

RENDERED: DECEMBER 14, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2018-CA-000031-ME

M.A.P.

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE MARCUS L. VANOVER, JUDGE  
ACTION NO. 17-AD-00005

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND C.W.P, AN INFANT

APPELLEES

AND

NO. 2018-CA-000032-ME

M.A.P.

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE MARCUS L. VANOVER, JUDGE  
ACTION NO. 17-AD-00006

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY; AND C.L.P.,  
AN INFANT

APPELLEES

AND

NO. 2018-CA-000033-ME

M.A.P.

APPELLANT

v.

APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE MARCUS L. VANOVER, JUDGE  
ACTION NO. 17-AD-00007

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND C.J.C., AN INFANT

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; D. LAMBERT AND THOMPSON,  
JUDGES.

CLAYTON, CHIEF JUDGE: M.A.P. (“Mother”), the mother of C.J.C., C.W.P.,  
and C.L.P, appeals from the Lincoln Circuit Court’s orders terminating her  
parental rights to such minor children. After careful review, we affirm the trial  
court’s order. Further, we grant Mother’s counsel’s motions to withdraw by  
separate order.

## BACKGROUND

The Department for Community Based Services (“DCBS”) became involved with M.A.P.’s family in 2009, when allegations were made that C.J.C. was discovered lying on the floor with roaches and fleas crawling on his body. DCBS workers also found human feces and trash throughout the house. Although DCBS ultimately closed the case concerning the environmental issues in the home, concerns were expressed that both Mother and F.J.P., the putative father of C.J.C. and the biological father of C.W.P. and C.L.P. (“Father”), were not capable of providing for the child due to their low cognitive functioning.

Thereafter, beginning in 2014, the family had an open in-home case with the Cabinet after C.W.P. arrived at school with multiple bleeding lacerations on his forehead and an ongoing rash on his legs, trunk, and arms. Concerns were again expressed concerning the parents’ low-functioning cognition and ability to properly care for the children. That same year, after being absent from school for a week, reportedly for the flu, C.W.P. was again found to have multiple small lacerations on his face, neck, and torso. At that time, the school was also providing the family with food and was bathing C.W.P. twice a week.

At the beginning of 2015, C.J.C.’s school found multiple burn marks on his torso and neck. He reported that he was frying chicken and was burned

when the grease spattered on him. Additionally, the school discovered more scratches on C.W.P.'s torso and face as well.

The Cabinet filed a Dependency, Neglect and Abuse Petition (the "Petition") on March 17, 2015 based on a referral that C.J.C. had arrived at school with a scratch on his arm, and C.J.C. had stated that Mother had pinched him. The Petition reported that Mother would pinch the children, often for no apparent reason, leaving marks and bruises, and that C.J.C. was scared of Mother. Further, Mother reportedly pulled C.J.C. down on the floor and hit him across his lower back, again leaving marks and bruises. The Petition also stated that the children had hygiene problems and showed developmental and speech delays. The trial court issued an emergency custody order and removed the three children from the home.

Soon thereafter, the trial court held a temporary removal hearing, at which time the Cabinet was given temporary custody of the children, with visits from the parents left to the Cabinet's discretion. The trial court additionally ordered mental health and parenting capacity assessments and Intelligence Quotient ("IQ") testing of both parents.

Upon removal from the home, one of the children was described by a Cabinet worker as "feral" and another was found in the fetal position and wearing pajamas that were so small that they were cutting off his circulation. Workers also

indicated concern that the child almost had to have a toe amputated and neither parent seemed to appreciate the gravity of the situation. Moreover, after the children entered foster care, they revealed that their maternal uncle had sexually abused them. Initially, evidence existed to indicate that Mother did not initially believe the children. By the time of the termination of parental rights hearing, however, both parents testified that they believed the children's sexual assault allegations against their uncle. Further, Mother testified that she had witnessed the children exhibiting sexual behaviors with each other at the home but stated that she did not know the reasons for such behavior.

Thereafter, pursuant to the trial court's order, a licensed clinical psychologist, Dr. Paul A. Ebben, completed a parental competency evaluation and risk assessment of Mother along with an additional IQ test. Dr. Ebben's IQ test found Mother to have a full-scale IQ of 60, which would put her at the low end of the "mildly intellectually deficient" range, with general skills around the seven to eight years of age level. Dr. Ebben's report indicated concerns that Mother did not think she had any parenting needs, limitations, or weaknesses, and that she did not think she had done anything wrong in the current situation. Dr. Ebben states in his report that he estimated Mother as "High Risk" and unlikely to be amendable to remediation because of her cognitive limitations. The report suggested that the childrens' permanency plan should therefore not include Mother as their primary

caregiver and that the court should consider termination of parental rights. Dr. Ebben further advised the court that he would not make case plan recommendations unless specifically requested to do so by the court, as it was his opinion that Mother would not have the ability to successfully fulfill such recommendations.

