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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2020-CA-0067-ME

J.W.S.

APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NO. 19-AD-00044

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; J.G.I.K.S.,  
A MINOR CHILD; AND Y.Y.S.

APPELLEES

AND

NO. 2020-CA-0081-ME

Y.Y.S.

APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NO. 19-AD-00044

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; J.G.I.K.S.,  
A MINOR CHILD; AND J.W.S.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND MCNEILL, JUDGES.

CLAYTON, CHIEF JUDGE: J.W.S. (“Father”) and Y.Y.S. (“Mother”) bring these consolidated appeals from a Graves Circuit Court order terminating their parental rights to their son, J.G.I.K.S. (“Child”). Having reviewed the record and the applicable law, we affirm.

Father and Mother are married and the biological parents of Child. Mother has a long history of drug abuse. Her two older children were born with cocaine in their systems, and her parental rights to these children were terminated in 2006.

Child was born on May 15, 2018. After he tested positive for cocaine and marijuana, the hospital contacted the Cabinet for Health and Family Services which commenced an investigation. Meanwhile, Child was sent to the NICU of another hospital, St. Francis in Cape Girardeau, Missouri, for treatment of possible withdrawal symptoms. When Child was ready to be discharged, the St. Francis hospital staff were reluctant to release him to either parent out of fear for his safety, because they had witnessed Father and Mother engage in several verbal altercations, one of which ended with Father leaving Mother at the hospital without a phone or means to leave. The staff also believed Father was under the influence

and were concerned that Father and Mother did not have a car seat to take Child home.

The Cabinet investigator discovered that Father had a pending DUI charge. Mother informed the investigator she relapsed and used drugs four times while pregnant with Child and had used illegal substances on and off for several years. The Cabinet gained emergency custody of Child upon his discharge from the hospital. Following a hearing four days later, the trial court placed Child in the Cabinet's temporary custody pending a further assessment. At the hearing, Mother stipulated to a finding of neglect based on her admission that she used illegal drugs while pregnant. No finding of neglect was made pertaining to Father and the allegations against him were informally adjusted.

Child was initially placed with a relative, but she soon requested him to be removed because of the parents' behavior. The relative reported she had to ask Mother and Father to leave because they were arguing and Father appeared to be under the influence. A paternal aunt declined placement because she felt she could not handle Father in her home. Placement with Child's maternal grandmother was evaluated but ultimately denied because she admitted using crack cocaine with Mother a week before Child's birth. Child was not placed with Father because, in addition to his pending DUI charge, he was living with a cousin

for whom he was unable to provide information for the Cabinet to perform a background check. Accordingly, Child was placed in foster care.

Mother and Father met with a social worker from the Cabinet on May 25, 2018, to develop a case plan. Mother agreed to complete parenting classes and mental health and substance abuse assessments as well as to follow all recommendations, which included not engaging in illegal activities and maintaining her mental health and sobriety.

Mother participated in the parenting classes but was unable to demonstrate any skills she had learned in those classes. During supervised visitations, she behaved erratically with Child, was very physical with him, and spoke inappropriately in front of him. She participated in a mental health assessment but declined the recommended services. She did not complete an anger management assessment. She participated in a substance abuse program but did not follow through with recommended long-term inpatient treatment. She did not timely complete drug screens for the Cabinet and accumulated more criminal charges, although these were for theft rather than drug-related. She and Father continued to engage in arguments and domestic violence. In one episode, Father shoved Mother in the presence of the social worker.

The trial court characterized Mother's testimony at the termination hearing as erratic and expressed concerns about her mental health. For example, in

her testimony, Mother denied telling social workers that Father gave her two black eyes and knocked out her tooth. This testimony was contradicted by the social workers and by Father, who heard her make the statements to the social worker. Father told a social worker he was concerned Mother was using crack cocaine shortly before the termination hearing.

Under the terms of the case plan, Father was directed to complete anger management, mental health, and substance abuse assessments and follow all recommendations, to complete drug screens as requested, and not engage in acts of domestic violence.

The ongoing Cabinet worker for the family testified that Father reported he completed an anger management assessment, but she never received any documentation to that effect. Father testified that he had completed the assessment but was not recommended for any further treatment because he is not an angry person in general, but just angry at the situation. He admitted that he regularly argues with Mother. He also admitted that he made numerous cruel and derogatory remarks about Child to the social worker, calling him “retarded” and stating that he was not his and he did not want that “crack baby.” Father explained that he made these remarks because he was upset and angry.

