

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000635-ME

Z.R.L.

APPELLANT

APPEAL FROM HOPKINS CIRCUIT COURT
DIVISION II/FAMILY COURT
v. HONORABLE TIMOTHY C. STARK, SPECIAL JUDGE
ACTION NO. 17-AD-00020

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; S.L.C.¹ (NATURAL
MOTHER); AND R.C.L. (A MINOR CHILD)

APPELLEES

AND
NO. 2018-CA-000636-ME

Z.R.L.

APPELLANT

APPEAL FROM HOPKINS CIRCUIT COURT
DIVISION II/FAMILY COURT
v. HONORABLE TIMOTHY C. STARK, SPECIAL JUDGE
ACTION NO. 17-AD-00021

¹ In his notice of appeal, Appellant lists the natural mother as S.L.C.L. in the case caption, but identifies mother as S.L.C. in the body of the notice. Mother stated her name as S.L. for the record during the termination hearing.

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; S.L.C. (NATURAL
MOTHER); AND H.L.L. (A MINOR CHILD)

APPELLEES

AND
NO. 2018-CA-000637-ME

Z.R.L.

APPELLANT

APPEAL FROM HOPKINS CIRCUIT COURT
DIVISION II/FAMILY COURT
v. HONORABLE TIMOTHY C. STARK, SPECIAL JUDGE
ACTION NO. 17-AD-00022

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; S.L.C. (NATURAL
MOTHER); AND K.F.L. (A MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, KRAMER, AND K. THOMPSON, JUDGES.

KRAMER, JUDGE: Z.R.L. (Father) appeals from the Hopkins Family Court's findings of fact, conclusions of law, and judgment terminating parental rights in

this case involving his three minor children.² In accordance with *A.C. v. Cabinet for Health and Family Servs.*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Father filed an *Anders*³ brief stating that the appeal is frivolous, which was accompanied by a motion to withdraw as counsel. After a careful review of the record, we affirm. We grant counsel's motion to withdraw by separate order.

The three children at issue in this appeal were respectively born in 2007, 2009, and 2010. As of the February 2018 final termination hearing, the youngest child was seven and the oldest was ten. All children share the same biological mother and father.⁴

In August 2015, the Cabinet for Health and Family Services filed a Dependency Neglect and/or Abuse (DNA) petition on behalf of the three children alleging physical abuse by the paternal uncle and aunt, who were providing care for the three children at the time. Father and Mother had not exercised custody of the children since 2014. On August 28, 2015, the family court granted emergency custody of the children to the Cabinet and removed the children from the home of

² The court also terminated the parental rights of the three children's mother. Mother did not appeal.

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

⁴ The family court incorrectly found that Z.R.L. is listed as the father of K.F.L. on the child's birth certificate. Although Z.R.L. is not listed on K.F.L.'s birth certificate, he testified that he is the child's father. He also meets the statutory requirements of putative father to K.F.L. pursuant to KRS 625.065(1)(f). The family court correctly found that Z.R.L. is listed as the father of R.C.L. and H.L.L. on the birth certificates.

the paternal uncle and aunt. The children were also removed from Mother and Father pursuant to the same order, although the parents' whereabouts were unknown. The Cabinet eventually made contact and implemented a case plan with Father. The Cabinet's case plan for Father included: (1) having a mental health assessment and attending all mental health treatment as recommended; (2) submitting to random drug screens; (3) maintaining stable housing and employment; (4) abstaining from illegal drugs; (5) attending parenting classes; (6) attending Alcoholics Anonymous or Narcotics Anonymous meetings; and (7) submitting to an alcohol and drug assessment and following all treatment recommendations.

At the adjudication hearing, the paternal uncle and aunt stipulated to a finding of neglect or abuse by the court as to all three children. Although Father did not stipulate to a finding of neglect or abuse, the family court found that there were no less restrictive alternatives than removal from the home because the parents and custodians were unable to provide a safe and appropriate home.

Father was initially compliant with his case plan, but his progress became inconsistent. Visits and telephone calls with the children became sporadic; Father failed to complete parenting classes as approved by the Cabinet; he failed to consistently follow through with mental health counseling; his housing remained unstable; he had repeated incarcerations; and Father tested positive for

amphetamine and methamphetamine. All contact between the children and Father eventually ceased due to behavioral issues exhibited by the children after visitation and telephone calls with Father. Father did not motion the family court to reinstate contact with his children,⁵ and there was ongoing lack of compliance with his case plan. The Cabinet moved to change the goals for each child to adoption, which the court granted.

In July 2017, the Cabinet filed Petitions for involuntary termination of parental rights for all three children. Service on Father was initially unsuccessful even though attempts were made at two different addresses. A warning order attorney was appointed to provide constructive service; however, Father filed a handwritten update of address with the family court on October 24, 2017, and personal service of summons followed. The family court appointed an attorney to represent Father, and a termination hearing was scheduled after appointment of a special judge. During the time between the filing of the petitions and the termination hearing, Father continuously failed to make consistent progress with his case plan.

Father appeared at the termination hearing. Following the hearing, the family court terminated Father's parental rights to all three children.

This appeal followed.

⁵ Father had court-appointed counsel.

On appeal, counsel for Father filed an *Anders* brief stating that the instant appeal is frivolous. When appointed counsel files an *Anders* brief, the Court of Appeals is bound to “independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal.” *A.C.*, 362 S.W.3d at 372.

In Kentucky, termination of parental rights is proper upon satisfaction, by clear and convincing evidence, of a tripartite test. *Cabinet for Health and Family Serv. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, KRS 625.090(1) requires that a child be adjudged neglected or abused. Second, KRS 625.090(1)(c) requires that termination must be in the child’s best interest. Third, at least one of the conditions set out in KRS 625.090(2) must be established. The family court’s termination decision will be reversed only 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.*

In this case, we conducted a thorough and independent review of the record and conclude that more than sufficient evidence supports the family court’s findings of fact, conclusions of law, and orders terminating Father’s parental rights as to the three children. The court complied with all relevant statutory mandates for involuntarily terminating Father’s parental rights, and the court conducted an

evidentiary hearing where Father was present and testified on his own behalf. There is no legal basis or reason to set aside the family court's judgment terminating Father's parental rights. We agree with counsel that no valid basis exists to warrant relief from the judgment. *A.C.*, 362 S.W.3d at 371. Accordingly, the family court did not err by terminating Father's parental rights as to all three of the children at issue.

For the foregoing reasons, the order terminating parental rights and judgment thereon by the Hopkins Circuit Court, Family Division is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thresa Taylor Hinton
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BRIEF FOR APPELLEE
COMMONWEALTH OF
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