

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001200-ME

P.J.R.

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 16-AD-00001

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND C.R.L.R.,
A MINOR CHILD

APPELLEES

NO. 2016-CA-001210-ME

P.J.R.

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 16-AD-00002

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND Z.S.R.,
A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

COMBS, JUDGE: Appellant, P.J.R. (Father), appeals from orders of the Mason Circuit Court terminating his parental rights to his two minor children. These cases have been designated to be heard together as a consolidated appeal. Father's counsel filed a motion to withdraw and an *Anders*¹ brief in each of the appeals. The motions were passed to the merits by orders of this Court entered on November 18, 2016. We also grant them by separate Order.

Father is the biological parent of two minor children: C.R.L.C., a male born in February 2010, and Z.S.R., a male born in June 2007.² On January 24, 2016, the Appellee, Cabinet for Health and Family Services (Cabinet), filed Petitions for Involuntary Termination of Parental Rights in the interest of each child. The Petitions reflect that each child had been in foster care under the responsibility of the Cabinet since June 18, 2013, and for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petitions.

On June 7, 2016, the Mason circuit court conducted a final hearing. Rachel Cogan, the social worker, testified on behalf of the Cabinet. Father, represented by counsel, was present and also testified. Each child's interests were represented by the Guardian *ad Litem*, who recommended termination. On July 5,

¹ *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

² Both children have the same mother whose parental rights were also terminated. She is not a party to this appeal.

2016, the circuit court entered Findings of Fact, and Conclusions of Law, Orders Terminating Parental Rights, and Orders of Judgment.

The circuit court found that each child was a neglected child pursuant to KRS³ 600.020 after the Mason district court had adjudicated that status by order entered on August 9, 2012. The circuit court also found that both parents failed to protect and preserve each child's right to a safe and nurturing home, that each child was an abused or neglected child as defined in KRS 600.020, and that it was in the best interest of each child that Father's parental rights be terminated.

The court considered Father's failure to pay child support as ordered and the arrearage that he had accumulated -- despite having the resources to do so. The court noted Father's testimony that he was earning \$40.00 per hour landscaping while the children were in a relative placement and then later in foster care.

The court considered that Father had not had contact with the children since January 13, 2015. He was incarcerated shortly after his last contact. When he was paroled, he did not attempt to contact the children or the Cabinet while out on parole. The court found that Father was arrested in December 2015 for absconding parole and that his "criminal lifestyle has rendered him incapable of caring for the children."

The court considered the services which the Cabinet rendered or attempted to render in an effort to keep the family together. In addition, it found

³ Kentucky Revised Statutes.

that each of the children had been in foster care under the Cabinet's responsibility since June 18, 2013, for at least fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petition.

On July 14, 2016, Father filed Notices of Appeal to this Court. On October 27, 2016, Father's counsel filed motions to withdraw and *Anders* briefs.⁴ The motions were passed to the merits by orders of this Court entered November 18, 2016, and, as noted above, we have consolidated the appeals and granted the motions to withdraw by separate order.

Where counsel files an *Anders* brief, "we are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal." *A.C. v. Cabinet*, at 372. 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." *Com., 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

⁴ "In accordance with *Anders*, once counsel has reached the conclusion that the appeal is wholly frivolous, counsel 'should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.' *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400." *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361, 371 (Ky. App. 2012).

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).

In the case before us, the circuit court found that each child was a neglected child. Father takes issue with the court's reliance on the Mason district court's adjudication of neglect. However, KRS 625.090(1) provides that the circuit court may involuntarily terminate parental rights if it finds 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), by a court of competent jurisdiction[.]" Thus, the first prong of the test is satisfied.

The circuit court determined that it is in the best interest of each child that Father's parental rights be terminated. "In conducting a best interest analysis, a trial court must consider the six factors enumerated in KRS 625.090(3)(a)-(f)."

K.H., 423 S.W.3d at 212. The KRS 625.090(3) factors are:

- (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 unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

- (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.

Father contends that it is “arguable” that the court did not consider all of the statutory factors. We disagree. We are satisfied that the court properly conducted the best-interest analysis as reflected in its written findings. *See K. H. id.* (“While the family court’s written order did not specifically address each factor, its findings lead us to believe that each factor was properly considered.”)

The court considered the services that the Cabinet rendered or attempted to render to keep the family together. KRS 625.090(3)(c). It considered Father’s efforts -- notably that when he was out on parole, he made no attempt to contact the children and that his criminal lifestyle “rendered him incapable of caring for the children.” KRS 625.090(3)(d). The court also considered Father’s failure to pay child support despite having the resources to do so. KRS 625.090(3)(f). We conclude that the second prong of the tripartite test is satisfied and that the court’s findings have a substantial evidentiary foundation.

The third prong of the test provides that at least one of the ten termination grounds set forth in KRS 625.090(2)(a)-(j) must exist. Father argues that the circuit court only found the existence of three and that the absence of evidence on the other grounds undermines the court's determination. We disagree. The plain language of the statute requires only one ground. The court found that each child had been in foster care under the Cabinet's responsibility since June 18, 2013, for at least fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petition in satisfaction of KRS 625.090(2)(j). That is sufficient. We find no error.

We affirm the orders of the Mason Circuit Court terminating Father's parental rights.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Mary Hall Sergent
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