

RENDERED: OCTOBER 1, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-0017-ME

R.B.<sup>1</sup>

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT  
HONORABLE DEANNA WISE HENSCHER, JUDGE  
ACTION NO. 20-AD-00062

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND Z.I.K., A  
CHILD

APPELLEES

AND

NO. 2021-CA-0018-ME

R.B.

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT  
HONORABLE DEANNA WISE HENSCHER, JUDGE  
ACTION NO. 20-AD-00073

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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.

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND Z.F.B., A  
CHILD

APPELLEES

OPINION  
AFFIRMING

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

DIXON, JUDGE: R.B. (Mother) appeals the judgments of the McCracken Family Court, entered November 24, 2020, terminating her parental rights to her children, Z.I.K. and Z.F.B. After careful review of the record, the briefs, and the law, we affirm the family court’s judgments and, by separate order, grant the motion to withdraw of Mother’s appointed counsel.

**FACTS AND PROCEDURAL BACKGROUND**

The Cabinet for Health and Family Services (CHFS) became involved with Mother in February 2018, after receiving a report of risk of harm from domestic violence. The report was precipitated by Mother’s being assaulted by I.K. (Father) in front of Z.I.K. Mother was open regarding her and Father’s history of domestic violence, disclosing prior incidents of serious abuse, and appeared receptive to CHFS assistance. In addition to the risk of harm from domestic

violence, CHFS identified that Mother had a lack of stable shelter—she and Z.I.K. were residing at the Merryman House Domestic Crisis Center at the time—and employment. In response, CHFS created a case plan with Mother, retaining Z.I.K. in her care, and provided her with services to overcome these barriers.

In May 2018, Mother left Merryman House without informing CHFS and did not respond to the social worker’s calls. Other than noting that Mother was using her food stamp card in Clarksville, Tennessee, CHFS was unable to locate Mother until September 2018, when Mother reported an address in Christian County, Kentucky. CHFS arranged for a courtesy visit to ensure family safety, but by October 2018, Mother had already moved, and contact was not made.

Ultimately, CHFS was able to reinitiate contact with Mother and visited her and Z.I.K. at their temporary residence in Paducah, Kentucky, in November 2018. After a lengthy conversation about the need for Z.I.K. to have stability, Mother stated she was receptive to reinitiating services. CHFS referred Mother to Paducah Cooperative Ministry, which provides housing for homeless mothers; First Steps; and Family Preservation Services. Mother became unhappy with the placement; so in December 2018, CHFS arranged for Mother and Z.I.K. to move to Gentry House in Murray, Kentucky, which, in addition to housing, provided Mother a myriad of services to transition her to independent living.

On a home visit in January 2019, the social worker noted that Mother had two adults in the home. Mother identified one of the adults, Javon Hodges, by a fictitious surname and falsely denied being in a romantic relationship with him. Mother was evicted in February 2019 when Gentry House discovered that Hodges was living with Mother, in violation of the rules, and Mother refused to make him leave. After being confronted with social media posts regarding Hodges putting hands on her, Mother admitted that there was at least one incidence of domestic violence during the relationship.

Due to ongoing concerns with Mother's stability and parenting skills, on February 12, 2019, CHFS filed a dependency, neglect, and abuse petition seeking orders to require Mother's compliance. After a temporary removal hearing the following day, the Calloway Circuit Court determined Z.I.K. should be placed in CHFS custody and ordered Mother to effectuate the exchange. Instead, Mother absconded with Z.I.K., and CHFS reported the child missing. Ultimately, Z.I.K.'s maternal great-grandfather contacted Kentucky authorities to advise that the child had been placed in his care, and Z.I.K. was returned to the Commonwealth. Mother returned in March 2019 and was convicted of custodial interference.

Mother was released from incarceration in June 2019 and resided with the maternal grandmother until they were evicted in August 2019. Also, in August, Mother gave birth to Z.F.B. CHFS immediately sought and was granted

emergency custody of Z.F.B. on allegations that Mother had not been compliant with prenatal recommendations to address Z.F.B.'s unique medical needs, as well as Mother's continued failure to make progress toward reunification with Z.I.K. The children were placed with the same foster family (Z.I.K. being transferred from a prior placement) where they have remained throughout these proceedings.

Over the following seven months, Mother resided in four different locations, including two homeless shelters and the residences of maternal grandmother and friends, before again settling in March 2020 at maternal grandmother's house. Mother has since remained consistently at this residence and assumed the lease in August 2020.

Petitions to terminate Mother's parental rights were filed in August 2020, and a final hearing was held November 19, 2020. Therein, the social worker testified regarding the case plans developed to assist Mother, both prior to removal and to aid in reunification, and noted that Mother was largely non-compliant.