Father did not complete a substance abuse assessment and did not submit to drug screens in a timely manner. He admitted to drinking on weekends

and sometimes during the week. He incurred another aggravated DUI charge shortly before the termination hearing.

Following the termination hearing on December 18, 2019, the trial court entered findings of fact and conclusions of law and an order terminating the parental rights of Father and Mother. These appeals by Father and Mother followed.

Kentucky Revised Statutes (KRS) 625.090 provides that a circuit court may involuntarily terminate parental rights only if the court finds by clear and convincing evidence that a three-pronged test has been met. First, the child must be deemed abused or neglected, as defined by KRS 600.020(1), or have been diagnosed with neonatal abstinence syndrome at the time of birth, or the parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that abuse, neglect, or injury is likely to occur to the child at issue. KRS 625.090(1)(a). Second, the court must also find the presence of at least one of the eleven grounds listed in subsection (2) of the statute. KRS 625.090(2). Third, termination of parental rights must be in the child's best interest, and the court is provided with a series of factors that it shall consider when making this determination. KRS 625.090(1)(c); KRS 625.090(3).

“[T]o pass constitutional muster, the evidence supporting termination must be clear and convincing. Clear and convincing proof is that of a probative

and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (internal quotation marks and citations omitted). “Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014) (citation omitted).

Mother’s counsel has filed a brief in accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). In *A.C.*, this Court applied the reasoning of *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to cases in which parental rights have been terminated and counsel cannot, following a thorough, good-faith review of the record, identify any non-frivolous grounds upon which to base an appeal. *A.C.*, 362 S.W.3d at 371. Counsel for Mother in this case has reviewed the record and concluded that there are no meritorious appellate issues to raise on her behalf and has filed an amended motion to withdraw. Under *A.C.*, we “are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal.” *Id.* at 372 (citing *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400).

Under the first prong of the termination statute, KRS 625.090(1), the trial court found Child to be abused and neglected. This finding was fully supported by clear and convincing evidence in the form of Mother's own stipulation to neglect before a court of competent jurisdiction, KRS 625.090(1)(a)1. Based on the evidence presented at the termination proceeding, the trial court found further proof of neglect and abuse in Mother's failure to timely drug screen or undergo long-term inpatient treatment, her failure to complete her case plan, and her failure to provide any necessities of life for Child resulting in Child remaining in foster care for fifteen of forty-eight months. KRS 600.020(1)(a) 4., 8., and 9.

Under the second prong of KRS 625.090(2), clear and convincing evidence supported the trial court's findings that Mother had "for a period of not less than six (6) months, . . . 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," KRS 625.090(2)(e), and that "for reasons other than poverty alone, ha[d] 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[.]” KRS 625.090(2)(g). Mother did not dispute that her parental rights to another child have been involuntarily terminated, KRS 625.090(2)(h), or that Child had “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[.]” KRS 625.090(2)(j).

Finally, under KRS 625.090(3), clear and convincing evidence supported the trial court’s finding that termination was in Child’s best interest. The Cabinet offered Mother numerous means by which she could be reunited with Child, yet she failed to take advantage of them. KRS 625.090(3)(c). The trial court described the Cabinet’s efforts in providing resources as more than reasonable and rejected the parents’ argument that the Cabinet simply did not like them. “The parents knew from the time of the removal . . . the tasks they had to complete for reunification with the child. The parents made very little progress on their case plans . . . [and] did not address any of their issues. [Mother] was still obtaining numerous criminal charges.” Trial court’s Dec. 19, 2019 Findings of Fact and Conclusions of Law at p. 7; *see also* KRS 625.090(3)(d) and (f). There was also evidence that Child’s welfare would improve upon termination of parental rights as he has made marked progress since his placement in foster care. KRS 625.090(3)(e).

Upon review of the trial court's findings, we agree with counsel's assessment of the case and grant counsel's amended motion to withdraw from Mother's case by separate order.

