

RENDERED: JULY 19, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001254-ME

S. P.

APPELLANT

v. APPEAL FROM GREENUP FAMILY COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 18-AD-00011

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND G.W.A.T., A MINOR CHILD

APPELLEES

AND

NO. 2018-CA-001255-ME

S. P.

APPELLANT

v. APPEAL FROM GREENUP FAMILY COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 18-AD-00012

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

APPELLEES

AND

NO. 2018-CA-001256-ME

S. P.

APPELLANT

v. APPEAL FROM GREENUP FAMILY COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 18-AD-00013

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND G.M.L.T., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GOODWINE, LAMBERT, AND MAZE, JUDGES.

GOODWINE, JUDGE: S.P. (“Mother”) appeals the Greenup Family Court’s July 17, 2018 orders terminating parental rights to her three minor children, G.W.A.T., G.A.L.T., and G.M.L.T. In accordance with *A.C. v. Cabinet for Health and Family*

Services, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother 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 family court's orders terminating Mother's parental rights.

BACKGROUND

The family court found S.P. to be the biological mother of G.W.A.T., born April 4, 2011; G.A.L.T., born February 20, 2014; and G.M.L.T., born November 5, 2015 (the "children"). D.T. is the biological father of all three children and did not appeal the orders terminating his parental rights. On August 22, 2015, the family court entered an emergency custody order committing the children to the care of the Cabinet for Health and Family Services ("Cabinet"). Mother was ordered to comply with the Cabinet's case plan to regain custody of the children. They have remained in the Cabinet's custody since that time and were placed in the same foster home where they appear to be thriving.

Mother's case plan required her to (1) utilize services provided by the Cabinet to make several lifestyle changes; (2) complete a substance abuse

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

assessment and treatment, a mental health assessment and treatment, random drug screens; (3) maintain safe and stable housing; (4) resolve all criminal matters to have her driving privileges restored; and (5) maintain consistent visits. After years of not fully complying with the case plan, the Cabinet petitioned to terminate Mother's parental rights on March 22, 2018. The family court held a final hearing on July 16, 2018. Mother failed to appear despite being properly before the court and having been reminded of the date and time of the hearing. Appointed counsel appeared on her behalf.

On July 17, 2018, the family court entered findings of fact and conclusions of law, as well as a judgment terminating parental rights to each of the children. The family court found the children abused or neglected. KRS² 600.020(1). It also found the termination was in the children's best interests. KRS 625.090(1)(c). The family court found Mother unfit to parent the children because: (a) she failed to provide basic needs for the children, KRS 625.090(2)(g); (b) she failed to offer the children essential parental care and protection, KRS 625.090(2)(e); and (c) 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). Mother appealed.

² Kentucky Revised Statute.

STANDARD OF REVIEW

Mother'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, supra*, regarding appeals from orders terminating parental rights where counsel cannot identify any nonfrivolous 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, Mother's counsel complied with the requirements of A.C. and *Anders* by providing Mother with a copy of the brief and informing Mother of her right to file a *pro se* brief raising any issues she found meritorious. A.C., 362 S.W.3d at 371. Mother failed to file a *pro se* brief. Under A.C., we analyzed the record, and now agree with counsel no grounds exist that would warrant disturbing the family court's orders terminating Mother's parental rights.

"[T]ermination of parental rights is a grave action which the courts must conduct with 'utmost caution.' [It] can be analogized as capital punishment of the family unit because it is 'so severe and irreversible.' Therefore, to pass constitutional muster, the evidence supporting termination must be clear and

convincing.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (quoting *M.E.C. v. Commonwealth, Cab. for Health and Family Svcs.*, 254 S.W.3d 846, 850 (Ky. App. 2008)). “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.’” *Id.* (quoting *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934)).

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 record contains sufficient evidence to support the family court's decision to terminate Mother’s parental rights. Here, the family court declared the children neglected in 2015, and the testimony at the termination hearing supported such a finding. KRS 625.090(1)(a). Mother 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 months out of the last twenty-two months.

Mother did not submit a *pro se* brief supporting her position; however, according to the *Anders* brief, she believes that the family court erred in granting the termination of her parental rights because substantial evidence did not support it. The *Anders* brief argues Mother maintained contact with her children through regular supervised visits, and that she had completed some of the tasks on her case plan. We find her arguments without merit.

As noted above, the family court found each child neglected and that each of their best interests would be served by termination of parental rights. The family court found:

(e) 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;

...

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

KRS 625.090(2). The family court also found “the child[ren] ha[ve] been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights” pursuant to KRS 625.090(2)(j).

Although, an amendment to that portion of the statute became effective three days before the trial court entered its order, we need not address whether the trial court applied the correct version of the statute. The amended version of KRS 625.090(2)(j) provides: “That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights.” The family court need only find “the existence of one (1) or more of the” grounds listed, and it found two other grounds existed to support termination of Mother’s parental rights. KRS 625.090(2).

Further, the family court held termination of parental rights was in the best interest of the child after weighing the factors under KRS 625.090(3). The family court’s judgment observed that the Cabinet offered all reasonable services to Mother that would likely have permitted reunification under KRS 625.090(3)(c). The family court also observed Mother failed to provide financially for the children under KRS 625.090(3)(f). Thus, the family court precisely followed the statutory protocol for termination of parental rights.

We reviewed the family court's termination of parental rights and conclude substantial evidence supports the family court's decision. Each of the children were adjudged neglected. Mother had not provided care and protection for them and failed to meet the Cabinet's requirements for the return of her children. Further, Mother failed to prove there was a reasonable expectation of significant improvement in her conduct in the immediately foreseeable future.

CONCLUSION

Based on the foregoing analysis, we affirm the Greenup Family Court's findings of fact, conclusions of law, and orders terminating Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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