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Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000661-ME

C.R.Y.

APPELLANT

v. APPEAL FROM MORGAN FAMILY COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-AD-00023

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; M.D.C., JR.; M.Y.; AND
J.A.C., A MINOR CHILD

APPELLEES

AND

NO. 2019-CA-000670-ME

C.R.Y.

APPELLANT

v. APPEAL FROM MORGAN FAMILY COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-AD-00022

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; M.W.B.; M.Y.; AND
S.R.B., A MINOR CHILD

APPELLEES

AND

NO. 2019-CA-000671-ME

C.R.Y.

APPELLANT

v. APPEAL FROM MORGAN FAMILY COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-AD-00021

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; M.W.B.; M.Y.; AND
A.J.B., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS AND LAMBERT, JUDGES; BUCKINGHAM, SPECIAL
JUDGE.¹

¹ Retired Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

LAMBERT, JUDGE: C.R.Y. (the Mother) has appealed from the April 15, 2019, orders of the Morgan Family Court involuntarily terminating her parental rights to three of her minor children. In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for the Mother has filed motions to withdraw her representation along with *Anders*² briefs conceding that there is no merit to the appeals. We affirm.

The Mother is the mother of three daughters: J.A.C. (Child 1), born in October 2001³; S.R.B. (Child 2), born in 2004; and A.J.B. (Child 3), born in 2006. M.D.C. (Father 1) is the biological father of Child 1, and M.W.B. (Father 2) is the biological father of Child 2 and Child 3. M.Y., who is married to the Mother, is the step-father of the three children (Step-Father). Father 1 voluntarily gave up his parental rights to Child 1 and consented to her being placed for adoption. Father 2 and Step-Father have not appealed from the termination of their parental rights. Therefore, this appeal concerns only the Mother's parental rights.

The children were committed to the Cabinet for Health and Family Services (the Cabinet) on October 31, 2017, by the family court. The Cabinet moved the court to involuntarily terminate parental rights a year later on November

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

³ We recognize that Child 1 has reached the age of 18 and is technically no longer a child. *See* Kentucky Revised Statute (KRS) 600.020(9) (“Child” means “any person who has not reached his or her eighteenth birthday, unless otherwise provided[.]”). We shall nevertheless consider her case in this appeal as we are affirming the family court's decision.

19, 2018. It alleged that the Mother failed to protect and preserve their fundamental right to a safe and nurturing home; that they were abused or neglected as defined by KRS 600.020; and that it was in their best interest for parental rights to be terminated.

The Cabinet went on to allege that the Mother, for at least six months, had failed or refused to provide or was substantially incapable of providing essential parental care and protection for the children and there was no reasonable expectation of improvement, considering the age of the children; that the Mother, for reasons other than poverty alone, had continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being and there was no reasonable expectation of significant improvement in her conduct in the immediately foreseeable future, considering the age of the children; that the Mother suffered from mental illness, retardation, or other mental disabilities pursuant to KRS 625.090(3)(a), making her consistently unable to care for the physical and psychological needs of the children for extended periods of time; that the Mother's pattern of alcohol or other drug abuse for at least 90 days rendered her incapable of caring for their immediate and ongoing needs and that the Mother refused or failed to complete available treatment; that the children had been in foster care under the Cabinet's care since August 2017, and for 15 cumulative

months out of 48 months preceding the filing of the petition; that the Mother had made little or no progress toward reunification despite the extensive services provided to her by the Cabinet; and that the Mother had not made any effort or adjustment to her circumstances that would make it in the children's best interest to be returned to her care in the immediately foreseeable future.

