

RENDERED: JULY 21, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2016-CA-001522-ME

T.H.

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOHN DAVID SEAY, JUDGE  
ACTION NO. 16-AD-00004

CABINET FOR HEALTH & FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; AND K.M.H. (A CHILD)

APPELLEES

AND

NO. 2016-CA-001523-ME

T.H.

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOHN DAVID SEAY, JUDGE  
ACTION NO. 16-AD-00006

CABINET FOR HEALTH & FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; AND J.D.H. (A CHILD)

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JONES, STUMBO, AND TAYLOR, JUDGES.

JONES, JUDGE: T.H. (“Mother”) appeals from two orders of the Hart Circuit Court terminating her parental rights over K.M.H. (“Daughter”) and J.D.H. (“Son”). In accordance with *A.C. v. Cabinet for Health and Family Servs.*, 326 S.W.3d 361 (Ky. App. 2012), Mother’s counsel has filed an *Anders*<sup>1</sup> brief, accompanied by a motion to withdraw as counsel, alleging that this appeal is wholly frivolous and that there is no meritorious argument to present to this Court on appeal. After careful review of the record, we affirm the Hart Circuit Court’s orders and grant counsel’s motion to withdraw by separate order.

**I. BACKGROUND**

Son and Daughter are the biological children of Mother and S.D.H. (“Father”).<sup>2</sup> Until February of 2014, Son and Daughter resided in their parents’ home along with Father’s granddaughter and a paternal uncle. The children were placed in the custody of the Cabinet for Health and Family Services (the “Cabinet”) by court order dated February 12, 2014, following numerous substantiated allegations of physical abuse. Within five days of Son and Daughter being placed in the Cabinet’s custody, Mother attended a case plan conference and

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

<sup>2</sup> Father’s parental rights over Son and Daughter were terminated by the same order terminating Mother’s parental rights; however, Father is not a party to this appeal. We discuss the facts only as relevant to Mother.

began working on her assigned tasks. Mother was compliant with her initial case plan, completing parenting classes and beginning – but not completing – domestic violence classes. Mother was ordered supervised visitation with both Son and Daughter twice a month.

While in foster care, both Daughter and Father's granddaughter alleged that there had been multiple instances of sexual abuse in the home. It was alleged that the sexual abuse had been perpetrated on all children in the home by several relatives, including Mother. While these allegations were being investigated, Mother's case plan was modified to include a requirement that she attend counseling for inappropriate sexual behavior. Mother refused to sign the modified case plan, instead requesting that she be given the opportunity to consult with an attorney. Visitation ceased following the allegations of sexual abuse.

On November 3, 2015, Mother entered guilty pleas in two separate criminal cases. In Hart Circuit Court case 14-CR-00169, Mother pleaded guilty to eight counts of complicity to first-degree sexual abuse, victim under 16 years old, with one of those counts involving Daughter and one count involving Son and two counts of complicity to second-degree criminal abuse, with one of the counts involving Daughter. In Hart Circuit Court case 15-CR-00155, Mother pleaded guilty to three counts of complicity to first-degree sexual abuse, victim under sixteen years old, with all three counts involving Daughter. Mother was sentenced to a total of five years in prison.

On March 22, 2016, the Cabinet filed two petitions for involuntary termination of parental rights (“TPR”) – one concerning Daughter and one concerning Son. A hearing on both petitions was held on August 11, 2016. Several witnesses testified in support of the Cabinet. A physician from the Barren River Area Child Advocacy Center testified that he had examined Daughter in 2014 following her allegations of sexual abuse. The physician described the allegations as Daughter had relayed them to him, and testified that the findings from her genital exam were consistent with the history he had been given. Daughter’s previous mental health therapist testified about the various incidents of sexual abuse that Daughter had relayed to her. The therapist noted that while Daughter never alleged that Mother sexually abused her, Daughter had told Mother about the abuse and Mother told Daughter that she would take care of it and that Daughter should not tell anyone. Additionally, the investigative worker and the current social worker from the Cabinet testified. The investigative worker stated that when she spoke to Mother as part of the investigation, Mother told her that she was aware of the physical abuse, but did not report it because she wanted to handle things on her own. The current social worker testified regarding the work done on the case plans. The social worker testified that, when Mother was still having visitation with Daughter and Son, she would bring them gifts; however, she was unaware of any support Mother might have provided the children once visitation ceased.