Mother was to maintain employment and stable housing but had only sporadic employment during CHFS involvement and was terminated from her most recent job in October 2020 (which she did not report). Mother testified she would imminently begin a new part-time job. Additionally, Mother moved residences twelve times since her CHFS case was opened and failed to provide CHFS with advance notice, as directed, before any of these relocations. While

CHFS concedes Mother has been at her present location for approximately eight months, the social worker expressed concerns because Mother had only taken over the lease in the last three months and was discussing moving again. Mother testified she would be moving on November 20, 2020, to a new apartment more suited for the children.

Mother was directed to obtain mental health treatment and to provide collateral information to the provider. Mother failed to provide said information and, prior to June 2020 when compliance improved, missed as many treatment sessions as she attended. Mother did complete her directed parenting and domestic violence classes in March and September of 2020, respectively. However, the classes had been a part of her case plan since March 2019, and the social worker noted concerns that Mother had only completed them after COVID-19 necessitated they be available through Zoom.

Mother was to comply with orders and services; however, she had a history of missing visits and appointments. Since August 2020, Mother missed two virtual visits with her children, as well as a case plan meeting. Mother was directed to be honest with CHFS, but she refused to provide waivers for CHFS to contact her service providers, failed to advise the social worker of important changes or of overnight guests, lied to CHFS on multiple occasions, and lied to the juvenile court on at least one occasion. At the time of the termination hearing,

Mother was pregnant, which she initially denied, and had not disclosed any information regarding the pregnancy itself or the unborn child's father. Prior to the termination hearing, Mother had not completed a budget sheet, as directed, or paid child support, and CHFS testified that Mother had not provided items for the children, except for special visits such as birthdays and holidays.

It is agreed visitation generally went well, and the social worker did acknowledge that Mother's conduct had improved since she completed parenting classes. However, the social worker expressed concern that Mother did not interact with Z.F.B., as evidenced by Mother's leaving her in the car seat, not removing her coat, and failing to check or change her diapers. Mother disputed the characterization but did acknowledge leaving Z.F.B. in the car seat so as not to wake her, and because Z.I.K. was so rough and jealous that Mother was concerned Z.F.B. would be hurt.

The social worker opined that termination was in the children's best interest because, despite the myriad of services provided, Mother had failed to resolve her employment and housing stability issues, and there were lingering concerns regarding the risk of domestic violence and Mother's poor decision making. The children are healthy and having all of their needs met by their foster parents. Z.I.K. initially had issues with eczema and biting when she entered CHFS custody, but these issues have been resolved. Z.F.B. has known no other home.

Mother admitted to being non-compliant with services in the beginning and to not being forthright on some occasions. Mother explained her reluctance to disclose information and her outright lies were the products of fear arising from her belief that the social worker would never approve of her actions and that she was entitled to her privacy. However, Mother testified that she has made significant strides and is now able to provide the necessities for her children. Mother acknowledged she has not paid child support but indicated that if it had been ordered or made part of her case plan, she would have done so. Mother noted that she has been bringing the children food at visits since October 2020 when it was made a specific part of her case plan. Mother asserts she is making good choices now, is not currently in a relationship, and has better support from family than in the past.

Following the testimony, the court entered detailed findings of fact and conclusions of law. Therein, the court determined that the children had previously been adjudged to be neglected and that Z.I.K. had been in CHFS custody for 15 of the previous 48 months prior to the present action. The court further concluded that for at least six months, Mother had continuously or repeatedly failed to provide essential parental care or protection, as well as essential food, clothing, shelter, medical care, or education, and that there was no reasonable expectation of improvement in the immediately foreseeable future



considering the ages of the children. The court determined that Mother had failed to establish that the children would not continue to be neglected if returned to her custody. Finally, the court concluded that CHFS had made reasonable efforts to reunify the family, having provided all available services, and that termination was 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>2</sup> brief, attesting that no meritorious issues exist to present to this Court, as well as a motion to withdraw as counsel on appeal. The motion to withdraw was passed to this panel. Mother was afforded an opportunity to file a *pro se* brief; yet, no brief was filed.

### **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 trial court's findings of fact are subject to the clearly erroneous standard. CR<sup>3</sup>

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

<sup>3</sup> Kentucky Rules of Civil Procedure.

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 Services*, 364 S.W.3d 106, 113 (Ky. 2012). Application of the law to the facts, we review *de novo*. *Id.*

### LEGAL ANALYSIS

Involuntary termination of parental rights (TPR) actions are governed by KRS<sup>4</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. Accordingly, the trial court did not err by terminating Mother's parental rights.

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<sup>4</sup> Kentucky Revised Statutes.

## **CONCLUSION**

Therefore, and for the foregoing reasons, the judgments of the McCracken Family Court terminating Mother's parental rights are AFFIRMED.

ALL CONCUR.

**BRIEF FOR APPELLANT:**

Nancy Barnes  
Paducah, Kentucky

**BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:**

Dilissa G. Milburn  
Mayfield, Kentucky