The family court held a final hearing on March 29, 2019, and heard testimony from the University of Kentucky Center on Trauma & Children Comprehensive Assessment and Training Services (CATS) Project worker, who testified that he completed the assessment of the family in February 2018 and expressed concern about the Mother's mental health. The court also heard testimony from the Mother's mental health providers. Dr. Dennis Campbell, the Mother's psychiatrist from Pathways, treated her for schizoaffective and bipolar disorder after her discharges from Eastern State Hospital. Dr. Campbell managed her psychiatric medications and said she seemed to be stabilized with her medication. He stated individuals with this diagnosis tend to be cyclical, meaning that they can lead a normal life between episodes but do not function well when they have a relapse. The Mother also testified about her mental health issues and treatment as well as about the past domestic violence she had experienced. She said she had not had another breakdown because of techniques she learned in her counseling as well as her medications.

The family court entered its findings of fact and conclusions of law as well as orders terminating the Mother's parental rights on April 15, 2019. The court found by clear and convincing evidence that the children had been found to be abused and neglected in the juvenile actions and that the evidence presented in these actions supported that finding; that the Mother inflicted or allowed to be inflicted emotional harm; that the Mother failed to provide essential parental care and protection; that the Mother failed to provide essential food, clothing, shelter, medical care, or education necessary for Child 2's and Child 3's well-being; that the Mother had allowed Child 1 to be sexually abused or exploited; and that the children had been in foster care for 15 cumulative months of the preceding 48 months. The court then found:⁴

17. The Court specifically finds that there is a Cabinet history with this child, her siblings or some combination thereof back to 2010. This child and her siblings have been subjected to multiple traumatic events. The mother [] has had repeated episodes of psychotic breaks and a sibling of this child, at one time, had indicated suicidal ideations and self-harm due to the trauma.^[5]

18. The Court finds that, at the time of the CATS assessment, [the Mother] was unable or unwilling to provide the essential care and this remains her condition. There has been dysfunctional parenting due to her severe

⁴ These findings are from the order entered in Child 2's case.

⁵ Child 3's order indicates she is the sibling who had indicated suicidal ideations and self-harm.

mental issues as demonstrated by the admitted juvenile petition in the underlying proceeding. [The Mother] has been unable to properly protect the child, allowing sexual activity with one child,^[6] domestic violence in front of the child as well as having her 10 year old son carry a gun to her estranged husband's house. There have been episodes of drug use and evidence of recent relapses as well as records that indicate a failure to insure school attendance.

19. Based upon the CATS assessment and the testimony of Corey Birch, [the Mother] and her husband do not seem to understand the severity of the issues and [the Mother] has indicated that some of her psychotic breaks are the Lord talking through her. [The Mother] and her husband did not see, as necessary, her anti-psychotic medication and believed it was harmful to her.

20. The CATS assessment found that [the Mother] was unable or unwilling to parent the child in such a manner so as to allow her to heal from the traumatic events that had occurred. She has demonstrated throughout the years an inability to protect the child from outside danger, including domestic violence, drugs and sexual assaults upon a minor, and at one point, recently, attempted to influence this child by saying "B***** would never hurt you, he loves you."

21. The Court's concern is that although [the Mother] is doing better emotionally, the psychiatrist testified that between episodes she demonstrates normal behavior but during an episode or psychotic break, she will not function well. This child has been through far too much and the treatment and what is being accomplished now is too late for the child although it is helpful to [the Mother's] mental health.

⁶ Child 1's order indicates that the sexual activity occurred with her.

Finally, the family court found that the Cabinet had provided reasonable services to the Mother in an effort to reunify the family and that termination would be in the children's best interest based upon the factors listed in KRS 625.090(2)(a) through (j). Therefore, the court terminated the Mother's parental rights and transferred the children's care, custody, and control to the Cabinet as wards of the state with the authority to place them for adoption. These consolidated appeals followed.

In the *Anders* briefs, counsel for the Mother, while noting no objections were made and there was no abuse of discretion, sought to contest the family court's findings related to whether the Mother neglected the children by inflicting emotional harm to them; the Mother's ability to function during a psychotic break; the Mother's failure to provide them with essential food, clothing, shelter, medical care, or education; the Mother's permitting sexual abuse of Child 1; and the children's time in foster care.

