

RENDERED: NOVEMBER 9, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000228-ME

J.R.M. (A/K/A W.)

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 15-AD-00012

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; G.S.W.; AND G.A.W.,
A MINOR CHILD

APPELLEES

AND

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CABINET FOR HEALTH AND FAMILY
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APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: J.R.M. bring these consolidated appeals from two orders entered by the Grant Circuit Court on January 29, 2016, terminating her parental rights to G.A.W. and A.J.W. 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), J.R.M.'s counsel filed an *Anders* brief stating that no meritorious issue exists on appeal. 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 orders terminating J.R.M.'s parental rights.

Relevant Facts

J.R.M. is the biological mother of A.J.W. and G.A.W.¹ Diana Marty, an ongoing social worker for the Cabinet for Health and Family Services (Cabinet), testified at the termination hearing. She testified that the Cabinet became involved with the children because of allegations of physical abuse, neglect, substance abuse and domestic violence. On June 15, 2011, the Grant District Court made a finding of abuse against the biological father. Initially, the children were placed with a relative, but on October 21, 2011, the children were placed in the Cabinet's custody due to the relative's inability to handle the children's behavior. The children have remained in the Cabinet's custody since that time. The district court changed the permanency goal in this case from reunification to adoption as a result of J.R.M.'s failure to work on her case plan and her continued substance abuse problem.

Marty testified that J.R.M. initially appeared to be working towards reunification with the children once she had been released from inpatient substance abuse treatment in 2012. J.R.M. had consistently visited and called the children until late 2013, when visits became more sporadic. J.R.M. relapsed in January 2014, after reportedly being clean for over two years. After she was arrested for a probation violation, she was sent for the second time to an inpatient substance abuse treatment program. J.R.M. appeared to be intoxicated during one of her visits with the children² and her boyfriend (who was not authorized to be around

¹ The children's biological father, G.S.W., did not appear at the hearing concerning this matter, and has not appealed this action.

² J.R.M. consented to a drug screen, which was negative.

the children) was present during one of her visits. Due to J.R.M.'s "decreasing compliance with [her] case plan as well as concerns related to her supervision"³ her visits were changed from unsupervised visitation to supervised, bi-weekly visitation. In January 2014 visitation had drastically decreased, and visitation was eventually suspended. J.R.M. has not visited or seen the children since early 2014.

In the Cabinet's initial plan for J.R.M., she was referred to parenting classes, substance abuse counseling, drug screening and mental health counseling. J.R.M. attended substance abuse counseling, domestic violence awareness and parenting classes while she was an inpatient but has not completed any classes since that time. Marty testified that she had not seen any behavioral changes in J.R.M. after she completed treatment. She also testified that J.R.M. had not provided any life necessities for the children while they were in foster care._

J.R.M. testified that after her visits were changed from unsupervised visitation to supervised visitation, she did not miss any visits with her children until she failed a drug test and was incarcerated. After being released, she was incarcerated all but one month since that time.⁴ She also admitted that since the children have been in foster care, she had been incarcerated three times. J.R.M. testified that she had left a treatment program after being notified that the Cabinet had changed the permanency goal from reunification to adoption.

³ J.R.M. testified that this was the result of an incident in which A.J.W. was shot with an airsoft gun.

⁴ J.R.M. was incarcerated at the time of trial in January 2016 but previously appeared and testified. She had been incarcerated since June 20, 2015, due to a probation violation in 2015. Her minimum expiration of sentence date is December 23, 2021, if she does not receive parole.

The circuit court terminated J.R.M.'s parental rights by order entered January 29, 2016, following a trial on January 7, 2016. This appeal follows. Counsel filed a notice of appeal on behalf of J.R.M. in both cases and submitted *Anders* briefs in each. In the respective *Anders* briefs, counsel asserted that no meritorious issues exist on which to base this appeal.

Analysis

When a party files an *Anders* brief in a termination of parental rights case, it does not require appellate courts to address every conceivable argument that an appellant could have raised on appeal. *A.C.*, 362 S.W.3d 361. This Court's review is analogous to a palpable error review requiring only that we ascertain error which affects the substantial rights of a party. *Id.* Our standard of review of a trial court's judgment terminating parental rights is the clearly erroneous standard, upon determining that the judgment was based on clear and convincing evidence. Kentucky Rules of Civil Procedure (CR) 52.01; *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658 (Ky. 2010).

Under KRS 625.090(1)(a)(1)-(2), a "Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence" that "[t]he child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1) . . . or "[t]he child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding[.]" The Grant Circuit Court

found that both G.A.W and A.J.W. were abused and neglected children during the termination proceeding.

Pursuant to KRS 600.020:

(1) “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

....

4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

....

7. Abandons or exploits the child;

8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being. . . .

The circuit court found that subsection (4) was satisfied. Based on Marty’s testimony that J.R.M. had not provided essential support for the children, we must agree with that finding. The court further found that subsection (7) was satisfied because “[J.R.M.] has not had contact with the child since January 13, 2014[,]” spanning a period of two years. Finally, the court found that subsection (8) was satisfied because J.R.M.’s “criminal acts and ongoing substance abuse have put her in a position of being unable to provide essential care and protection

for the child[ren].” Having reviewed the record, the circuit court’s finding of abuse and neglect was supported by clear and convincing evidence and thus not clearly erroneous.

KRS 625.090 provides as follows:

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

....

(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 circuit court found that subsection (a) was satisfied because J.R.M. did not contact the children since early 2014. The circuit court also found that subsection (e) was satisfied because “[J.R.M.]’s criminal acts and ongoing substance abuse have put her in a position of being unable to provide essential parental care and protection for the child[ren].” The circuit court found that subsection (g) was satisfied because “[J.R.M.] has adopted a criminal lifestyle that renders her incapable of providing any of the essential necessities of life for [both children].” Finally, the circuit court found that subsection (j) was satisfied because the children have been in foster care for the past fifty-one months. Given our review of the record, we again cannot conclude that the circuit court’s findings were clearly erroneous and it otherwise was in the best interest of the children to terminate J.R.M.’s parental rights.

Accordingly, for the reasons and grounds set forth herein, including that no meritorious issue has been raised on appeal, the circuit court’s orders entered January 29, 2016, terminating J.R.M.’s parental rights are affirmed.

ALL CONCUR.

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