

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000622-ME

T. Y.

APPELLANT

v. APPEAL FROM OHIO FAMILY COURT
HONORABLE MICHAEL L. MCKOWN, JUDGE
ACTION NO. 14-AD-00019

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
B. D. J.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, J. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: T.Y. (father) appeals the Ohio Family Court's order terminating his parental rights to B.D.J. (child). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky.App. 2012) and *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), father's

counsel filed an *Anders* brief conceding that no meritorious assignment of error exists. The brief was 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 circuit court's order terminating father's parental rights.

The parties are in agreement as to the facts. Father is the biological father of child born in April 2012. On July 5, 2012, the family court removed child from his mother's custody¹ and placed him with the Cabinet for Health and Family Services. Child was then briefly placed in father's custody.

On April 3, 2013, the family court issued an emergency custody order removing child from father's custody. This order was based upon father's admission that he was using methamphetamine. On that same day, father and child's mother were arrested for manufacturing methamphetamine. On May 8, 2013, father entered a stipulation pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to neglect.

On May 8, 2013, father was indicted for manufacturing methamphetamine, first offense. Father filed motions in the family court to have child placed with his parents and to schedule visitation with child while father was incarcerated. Both motions were denied. Father was released from jail on February 14, 2014. That same day, father moved to Letcher County, Kentucky.

¹ Child's biological mother is now deceased.

Father filed a motion for child to be placed in Letcher County and a motion for the case to be transferred to Letcher County. These motions were denied.

The Cabinet developed a case plan for father after he was released from custody and completed a 90-day rehabilitation program. Father attended parenting classes, anger management classes and NA/AA meetings. He testified at the hearing that he also continued to maintain sobriety.

Although father was granted weekly visitation with child, he failed to visit child regularly. Since February 2014, father visited child approximately once a month. At father's hearing, he estimated the total time he visited child between April 3, 2013, and March 18, 2015, was between forty-eight and seventy-two hours.

On September 4, 2014, the Cabinet filed a petition for involuntary termination of parental rights.

On October 24, 2014, father pled guilty to manufacturing methamphetamine, first offense, and ultimately received a 15-year prison sentence. He pled guilty before the termination hearing, but had not been finally sentenced.

The family court held a hearing on the termination of father's parental rights on March 16, 2015. At the hearing, father testified that if he was sent to prison he would grant temporary custody of child to his parents or his fiancée. Written findings of fact were entered on April 6, 2015. This appeal follows.

When a party files an *Anders* brief in a termination context, it does not "require appellate courts to flesh out every conceivable argument father could have

raised on appeal; instead, our review is akin to palpable error review requiring us only to ascertain error which ‘affects the substantial rights of a party.’” *A.C.*, 362 S.W.3d at 370 (quoting Kentucky Rules of Civil Procedure (CR) 61.02). A lower 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).

Kentucky Revised Statutes (KRS) 625.090 provides three criteria that must be met in order for a family court to terminate parental rights. First, KRS 625.090(1)(a), the family court must find by clear and convincing evidence that the child is abused or neglected. The family court found the child had been previously adjudged to be neglected. Furthermore, the family court’s written findings of fact stated that child had been neglected by father, when father:

(1) Engaged in a pattern of criminal drug activity leading to his arrest and incarceration which rendered him incapable of caring for the immediate and ongoing needs of the child. [Father’s] most recent arrest occurred while he was on probation for a prior offense;

(2) Considering the age of the child, continuously and/or repeatedly failed or refused to provide essential parental care and protection for the child. [Father] was incarcerated for nearly a year between April 2013, and February 2014, but even in the year since his release, [father] has failed to spend more than seventy-two (72) hours with the child; and

(3) Did not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being. [Father] provided limited if any financial support for the child despite receiving Social Security Income and money from selling fire wood and having only a car and car insurance payment[.]

Second, under KRS 625.090(1)(b), the family court must find that the termination of parental rights would be in the child's best interest after considering the factors in KRS 625.090(3). The family court concluded that it would be in child's best interest to terminate father's parental rights, relying on several different facts, including the following: Father had previously been found to have neglected child, child appeared to be well adjusted to his current foster home, father did not contribute to the care and maintenance of child or visit child despite having the resources to do so and father engaged in a criminal lifestyle incompatible with parenting.

Third, KRS 625.090(2) provides that the family court must find by clear and convincing evidence the existence of at least one of the enumerated grounds for termination which include:

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

.....

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

.....

(j) That the child has 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.

The family court found (e), (g) and (j) were proven. The family court reasoned that (e) and (g) were satisfied because father was incarcerated on drug charges for approximately one year. The family court found that (j) was satisfied because child had been in foster care for approximately twenty-three months.

Having concluded that substantial evidence exists in the record to support the trial court’s findings, we will not disturb them on appeal. *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 116 (Ky.App. 1998). No meritorious grounds exist upon which to grant relief.

The Ohio Family Court’s order terminating father’s parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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