

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

NO. 2020-CA-1554-ME

R.N.E.<sup>1</sup>

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT  
HONORABLE STOCKTON B. WOOD, JUDGE  
ACTION NO. 20-AD-00001

CABINET FOR HEALTH AND  
FAMILY SERVICES AND D.N.A.

APPELLEES

AND

NO. 2020-CA-1555-ME

R.N.E.

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT  
HONORABLE STOCKTON B. WOOD, JUDGE  
ACTION NO. 20-AD-00002

CABINET FOR HEALTH AND  
FAMILY SERVICES AND K.N.H.

APPELLEES

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<sup>1</sup> Pursuant to Court policy, to protect the privacy of minors, we refer to parties in termination of parental rights cases by initials only.

OPINION  
AFFIRMING

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BEFORE: CALDWELL, DIXON, AND L. THOMPSON, JUDGES.

DIXON, JUDGE: R.N.E. (Mother) appeals the orders of the Mason Circuit Court, entered October 10, 2020, terminating her parental rights to her children, D.N.A. and K.N.H.<sup>2</sup> After careful review of the record, the briefs, and the law, we affirm the trial court's orders and, by separate order, grant the motions to withdraw of Mother's appointed counsel.

**FACTS AND PROCEDURAL BACKGROUND**

On November 6, 2018, Mother admitted to the Cabinet for Health and Family Services (CHFS) that she had been abusing illegal substances while caring for her children. Consequently, D.N.A. and K.N.H., ages two years and one year respectively, were removed from Mother's care and placed with a foster family. Thereafter, on January 16, 2019, the children were briefly placed in the custody of their father; however, after both parents admitted to using illegal substances, the children were returned to foster care on March 6, 2019, where they have remained continuously.

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<sup>2</sup> J.N.H. (Father) voluntarily terminated his parental rights and is not a party to these consolidated appeals. Accordingly, any reference to him in this Opinion is intended solely for the purposes of clarity and completeness.

Petitions to terminate Mother's parental rights were filed January 6, 2020. At the final hearing on August 31, 2020, CHFS's investigative social worker detailed her efforts to aid Mother in addressing her substance abuse and reunifying the family, including crafting multiple case plans and making referrals to community service providers. Mother was not compliant.

Mother failed to obtain three random clean drug screens; consequently, her last visitation with the children occurred in August 2019. Substance abuse treatment was unsuccessful where Mother did not attend the prescribed number of meetings, did not obtain a sponsor, was discharged from one program and ceased participating in two others, and relapsed multiple times. CHFS acknowledged that Mother had entered a residential treatment facility in May 2020, four months after the petitions for termination of parental rights were filed, but noted that she still had not submitted to random drug screens. Mother is not currently employed, does not have suitable housing, has failed to provide items for the children, and has made only one payment toward her \$60 monthly child support obligation, which is \$563.23 in arrears.<sup>3</sup>

Regarding the children, the social worker testified they were doing well in foster care and would benefit from the petitions being granted. The children are placed together in a pre-adoptive home, developmentally on target,

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<sup>3</sup> Two involuntary payments were credited in May 2020.

and well-bonded with their foster parents. The social worker opined that there was no reasonable expectation of improvement in Mother's parental capacity in the immediately foreseeable future, considering the ages of the children. This opinion was based on Mother's extensive history of substance abuse—a contributing factor to the involuntary loss of her parental rights to four prior-born children in 2015—and her short duration of sobriety of only 90 days. The social worker noted that Mother would be required to demonstrate six months of sobriety after completing treatment before CHFS would consider reunification.

Mother acknowledged her past failures to maintain sobriety, having attended seven different treatment facilities and relapsed each time. However, Mother argued her current treatment provided a level of ongoing community support that she had not had previously. She anticipated graduating from treatment in October 2020, moving into transitional housing, and obtaining a paid internship, with the possibility of a permanent position six months thereafter. Mother opined she would be positioned to regain custody of the children within six to eight months and wished to return to college to pursue a degree in social work.

After hearing the evidence, the court entered findings of fact and conclusions of law. Therein, the court found that the children had previously been adjudged to be neglected and had been in CHFS custody for 19 of the previous 24 months, having been removed from their parents twice in a 24-month period. The

court further found that Mother had abandoned the children, had failed to provide basic essentials and parental care, had failed to remedy the substance abuse issues that were a factor in the termination of her parental rights to prior-born children, and further found there was not a reasonable expectation of parental improvement in the immediately foreseeable future. Finally, the court found that CHFS had made reasonable efforts to reunify the family and that termination would be in the best interest of the children. Accordingly, the court entered judgments granting CHFS's petitions and terminating Mother's parental rights.

Mother, through her appointed counsel, timely appealed. Thereafter, in accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), Mother's counsel filed an *Anders*<sup>4</sup> brief, attesting that no meritorious issues exist to present to this Court, as well as motions to withdraw as counsel on appeal. The motions to withdraw were passed to this panel. Mother was afforded an opportunity to file a *pro se* brief, but failed to do so. Additional facts will be introduced as they become relevant.

### **STANDARD OF REVIEW**

When appointed counsel files an *Anders* brief, the Court is required to "independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal." *A.C.*, 362 S.W.3d at 372. Upon review, the

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<sup>4</sup> *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 12 L. Ed. 2d 493 (1967).

trial court's findings of fact are subject to the clearly erroneous standard. CR<sup>5</sup> 52.01. Accordingly, we give great deference to the trial court's findings and will only set them aside if the record is devoid of substantial evidence to support them. *D.G.R. v. Commonwealth, Cabinet for Health and Family Servs.*, 364 S.W.3d 106, 113 (Ky. 2012). Application of the law to the facts, we review *de novo*. *Id.*

### ANALYSIS

Involuntary termination of parental rights (TPR) actions are governed by KRS<sup>6</sup> 625.090. TPR may be granted only if the trial court finds that a three-prong test has been met by clear and convincing evidence. *Id.* First, the child must be deemed abused or neglected as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, the trial court must find the existence of at least one statutory ground for termination as set forth in KRS 625.090(2). Third, termination must be found to be in the best interest of the child after consideration of the factors listed in KRS 625.090(3).

After a thorough examination of the record on appeal, we conclude that the trial court complied with all statutory mandates and rendered detailed findings of fact and conclusions of law which are supported by the evidence. In response to the points raised in the *Anders* brief, we note that the court's

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<sup>5</sup> Kentucky Rules of Civil Procedure.

<sup>6</sup> Kentucky Revised Statutes.

consideration of the termination of Mother's parental rights to her prior-born children was in accord with KRS 625.090(2)(h), and we reiterate that ample evidence supported the court's findings. Accordingly, the trial court did not err by terminating Mother's parental rights.

### **CONCLUSION**

Therefore, and for the foregoing reasons, the orders of the Mason Circuit Court terminating Mother's parental rights are **AFFIRMED**.

**ALL CONCUR.**

**BRIEF FOR APPELLANT:**

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**BRIEF FOR APPELLEE CABINET  
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