As grounds for terminating Father's parental rights, the family court found that Father did not make sufficient progress in his case plan to have Child returned to him. Father did not complete either his anger management or his substance abuse assessment, claiming he did not need either one. Although he did complete a mental health assessment, he did not participate in the recommended follow-up services. The court found that both Father and Mother had made very little progress on their case plans and were not self-aware of their issues and the impact these issues had on Child. Father had very little interaction with Child during visitation and made derogatory comments about him. He and Mother argued in front of Child, and the family's social worker testified that she saw Father push Mother during a scheduled home visit. The court found that Father never paid child support or brought any items to care for the child during their visits. The court observed that Father believed the Cabinet should have to provide for all Child's needs while he was in the Cabinet's custody.

The trial court's finding that Child is a neglected or abused child as defined in KRS 600.020(1)(a) is supported by clear and convincing evidence. It is undisputed that Father "continuously or repeatedly fail[ed] or refuse[d] to provide

essential parental care and protection for the child, considering the age of the child[.]” KRS 600.020(1)(a)4.; did not “provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being[.]” KRS 600.020(1)(a)8.; and failed “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[.]” KRS 600.020(1)(a)9.

As to the grounds listed in KRS 625.090(2), clear and convincing evidence supported the finding that Father had failed to provide essential food, clothing, shelter, medical care, or education reasonably necessary for Child’s well-being and there is no reasonable expectation of improvement. It is undisputed that Father never paid any child support, never brought anything for Child at visitation, and believed that the Cabinet should provide for all of Child’s needs because he was in the Cabinet’s custody.

Under KRS 625.090(3)(c), (d), (e), and (f), the trial court found termination to be in Child’s best interest. The record shows the Cabinet made reasonable attempts to reunite Child with Father, but he refused to complete his case plan and never provided a good reason for failing to do so; there is no evidence he made any adjustments to his lifestyle to allow for the return of Child;

evidence showed Child was thriving in foster care; and there was no evidence Father paid a reasonable portion of Child's physical care and maintenance.

Father's arguments are directed primarily at challenging the sufficiency of the evidence supporting the trial court's decision to terminate his parental rights. He claims he was unjustly penalized for Mother's wrongdoing and points out that the only evidence supporting key findings of the trial court came from the testimony of Cabinet investigators. He argues he was never given an opportunity to raise Child and was not even permitted to take him home from the hospital due to "paper thin" evidence consisting of his DUI and alleged anger management issues based on his arguments with Mother. No evidence was offered that he ever had a domestic violence petition filed against him or any assault charges brought against him. Father also argues there are gaps in the evidence, such as the fact that he has other children, yet the Cabinet witnesses testified they had not contacted the mothers of these children to determine whether he was neglectful or abusive.

Father has also drawn our attention to evidence in his favor; for instance, he claimed that he was concerned by Mother's drug use and tried to help her get counseling, that he was present at the hospital when Child was born, that he completed the substance abuse assessment, and that he attended parenting classes.

This evidence is not sufficient, however, to overturn the findings of the trial court. “Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (internal quotation marks and citations omitted).

The trial court was acting well within its exclusive province in giving greater weight to the testimony of the witnesses for the Cabinet than to Father. Father received another DUI after Child was placed in foster care, was witnessed shoving Mother, and more importantly, did not follow the case plan which would have enabled him to gain custody of Child. Father provided no reason for not following the case plan except his belief that his behavior was justifiable because he was angry and upset. It is true that Child was placed in the care of a paternal relative by the Cabinet at one point and was seriously injured while in that person’s care, but this tragic incident does not explain Father’s lack of effort to take the necessary steps to gain custody. His allegation that the Cabinet should have contacted and interviewed the mothers of his other children to determine if he was a good parent does not alter the fact that the simplest route to gain custody of Child would have been to follow the case plan, avoid altercations with Mother,

acknowledge his drinking problem, and make efforts to interact in a positive manner with Child during visitation.

Moreover, the trial court did not unfairly attribute Mother's shortcomings as a parent to Father. The trial court expressly acknowledged that Father had fewer issues than Mother, but that Mother could not or would not address her issues, and Father refused to disengage from her for the sake of Child. To summarize, Father made no significant progress on his case plan and did not appear to wish to do so; he refused to acknowledge his alcohol abuse problem and continued to engage in damaging altercations with Mother; he provided no material support of any kind for Child; referred to Child using cruel and offensive terms; and did not try to engage with Child during visitation. In view of the lack of evidence of ongoing improvement in his behavior or attitudes, the trial court's decision to terminate his parental rights was fully justified.

For the foregoing reasons, the order of the Graves Circuit Court terminating the parental rights of J.W.S. and Y.Y.S. is affirmed.

ALL CONCUR.

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