Meanwhile, the trial court held an adjudication hearing on April 14, 2016, and, based on that hearing, entered an order finding C.J.C. to be an abused child as to Mother and finding C.W.P and C.L.P. to be dependent as to Mother. The trial court found all three children to be dependent as to Father. The court based its adjudication of C.J.C. as abused, in part, based on C.J.C.'s testimony at the adjudication hearing that Mother would hold him down and choke him, leaving bruises, as well as the court's finding that Mother had not shown improvement in her case plan or ability to care for C.J.C.

Thereafter, the trial court held a dispositional hearing on May 5, 2016, at which time the children were committed to the Cabinet's custody. The trial court requested that Dr. Ebben make recommendations as to what may be done if reunification were to remain the permanency plan. Further, a case plan was developed for Mother that addressed her high risk issues. Mother was asked to cooperate with and complete parenting classes and demonstrate skills learned during visits with the children, cooperate with and complete a mental health

assessment and follow all recommendations, cooperate with and complete a domestic violence assessment and follow all recommendations, complete the recommendations subsequently received from Dr. Ebben regarding education on various issues related to child abuse and neglect and raising children with special needs, and participate in parent-child interactive therapy. Pursuant to a permanency hearing order entered in June 2016, the permanency plan continued to be returning the children to the parents.

Thereafter, the Cabinet filed a petition for the involuntary termination of parental rights in February 2017 and the trial court held a hearing on the Cabinet's termination of parental rights petition on August 10, 2017 and August 31, 2017. The Cabinet workers involved in the case and the experts who had evaluated both Mother and the children testified at the hearing. The Cabinet workers testified that, although Mother was compliant with the case plans developed for her and consistently paid child support, they did not feel that she was ever able to demonstrate the skills that she learned in the parenting classes, even after being coached multiple times during her visitations with the children. Further, the Cabinet caseworker testified that she repeatedly worked with Mother on the educational issues listed in Dr. Ebben's recommendations but made no appreciable progress. The workers could not think of any other services the Cabinet could offer to Mother that might make a difference. Finally, the Cabinet

caseworker testified that the childrens' current foster parents were willing to adopt all three of the boys and work with them on their significant developmental delays and emotional issues.

Dr. Ebben testified that, due to Mother's intellectual deficiencies, her ability to parent in a minimally acceptable manner was significantly impaired. Moreover, he testified that he did not believe that Mother would benefit from treatment and educational interventions to reduce any risks to the children and did not think Mother would be able to achieve a level of acceptable care in the foreseeable future, as her IQ was not something that was subject to change or improvement over time. Overall, he did not think Mother would be able to sufficiently learn, retain, and implement parenting information, especially for special needs children. In essence, his testimony was that Mother would need a full-time, functioning adult to live with her in order to appropriately parent the children.

Additionally, Dr. Jessica Eslinger performed trauma assessments on the three children and testified at the termination of parental rights hearing. Dr. Eslinger testified that her evaluation of C.J.C., the eldest child, indicated that he was exhibiting emotional and behavioral symptoms of post-traumatic stress disorder, as well as significant mood issues, with symptoms of depression and anxiety in the very elevated range. He also exhibited angry outbursts following



visits with Mother and had expressed fearfulness and thoughts of self-harm resulting in hospitalization. Overall, Dr. Eslinger evaluated C.J.C. to be a “high needs” child.

Dr. Eslinger’s trauma assessment of C.W.P., the middle child, determined that he was a “psychologically fragile child” due to his intellectual functioning, his traumatic stress, and his emotional and behavioral needs. Dr. Eslinger found in her report that C.W.P. had been exposed to possibly traumatizing life events, including physical abuse, neglect, witnessing domestic violence, psychological and emotional maltreatment, risk of harm, frequent disruptions in caregiving, and suspected sexual abuse. Dr. Eslinger testified that she did not fully diagnose C.W.P. as having PTSD, as he already had an existing PTSD diagnosis. He was also diagnosed with an unspecified intellectual disability and had limited language. C.W.P. had difficulty managing his frustration and wore a helmet to protect his head because he would bang it on objects when he became frustrated or angry. He would also scratch and bite himself, had difficulty following directions, frequently touched his genitals and rectum, and expressed anxiety about not having enough food.

Finally, the trauma assessment of C.L.P., the youngest child, also indicated that he experienced symptoms of emotional reactivity, anxiety, depression, and sleep problems, and that he had been exposed to potentially

traumatizing life events. Dr. Eslinger further noted that C.L.P. suffered from on-going anxiety that he would not get enough food and that he experienced clinical levels of anxiety and aggression.

For all three children, Dr. Eslinger recommended training and support of the foster parents to educate them on the special needs that these children have considering the trauma they have experienced. Dr. Eslinger also noted that there was a history of sexualized behaviors between the brothers and that the foster parents must put safety plans into place to assure that all play between the children was supervised and the bedroom arrangements were separate.

