

RENDERED: OCTOBER 16, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-1330-ME

W.M.

APPELLANT

APPEAL FROM JESSAMINE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE JEFF MOSS, JUDGE
ACTION NO. 18-AD-00013

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, MCNEILL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: W.M.¹ (“Father”) appeals from an order terminating his parental rights to his daughter, M.M., by the Jessamine Family Court. Father’s appointed counsel contends that: (1) this appeal is frivolous, and (2) he should be

¹ Pursuant to the policy of this Court, we will not use the names of the parties involved because this case involves minor children.

granted leave to withdraw from his representation of Father. For the reasons addressed below, we grant counsel's motion to withdraw by separate order and affirm the judgment terminating Father's parental rights to M.M.

The relevant facts are not in dispute in this case. Father is the biological parent of M.M., the subject matter of the instant appeal.² M.M. has been in the care and custody of the Cabinet for Health and Family Services (the Cabinet) since September 30, 2016. The Cabinet became involved with this family upon receiving a referral about environmental neglect at the home where M.M. resided with her mother, mother's paramour, and half-siblings. The home contained little food, no electricity, no running water, and no bedding. M.M., who was thirteen years old at the time, was left alone to care for her younger half-siblings. There were also reports of substance abuse on the part of M.M.'s mother and mother's paramour.

After the Cabinet filed an emergency custody order, the children were removed. The family court found the mother had neglected M.M. on October 20, 2016, based on her substance abuse and environmental neglect. On January 16, 2018, the family court made a separate finding of neglect for Father, based on his substance abuse and his criminal activity. At the time of the children's removal, Father was incarcerated for trafficking in a controlled substance. The Cabinet was

² The family court's order in this case also terminated the parental rights of M.M.'s mother. She did not appeal.

also concerned about Father's previous violent behavior, including reports of domestic violence.

From October 2016 until December 2018, the Cabinet provided or made available various reunification services in order to reunite the children with the mother. M.M.'s mother did not complete her case plan, and her last visit with M.M. was prior to October 2018. Similarly, the Cabinet provided case plans for Father in January 2018 and March 2019. Father's case plan included notification to the Cabinet upon his release from incarceration, drug screening upon release, domestic violence assessment, no further criminal charges, mental health and substance abuse evaluations, and attendance at parenting classes. When Father was released from his incarceration, he did not work his case plan. The extent of his compliance was that, on one occasion, he went to a clinic in Lexington specializing in substance abuse and mental health services. However, he did not provide any documentation to the Cabinet that he had actually completed any part of his plan. Father would later testify that he could not return for further services because he did not have transportation. Father's last visits with M.M. were in March 2018, but these visits ceased once he became aware he had an outstanding bench warrant for his arrest. Father was once again incarcerated at the time of the termination hearing. When asked what he had done for M.M. since she was

removed, he replied, “I could’ve done more if I was out longer to do it and wasn’t on the run.”

In February 2018, the goal for M.M.’s disposition was changed from reunification to adoption by the Cabinet. On April 10, 2018, the Cabinet filed a petition for involuntary termination of parental rights in family court. M.M.’s mother and Father received appointed counsel, and a termination hearing was conducted on June 3, 2019. M.M.’s mother failed to appear, despite the efforts of her counsel, and her counsel was permitted to withdraw. Father appeared and testified on his own behalf. An order terminating parental rights and judgment was entered on July 8, 2019. This appeal followed.

On October 28, 2019, counsel for Father tendered to this Court an *Anders* brief and a motion to withdraw as Father’s counsel. In support of the motion, counsel directed our attention to *Anders v. State of California*, 386 U.S. 738 (1967), and *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), for the proposition that withdrawal from representation is justified where the record demonstrates that the appeal is wholly frivolous. *Anders*, 386 U.S. 738, as adopted in the Commonwealth by *A.C.*, 362 S.W.3d 361, provides in relevant part that when counsel determines the appeal to be without merit, he or she may withdraw from representation and appellant is then given notice and 30 days leave to file a *pro se* brief or other pleading. The *Anders* brief

was filed December 2, 2019. Subsequently, after several procedural motions, Father, *pro se*, filed a reply brief on March 24, 2020. Our review proceeds accordingly.

When a party files an *Anders* brief in a termination of parental rights case, this Court is not required to address every conceivable argument that an appellant could have raised on appeal. *A.C.*, 362 S.W.3d at 370. This Court’s review is analogous to a palpable error review requiring only that we “ascertain error which ‘affects the substantial rights of a party.’” *Id.* (quoting Kentucky Rules of Civil Procedure (CR) 61.02). Our standard of review of a trial court’s judgment terminating parental rights is the clearly erroneous standard, upon determining that the judgment was based on clear and convincing evidence. CR 52.01; *Commonwealth, Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

Under Kentucky Revised Statutes (KRS) 625.090(1)(a)1.-2., a “Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that . . . [t]he child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction”; or “[t]he child is found to be an abused or neglected child, as defined

in KRS 600.020(1), by the Circuit Court in this proceeding[.]” The family court found that M.M. was a neglected child during the termination proceedings.

Pursuant to KRS 600.020:

(1) “Abused or neglected child” means 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:

.....

4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of 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[.]

The Cabinet presented evidence to the family court consistent with these provisions at trial. Furthermore, the family court correctly noted that the parties stipulated to neglect. Based on our review of the record and the evidence presented below, we agree with the court’s findings. These findings were supported by clear and convincing evidence and thus are not clearly erroneous.

KRS 625.090 provides as follows:

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

.....

(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;

The family court found these provisions had been satisfied by the Cabinet. The family court then found termination of parental rights was in M.M.'s best interest, pursuant to KRS 625.090(3). Based on our review of the record, we cannot conclude that the family court's findings were clearly erroneous and must agree that it was in the best interest of M.M. to terminate Father's parental rights.

Finally, we note that we have thoroughly reviewed Father's *pro se* brief filed in this case. The brief makes no recitation to the record or identifies any evidence below which would refute the family court's findings in these cases.

For the foregoing reasons and grounds set forth herein, including that no meritorious issue has been raised on appeal, and the findings of the family court are not clearly erroneous based upon our independent review of the record on appeal, we affirm the family court's order terminating Father's parental rights entered on July 8, 2019.

ALL CONCUR.

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PRO SE BRIEF:

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