

RENDERED: DECEMBER 7, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-001723-ME

G.B.R.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE OSCAR G. HOUSE, JUDGE  
ACTION NO. 16-AD-00015

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY SERVICES;  
J.R.; AND W.G.B.R., A CHILD

APPELLEES

AND

NO. 2017-CA-001724-ME

G.B.R.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE OSCAR G. HOUSE, JUDGE  
ACTION NO. 16-AD-00016

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY SERVICES;  
J.R.; AND K.C.M.R., A CHILD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

CLAYTON, CHIEF JUDGE: G.B.R. (“Father”), the father of two minor children, appeals from the Clay Circuit Court’s orders terminating his parental rights to such minor children. After careful review, we affirm the trial court’s orders terminating Father’s parental rights.

BACKGROUND

Father and J.R. (“Mother”) had two minor children, W.R., born in 2008, and K.R., born in 2010. A Dependency, Neglect, and Abuse (“DNA”) petition was initially filed regarding W.R. and K.R. in July 2012 following a Cabinet of Health and Family Services (“Cabinet”) investigation finding that both parents were under the influence while caring for their children. The children’s paternal grandmother was granted temporary custody.

Another DNA petition was filed soon after, at the end of July 2012, due to the grandmother allowing the children to have unsupervised weekend visits with the parents in violation of the court’s order. The grandmother stated at that

time that she was unable to care for the children, and the children entered foster care. The Cabinet began working with Father at that point to develop a plan to address his substance abuse, with him agreeing to complete a substance abuse assessment, take random drug screens, have proper medication counts, and complete parenting classes. The trial court subsequently dismissed both of the petitions without adjudication in August 2012 and the children were returned to their parents.

A third DNA petition was filed in early April 2013 when both children, who were at the time ages 4 and 3, were discovered alone and unsupervised in the road. Both were dirty and blue from cold. The parents were located in the home and awakened, and the police found the family home had no running water and garbage piled inside and out. Neither parent was able to tell investigators whether the children had eaten that day. The trial court adjudicated both children were neglected and granted the Cabinet temporary custody of the children.

The Cabinet ordered the parents to undergo a substance abuse assessment, random drug screens, submit to medication counts, and provide safe housing with adequate utility services. Father completed the substance abuse assessment, enrolled in substance abuse counseling, and completed parenting

classes. However, his Soboxone strip counts were typically off and he tested positive for methamphetamines once.

Meanwhile, in May 2013 the parents were involved in a domestic abuse incident in front of another child of Mother's, who at the time was six years old. A DNA petition was filed regarding that child and she was found neglected. Father completed domestic violence perpetrator counseling and Mother attended counseling.

In December 2013, the trial court ordered a trial home placement of the children back with their parents and Father's new, in-home case plan required him to use no un-prescribed medication, to take random drug tests, to remain sober, to work with the Family Preservation Program, to attend Alcoholics Anonymous/Narcotics Anonymous ("AA/NA") meetings, and to have no arrests or hospitalizations related to illegal drug use or alcohol use. In subsequent drug screens Father tested positive for methamphetamines in March 2014, and custody of both children was given to a relative. Father also tested positive for amphetamines in early April 2014, but had clean drug screens in May and June 2014. Custody of both children was returned to the parents in June 2014 because of the clean drug screens and completion of several plan tasks.

In October 2014, a fourth DNA petition was filed regarding the children alleging that both parents were intoxicated while in a caretaking role.

Father was arrested at a football game for public intoxication and Mother was arrested the next day at the courthouse for being under the influence. The children were again placed in the custody of the Cabinet, and the trial court made another finding of neglect. Again, the parents negotiated a case plan with the Cabinet. The parents were again able to show just enough compliance with their case plan to allow another trial home placement, which began in April 2015. However, custody of the children remained with the Cabinet.

The Cabinet filed a fifth and final DNA petition in May 2015 upon Father's arrest after the parents were stopped at a state police checkpoint with K.R. in the vehicle. Numerous illegal substances, including a large amount of methamphetamines, Suboxone strips, and prescriptions in other people's names were found, along with syringes, scales, and a loaded pistol. Father was arrested and eventually pled guilty to possession of a firearm by a convicted felon and was sentenced to five years in prison. The court made a finding of neglect on this fifth petition and both children were committed to the Cabinet. The trial court also suspended visits between the parents and both children and changed the permanency plan to adoption.