Lastly, both Mother and Father testified at the termination of parental rights hearing. Mother testified that she loved her children, wanted them back at home, and believed it would be best for them to come home. She said that she had learned at the parenting classes to be more responsible, more supportive, and that she must adequately supervise the children. She did not admit causing the bruises on her children. Father testified that Mother had a temper and had pushed, shoved, and hit him a few times in front of the children. Additionally, he testified that two of the children had told him they were scared of Mother, that he had seen Mother smack one of the children, and that he had seen bruises on the children.

The Lincoln Family Court entered findings of fact, conclusions of law and a judgment terminating Mother's parental rights as to each child in October

2017. Mother filed a motion to alter, amend or vacate the court's decision, which the trial court denied. Thereafter, Mother filed timely notices of appeal via court-appointed counsel. Father did not appeal.

Mother's counsel also filed motions to withdraw as counsel in the appeals and briefs that comported with *Anders v. California*, 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. *See Anders v. California*, 386 U.S. 738, 741-42, 87 S.Ct. 1396, 1399, 18 L.Ed.2d 493 (1967). By orders entered May 23, 2018, counsel's motions to withdraw were passed to this panel. The Court also gave Mother thirty days to file a *pro se* brief in each appeal, which she did not file. In the interest of judicial economy, the three 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*, a panel of this Court adopted the principles and procedures laid out in *Anders* in the criminal setting to appeals from orders terminating parental rights, concluding that while “an indigent parent defending a termination of parental rights action enjoys a statutory right to counsel during the appeal, that right to counsel ‘does not include

the right [of an indigent parent] to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing a frivolous appeal.” *A.C.*, 362 S.W.3d 361, 367 (Ky. App. 2011) (quoting *Smith v. Robbins*, 528 U.S. 259, 278, 120 S.Ct. 746, 760, 145 L.Ed.2d 756 (2000)). 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:

[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. 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, 87 S.Ct. at 1400.

As previously discussed, in this case, Mother’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 Rules of Civil

Procedure (CR) 52.01; *Commonwealth of Kentucky, 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. Commonwealth of Kentucky, 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 Kentucky Revised Statutes (KRS) 625.090, which 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 Mother's parental rights. Pursuant to KRS 625.090(1)(a)(1), C.J.C. was found to be an abused child in the adjudication hearing, and pursuant to KRS 625.090(1)(a)(2), the trial court in this case found that C.W.P. and C.L.P. were abused children. Moreover, the trial court's finding that C.W.P. and C.L.P. were abused children was based on substantial evidence that Mother had not made

sufficient progress on her case plan goals to allow the safe return of the children to her care that had resulted in the children remaining committed to the Cabinet and in foster care for fifteen cumulative months out of twenty-two months under KRS 600.020(1)(a)(9), as the same was in effect at the time of this case. One expert and multiple caseworkers involved in the case testified that, although compliant with her case plan, Mother had made insufficient progress to allow the children to be returned to her, resulting in the children being in foster care for the previous fifteen months.

Moreover, the trial court found that it was in the childrens' best interest that Mother's parental rights be terminated pursuant to KRS 625.090(1)(c). The trial court discussed the factors included in KRS 625.090(3), including acts of abuse or neglect by Mother under KRS 625.090(3)(b), the fact that the Cabinet had offered all reasonable services to Mother that would have permitted reunification pursuant to KRS 625.090(3)(c), the efforts and adjustments made by the parents to allow for the childrens' return pursuant to KRS 625.090(3)(d), and the physical, emotional, and mental health of the children pursuant to KRS 625.090(3)(e).

Finally, the trial court found the existence of two factors listed in KRS 625.090(2). Pursuant to KRS 625.090(2)(e), the trial court found that Mother:

for a period of not less than six (6) months, ha[d] continuously or repeatedly failed or refused to provide, or ha[d] been substantially incapable of providing, essential parental care and protection for the child and that there

[wa]s no reasonable expectation of improvement in parental care and protection, considering the age of the child.

Additionally, the trial court found that Mother, pursuant to KRS 625.090(g):

for reasons other than poverty alone, ha[d] continuously or repeatedly failed to provide or [wa]s incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there [wa]s no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child[ren].

Having reviewed the record in detail pursuant to *Anders* and *A.C.*, we agree with counsel's belief that Mother 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. Substantial evidence exists that any additional services provided by the Cabinet to Mother would have had little to no success in bringing about lasting parental adjustment and achieving reunification and would simply have had the effect of delaying permanency for the children. 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 Lincoln Circuit Court in Appeal Nos. 2018-CA-000031-ME, 2018-CA-000032-ME, and 2018-CA-000033-ME are affirmed.

Furthermore, we grant the motion of Than Cutler to withdraw as counsel for Mother in each appeal in a separate Order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Than Cutler  
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BRIEF FOR APPELLEE:

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