

RENDERED: OCTOBER 25, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000232-ME

A.M.E.

APPELLANT

v. APPEAL FROM MCCRACKIN CIRCUIT COURT
HONORABLE DEANNA WISE HENSCHER, JUDGE
ACTION NO. 18-AD-00030

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH
AND FAMILY SERVICES; AND M.M.J., A CHILD APPELLEES

OPINION AND ORDER
AFFIRMING

** ** * * * * *

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

THOMPSON, L., JUDGE: A.M.E.¹ (“Appellant”) appeals from 1) findings of
facts and conclusions of law, and 2) an order terminating parental rights and order

¹ Due to the confidential nature of this appeal, Appellant and her child will be referred to only by their initials.

of judgment rendered by the McCracken Circuit Court. Appellant’s counsel, Hon. Ashley Wiggins White, has moved to withdraw from representation based on her belief that this appeal is without merit. The Commonwealth of Kentucky, Cabinet for Health and Family Services (“the Cabinet”) agrees that the appeal is frivolous. We grant attorney White’s motion to withdraw. Having reviewed the record and applicable case law, we conclude that the appeal is without merit and accordingly AFFIRM the judgment on appeal.

Facts and Procedural History

Appellant is the biological mother of M.M.J., a female child born on July 30, 2017, in McCracken County, Kentucky. M.M.J.’s biological father is unknown and not a party to these proceedings. Appellant suffers from mental illness, drug addiction and hepatitis B, and was homeless at the time of M.M.J.’s birth. M.M.J. was born addicted to illegal drugs.

The Department for Community Based Services, Division of Protection and Permanency (“DCBS”) is an agency of the Cabinet tasked with investigating child protection issues and facilitating reunification. DCBS became involved with Appellant and M.M.J. on the day following M.M.J.’s birth. On July 31, 2017, DCBS petitioned for M.M.J.’s removal from Appellant’s custody. A protracted procedural history followed. M.M.J. was placed in a foster home, and

Appellant disappeared and left no information as to her whereabouts. Appellant has not seen M.M.J. since birth.

In February 2018, Appellant entered a treatment facility in Georgia called New Beginnings. About three months later, Appellant left the facility after exhibiting rage and threats of self-harm. During this time, Appellant suffered from paranoid schizophrenia and drug-induced psychosis. She entered a treatment facility called Peachford, and later another facility called Advantage. It appears that Appellant still resides in Georgia as of the filing of this appeal.

The Cabinet filed a petition in McCracken Circuit Court to terminate Appellant's parental rights. A hearing on the petition was conducted, whereupon the circuit court rendered an order terminating Appellant's parental rights as to M.M.J. In support of termination, the court found that M.M.J. was abused and neglected as defined in Kentucky Revised Statutes ("KRS") 600.020(1); that Appellant abandoned M.M.J. for not less than 90 days; and that for a period of not less than six months, Appellant continuously or repeatedly failed or refused to provide essential parental care and protection for M.M.J. The court also determined that Appellant continuously or repeatedly failed to provide essential food, clothing, shelter, medical care and education, and that there was no reasonable expectation of improvement. It found that termination of Appellant's

parental rights was in M.M.J.’s best interest, and that the Cabinet was best qualified to receive custody of the child. This appeal followed.

Argument and Analysis

Attorney White was appointed to represent Appellant. On March 8, 2019, Ms. White moved to withdraw as counsel based on her belief that this appeal is without merit. In support of the motion, Ms. White filed an “Anders brief” pursuant to *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), as adopted in *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). *A.C.* sought to balance an appellant’s right to vigorous legal representation and defense of parental rights with counsel’s duty not to prosecute a frivolous appeal and the appellate court’s need for judicial economy. In *A.C.*, a panel of this Court conducted a cursory review of the circuit court’s judgment finding 1) abuse and neglect; 2) unfitness under KRS 625.090(2); and, 3) a best interest determination. In light of its review, it agreed with counsel’s conclusion and found no basis warranting relief.

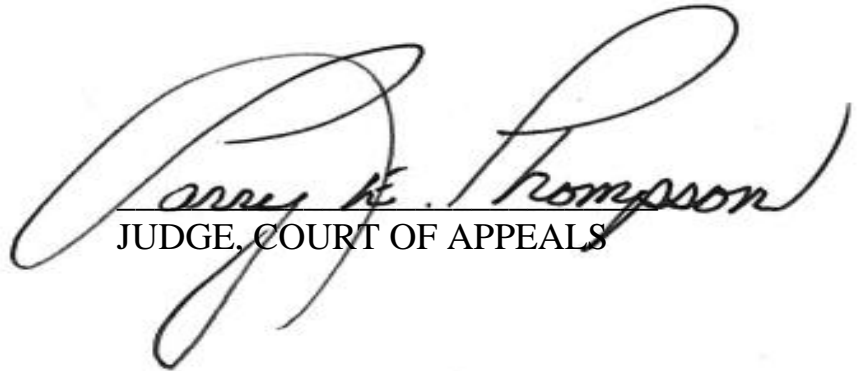
Conclusion

Pursuant to *Anders* and *A.C.*, we have reviewed the circuit court’s finding of abuse and neglect, unfitness under KRS 625.090(2), and M.M.J.’s best interest. The record supports the circuit court’s finding that M.M.J. was abused and neglected, and that Appellant has repeatedly failed or refused to provide

essential parental care and protection for M.M.J. Appellant continuously or repeatedly failed to provide essential food, clothing, shelter, medical care and education, and there is no reasonable expectation of improvement. The record supports the circuit court's judgment, and we conclude that the instant appeal is without merit. For the foregoing reasons, we grant attorney White's motion to withdraw and AFFIRM the 1) findings of facts and conclusions of law, and 2) order terminating parental rights and order of judgment rendered by the McCracken Circuit Court.

ALL CONCUR.

ENTERED: _____



GARY E. THOMPSON
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Ashley Wiggins White
Paducah, Kentucky

BRIEF FOR COMMONWEALTH OF
KENTUCKY, CABINET FOR
HEALTH AND FAMILY
SERVICES:

Dilissa G. Milburn
Mayfield, Kentucky