

RENDERED: MARCH 29, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001147-ME

P.H.

APPELLANT

v.

APPEAL FROM UNION FAMILY COURT
HONORABLE BRANDI D. ROGERS, JUDGE
ACTION NO. 18-AD-00006

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND
CHILDREN; AND THE MINOR
CHILD, T.H.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; JONES AND THOMPSON, L.,
JUDGES.

CLAYTON, CHIEF JUDGE: This appeal is taken from a decision of the Union
Family Court terminating the parental rights of P.H. (“Mother”) to her minor

daughter, T.H. (“Child”). Having reviewed the record and the applicable law, we affirm.

Child was born on September 30, 2004. Her biological father passed away on April 28, 2015. Child is a special needs child suffering from cerebral palsy and ataxia. She is severely handicapped and low functioning. Her program therapist and professional counselor, Angela Siebert, testified at the termination hearing that Child needs specialized care to manage her behaviors which include yelling, kicking, screaming, banging her head, and soiling herself. From the time of her birth, Child frequently lived in foster care and with relatives because Mother was unable to look after her due to domestic violence, drug and alcohol abuse, and homelessness. Child was adjudicated as a neglected or abused child by the Clay Family Court in 2008 after Child was injured during a domestic violence incident between Mother and the biological father. She was adjudicated a neglected and abused child on a second occasion by the Laurel Family Court in 2010. Child was placed in the custody of an aunt on February 3, 2012. Mother’s visits ceased after April 2014, even though Mother knew Child’s whereabouts. Mother did not provide any financial support for the Child during these years. Siebert testified that Child does not have a relationship or connection with Mother. In 2017, Child was found to be neglected or abused by the Union Family Court and removed from

her aunt's home. Mother requested custody of Child only after learning from Facebook that Child had been removed from the aunt's custody.

At the time of the termination hearing, Child was living in a state-approved residential facility. Previously, she resided with experienced therapeutic foster parents who are trained to look after special needs children. They were unable to meet Child's needs, however, and feared for the safety of their other children.

The Cabinet filed a petition for involuntary termination of parental rights on February 23, 2018. Following a termination hearing on May 18, 2018, the family court entered findings of fact and conclusions of law and an order terminating Mother's parental rights. Mother filed a motion to alter, amend or vacate which was also denied following a hearing. This appeal by Mother followed.

Mother's counsel has filed a brief in accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). In *A.C.*, this Court applied the reasoning of *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to cases in which parental rights have been terminated and counsel cannot, following a thorough, good-faith review of the record, identify any non-frivolous grounds upon which to base an appeal. *A.C.*, 362 S.W.3d at 371. Counsel in this case has reviewed the record and concluded that there are no

meritorious issues to raise on appeal and has filed a motion to withdraw. We agree with counsel's assessment of the case and grant the motion to withdraw by separate order.

Involuntary termination proceedings are governed by KRS 625.090,¹ which provides that a circuit court may involuntarily terminate parental rights only if the court finds by clear and convincing evidence that a three-pronged test has been met. First, the child must be deemed abused or neglected, as defined by KRS 600.020. KRS 625.090(1)(a). Second, the court must also find at least one of the ten grounds listed in subsection (2) of the statute. KRS 625.090(2). Third, termination of parental rights must be in the child's best interest, and the court is provided with a series of factors that it shall consider when making this determination. KRS 625.090(1)(b); KRS 625.090(3).

“[T]o pass constitutional muster, the evidence supporting termination must be clear and convincing. Clear and convincing proof is that of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (internal citations and quotation marks omitted).

It is undisputed that Child was adjudicated to be abused or neglected in 2008 and 2010 by courts of competent jurisdiction. It is also undisputed that

¹ KRS 625.090 was amended effective July 14, 2018. The citations in this opinion are to the prior version of the statute utilized by the family court which came into effect July 12, 2012.

Mother abandoned Child after April 2014 and provided her no care, protection or material support. These foregoing facts constitute clear and convincing evidence supporting the family court's determination that Child is a neglected or abused child as defined in KRS 600.020(1)(a).

Under KRS 625.090(2), the family court found the existence of the following grounds to justify termination: That Mother has abandoned Child for a period of not less than ninety days, KRS 625.090(2)(a); that Mother, for a period of not less than six months, had continuously or repeatedly failed to provide or been substantially incapable of providing essential parental care and protection for the Child and there is no reasonable expectation of improvement in parental care and protection considering the age of Child, KRS 625.090(2)(e); that Child has been in foster care under the responsibility of the Cabinet for fifteen of the most recent twenty-two months preceding the filing of the termination petition, KRS 625.090(2)(j); and that Mother, for reasons other than poverty alone, continuously failed to provide or is incapable of providing essential food, clothing, shelter, medical care or education for Child's well-being and there is no reasonable expectation of significant improvement considering the age of Child KRS 625.090(2)(g). These findings are all supported by clear and convincing evidence in the record. Mother has not provided Child with any essential parental care or protection, food, clothing, shelter, medical care, or education since at least July

2016, when Child entered foster care. Indeed, Mother has not provided any consistent care for Child since 2010 and had no contact with her after 2014.

In assessing Child's best interest under the factors listed in KRS 625.090(3), clear and convincing evidence also supports the family court's finding that the Cabinet had provided reasonable reunification services to Mother and that additional services would not be likely to bring about lasting parental adjustment to facilitate reunification and that Mother had made no efforts or adjustments in her circumstances, conduct or conditions to make it in the best interest of Child to return to her home within a reasonable period of time, considering the age of the child. KRS 625.090(3)(c), (d). Mother has never completed any case plans since Child's birth, continues to test positive for drugs, did not complete a sufficient psychological evaluation and failed to maintain contact with her social worker. No obstacles were identified that would prevent Mother from working to support Child. Mother has a teenage son, who suffers from ADHD. He was recently returned to her custody and she supports herself on his monthly disability check. The family court noted there is no evidence beyond Mother's own testimony, which the court described as lacking in veracity, that the son is receiving the counseling recommended by the Cabinet.

In light of this lengthy history of abuse, neglect and abandonment, and the lack of any evidence of improvement in Mother's situation, the trial court's

decision to terminate parental rights was amply justified. Its findings of fact and conclusions of law and order terminating parental rights and its order denying the motion to alter, amend or vacate, are affirmed.

ALL CONCUR.

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