

RENDERED: DECEMBER 13, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000273-ME

R.Y.

APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
FAMILY DIVISION
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 18-AD-00013

K.A.; M.A.; C.A.; AND
C.M.A., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: GOODWINE, LAMBERT, AND K. THOMPSON, JUDGES.

GOODWINE, JUDGE: R.Y. (“Mother”) appeals the Oldham Circuit Court’s
January 4, 2019 order terminating parental rights to her minor child, C.M.A. 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 order terminating Mother's parental rights.

BACKGROUND

R.Y. is the biological mother of C.M.A. ("Child"), born on December 14, 2014. K.A. and M.A. are Child's paternal grandparents ("Grandparents"). On April 19, 2018, Grandparents petitioned the family court to adopt Child without Mother's consent pursuant to KRS² 199.502. C.A. is the biological father of Child. He consented to termination of his parental rights and adoption of Child. Child was appointed a guardian *ad litem* by the family court.

The family court held a final hearing on the termination of Mother's parental rights and adoption on November 19, 2018. Child has resided with K.A. and M.A., the child's paternal grandparents, since he was discharged from the hospital after his birth. Child tested positive for opiates at birth, and Mother has a history of opiate abuse. On February 25, 2016, the child's grandparents were awarded permanent custody by the Jefferson Family Court.

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

² Kentucky Revised Statutes.

At the time of the hearing, Mother resided at The Healing Place where she was recovering from her drug addiction. She was employed as a peer mentor, for which she received a \$150.00 biweekly stipend and had no living expenses. In the weeks leading up to the hearing, Mother paid a total of \$150.00 in child support. She was in the process of securing Section 8 housing. Mother had not seen Child since he was three months old, but she argues she had made attempts to see him. Mother also testified that she lost custody of her older daughter when Mother overdosed and left her daughter at daycare with no one to pick her up. We note that Mother's parental rights to her daughter are not at issue in this case.

On January 4, 2019, the family court entered findings of fact and conclusions of law, as well as a judgment terminating parental rights to Child. The Jefferson Family Court found Child neglected when it awarded Grandparents permanent custody. KRS 600.020(1). The Oldham Family Court found termination of Mother's parental rights was in Child's best interests. KRS 199.520(1). The family court found Mother unfit to parent the child because: (a) she "abandoned the child for a period of not less than ninety (90) days" under KRS 199.502(1)(a); (b) "failed . . . to provide essential parental care and protection for the child" under KRS 199.502(1)(e); and (c) "failed to provide . . . essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being" under KRS 199.502(1)(g). Mother appealed.

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 filed 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 order terminating Mother's parental rights.

This is an adoption case. A family court shall enter a judgment of adoption if after a hearing, the court is satisfied that:

the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable

standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption.

KRS 199.520(1). “Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.” KRS 199.520(2). Adoptions can be granted with or without the consent of the biological parents. KRS 199.500. If the adoption is sought without consent, KRS 199.502(1) requires proof as part of the adoption proceedings that one of the conditions set forth in subsections (a)-(j) exists with respect to the child at issue.

“An adoption without the consent of a living biological parent is, in effect, a proceeding to terminate that parent’s parental rights.” *B.L. v. J.S.*, 434 S.W.3d 61, 65 (Ky. App. 2014) (citing *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003)). Accordingly, in adoption without consent cases we apply the same standard of review that governs parental termination cases. Our review is confined to the clearly erroneous standard in CR³ 52.01, based upon clear and convincing evidence. The family court’s findings will not be disturbed unless there exists no substantial evidence in the record to support them. *See M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998) (citing *V.S. v.*

³ Kentucky Rules of Civil Procedure.

Commonwealth, Cabinet for Human Resources, 706 S.W.2d 420, 424 (Ky. App. 1986)). “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.* at 117 (quoting *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934)). “Additionally, since adoption is a statutory right which severs forever the parental relationship, Kentucky courts have required strict compliance with the procedures provided in order to protect the rights of the natural parents.” *B.L.*, 434 S.W.3d at 65.

We begin our analysis by determining whether the family court complied with the basic requirements of KRS 199.470. To petition for adoption, a person must be at least eighteen years old and “a resident of this state or who has resided in this state for twelve (12) months next before filing[.]” KRS 199.470(1). The petition should be filed in the county where the petitioner resides. *Id.* KRS 199.470(3) requires the child must have resided continuously with the petitioner “for at least ninety (90) days immediately prior to the filing of the adoption petition.” Here, Grandparents pleaded that they are residents of Kentucky, and they filed their petition in Oldham County, where they reside. Child has resided with Grandparents since he was born in 2014, so the 90-day requirement was also met.

The Cabinet's written approval of the adoption petition is required under KRS 199.470(4)(a) unless

[a] child sought to be adopted by a blood relative, including a relative of half-blood, first cousin, aunt, uncle, nephew, niece, and a person of a preceding generation as denoted by prefixes of grand, great, or great-great; stepparent; stepsibling; or fictive kin; however, the court in its discretion may order a report in accordance with KRS 199.510 and a background check as provided in KRS 199.473(8)[.]

Here, Grandparents did not need pre-approval from the Cabinet to adopt Child because they meet the definition of blood relative under the statute. As such, the family court appropriately concluded that Grandparents properly petitioned to adopt Child.