The Cabinet again offered Father similar reunification services, but for the remainder of 2015 and early 2016, he made virtually no progress towards such reunification. He failed to call in for drug screenings, he did not complete a

substance abuse assessment, provided no proof of attendance at AA/NA meetings, and was jailed at least twice, once for public intoxication and another time for drug-related charges. Father's last incarceration lasted from December 2015 until mid-2017. His reunification plan was modified to reflect available services in prison, and he was required to provide proof of completion to the Cabinet.

In March 2016, the Cabinet filed a petition to involuntarily terminate Father's and Mother's parental rights. Father was subsequently released from prison and negotiated yet another case plan for eventual reunification in June 2017, including a referral to The Way to Recovery Program for a substance abuse assessment and counseling, random drug screens, a parenting assessment and parenting skills classes. Father was also asked to attend AA/NA meetings weekly and provide proof of attendance, to follow all recommendations of his substance abuse and parenting assessments, and to establish an appropriate home with working utilities.

In August 2017, the trial court held a hearing on the Cabinet's petition to involuntarily terminate the parents' rights. Mother had previously signed a voluntary termination of rights petition and was not present at the hearing, but Father was present for the hearing. While Father did introduce copies of completion certificates for a substance abuse program dated June 1, 2017, for Celebrate Recovery dated May 23, 2017, a job readiness program, a financial skills

program, and a parenting program at the hearing, he did not provide copies of either participation or completion of any of these programs to the Cabinet as required by his case plan.

Additionally, Father did not provide any progress on his new plan tasks negotiated after his release from prison. He had not contacted The Way to Recovery for a substance abuse or parenting assessment, random drug screens or parenting classes, and The Way to Recovery had no record of his involvement. He claimed to have been attending AA/NA meetings but had left his documentation at home. Although he claimed to have undergone a substance abuse assessment at a Veterans' Administration facility, he did not provide a copy to his caseworker.

Additionally, testimony provided at the hearing by licensed professional counseling associates and social workers who provided counseling and services to both children noted that the structure provided by the children's respective foster parents had drastically improved the children's behavior. Upon entering foster care, K.R. had behavior issues and was diagnosed with attention-deficit hyperactivity disorder. She received counseling and made tremendous improvement in her self-control techniques and no longer quickly resorted to violence. However, she required a great deal of parenting structure and consistency, which she received in her foster home. K.R. had been fully integrated into her foster family and was very attached.

Similarly, upon entering foster care, W.R. was very hyper and had behavior issues, often consisting of angry outbursts. A social worker testified that when she first started working with W.R., he had great difficulty with social norms. There were instances where he thought it acceptable to defecate on the sidewalk, and he was physically violent. At the time of the hearing, he had received counseling and his behavior had much improved. Like K.R., W.R. required a great deal of parenting structure and consistency, and the testimony from the experts at the hearing was that he was fully integrated into his foster family and had expressed his wish never to leave them.

Further, a Cabinet caseworker involved with the family since 2012 assessed Father's overall progress toward reunification as poor. She did not think continuing to offer Father more reunification services after five years of attempts would change anything. She also noted that, when one subtracts time in foster care or relative placement, the children had only been in Father's care for approximately seven and a half months over the past five years.

Following a lengthy evidentiary hearing, the trial court concluded the children were abused or neglected pursuant to Kentucky Revised Statute (KRS) 600.020(1). In addition, the trial court found the children had been in foster care for fifteen of the prior twenty-two months; the parents had failed to provide essential parental care and protection to the children for a period of not less than



six months; for reasons other than poverty alone, the parents 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; the Cabinet had provided all reasonable efforts and services to reunify the family; the children had made significant improvements during their time in foster care; and neither parent had proven, even by a preponderance of the evidence, that the children would not continue to be neglected if returned to either parent's care. Based on these findings, the trial court concluded that termination of parental rights was in the children's best interests and transferred custody to the Cabinet with authority to place the children for adoption. Written orders comports with these rulings were entered on September 20, 2017.

