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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000712-ME

M. N. S.

APPELLANT

v.

APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 14-AD-00007

CABINET FOR HEALTH AND
FAMILY SERVICES AS NEXT
FRIEND OF S. N. S., A CHILD
UNDER EIGHTEEN

APPELLEES

AND

NO. 2015-CA-000713-ME

M. N. S.

APPELLANT

v.

APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 14-AD-00008

CABINET FOR HEALTH AND
FAMILY SERVICES AS NEXT

FRIEND OF A. L. A. S., A CHILD
UNDER EIGHTEEN

APPELLEES

AND

NO. 2015-CA-000714-ME

M. N. S.

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 14-AD-00009

CABINET FOR HEALTH AND
FAMILY SERVICES AS NEXT
FRIEND OF K. P. S., A CHILD
UNDER EIGHTEEN

APPELLEES

AND

NO. 2015-CA-000715-ME

M. N. S.

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 14-AD-00010

CABINET FOR HEALTH AND
FAMILY SERVICES AS NEXT
FRIEND OF M. N. S., A CHILD
UNDER EIGHTEEN

APPELLEES

OPINION AND ORDER

AFFIRMING ORDERS OF TERMINATION
AND GRANTING
MOTION TO WITHDRAW

** ** * * * * *

BEFORE: COMBS, THOMPSON AND VANMETER, JUDGES.

COMBS, JUDGE: Appellant, M.N.S. (Father) appeals from Orders of the Trimble Circuit Court terminating his parental rights to his four natural children.

Appellant's counsel has filed a Motion to Withdraw and 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).

Having carefully reviewed the record, we grant the Motion to Withdraw and affirm the trial court's Orders terminating Father's parental rights to each of his four children.

Father and T.N.S. (Mother) were married on March 29, 2002. A Decree of Dissolution was entered in Indiana in 2013. Father and Mother have four biological children together: A.L.A.S., a female born on April 30, 2003 (Child 1); M.N.S., a male born on May 1, 2004 (Child 2); K.P.S., a male born on March 8, 2005 (Child 3); and S.N.S., a female born on March 26, 2008 (Child 4). In addition, Mother has another child, S.J.B., born on November 6, 2000, whose putative father is M.D.B. Mother has not appealed.

On September 17, 2014, the Appellee, Cabinet for Health and Family Services (the Cabinet) filed Petitions for Involuntary Termination of Parental Rights with regard to Mother's five and Father's four children. The actions were tried on March 2,

2015. Katie Rankin, a social services worker for the Cabinet, and Father testified at trial. Mother did not appear at trial; her appointed counsel appeared on her behalf.

The trial court entered Findings of Fact and Conclusions of Law, Orders Terminating Parental Rights, and Orders of Judgment on April 7 and 8, 2015. The trial court found that each child had been in foster care under the responsibility of the Cabinet for 15 of the most recent 22 months preceding the filing of the petition for reconsideration. The trial court also found as follows:

Katie Rankin testified She has worked as an ongoing worker for this family since April of 2013.

The Cabinet has been involved with this family since April of 2013,^[1] when it received a report that [Father] had been arrested for assaulting [Mother] and one of the children and he had violated an EPO that [Mother] had obtained against him. It filed Juvenile Dependency, Neglect and Abuse Petitions on behalf of all five (5) children in the Trimble Family Court on April 11, 2013, alleging that the children were neglected because [Father], the father of four of the children, was arrested the previous month for assaulting [Mother] ... and one of the children; [Mother] obtained a DVO against [Father], but one of the children reported that he was back in the home; and [Mother] was recently arrested for DUI.... The Court entered Emergency Custody Orders on April 11, 2013, placing the children in the emergency custody of the Cabinet. It entered Temporary Removal Hearing Orders on April 16, 2013, placing the children in the temporary custody of the Cabinet. The Court entered Adjudication Hearing Orders on July 23, 2013, wherein it found that [Mother] and [Father] had neglected the children

¹ We note that the Cabinet's April 12, 2013, Report, included in the certified Trimble Family Court records made an Exhibit at trial, reflects a child services history in Indiana. The Cabinet's report notes that "[t]he children continue to be at significant risk of abuse and neglect at this time due to the extreme violence between the parents if they are returned. The children have been removed in the past as a result of domestic violence, lack of stability and substance abuse."

and [Father] had abused [Child 4]. It entered Disposition Hearing Orders on September 26, 2013, committing the children to the Cabinet. Finally, the Court entered Permanency Hearing Orders on May 14, 2014, changing the goal to adoption and waiving reasonable efforts to reunify the children with [Mother] and [Father]. ...