Next, we must determine whether Grandparents complied with KRS 199.480, which governs party defendants, service of process, and guardian *ad litem*. To be valid, an adoption petition shall name as party defendants:

- (a) The child to be adopted;

- (b) The biological living parents of a child under eighteen if the child is born in lawful wedlock. If the child is born out of wedlock, its mother; and its father, if one (1) of the following requirements is met;

...

- 3. He has caused his name to be affixed to the birth certificate of the child;

...

(d) If the care, custody, and control of the child has been transferred to the cabinet, or any other individual or individuals, institution, or agency, then the cabinet, the other individual or individuals, institution, or agency shall be named a party defendant, unless the individual or individuals, or the institution or agency is also the petitioner.

KRS 199.480(1). The adoption petition shall be served on the party defendants

in the same manner as provided in other civil cases except that if the child . . . is under fourteen (14) years of age and . . . the individual . . . has custody of the child, the service of process upon the child shall be had by serving a copy of the summons in the action upon . . . the . . . individual . . . any provision of CR 4.04(3) to the contrary notwithstanding.

KRS 199.480(2).

In this case, Grandparents named the Cabinet, Child, and Mother and Father as party defendants.⁴ A review of the record shows Grandparents served all parties in compliance with KRS 199.480(2). Father's name is on Child's birth certificate, and he filed an answer consenting to the adoption. Furthermore, even though not required, a guardian *ad litem* was appointed for Child.⁵

⁴ KRS 199.480(1)(d) only requires joinder of the Cabinet if the child's care, custody, and control had previously been transferred to the Cabinet. In this case, the Cabinet never had custody of the children. Therefore, it was not necessary for Grandparents to name the Cabinet. *Id.* ("If the care, custody, and control of the child has been transferred to the cabinet . . . then the cabinet . . . shall be named a party defendant. . . .").

⁵ Because Child's biological parents were party defendants the family court was not required to appoint a guardian *ad litem* for the children. See KRS 199.480(3) ("If the child's biological living parents, if the child is born in lawful wedlock, or if the child is born out of wedlock, its mother, and if paternity is established in legal action or if an affidavit is filed stating that the

After an adoption petition is filed, under KRS 199.510(1), the clerk of the court must forward two copies of the petition to the Cabinet. Upon receipt, the Cabinet (or its designee) “shall, to the extent of available facilities,” commence an investigation and file a written report of its results with the court. *Id.* The Cabinet’s investigative report should address:

(a) Whether the contents of the petition required by KRS 199.490 are true;

(b) Whether the proposed adoptive parents are financially able and morally fit to have the care, custody and training of the child; and

(c) Whether the adoption is in the best interest of the child and the child is suitable for adoption.

Id. On July 16, 2018, a KRS 199.510 investigative report was properly filed in this case. In the report, the Cabinet determined the contents of the petition required by KRS 199.490 were true, Grandparents were of good moral character and financially able to support Child, that Child was suitable for adoption and adoption was in Child’s best interest.

In sum, having reviewed KRS 199 in conjunction with the record, we are satisfied that the family court correctly concluded Grandparents were eligible to adopt Child, and the statutory prerequisites for adoption were satisfied in this

affiant is father of the child, its father, are party defendants, no guardian ad litem need be appointed to represent the child to be adopted.”).

case. As such, we will now examine the family court's decision to grant the adoption petition without Mother's consent.

KRS 199.502(1) permits adoption without the consent of a child's biological living parent if one of the following conditions exist:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

...

(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; [and]

...

(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 199.502(1).

The family court relied on subsections (a), (e), and (g) regarding Mother's inability to provide for Child's needs and care for Child. We must

determine whether substantial evidence supports the family court's conclusions with respect to one of these factors.

First, we examine subsection (a). The family court found Mother abandoned Child for a period of not less than 90 days. She had not seen Child for nearly four years. Mother suffered from substance abuse. She used drugs while pregnant with Child who tested positive at birth. Mother last saw Child when he was a few months old.

Consequently, the Jefferson Family Court awarded Grandparents permanent custody of Child. Mother did not visit Child during this time and had not seen him since he was a few months old. Although Mother had been sober for a year at the time of the hearing, she never regained custody. Mother argues she made attempts to see Child since getting sober, but Grandparents never permitted her to see him.

The family court also relied on subsections (e) and (g). Mother "acknowledged that she had not paid any support except for three separate money orders totaling \$150.00[,]" which she paid "in the weeks prior to the hearing in this action." R. at 110. At the time of the hearing, Mother resided at The Healing Place where she received substance abuse treatment, but she had applied for Section 8 housing. Mother also worked for The Healing Place and received a small stipend, but she had no regular, ongoing financial responsibilities. Mother

received Vivitrol as part of her treatment. Grandfather expressed concern that Mother would not be able to maintain sobriety after she is released from the structured environment she has at The Healing Place. Based on the evidence presented, the family court found that Mother “made insufficient efforts or adjustments in her circumstance, conduct, or conditions to make it in the best interest of the child to return to her home within a reasonable period of time.” R. at 115.

The testimony presented supports the family court’s conclusion that for a period of not less than six months, Mother has been substantially incapable of caring for Child, and there is no reasonable likelihood that she will be able to care for Child at any time in the reasonable future.

CONCLUSION

Based on the foregoing analysis, we affirm the order of the Oldham Family Court.

ALL CONCUR.

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