

**Commonwealth of Kentucky
Court of Appeals**

NO. 2017-CA-001879-ME

J.L.B.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DAWN M. GENTRY, JUDGE
ACTION NO. 17-AD-00080

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND M.L.B., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, DIXON, AND THOMPSON, JUDGES.

ACREE, JUDGE: J.L.B. (Father) appeals the Kenton Family Court's October 24, 2017, orders terminating his parental rights relative to his biological child, M.L.B.

In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Father filed an *Anders*¹ brief conceding that no meritorious assignment of error exists to present to this Court. Counsel

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

accompanied the brief with 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 circuit court's order terminating Father's parental rights.

The family court entered a default judgment of paternity for Father on August 18, 2015. The family court found Father to be the biological parent of M.L.B., who was born on December 29, 2014. The minor child has three older siblings. The Cabinet became involved with this family in January 2015, based on reports from their school that the two eldest children were being physically abused by a non-parent caretaker. This prompted the Cabinet to file a dependency, neglect, or abuse petition on March 30, 2015. The petition asserted that, during a time when J.L.B. was in a caretaking role, a non-parent caretaker physically abused these children with a switch and buckle, and that J.L.B. subjected the children, including M.L.B., to caretakers who were intoxicated or under the influence of marijuana. The Cabinet's petition also expressed concerns that the children were not receiving adequate medical care. The Cabinet deemed all children at risk of harm. Substantiation of these allegations in 2015 formed the basis of the family court committing the children, including M.L.B., to foster care, and adjudging them neglected or abused.

To foster reunification with M.L.B., the Cabinet determined both parents needed to: (1) submit to random drug screens; (2) attend supervised visits

with the child; (3) engage in individual counseling and parent-child interaction therapy; and (4) cooperate with the Cabinet. The mother made efforts to complete the court-approved case plan, but the court found her substantially incapable of providing parental care because of significant deficits in her cognitive abilities. Father failed to adequately work his case plan.

On April 10, 2017, the Cabinet petitioned to terminate both parents' parental rights to raise M.L.B. The family court held a two-day termination hearing at which the social worker testified that Father visited the child one time during the time the child was removed from his home. The Cabinet attempted to set up visitation, but Father stated he was not interested in Cabinet-organized visitation. The social worker further testified that Father was hostile. She said, at one point, she feared one-on-one contact with him. There is also expert testimony that Father suffers from a personality disorder with anti-social traits.

At trial, Father admitted to an extensive criminal history which included convictions for drug possession, robbery, and domestic violence. Father also admitted to the current and regular use of marijuana. The family court found that Father continuously failed to provide life essentials for his child. It also found Father had no reasonable expectation of improvement because he demonstrated a negative attitude toward working a case plan, failed to make progress on that plan, failed to provide financial support, and had an extensive criminal and drug history.

On October 24, 2017, the family court entered Findings of Fact and Conclusions of Law, as well as a Judgment Terminating Parental Rights to raise the minor child. The family court found the child abused and neglected. KRS² 600.020. It also found termination was in the child's best interests. KRS 625.090(1)(c). The court found Father was unfit to parent the child because: (a) he abandoned the child for a period of not less than ninety days; (b) he failed to provide basic necessities for the child; (c) he failed to offer the child essential parental care and protection; and (d) the child was in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition. KRS 600.020(1). Father appealed.

Father's counsel filed an *Anders* brief in compliance with *A.C.*, *supra*. In *A.C.*, this Court adopted and applied the procedures identified in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), regarding appeals from orders terminating parental rights where counsel cannot identify any non-frivolous grounds to appeal. *A.C.*, 362 S.W.3d at 364. Those procedures require counsel to first engage in a thorough and good faith review of the record. *Id.* “[I]f 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.” *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S. Ct at 1400).

² Kentucky Revised Statutes.

Here, Father's counsel complied with the requirements of *A.C.* and *Anders* by supplying Father with a copy of the brief and informing Father of his right to file a *pro se* brief raising any issues he found meritorious. *A.C.*, 362 S.W.3d at 371. Father failed to provide a *pro se* brief. Under *A.C.*, we analyzed the record, and now agree with counsel that no grounds exist that would warrant disturbing the family court's orders terminating Father's parental rights.

Termination of a party's parental rights is proper upon satisfying a three-part test by clear and convincing evidence. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the court must find the child "abused or neglected," as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). The family court's termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

The record contains sufficient evidence to support the family court's decision to terminate Father's parental rights. Here, the family court declared the child neglected in 2015, and the testimony at the termination hearing supported such a finding. KRS 625.090(1)(a)(1). Father has not contributed, financially or

otherwise, to the child's care since removal. KRS 625.090(2)(g), (3)(f). It is undisputed that the child resided in foster care under the responsibility of the Cabinet for at least fifteen of the most recent twenty-two months preceding the filing of the termination petition on April 10, 2017. KRS 625.090(2)(j). And Father visited the child only once since removal. Therefore, Father abandoned the child for six months. KRS 600.020(1)(a)(7); KRS 625.090(2)(a).

The Cabinet made reasonable efforts to facilitate reunification by offering Father services and treatment options. KRS 625.090(3)(c). Father failed to make any effort to fulfill his case plan objectives. KRS 600.020(1)(a)(9). Ultimately, Father failed to prove it would be in the child's best interests to return to his home because he did not make the necessary adjustments to his circumstances. KRS 625.090(3)(d).

Upon considering the totality of the circumstances, we are convinced Father neglected the child and is unfit to parent her. It is in the child's best interests to terminate Father's parental rights. We affirm the October 24, 2017 orders of the Kenton Family Court terminating Father's parental rights to the child.

ALL CONCUR.

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