...

There were several barriers to the parents' reunification with their respective children. First, [Mother and Father] never completed their Case Treatment Plans. ... [Father] was in and out of jail or on the run. And ... the children were afraid of [Father].

...

The Trimble Family Court entered Orders ... on October 30, 2013, directing [Father] to pay child support of \$510.00 per month for the children born to him. He made three (3) payments totaling \$83.07 since that date. ...

...

[Father] has been convicted several times. ... He was convicted of Violation of a Kentucky EPO/DVO in the Trimble District Court on February 18, 2014. He was also convicted of Thirds [sic] Degree Burglary, First Degree Unlawful Imprisonment, Fourth Degree Assault (2 counts), and Second Degree Disorderly Conduct in the Trimble Circuit Court on October 27, 2014. He was sentenced to serve four (4) years on the first two (2) counts 12 months on the second two (2) counts and 90 days on the last count, running concurrently for four (4) years. His minimum expiration date is August 12, 2017. ...

...

[Child 1 and Child 4] have been placed in a Benchmark foster home in Laurel County since March of 2014. This is their fifth placement because [Child 1] keeps acting aggressively toward the foster parents or [Child 4] and disrupting the placements. The foster parents have three (3) biological children between the ages of two and 16 years old. They have agreed to adopt [Child 4], but they are still deciding about adopting [Child 1].

[Child 1] is 11 years old. She has struggled attaching to her foster parents. She also has become aggressive toward the foster mother and [Child 4]. She has gone AWOL in the

past. She is participating in weekly individual and family therapy. She has been assessed for special education services because she struggles with reading and math.

[Child 4] is almost seven (7) years old. She is attached to her foster family. She suffers from ADHD and is participating in biweekly therapy sessions. She is doing well in school, but also struggles with reading.

[Child 2] and [Child 3] have been placed in a Benchmark foster home in Whitley County, Kentucky since June of 2014. This is their third placement. ... The foster parents are available to adopt [Child 2] and [Child 3].

[Child 2] is 10 years old. He participates in special education services at school because he struggles with reading and math. He participates in biweekly therapy sessions. He is starting to open up about his past.

[Child 3] is almost 10 years of age. He does well in the foster home and gets along with his brother, [Child 2]. He is doing well in school. He also participates in biweekly therapy sessions.

...

Ms. Rankin ... had no evidence that [Father] had completed any of his Case Treatment Plan as of the date of the trial. He could have completed some of it, even if he was incarcerated. She also had no evidence that he had paid child support by wage assignment or cash in Indiana.

...

[Father] testified that he is 34 years old. He denied that he had abused or neglected the children, even though the Court had found otherwise at the adjudication hearing on July 22, 2013. ...

He further testified that he had problems with [Mother]. They yelled and shoved each other. He denied beating her in the head or folding her up in the sofa bed [In the March 20, 2013 Domestic Violence Petition, Mother alleged that Father had pounced on her while she was asleep

with Child 4 on a sofa bed, that he started beating her in the head, and when she tried to get up, Father tried to fold her and the child into the sofa bed.] He also denied that the children were present, except for “a couple of times.”

[Father] admitted that he had received a Case Treatment Plan on April 24, 2013 and he had signed it. He talked to a therapist at Centerstone in Indiana and completed several substance abuse classes. However, he had no documentation that he had ever enrolled in these classes, much less completed them.

He claimed that he had supervised visits with the children after they were removed in April of 2013 until the summer of 2013. These visits were in the Cabinet’s office in Trimble County. However, he could not remember the date of his last visit with the children.

[Father] also claimed that he had paid child support in Indiana, pursuant to the Decree of Dissolution of Marriage entered by the Indiana Court on May 13, 2013. ... He was ordered to pay child support of \$88.00 per week. He [testified that he] paid this child support by wage assignment. However, he had had [no] documentation of the payments that he had made at the trial.

