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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000102-ME

J.O.P.

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00005

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; C.C.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND

NO. 2017-CA-000103-ME

J.O.P.

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00006

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; M.E.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND

NO. 2017-CA-000104-ME

J.O.P.

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00007

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; J.C.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND

NO. 2017-CA-000105-ME

J.O.P.

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00008

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; R.L.W.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND

NO. 2017-CA-000106-ME

J.O.P.

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00009

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; J.L.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND NO. 2017-CA-000107-ME

J.O.P.

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00010

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; O.C.P., A MINOR CHILD;
AND E.D.S.

APPELLEES

AND NO. 2017-CA-000108-ME

J.O.P.

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-AD-00011

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; J.O.P., JR., A MINOR CHILD;
AND E.D.S.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, J. LAMBERT AND KRAMER, JUDGES.

ACREE, JUDGE: J.O.P. (Father) appeals the Rowan Circuit Court's January 24, 2017, orders terminating his parental rights relative to his seven biological children, R.L.W.P., O.C.P., M.A.P., J.C.P., J.L.P., J.O.P. Jr., and C.C.P. 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 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.

FACTS AND PROCEDURE

The circuit court found Father to be the biological parent of nine minor children, R.L.W.P., born October 6, 2013; J.O.P. Jr., born October 28, 2010;

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

M.A.P., born October 27, 2007; O.C.P., born October 27, 2005; J.C.P., born March 11, 2004; C.C.P., born July 17, 2002; and J.L.P., born June 13, 1999. This appeal does not concern the paternal rights of Father relative to D.P. and O.G.P. as they have reached the age of majority and are emancipated.

Upon inspection, the Cabinet found Father's home in deplorable conditions: there was no food in the home save for one can of baby formula and two bags of uncooked rice, which were hidden; there was no running water, no heat, no bed for the children to sleep upon; and the children were extremely dirty and not properly clothed for winter weather. This prompted the Cabinet to file a dependency, neglect, or abuse petition on March 30, 2015. The petition asserted that, during a time when Father was in a caretaking role, for reasons other than poverty alone, he failed to provide essential food, clothing, shelter, and medical care in spite of the availability of sufficient income to provide for the children's needs. The Cabinet deemed all the children at risk of harm. Substantiation of these allegations in December 2013 was sufficient basis for the circuit court to adjudge the children neglected or abused and to commit them to foster care.

To foster reunification with the children, the Cabinet made numerous resources available to Father, but he either failed or refused to take advantage of them. Father continues to refuse or ignore all services offered to increase the possibility of reunification.

On March 14, 2016, the Cabinet petitioned to terminate both parents' parental rights to raise their children. The circuit court held a hearing on November 21, 2016, at which the Cabinet worker testified that the home Father provided for the children was in a deplorable condition. She described in more detail the conditions summarized above. Father made no effort to feed or clothe the children. The Cabinet worker also testified that all the children suffered severe forms of physical and mental abuse. There was also extensive expert testimony that the children were severely malnourished and neglected. The Cabinet worker testified that Father, in his long history with child services since 1999, was always non-compliant with the programs offered by the Cabinet, but that he now wishes to participate.

Because he was incarcerated, Father participated in the hearing telephonically. During Father's testimony, he admitted that the home was dirty and that "it looked pretty bad," but he made no admissions as to neglect or abuse concerning food, running water, or proper clothing for the children. Father testified that when he was around the house the children received proper care and any neglect or abuse was due to Mother's inaction. The circuit court found that Father continuously failed to provide life essentials for his children. It also found that Father had no reasonable expectation of improvement because he

demonstrated no action or desire commensurate with his intention to utilize resources provided by the Cabinet.

On January 24, 2017, the circuit court entered findings of fact and conclusions of law, as well as a Judgment Terminating Parental Rights to raise his minor children. The circuit court found the children abused and neglected. KRS 600.020(1). It also found the termination was in the children's best interests. KRS 625.090(1)(c). The circuit court found Father unfit to parent the children because: (a) he abandoned the children for a period of not less than ninety days, KRS 625.090(2)(a); (b) he failed to provide basic necessities for the children, KRS 625.090(2)(g); (c) he failed to offer the children essential parental care and protection KRS 625.090(2)(e); and (d) the children were in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition, KRS 625.090(2)(j). KRS 600.020(1). Father appealed.

STANDARD OF REVIEW

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 (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.* "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.” *Id.* (quoting *Anders*, 386 U.S. at 744).

ANALYSIS

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 Serv. 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(1). 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 circuit court's decision to terminate Father's parental rights. Here, the circuit court declared the children 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 children's care since removal. KRS 625.090(2)(g), (3)(f). It is undisputed that the children 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 March 14, 2016. KRS 625.090(2)(j). Father has only spoken to the children telephonically since their 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 children'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 children and is unfit to parent them. It is in the children's best interests to terminate Father's parental rights. We affirm the January 24, 2017

orders of the Rowan Circuit Court terminating Father's parental rights to the children.

CONCLUSION

Upon considering the totality of the circumstances, we are convinced Father neglected the children and is unfit to parent them. It is in the children's best interests to terminate Father's parental rights. We affirm the January 24, 2017 orders of the Rowan Circuit Court terminating Father's parental rights to the children.

ALL CONCUR.

BRIEF FOR APPELLANT:

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