

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001001-ME

C. M. O. C.<sup>1</sup>

APPELLANT

v. APPEAL FROM ALLEN FAMILY COURT  
HONORABLE G. SIDNOR BRODERSON, JUDGE  
ACTION NO. 16-AD-00006

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; B. J. C.; and C. L. C.

APPELLEES

AND

NO. 2017-CA-001002-ME

C. M. O. C.

APPELLANT

v. APPEAL FROM ALLEN FAMILY COURT  
HONORABLE G. SIDNOR BRODERSON, JUDGE  
ACTION NO. 16-AD-00007

COMMONWEALTH OF KENTUCKY,

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<sup>1</sup> Pursuant to the policy of this Court, to protect the privacy of minor children, we refer to the parties in termination of parental rights (TPR) cases only by their initials.

CABINET FOR HEALTH AND FAMILY  
SERVICES; D. J. H.; and T. L. M. A.

APPELLEES

OPINION  
AFFIRMING

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

NICKELL, JUDGE: C. M. O. C. (“Mother”) has appealed from judgments of the Allen Circuit Court, Family Division, ordering involuntary TPR to her two minor children, C. L. C. and T. L. M. A. Custody of the children was awarded to the Cabinet for Health and Family Services (“CHFS”).<sup>2</sup> In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*<sup>3</sup> brief conceding no meritorious assignment of error exists to present to this Court, accompanied by a motion to withdraw which was passed to this merits panel. After careful review, we grant counsel’s motion to withdraw by separate order, and affirm the trial court’s orders terminating Mother’s parental rights.

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<sup>2</sup> The parental rights of C. L. C.’s father were also terminated in the proceedings below. He has not filed an appeal. The parental rights of T. L. M. A.’s father were not terminated; the legal father was excluded as her biological father through genetic testing. The trial court concluded insufficient grounds for termination had been presented relative to the putative father. Any reference to either father in this appeal is intended solely for purposes of clarity and completeness.

<sup>3</sup> *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

C. L. C. was removed from Mother's custody on February 13, 2015, due to domestic violence between Mother and her paramour. The child was nine months old. Initially, the child was placed with the maternal grandmother, but was placed in foster care after social workers discovered Mother was being allowed unsupervised visitation in contravention of court orders. T. L. M. A. was one day old when removed from Mother's care on November 19, 2015, because both tested positive for marijuana shortly after the birth. Termination petitions for both children were filed by CHFS on June 3, 2016.

Several case plans were developed but Mother failed to complete them. She underwent the required assessments but did not follow through on the recommendations stemming therefrom. She was incarcerated numerous times for domestic assaults. When not in jail, Mother was sometimes cooperative and seemingly willing to work her case plan; other times she was defiantly noncompliant. She missed visits with the children on many occasions and completed only a small fraction of the recommended parenting classes and domestic violence treatment sessions. She refused to take drug screens and informed treatment providers her marijuana use was not a problem and had been approved by her obstetrician. Mother did not maintain stable housing or employment. Both children remained in foster care and were never returned to

Mother's care. She made no progress on her plans until immediately prior to the final adjudication hearing.

On April 27, 2017, the trial court convened a final adjudication hearing on the termination petitions. The court took testimony from Mother, social workers, counselors, police officers and the maternal grandmother. Following the lengthy evidentiary hearing, the trial court concluded the children were abused or neglected pursuant to KRS<sup>4</sup> 600.020(1). In addition, the trial court found Mother had failed to provide essential parental care and protection to the children for a period of more than six months; for reasons other than poverty alone, Mother had failed to provide essential food, clothing, shelter, medical care and education for the children; no reasonable expectation of improvement in parental care was foreseeable; and CHFS had provided all reasonable efforts and services to reunify the family. Based on these findings, the trial court concluded TPR was in the children's best interests and transferred custody to CHFS. The trial court granted CHFS authority to place C. L. C. for adoption. Custody of T. L. M. A. was ordered to remain with CHFS, but authority to place the child for adoption was withheld as her paternal parental rights were not terminated. Written orders comporting with these rulings were entered on May 10, 2017.

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<sup>4</sup> Kentucky Revised Statutes.

Appointed counsel for Mother filed separate notices of appeal from the orders terminating Mother's parental rights. Thereafter, Mother's appointed counsel filed *Anders* briefs and alleged no meritorious issues existed to present to this Court in either appeal. Appointed counsel also filed motions to withdraw as counsel in both appeals. By Orders entered March 29, 2018, a panel of this Court passed counsel's motions to withdraw to the panel assigned for merits review. The Court also gave Mother thirty days to file *pro se* briefs, but no additional brief was tendered. The separate appeals were consolidated for treatment in a single Opinion of this Court.

In Kentucky, the method set forth in *Anders* was applied to termination of parental rights cases in *A.C.* where another panel of this Court specifically stated:

[w]hile we recognize *Anders*-type proceedings are only *required* in the criminal context where the indigent defendant enjoys a constitutional right to counsel, *see* [*Pennsylvania v.*] *Finley*, [481 U.S. 551, 555, 107 S.Ct. 1990, 1993, 95 L.Ed.2d 539 (1987)], 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—wheresoever 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. [v. Lee County Dept. of Human Resources]*, 668 So.2d 813, 816 (Ala. Civ. App. 1995)]. 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 [v. Robbins]*, 528 U.S. 259, 273, 120 S.Ct. 746, 757, 145 L.Ed.2d 756 (2000)], 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 construed KRS 625.080(3) to provide an indigent parent the right to be represented during every critical stage of termination proceedings including the "stages leading up to termination, such as the underlying dependency matter." *Id.* at 366 (citing *Z.T. v. M.T.*, 258 S.W.3d 31, 36 (Ky. App. 2008)). The Court concluded an indigent parent's right to representation also applies "to all critical stages of proceedings following termination, including the appeals process." *Id.* Further, 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.

In the case *sub judice*, we have conducted a complete and independent examination of the record on appeal in both cases. In so doing, we have determined more than sufficient evidence exists to support the trial court's conclusion C. L. C. and T. L. M. A. are abused or neglected children. The trial court conducted an evidentiary hearing and thereafter rendered extensive findings

of fact and conclusions of law with which we find no error. The trial court also complied with all relevant statutory mandates for adjudicating the children as abused or neglected and concluding TPR was in their best interests. Accordingly, we do not believe the trial court's decision to grant TPR and place the children in the permanent custody of CHFS was in error as a matter of law. We, likewise, agree with counsel's contention there is no basis for relief and the appeals are wholly frivolous.

For the foregoing reasons, the judgments of the Allen Circuit Court, Family Division, are AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David Goin  
Scottsville, Kentucky

BRIEF FOR APPELLEE:

Mary Gaines Locke  
Cabinet for Health & Family Services  
Munfordville, Kentucky