

RENDERED: OCTOBER 27, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2016-CA-001229-ME

S.H.

APPELLANT

APPEAL FROM CALLOWAY CIRCUIT COURT  
FAMILY COURT DIVISION

v.

HON. ROBERT DAN MATTINGLY, JR., JUDGE  
ACTION NO. 11-J-00145-004

COMMONWEALTH OF KENTUCKY,  
CALLOWAY COUNTY, KENTUCKY;  
CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH  
OF KENTUCKY; R.S., PATERNAL  
GRANDMOTHER; T.H., FATHER OF  
CHILD; L.G.H., A MINOR CHILD

APPELLEES

AND

NO. 2016-CA-001230-ME

S.H.

APPELLANT

APPEAL FROM CALLOWAY CIRCUIT COURT  
FAMILY COURT DIVISION

v.

HON. ROBERT DAN MATTINGLY, JR., JUDGE

ACTION NO. 12-J-00185-003

COMMONWEALTH OF KENTUCKY,  
CALLOWAY COUNTY, KENTUCKY;  
CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH  
OF KENTUCKY; R.S., PATERNAL  
GRANDMOTHER; T.H., FATHER OF  
CHILD; J.H., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING  
APPEAL NOS. 2016-CA-001229-ME  
AND 2016-CA-001230-ME

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BEFORE: J. LAMBERT, STUMBO, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: S.H. brings Appeal No. 2016-CA-001229-ME and Appeal No. 2016-CA-001230-ME from orders of the Calloway Circuit Court, Family Court Division, entered July 15, 2016, awarding permanent custody of her biological children to their paternal grandmother, R.S. We affirm Appeal No. 2016-CA-001229-ME and Appeal No. 2016-CA-001230-ME.

S.H. is the biological mother of L.G.H., who was born on November 9, 2010, and J.H., who was born on November 8, 2011.<sup>1</sup> T.H. is the biological father of L.G.H. and J.H. On January 28, 2016, R.S., paternal grandmother of

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<sup>1</sup> S.H. also has other biological children, but only L.G.H. and J.H. are named in this appeal.

L.G.H. and J.H., filed petitions in the Calloway Circuit Court, Family Court Division, alleging that both children were dependent, neglected, or abused. R.S. claimed that L.G.H. and J.H. had been in her care since 2014. R.S. stated that her adult son, T.H., had been granted custody of L.G.H. and J.H. in a Tennessee dissolution of marriage proceeding between T.H. and S.H.<sup>2</sup> According to R.S. the childrens' biological mother, S.H., was granted only supervised visitation by the Tennessee court. S.H. allegedly had substance abuse issues and was facing criminal charges related to physical abuse of other biological children. R.S. stated that T.H. originally resided in her home with L.G.H. and J.H. but eventually abandoned the children to her care and resided elsewhere.

At a hearing on R.S.'s petitions, T.H. stipulated to neglect of L.G.H. and J.H. based upon abandoning the children due to his own substance abuse issues. However, a finding of neglect as to L.G.H. and J.H. was not made against S.H. as she was not custodian of the children. Following a hearing, the family court ordered that L.G.H. and J.H. remain in the temporary custody of their paternal grandmother, R.S.

A hearing on permanent custody was scheduled for May 2, 2016, but S.H. failed to appear. S.H.'s counsel requested a continuance, and the family court granted same. The hearing was then rescheduled for May 9, 2016. On that date,

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<sup>2</sup> The Tennessee dissolution of marriage proceeding is not part of the record on appeal in this case.

S.H. did not appear once again. However, due to illness of the family court judge, the hearing was rescheduled to June 6, 2016. S.H. again failed to appear for the June 6, 2016, hearing. The hearing was rescheduled to July 11, 2016. On July 11, 2016, S.H. again failed to appear, but her appointed counsel was present on her behalf. The family court then conducted an evidentiary hearing. By separate orders entered July 15, 2016, the family court adjudicated the paternal grandmother, R.S., to be the *de facto* custodian of both L.G.H. and J.H. and awarded her permanent custody of the children. These appeals follow.

