

RENDERED: DECEMBER 4, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2020-CA-0537-ME

A.E.K.

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT  
HONORABLE HEATHER FRYMAN, JUDGE  
ACTION NO. 19-AD-00022

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; T.H.D.K.; AND  
T.H.D.K., JR.

APPELLEES

AND  
NO. 2020-CA-0539-ME

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COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; T.H.D.K.; AND  
W.R.A.K., II

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND K. THOMPSON, JUDGES.

ACREE, JUDGE: A.E.K. (Mother) appeals the Harrison Family Court’s March 24, 2020 orders terminating her parental rights to her biological children, T.H.D.K., Jr. and W.R.A.K., II. 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*<sup>1</sup> 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 circuit court’s orders terminating Mother’s parental rights.

On September 18, 2017, the Cabinet became involved with the family upon allegations Mother had issues with drug trafficking, domestic violence, and substance abuse while in a caretaking role. The Cabinet contacted the local authorities and found Mother had been under police surveillance for some time. During the Cabinet’s investigation, the children reported observing their parents using substances and the home smelling like marijuana. Overall, the home was in

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<sup>1</sup> *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

bad condition. The Cabinet secured emergency custody of the children on September 21, 2017. Since that time, the children remained in foster care.

In December 2017, the family court adjudged the children neglected and the Cabinet developed a case plan for Mother. The case plan required her to obtain a mental health and substance abuse assessment, to attend parenting classes, to maintain a clean and appropriate home, to maintain employment, and to drug screen. Not long afterward, Mother tested positive for amphetamines and methamphetamines and failed to complete the case plan tasks. During that time, Mother did not attempt to see, or request to see, her children. According to the Cabinet worker, Mother was offered multiple treatment opportunities but always refused. This resulted in the Cabinet filing petitions for involuntary termination of Mother's parental rights on July 9, 2019.

The termination hearing was set for March 12, 2020. Mother failed to appear. Her counsel objected to proceeding without her. Because Mother had signed an order to appear that included the date and time of the hearing, the court concluded notice was adequate. At the conclusion of the hearing, the family court terminated Mother's parental rights.

In its findings of fact and conclusions of law, the family court found the children neglected. KRS<sup>2</sup> 600.020; KRS 625.090(1)(a). It also found

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<sup>2</sup> Kentucky Revised Statutes.

termination was in the children's best interests. The family court found Mother was unfit to parent because: (a) she abandoned the children for a period of not less than ninety days; (b) she failed to provide essential parental care and protection for the children; (c) for reasons other than poverty alone, she failed to provide necessities to the children; and (d) the children were in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition. KRS 600.020(1)(a). Mother appealed.

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 v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), regarding appeals from orders terminating parental rights where counsel cannot identify any non-frivolous 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.* “[I]f 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, 87 S. Ct at 1400).

Here, Mother's counsel complied with the requirements of *A.C.* and *Anders* by supplying 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. *Id.* at 371; (*See* Appellant's Brief page 4.) Mother failed to provide a *pro se* brief. Under *A.C.*, we

analyzed the record and agree with counsel that no grounds exist that would warrant disturbing the family court's orders terminating Mother's parental rights.

Termination of a party's parental rights is proper upon satisfying a three-part test by clear and convincing evidence. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the court must find the child "abused or neglected[,]” as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). The family court's termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

The record contains sufficient evidence to support the family court's decision to terminate Mother's parental rights. Here, the family court adjudged the children neglected in the underlying juvenile case, and the testimony at the termination hearing supported such a finding, satisfying the first prong of the analysis. KRS 625.090(1)(a)1. Additionally, the record demonstrated it was in the children's best interests to terminate Mother's parental rights because: (1) she abandoned her children for not less than 90 days – as shown by the fact she has not attempted to visit her children since removal, KRS 625.090(2)(a); (2) she failed to

provide essential parental care for her children, KRS 625.090(2)(e); (3) for reasons other than poverty alone, she failed to provide necessities, KRS 625.090(2)(g); and (4) her children have resided in foster care under the responsibility of the Cabinet for at least fifteen of the most recent forty-eight months preceding the filing of the termination petition, KRS 625.090(2)(j).

The Cabinet also made reasonable efforts to facilitate reunification by offering Mother services and treatment options, but she declined to participate. KRS 625.090(3)(c). She also failed to make any effort to fulfill her case plan objectives. KRS 600.020(1)(a)9. Ultimately, Mother failed to prove it would be in the children's best interests to return to her home because she did not make the necessary adjustments to her circumstances. KRS 625.090(3)(d).

Mother's counsel states Mother had concerns with the family court moving forward with the hearing despite her absence. However, going forward with the hearing after confirming Mother had notice and was given an opportunity to be heard was well within the discretion of the family court. Mother participated in several previous hearings and was aware of the termination hearing. She failed to file a brief to explain her absence and we are not inclined to overturn the family court's ruling.

Upon considering the totality of the circumstances, we are convinced there is substantial evidence determining Mother neglected the children and is unfit

to parent them. It is in the children's best interests to terminate Mother's parental rights. We affirm the March 24, 2020 orders of the Harrison Family Court terminating Mother's parental rights to the children.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE  
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