Father, via court appointed counsel, filed timely notices of appeal. Mother did not appeal, and by subsequent court order was dismissed from both appeals as a party. Father's counsel also filed motions to withdraw as counsel in the appeals and briefs that comported with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), citing counsel's inability to identify any issue with sufficient merit to support a meaningful argument on appeal and requesting that this Court conduct a full examination of the record for prejudicial error and to determine if any non-frivolous issues has been overlooked. By orders entered May 31, 2018, the Court of Appeals passed counsel's motions to withdraw to this panel.

The Court also gave Father thirty days to file a pro se brief in each appeal, which he did not file. In the interest of judicial economy, the two separate appeals regarding each child have been combined for treatment in this single Opinion.

### ANALYSIS

In *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), a panel of this Court adopted the principles and procedures laid out in *Anders v. State of California* in the criminal setting to appeals from orders terminating parental rights, concluding that “an indigent parent defending a termination of parental rights action enjoys a statutory right to counsel during the appeal[.]” *Id.* at 367. Consequently, under Kentucky law, it is necessary to utilize *Anders*-type briefs and procedures in termination of parental rights cases wherein appointed counsel does not believe there are any non-frivolous claims to appeal.

Upon a good faith review of the record:

if counsel finds his [client's] case to be wholly frivolous, after a conscientious examination of it, he 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. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.

*Anders*, 386 U.S. at 744.

As previously discussed, in this case Father's counsel submitted an *Anders* brief in compliance with *A.C.* and *Anders*. Following *A.C.*, we are obligated to independently review the record and establish whether the appeal is, in fact, frivolous. *A.C.*, 362 S.W.3d at 371.

An appellate court will only reverse a trial court's decision to terminate a parent's rights if it is clearly erroneous, meaning there is no substantial, clear, and convincing evidence to support the decision. Kentucky Rule of Civil Procedure (CR) 52.01; *Com., Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Therefore, the findings of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. *V.S. v. Com., Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

The grounds for the involuntary termination of parental rights are set forth in KRS 625.090. This statute provides that parental rights may be involuntarily terminated only if a circuit court finds, in pertinent part, that a child is abused or neglected as defined in KRS 600.020(1), that termination is in the child's best interests, and the existence of one or more of ten specific grounds set out in KRS 625.090(2). KRS 625.090(1)(a)-(b), (2); *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007). Further, KRS 625.090(3) lays out factors for the trial court to

consider in determining the best interests of the child and the existence of grounds for termination.

In this case, the family court complied with all relevant statutory mandates to terminate Father's parental rights. Pursuant to KRS 625.090(1)(a) and (b), the trial court found that the children were neglected and that it was in the childrens' best interest that Father's parental rights be terminated. Moreover, the trial court found the existence of multiple factors listed in KRS 625.090(2), including that Father, for a period of not less than six (6) months, had continuously or repeatedly failed or refused to provide, or had been substantially incapable of providing, essential parental care and protection for the child and that there was no reasonable expectation of improvement in parental care and protection, considering the age of the child. Additionally, the trial court further found that Father, for reasons other than poverty alone, had continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there was no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child. Finally, the trial court discussed the factors included in KRS 625.090(3), including the fact that the Cabinet had offered all reasonable services to Father that would

have permitted reunification pursuant to KRS 625.090(3)(c) and that the children had made improvements during their time in foster care.

Having reviewed the record in detail pursuant to *Anders* and *A.C.*, we agree with counsel's belief that the evidence shows that Father does not have grounds warranting relief and find that the evidence is more than sufficient to support the trial court's findings of fact, conclusions of law, and judgment. Father had not provided care and protection to the children, and the Cabinet had given Father no less than five times to reunify with the children. He failed to do so each time. Accordingly, we do not believe the trial court's decision to grant termination of parental rights and place the children in the permanent custody of the Cabinet was in error.

### CONCLUSION

For the foregoing reasons, the orders of the Clay Circuit Court in Appeal No. 2017-CA-001723-ME and Appeal No. 2017-CA-001724-ME are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Raleigh P. Shepherd  
Manchester, Kentucky

BRIEF FOR APPELLEE:

Stephen D. Spurlock  
London, Kentucky