RENDERED: APRIL 30, 2021; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-1926-ME

J.M., SR. APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE DENISE BROWN, JUDGE
ACTION NO. 19-AD-500163T

COMMONWEALTH OF KENTUCKY, CABINET
FOR HEALTH AND FAMILY SERVICES; M.L.R;
AND J.P.H.M., A MINOR CHILD APPELLEES

AND
NO. 2019-CA-1927-ME

J.M., SR. APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE DENISE BROWN, JUDGE
ACTION NO. 19-AD-500164T

COMMONWEALTH OF KENTUCKY, CABINET
FOR HEALTH AND FAMILY SERVICES;
M.L.R.; AND J.C.M., JR., A MINOR CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, MCNEILL, AND TAYLOR, JUDGES.

MCNEILL, JUDGE: J.M. appeals from an order issued by the Jefferson Circuit Court, Family Court Division, on November 22, 2019, terminating his parental rights to J.P.H.M. and J.C.M (the children). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), and *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), counsel for J.M. filed a brief stating that no meritorious issue exists on appeal and additionally moved to withdraw as counsel. Counsel's request to withdraw was passed to this merits panel, and J.M. was given time to file a brief on his own behalf, though he did not do so. After review, we grant counsel's motion to withdraw by separate order and affirm the family court's termination order.

The crucial underlying facts do not appear to be contested.[1] J.M. is the father of J.C.M., born in 2017, and J.P.H.M., born in 2016. In April 2018, the

[1] J.M.'s attorney did not file a designation of the record on appeal. *See, e.g.*, Kentucky Rules of Civil Procedure (CR) 75.01(1). Unfortunately, we do not have the exhibits admitted at the final termination hearing, including records of underlying dependency, neglect, and abuse proceedings involving J.M. and the children. Instead, the written record before us begins with the Cabinet's petition for termination of parental rights.

"[W]e have consistently and repeatedly held that it is an appellant's responsibility to ensure that the record contains all of the materials necessary for an appellate court to rule upon all the issues raised" and we must "assume that any portion of the record not supplied to us

Cabinet filed an emergency custody petition alleging J.M. and the children's mother had neglected or abused J.C.M., thereby also placing J.P.H.M. at risk. An emergency custody order was issued that same date, and the children were placed in the Cabinet's temporary custody.

In September 2018, J.M. stipulated that J.C.M. had an inflicted injury, which placed J.P.H.M. at risk. However, the stipulation—which unfortunately is not in the record presented to us—stated that the perpetrator of the injury was unknown. In other words, J.M. admitted J.C.M. was injured in a non-accidental manner but J.M. did not admit that he was the person who inflicted the child's injuries. J.M. was ordered to undergo random drug tests and to have a parenting assessment.

In April 2019, the Cabinet filed the petition for termination of parental rights at hand. J.M. and his counsel were present for the September 2019 final hearing, at which the only witness was a social worker called by the Cabinet. The social worker testified that J.M. had failed to complete virtually any portion of his case plan. He encountered insurance issues when attempting to complete his

---

supports the decision of the trial court." *Clark v. Commonwealth*, 223 S.W.3d 90, 102 (Ky. 2007) (footnotes omitted). The exhibits were introduced by the Cabinet without objection at the final termination hearing and the parties do not otherwise dispute the essential facts or underlying procedural history. We will relate the pertinent facts based upon our review of the record before us and the parties' briefs, which do not meaningfully diverge. Thus, though the omission from the record of the exhibits introduced at the final hearing hampers our ability to review the pre-termination proceedings, it does not impact the ultimate outcome of these appeals.

parenting assessment and ultimately never completed it. He only went to a few drug screenings and often did not keep his appointments to meet with the social worker. He had no contact with the children after September 2018 and, other than giving some presents for one child's birthday, did not provide financially for them.

At the close of the hearing, the family court took the matter under advisement. The court later issued findings of fact, conclusions of law, and an order terminating J.M.'s parental rights as to both children. J.M. then filed these two appeals, which we have consolidated.[2]

When a party files an *Anders* brief in a termination of parental rights case, it does not require appellate courts to address every conceivable argument that an appellant could have raised. *A.C.*, 362 S.W.3d at 370. Instead, our review is analogous to a palpable error review, "requiring us only to ascertain error which affects the substantial rights of a party." *Id.* (quotation marks and citation omitted). We accord great deference to the trial court's termination decision and may only disturb its factual findings if they are clearly erroneous. *Commonwealth, Cabinet for Health and Family Services. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky.

