

RENDERED: SEPTEMBER 24, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2020-CA-1510-ME

V.C.

APPELLANT

v. APPEAL FROM LEWIS CIRCUIT COURT,  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 19-AD-00017

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH  
OF KENTUCKY; C.A.D.C., A CHILD;  
K.N.C.; A.Y.; AND P.Y.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; TAYLOR AND L. THOMPSON,  
JUDGES.

CLAYTON, CHIEF JUDGE: V.C. brings this appeal from a Lewis Circuit Court,  
Family Division order terminating his parental rights in his minor child. Having  
reviewed the record and the applicable law, we affirm.

V.C. (“Father”) and K.C. (“Mother”) are the biological parents of C.A.D.C. (“Child”), who was born on February 4, 2011. Child has a stepsister, E.A.C. (“Stepsister”) who has a different father.

The Cabinet for Health and Family Services (“the Cabinet”) became involved with the family in 2017 after allegations that Father sexually abused a minor friend of Stepsister. The Cabinet’s investigative worker negotiated a prevention plan with the family which entailed Father leaving the home and having no contact with Child or Stepsister until the Cabinet completed its investigation. The plan was later amended to allow Mother to supervise all contact between Father and Child. Mother nonetheless allowed Father to have unsupervised contact with Child and Stepsister. Consequently, the Cabinet filed a petition on April 5, 2017, alleging neglect and abuse against Father and Mother for violating the plan.

At the temporary removal hearing, the family court allowed Child to remain in Mother’s custody and ordered supervised visitation for Father. On May 11, 2017, Child was adjudicated a neglected child. Father initially signed a case plan with the Cabinet in July 2017, but then refused to sign any other plans, stating that his attorney told him not to sign any documents. According to Christian Buckner, the ongoing Cabinet worker for the family, Father did not avail himself of any of the services offered by the Cabinet.

Child remained in Mother's custody until November 2018 when the Cabinet filed a petition for removal. According to Buckner's testimony, Mother displayed violent behavior which frightened Child and Stepsister and the Cabinet had concerns about Mother's substance abuse. The family court granted the petition and placed Child with his paternal grandmother.

In February 2019, the grandmother allowed Father and Mother to take Child and Stepsister from her home to Mexico. Mother then left Child in Mexico with Father. The FBI, the Lewis County Police, and the Cabinet were all involved in returning the children to Kentucky from Mexico and Father and Mother were subsequently charged with kidnapping in connection with the incident. Mother was convicted of custodial interference for her role in the events. Father's charges were still pending at the time of the final hearing.

On March 11, 2019, Father signed a case plan with the Cabinet which required him to complete a sexual perpetrator class, a substance abuse assessment, a mental health assessment, parenting classes, random drug screens, to obtain stable housing and employment, to have no unauthorized contact with the children, and to notify the Cabinet upon his release from incarceration. Child was placed in the custody of the Cabinet by order of the family court on March 14, 2019.

On April 3, 2019, Father entered a plea of guilty to three counts of sexual abuse, first degree, and one count of attempted sexual abuse, first degree, in

connection with the 2017 charges involving Stepsister's friend. He was sentenced to three years in prison. Buckner testified that she visited Father and informed him of programs available at the prison related to his case plan. She testified that although Father did write letters asking her to tell Child he missed him, he never attempted to complete any programs or treatment while incarcerated or even during the two years prior to his incarceration. As to Child, Buckner testified that he has been diagnosed with PTSD and anxiety and is currently receiving treatment for past trauma he endured while in the care of Father and Mother. He is doing well in school and is emotionally bonded with his foster family which is pre-adoptive.

The Cabinet filed a petition for involuntary termination of parental rights of Mother and Father on December 23, 2019. Following a hearing on September 24, 2020, the family court entered findings of fact and conclusions of law and an order terminating the parental rights of Father and Mother. This appeal by Father followed. Mother is not a party to this appeal.

Kentucky Revised Statutes (KRS) 625.090 provides that a family court may involuntarily terminate parental rights 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 must have 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)(a)-(k). 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) and (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).

The family court found pursuant to KRS 625.090(1)(a) that Father had been adjudicated by the family court as having neglected Child. The basis for the finding of neglect was Father's unsupervised contact with Child in violation of the terms of the prevention plan developed after the allegations of sexual abuse. The family court further noted that Father faced pending charges for kidnapping Child

after taking him to Mexico and that Father had been convicted of sexual abuse, first degree, in the Lewis Circuit Court.

The family court found pursuant to KRS 625.090(2)(e) that Father for a period of not less than six months had continuously or repeatedly failed or refused to provide, or been substantially incapable of providing essential care and protection for Child and there was no reasonable expectation of improvement, considering the age of Child. Pursuant to KRS 625.090(2)(g), the family court found that for reasons other than poverty alone, Father had continuously or repeatedly failed to provide, or was incapable of providing, essential food, clothing, shelter, medical care, or education for Child and there was no reasonable expectation of significant improvement.

The family court found that the Cabinet had tried to render reasonable services to Father and Mother in order to keep the family together and had worked with the family for more than three years, but Father had failed to take advantage of the services offered by the Cabinet. Father did not complete any elements of his case plan prior to his incarceration in early 2019. The court observed that “[t]he pattern of the parents’ behavior in this case, as it has progressed, demonstrates a degradation in their capacity to adequately and safely parent the child when the inverse should be true for reunification to be achieved in a reasonable time period.”

Father'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), which applied the reasoning of *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to hold that counsel representing a parent in a termination of parental rights case may withdraw if he or she 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 Father has submitted an *Anders* brief after concluding upon review of the record that there are no meritorious appellate issues to raise on Father's behalf, and has filed a 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).

Upon review of the record and the family court's findings, we agree with counsel's assessment of the case. It is undisputed that Father violated the terms of the prevention plan; that he was charged with kidnapping for unlawfully taking Child to Mexico; that he was charged with and pled guilty to sexual abuse in the first degree of a minor child; that he has failed to participate meaningfully in any case plan services before or after his incarceration; and that he has failed to provide for Child's needs while Child was in foster care.

For the foregoing reasons, we affirm the Lewis Family Court's findings of fact and conclusions of law and the order terminating parental rights and order of judgment. We grant counsel's motion to withdraw from Father's case by separate order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Madison Mantz Imel  
Ashland, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
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Leslie M. Laupp  
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