...

[Father] has been incarcerated continuously since October 16, 2014. ... He also admitted that he had a detainer on him for pending charges in Indiana, including Second Degree Assault (Domestic Violence), which is a felony.

The ... Cabinet has made all reasonable efforts toward reunification ... and further efforts by the Cabinet will not result in reunification.

The ... children’s physical, mental and emotional needs have been met while in the Cabinet’s care and custody and the children are expected to make further improvements in these areas upon termination of parental rights. The Cabinet foresees no barriers to adoption at this time.

Termination of parental rights is in the best interest of the ... children and the Cabinet ... has facilities available to accept the care, custody and control of the children and is the agency best qualified to receive custody of them.

The trial court determined that each child was a neglected child pursuant to KRS 600.020(1); that it was in the best interest of each child that parental rights be terminated; and that each child has been in foster care under the responsibility of the Cabinet since April 10, 2013, or for 15 of the most recent 22 months preceding the filing of the petition for termination of parental rights. As to each of the children, it determined as follows:

[Mother and Father] for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the ... child ... and there is no reasonable expectation of improvement considering the age of the child.

[Mother and Father] have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the ... child's well-being and there is no reasonable expectation of significant improvement in their conduct in the immediately foreseeable future, considering the age of the child.

[Mother and Father] have made no efforts or adjustments in their circumstances, conduct or conditions to make it in the best interest of the child to return to their home within a reasonable period of time, considering the age of the child.

The trial court concluded that:

The ... Cabinet has rendered or attempted to render all reasonable services to the ... parents that might be expected to bring about a reunion of the family. Given the efforts made by the Cabinet and the Trimble Family Court to reunify the family,

no additional services are likely to bring about parental adjustments enabling return of the children to their respective parents within a reasonable time considering the age of the children.

The ... Cabinet has met the ... children's physical, emotional and mental health needs since removal from the custody of the ... parents and the prospects are for greater improvement in the children's welfare if termination is ordered.

In reviewing a decision to terminate parental rights, we apply a clearly erroneous standard. "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them."

Commonwealth, Cabinet for Health & Family Servs. v. T.N.H., 302 S.W.3d 658, 663 (Ky. 2010) (citations omitted).

KRS 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.

Cabinet for Health & Family Servs. v. K.H., 423 S.W.3d 204, 209 (Ky. 2014).

Adjudication Hearing Orders were entered on July 23, 2013, finding that Mother and Father had neglected each of the children and that Father had abused Child 4.

The trial court also found that each child was a neglected child as defined in KRS 600.020(1).

The trial court concluded that termination of parental rights was in the best interest of each child. In conducting a best-interest analysis, the trial court must consider the factors in KRS 625.090(3):

- (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 ...;
- (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.

The trial court carefully considered the appropriate statutory factors in its detailed Findings of Fact and Conclusions of Law.

At least one of the grounds for termination enumerated in KRS 625.090 (2)(a)-(j) exists. As to each child, the trial court found that for a period of not less than six months, Mother and Father continuously or repeatedly failed or refused to provide -- or had been substantially incapable of providing -- essential parental care and protection for the child, and there is no reasonable expectation of

improvement considering the age of the child. KRS 625.090(e). The trial court also found that each 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 for termination of parental rights. KRS 625.090(j).

Having carefully reviewed the record, including the testimony and exhibits submitted at trial, we conclude that the three statutory prongs have been satisfied and that the trial court's findings are supported by clear and convincing evidence. Accordingly, we affirm its Orders of Termination.

We have reviewed the motion of counsel to withdraw from these appeals, citing *A.C. v. Cabinet for Health & Family Servs.*, 362 S.W.3d 361 (Ky. App. 2012). After reviewing the record and finding no meritorious issue to raise, counsel for M. N. S. certified that copies of the motion to withdraw and the *Anders* brief were mailed to M. N. S. Council also advised M. N. S. that he could file a brief, *pro se*, if he so desired.

A motion panel of this Court passed the motion to this merits panel for resolution, and M. N. S. has filed no response. We grant the motion of counsel to withdraw.

ALL CONCUR.

ENTERED: June 24, 2016

/s/ Sara W. Combs
JUDGE, COURT OF APPEALS

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