm those same orders terminating Father's parent rights to child, A.T.

ALL CONCUR.

BRIEF FOR APPELLANT, E.W:

Traci Peppers  
Glasgow, Kentucky

BRIEF FOR APPELLANT, P.F:

Holly Boling  
Edmond, Kentucky

BRIEFS FOR APPELLEES:

Mary Gaines Locke  
Munfordville, Kentucky