Considering the motion to withdraw, "we are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal. *Anders*, 386 U.S. at 744, 87 S.Ct. at 1400." *A.C.*, 362 S.W.3d at 372. We have also reviewed the Mother's *pro se* brief, in which she contests the evidence of her neglect, domestic violence, the children's school attendance, her alleged drug relapses, lack of food and clothing at the home, and her response to Child 1's sexual abuse. After review of the record and the

parties' briefs, we affirm, and grant counsel's motions to withdraw by separate order.

Kentucky allows parental rights to be involuntarily terminated "only if there is clear and convincing evidence that the child has been abandoned, neglected, or abused by the parent whose rights are to be terminated, and that it would be in the best interest of the child to do so." *Cabinet for Health & Family Servs. v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006). Additionally, at least one of the conditions set forth in KRS 625.090(2) must be established through clear and convincing evidence.

In *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998), we recognized that:

The trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, Ky. App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, Ky. App., 706 S.W.2d 420, 424 (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.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

Furthermore, “[t]he findings of the trial judge may not be set aside unless clearly erroneous with due regard being given to the opportunity of the trial judge to consider the credibility of the witnesses.” *Lawson v. Loid*, 896 S.W.2d 1, 3 (Ky. 1995) (citing Kentucky Rules of Civil Procedure (CR) 52.01; *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982); *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986)).

We have conducted an independent review of the record and conclude there is sufficient evidence to support the family court’s orders. There was substantial compliance with the “clear and convincing” evidence standard enunciated in *Santosky v. Kramer*, 455 U.S. 745, 769, 102 S.Ct. 1388, 1403, 71 L.Ed.2d 599 (1982); accord *J.E.H. v. Department for Human Resources*, 642 S.W.2d 600, 603 (Ky. App. 1982).

Considering the family court’s neglect and abuse determination, KRS 600.020(1)⁷ defines an “[a]bused or neglected child” as “a child whose health or welfare is harmed or threatened with harm when:”

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

⁷ We are referring to the version of the statute that went into effect on July 14, 2018. The statute has since been revised multiple times.

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to alcohol and other drug use as defined in KRS 222.005;
4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
7. Abandons or exploits the child;
8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be

considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months[.]

As the Cabinet argues in its brief, the family court made an independent finding of abuse and neglect and did not merely rely upon the prior finding in the juvenile actions. The family court found violations of KRS 600.020(1)(a)1 in the Mother's exposing her children to domestic violence, of subsection 3 in her substance abuse relapses, of subsection 4 in her inability to function during psychotic episodes, of subsection 5 in allowing Child 1 to be sexually abused, and of subsection 9 in her failure to sufficiently comply with her case plan, which resulted in the children's remaining in foster care for 16 months.

Turning to the family court's finding of unfitness, the court must find the existence of one ground listed in KRS 625.090(2).⁸ These grounds include:

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

⁸ We again refer to the version of the statute that went into effect July 14, 2018.

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;

(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;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(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;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has 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.

The Cabinet pointed out that the family court made findings under multiple grounds, including subsections (c), (e), (g), and (j), and our review supports these findings.

Finally, in considering the best interest of the child, the family court had to consider the factors listed in KRS 625.090(3), which include:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

The family court made findings under subsections (b), (c), (d), and (e), which, again, our review confirms. In addition, the family court found that the Cabinet had offered reasonable services to reunite the family pursuant to KRS 625.090(4), which provides that “[i]f the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.”

Pursuant to our obligation in *A.C.*, “[w]e have reviewed the circuit court’s (1) neglect and abuse determination; (2) finding of unfitness under KRS

625.090(2); and (3) best-interests determination. In light of our review, we agree with counsel's estimation and perceive no basis warranting relief on appeal." *A.C.*, 362 S.W.3d at 372. We find no abuse of discretion in the family court's decision to terminate the Mother's parental rights to her three daughters, and we find sufficient reason to grant the motion to withdraw as counsel for the Mother.

For the foregoing reasons, the orders of the Morgan Family Court terminating the Mother's parental rights are affirmed.

ALL CONCUR.

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