Mother testified in her own defense. While she acknowledged that she had pleaded guilty to numerous counts of abuse, she maintained that she did so only on the advice of counsel and knew nothing about the sexual abuse charges. Mother stated that she was aware of the physical abuse, which she referred to as “whoopins.” Mother contended that most of what was said regarding the physical and sexual abuse was a lie and that she had never personally touched Son or Daughter in an abusive manner.

On September 20, 2016, the trial court entered findings of fact, conclusions of law, and orders terminating Mother’s parental rights over both Son and Daughter. The trial court found that the children were abused and neglected as defined in KRS<sup>3</sup> 600.020(1), that Mother had been convicted of criminal charges related to the physical or sexual abuse or neglect of the children, and that termination of parental rights would be in the best interest of the children. Further, the trial court found that Mother was unfit to parent the children because: she inflicted or allowed to be inflicted upon the children, by other than accidental means, physical injury or emotional harm; she had continuously or repeatedly failed or refused to provide for or had been incapable of providing essential parental care and protection for the children, with no reasonable expectation of improvement, considering the ages of the children; she caused or allowed the children to be sexually abused or exploited; she continuously or repeatedly failed to provide essential food, clothing, shelter, medical care, or education reasonably

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<sup>3</sup> Kentucky Revised Statutes.

necessary and available for the children with no reasonable expectation of improvement; and the children had been in foster care for fifteen of the most recent twenty-two months preceding the filing of the TPR petition. Mother then filed a notice of appeal.

## II. ANALYSIS

Following a thorough review of the record, Mother's counsel filed an *Anders* brief in compliance with *A.C.*, *supra*. In *A.C.*, this Court adopted the procedures identified in *Anders* to appeals from orders terminating parental rights when counsel has reached the conclusion that the appeal is frivolous. *A.C.*, 362 S.W.3d at 371. Those procedures require counsel to "conduct a thorough, good-faith review of the record." *Id.* "Once counsel has reached the conclusion that the appeal is wholly frivolous, counsel 'should so advise the court and request permission to withdraw.'" *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400).

Mother's counsel has complied with the mandates of *A.C.* and *Anders*.<sup>4</sup> Pursuant to *A.C.*, this Court has also fully examined the record to determine whether the appeal is wholly frivolous. After so doing, we agree with counsel that no grounds exist warranting a reversal of the trial court's termination of Mother's parental rights.

In Kentucky, the involuntary termination of parental rights is governed by KRS 625.090. Under that statute, termination of parental rights is

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<sup>4</sup> Mother's counsel has certified that he provided Mother with a copy of his *Anders* brief and informed her of her right to file a *pro se* brief raising any issues she deems meritorious, as required under *A.C.* 362 S.W.3d at 371. Mother did not file a *pro se* brief.

proper upon satisfaction of a three-pronged test. First, the child must be found to be abused or neglected, as defined in KRS 600.020(1). KRS 625.090(1). Second, the court must find that at least one of the enumerated factors in KRS 625.090(2) is present. Finally, the court must find that it is in the best interest of the child that parental rights be terminated. KRS 625.090(3). We review a trial court's decision to terminate parental rights under the clearly erroneous standard. CR<sup>5</sup> 52.01; *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Findings of fact are clearly erroneous only if there exists no substantial evidence in the record to support them. *Yates v. Wilson*, 339 S.W.2d 458 (Ky. 1960).

The record contains sufficient evidence to support the trial court's decision to terminate Mother's parental rights. Mother has been convicted of several criminal charges relating to the physical and sexual abuse of both Daughter and Son. KRS 625.090(1)(a)(3). The evidence demonstrated that Daughter and Son had been physically and/or sexually abused while in Mother's care. KRS 625.090(2)(c), (2)(f), (3)(b); KRS 600.020(1)(a)(1), (1)(a)(5). Both Daughter and Son have resided in foster care since February of 2014 – more than the requisite 15 of the last 22 months before the TPR petition was filed. KRS 625.090(2)(j). While Mother was initially compliant with her case plan, Mother refused to sign her modified case plan and attend counseling for inappropriate sexual behavior. There was no error on the part of the trial court in terminating Mother's parental rights.

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<sup>5</sup> Kentucky Rules of Civil Procedure.

### III. CONCLUSION

Having thoroughly considered the record, we agree with the trial court that Mother has neglected Son and Daughter and is unfit to parent them. It is in the children's best interest that Mother's parental rights be terminated. We affirm the orders of the Hart Circuit Court terminating Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Justin Edward Baird  
Munfordville, Kentucky

BRIEF FOR APPELLEE:

Mary Gaines Locke  
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