

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

NO. 2017-CA-002042-ME

D.C.B., SR.

APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NO. 17-AD-00024

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

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GOODWINE, JONES, AND NICKELL, JUDGES.

JONES, JUDGE: D.C.B., Sr. (“Father”) appeals the Graves Circuit Court’s November 30, 2017, judgment terminating his parental rights to his biological child, S.L.O. (“Child”). 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* brief accompanied by a motion to withdraw from the case. After careful review of the record, we grant counsel's motion to withdraw by separate order and affirm the circuit court's order terminating Father's parental rights.

## **I. BACKGROUND**

Father is the biological parent of Child who was born in 2005. Child lived with her mother and other relatives until 2010. In 2010, Child was placed in the care of her mother's cousin, C.Y., and remained with her until she was placed in the Cabinet's custody in October 2015. Child's mother passed away in January 2014. Child was placed in the Cabinet's custody in October 2015 because of her serious ongoing mental health issues.

The Cabinet filed a petition for involuntary termination of Father's parental rights on August 21, 2017. At the hearing on November 14, 2017, the circuit court heard testimony from C.Y., the social worker on the case, a mental health expert, and Father. C.Y. testified that Father only visited Child five times while she was in her care, despite living in the same county as C.Y. and Child. Furthermore, C.Y. testified that Father did not visit at all in the final three years during which Child was living with her. Additionally, throughout Child's life, despite requests from C.Y., Father refused to provide financial assistance for the care of Child.

The social worker, Elise Leatherwood, testified to Father's case plan, which included anger management classes, parenting classes, finding stable housing, maintaining employment, a mental health assessment, and having positive visits. Ms. Leatherwood testified that Father completed parenting classes but had not completed the other tasks in the plan. She stated that Father had some supervised visits while Child was in the Cabinet's custody but had not seen Child in more than four months at the time of the hearing. She also stated that Father sometimes became angry and started arguments during telephone calls with Child. Finally, she testified that she and Father had discussed the necessity of suitable housing for more than one year, but that Father still lived in a one-bedroom home at the time of the hearing.

The mental health expert, Sarah Ford, testified to Child's mental health diagnoses, some of which she attributed to Child's history of multiple placements, childhood neglect, and childhood trauma. She also stated that Child had experienced confusion due to Father's inconsistency in her life. When asked whether she thought termination of Father's parental rights would harm Child, Ms. Ford stated that she could not give an opinion because she had not had contact with Father.

Father testified to his love for Child and his desire to have custody of her. He stated that, when Child was young, her mother moved often with Child

and did not give him information about their whereabouts. Father admitted that he never had unsupervised contact with Child. He also testified that on more than one occasion he went years without visiting Child. Although Child was placed in foster care in October 2015, Father did not contact the Cabinet until July 2016. Father estimated that he visited with Child ten times while she was in the Cabinet's custody and stated that lack of funds and a work-related injury had prohibited visitation at certain times during 2016 and 2017. Father admitted that he had not completed his case plan, including his failure to complete anger management classes. Although Father admitted that his one-bedroom home was inappropriate for a twelve-year-old girl, he did not find more suitable housing. Father also admitted that he had not provided financial support for Child for ten years.

In a judgment entered on November 30, 2017, the circuit court found that it was in Child's best interest to terminate Father's parental rights. Specifically, the circuit court concluded that Child was a neglected child under KRS<sup>1</sup> 625.090(2)(e) because Father had, "for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide, or has been substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of significant improvement in parental care and protection, considering the age of the child." Father's counsel filed a

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<sup>1</sup> Kentucky Revised Statutes.

notice of appeal and submitted a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), stating that no meritorious grounds for appeal exist. Counsel also filed a motion to withdraw.

## **II. STANDARD OF REVIEW**

A circuit court's decision to terminate parental rights will be reversed only if it was clearly erroneous, meaning that it was not based upon clear and convincing evidence. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citations omitted). "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 117 (Ky. App. 1998) (citation omitted). "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the [circuit] court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *T.N.H.*, 302 S.W.3d at 663.

## **III. ANALYSIS**

Where counsel is unable to identify any meritorious grounds for appeal, he must follow the "prophylactic framework" explained in *Anders* and adopted by this court in *A.C.*, 362 S.W.3d at 364, to protect a parent's right to

counsel in termination of parental rights proceedings. This framework requires counsel to first engage in a good faith review of the record. *Id.* at 371. After conscientious review of the record, if counsel cannot identify any non-frivolous claims, “he should so advise the court and request permission to withdraw.” *Id.* at 364 (citation omitted). “That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.” *Id.* at 371 (citation omitted).

In this matter, Father’s counsel complied with the requirements of *A.C.* and *Anders* by submitting his brief and motion to withdraw to the court, providing 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. *Id.* Father failed to provide a *pro se* brief. We must now proceed with “a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Id.* at 365 (citation omitted).

Under KRS 625.090, “termination of parental rights is proper upon satisfaction of a three-pronged test.” *M.P.R. v. Cabinet for Health and Family Servs.*, 520 S.W.3d 409, 412 (Ky. App. 2017).

First, the child must be found to be abused or neglected, as defined in KRS 600.020(1). KRS 625.090(1).  
Second, the court must find that at least one of the enumerated factors in KRS 625.090(2) is present.  
Finally, the court must find that it is in the best interest of

the child that parental rights be terminated. KRS 625.090(3).

*Id.*

The record contains sufficient evidence to support the circuit court's decision to terminate Father's parental rights. First, evidence supports the determination that Child is an "[a]bused or neglected child" because Father "[c]ontinuously or repeatedly fail[ed] to provide essential parental care and protection for the child, considering the age of the child[.]" KRS 600.020(1)(4). By Father's own admission, he never regularly visited Child and had not seen her for three years prior to the Cabinet taking custody. Child had been in the Cabinet's custody for almost a full year before Father contacted the Cabinet. Once Father had contacted the Cabinet, he visited Child on ten occasions and had not seen Child in four months at the time of the hearing. When Father did have contact with Child, he often became angry and upset Child. Additionally, when C.Y. requested financial assistance for caring for the Child, Father refused to provide any funds. By his own admission, Father has never financially supported Child. This evidence clearly supports the circuit court's finding that Child is "[a]bused or neglected" due to Father's continuous or repeated failure "to provide essential parental care and protection for the child, considering the age of the child" pursuant to KRS 600.020(1)(4).

Second, the record supports the circuit court's finding that there were grounds for termination of parental rights under KRS 625.090(2)(e). Specifically, KRS 625.090(2)(e) requires the circuit court to find the following by clear and convincing evidence:

That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child[.]

In this matter, Father admitted that he provided little to no financial support for Child throughout her life. Even after contacting the Cabinet, Father did not make the requisite changes to enable him to gain custody of Child. For more than a year, he repeatedly refused to complete his case plan and the record contains no evidence to support a reasonable expectation that his behavior would improve in the future.

Finally, there is ample evidence to support the circuit court's finding that termination of Father's parental rights is in Child's best interest, as required by KRS 625.090(3). Father's inconsistency resulted in confusion for Child. Despite the reasonable efforts of the Cabinet to reunify Father and Child, Father did not make the necessary changes to gain custody of Child. Specifically, Father failed to provide financial support, maintain a relationship with Child, complete anger



management classes, and secure suitable housing. The circuit court had no reasonable basis to believe Father would complete his required case plan and gain custody in the near future.

#### **IV. CONCLUSION**

For the foregoing reasons, we affirm the order of the Graves Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis L. Null, Jr.  
Mayfield, Kentucky

BRIEF FOR APPELLEES:

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