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Appointed counsel for S.H. filed separate notices of appeal from the July 15, 2016, orders declaring R.S. the *de facto* custodian of L.G.H. and J.H. and awarding her permanent custody of both children. Thereafter, S.H.'s appointed counsel filed briefs pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967)<sup>3</sup> and alleged that no meritorious issues in either appeal existed to present to the Court of Appeals. Appointed counsel for S.H. also filed motions to withdraw as counsel in appeal both appeals. By Orders entered

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<sup>3</sup> In *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) the United States "Supreme Court established a 'prophylactic framework' – now commonly known as 'Anders procedures' or an 'Anders brief' – to safeguard a criminal appellant's constitutional right to counsel when the appellant's court-appointed attorney wishes to withdraw from a claim no-merit appeal." *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361, 364 (Ky. App. 2012) (citations omitted).

November 10, 2016, the Court of Appeals passed counsel's motions to withdraw to the panel assigned for merits review. The Court also gave S.H. thirty days to file a *pro se* brief in each appeal; S.H. did not file any briefs in either appeal.

In Kentucky, the method set forth in *Anders*, 386 U.S. 738, was applied to termination of parental rights cases in *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). In *A.C.*, another panel of this Court specifically stated:

While we recognize *Anders*-type proceedings are only *required* in the criminal context where the indigent defendant enjoys a constitutional right to counsel, *see Finley*, 481 U.S. at 555, 107 S. Ct. at 1993, we are not prohibited from extending *Anders*-like proceedings to termination of parental rights cases. We do so today because we find the source of the right to counsel irrelevant; as long as there is a right to counsel – wherever that right is found – the conflict between an attorney's duty to his client and his duty to the court remains. That conflict warrants the utilization of *Anders*-type briefs and procedures. Moreover, if *Anders* procedures are sufficient to protect an appellant's *constitutional* right to counsel – an arena in which the courts tend to erect stringent safeguards – the same procedures should certainly be adequate in termination of parental rights cases as well. *J.K.*, 668 So.2d at 816. Just as the United States Supreme Court erected safeguards in *Anders* to vindicate a defendant's constitutional right to appellate counsel in the criminal context, *see Smith*, 528 U.S. at 273, 120 S. Ct. at 757, we believe the safeguards set forth in this opinion satisfactorily vindicate an

indigent parent's statutory right to appellate counsel in termination of parental rights cases.

*A.C.*, 362 S.W.3d at 370-71. The Court of Appeals also construed KRS 625.080(3) as providing an indigent parent with the right to have representation during every critical stage of termination proceedings including the “stages leading up to termination, such as the underlying dependency matter.” *A.C.*, 362 S.W.3d at 366 (citing *Z.T. v. M.T.*, 258 S.W.3d 31, 36 (Ky. App. 2008)). The Court went on to state that it logically followed that an indigent parent’s right to representation also applies “to all critical stages of proceedings following termination, including the appeals process.” *A.C.*, 362 S.W.3d at 366 (citing *Z.T.*, 258 S.W.3d at 36)). It was also recognized that counsel’s obligations to the Court may conflict with counsel’s obligations to his client if counsel believes the appeal is frivolous. *A.C.*, 362 S.W.3d 361.

KRS 620.100 similarly provides an indigent parent with appointed counsel in a dependency, neglect, and abuse action. And, this right to counsel naturally continues throughout the entire course of the appeal. *See A.C.*, 362 S.W.3d 361. As with a termination case, there exists a potential for conflict between counsel’s duty to the Court and counsel’s obligation to protect the right of appeal of an indigent parent. Accordingly, we believe counsel appointed on appeal in a dependency, neglect, or abuse action may fulfill his obligation to both the

Court and to his client by submitting a brief pursuant to *Anders*. *See id.* And, we further find it appropriate to conduct an *Anders* type review to this case.

In the case *sub judice*, we have made a complete and independent examination of the record on appeal in both cases and have determined that more than sufficient evidence exists to support the family court's conclusion that L.G.H. and J.H. are neglected children. The family court conducted an evidentiary hearing and thereafter rendered findings of fact and conclusions of law, to which we find no error. The family court also complied with all relevant statutory mandates for adjudicating that the children were neglected. Accordingly, we do not believe the family court's decision to place the children in the permanent custody of their paternal grandmother, R.S., was in error as a matter of law. We, likewise, agree with the counsel's contention that there is no basis for relief and that the appeal is wholly frivolous.

For the foregoing reasons, the orders of the Calloway Circuit Court, Family Court Division in Appeal No. 2016-CA-001229-ME and Appeal No. 2016-CA-001230-ME are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

NO BRIEF FOR APPELLEES.

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