[2] J.M. failed to name the children as appellees in the body of his notice of appeal, a potentially fatal error. *See, e.g., A.M.W. v. Cabinet for Health and Family Services*, 356 S.W.3d 134, 135 (Ky. App. 2011). In fact, the body of the notice of appeal does not specify the names of any appellees, contrary to the requirements of CR 73.03(1). However, J.M. listed the Cabinet and each child in the caption of the notice of appeal and, unlike the appellant in *A.M.W.*, mailed a copy of the notice to the children's guardian *ad litem* (as well as the Cabinet's counsel). Therefore, we do not have to dismiss these appeals. *A.R.D. v. Cabinet for Health and Family Services*, 606 S.W.3d 105, 106 n.2 (Ky. App. 2020).

2010). "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." *Id.*

Kentucky Revised Statute (KRS) 625.090 requires a trial court to follow a three-step process for involuntarily terminating parental rights. First, as it pertains to these appeals, KRS 625.090(1)(a) requires the court to find by clear and convincing evidence that a child is, or has previously been adjudged to be, abused or neglected.[3] Second, the court must find, again by clear and convincing evidence, at least one specified ground of parental unfitness. KRS 625.090(2). Finally, the court must find by clear and convincing evidence that termination would be in the child's best interest. KRS 625.090(1)(c). J.M. has not challenged any portion of the family court's determinations, and our review has shown no basis for disturbing the family court's decision.

First, a child is abused or neglected if, among other things, the child's parent "[i]nflicts or allows to be inflicted upon the child physical or emotional injury" or "[c]reates or allows to be created a risk of physical or emotional injury . . . ." KRS 600.020(1)(a)1-2.[4] J.M. stipulated to one child having been abused or

[3] KRS 625.090 was amended in the interval between the Cabinet filing the termination petition and the final hearing thereon, but the amendments do not impact these appeals.
[4] KRS 600.020 was amended while the termination petition was pending in 2019 and again in 2020, but those amendments have no impact on these appeals.

neglected and the other child having thus been at risk for abuse or neglect, so there was substantial evidence to support the finding that the children were abused or neglected.

Second, there is substantial evidence to support at least one of the factors in KRS 625.090(2). The trial court found several factors had been satisfied, but since only one must be satisfied, we need not address them all. The unrebutted evidence showed that J.M. had no contact with the children for roughly a year before the final hearing, so there was substantial—indeed, unrebutted—evidence to support the family court's finding that J.M. had "abandoned the child[ren] for a period of not less than ninety (90) days[,]" thereby satisfying KRS 625.090(2)(a).

Finally, there was substantial evidence to support the family court's finding that termination was in each child's best interest. In making that best interest determination, a court must consider the factors listed in KRS 625.090(3), such as the parent's mental illness or intellectual disability, acts of abuse or neglect toward any child in the family, whether the Cabinet has made reasonable efforts to reunite the child with the parent, the parent's efforts towards making it in the child's best interest to return home, the child's physical, emotional, and mental health, the prospects for the child's welfare to improve if parental rights are terminated, and the parent's payment, or lack thereof, of the cost of the child's care and maintenance.

Here, there was no evidence that J.M. had a mental illness or intellectual disability. The court concluded the children had been neglected or abused based upon factors such as J.M.'s substance usage and abandonment of the children. The family court found the Cabinet had made reasonable efforts to reunite J.M. with the children but J.M. failed to take advantage of the Cabinet's reunification efforts by, for example, failing to complete parenting assessments and failing to undergo all required drug screens. As the court noted, the social worker testified that she was unaware of any additional steps the Cabinet could have taken to allow the children to be safely reunited with their parents within a reasonable time. The court also found that J.M. had failed to make substantial efforts toward reuniting with the children since he, for example, failed to comply with drug screenings and failed to complete parenting assessments. Next, the court found the children's physical, mental, and emotional health had improved while in the Cabinet's care. Finally, the court found that J.M. had failed to provide financial assistance or support toward the children's care while they were in the Cabinet's custody. Accordingly, the family court's conclusion that termination would be in each child's best interest was reasonable and supported by substantial evidence.

In sum, we have reviewed the record and have discerned no errors impacting J.M.'s substantial rights. We thus affirm the order of termination and grant counsel's motion to withdraw via separate order.

For the foregoing reasons, the Jefferson Circuit Court's order terminating the parental rights of J.M. to J.P.H.M. and J.C.M. is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Valentine
Louisville, Kentucky

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES:

Leslie M. Laupp
Covington, Kentucky