

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NOT TO BE PUBLISHED

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

NO. 2021-CA-0027-ME

L.M.S., BIOLOGICAL FATHER

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 19-AD-00084

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; K.M., BIOLOGICAL MOTHER;  
AND L.M.G.S., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-0029-ME

L.M.S., BIOLOGICAL FATHER

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 19-AD-00085

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF

KENTUCKY; K.M., BIOLOGICAL MOTHER;  
AND B.I.S., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-0031-ME

L.M.S., BIOLOGICAL FATHER

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 19-AD-00086

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; K.M., BIOLOGICAL MOTHER;  
AND T.E.S., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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

CALDWELL, JUDGE: L.M.S. (Father) appeals from three December 4, 2020 orders of the Laurel Circuit Court, Family Court Division (family court), respectively terminating his parental rights regarding his three minor children (*i.e.*, T.E.S., L.M.G.S., and B.I.S.). Upon review, we affirm.

In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Father filed a notice of appeal and, subsequently, an *Anders*-type<sup>1</sup> brief reaching the conclusion that no meritorious claim of error exists that would justify reversal of the orders terminating Father’s parental rights in this consolidated matter. Counsel accompanied the brief with a motion to withdraw, which was passed to this merits panel. Upon review, we grant counsel’s motion to withdraw by separate order and affirm the family court’s orders terminating Father’s parental rights.

Pursuant to *A.C.*, the function of this Court is “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. Such review is analogous to a palpable error review, requiring only that we ascertain whether any error affects the substantial rights of a party. *Id.* at 370. If such a review results in the Court’s agreement with an appellant’s counsel that there is no nonfrivolous ground for appealing the termination of parental rights, it is appropriate to affirm the trial court.

Here, we will not burden this Opinion with an extensive recitation of the facts or reiteration of legal principles that can be found in the statutes and in an

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

abundance of appellate opinions. Suffice it to say there is clear and convincing evidence supporting the family court’s dispositive findings to the effect that: (1) Father’s three minor children at issue herein qualify as “neglected” as defined in KRS<sup>2</sup> 600.020(1); (2) termination was warranted based upon the grounds identified in KRS 625.090(2)(e) and (g); and that (3) all legal requirements of KRS Chapter 625 were met over the course of the proceedings below.

Indeed, to the extent Father’s *Anders* brief refers to “anything in the record that might arguably support the appeal,”<sup>3</sup> it is limited to the following unsupported proposition:

The Trial Court erred or abused its discretion by finding it is in the best interest of the children that the care, control and custody of the children be transferred to the Cabinet for Health and Family Services as a ward of the state with authority to place the child [sic] for adoption.

We disagree. Ascertaining the children’s best interests, the family court discussed and weighed the mandatory factors outlined in KRS 625.090(3)(a) through (f) in each of its December 4, 2020 orders, making the following relevant findings which are consistent with the evidence of record:

20. [Father] has struggled with a decades-long substance abuse problem as evidenced by his multiple criminal convictions since the 1990s related to illegal substance possession and manufacture and his own admission as to

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

<sup>3</sup> A.C., 362 S.W.3d at 371 (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400).

his problems. He has been convicted at least four times for driving under the influence of drugs or alcohol. He has been charged or convicted on more than occasion [sic] for driving on DUI suspended license.

21. By his own estimation, [Father] has completed multiple substance abuse treatment programs while in and out of jail over the years. He admitted that his decision to drink alcohol in recent months, especially to excess, was a poor one, especially in light of the knowledge he had gained from all his substance abuse treatment over the years. He admitted to being intoxicated as recently as October 2020.

22. [Father] is prescribed the painkiller Gabapentin and the anti-anxiety drug Seroquel by Sarah Parman, who was until recently the director of the Parachute Recovery drug treatment program. There is no evidence that [Father] was or is enrolled in that program or is receiving any sort of medical care from Parman.

23. [Father] would be dependent on third parties for any transportation of himself or other parties, including his children, until such time as he obtains a driver's license. If custody of his children were returned to him, a primary facet of his plan of care is dependency on their current foster family for some or most of their care for at least several months.

The family court then considered the children's circumstances. With respect to L.M.G.S., the family court noted:

[L.M.G.S.] has lived with his foster family since entering foster care in 2017 when he was only 10 months old. His two brothers have lived there with him since they entered foster care. [L.M.G.S.] was referred to First Steps because of anxiety caused by nightmares and delays in speech and communication and emotional domains. These services have assisted [L.M.G.S.] and he has

improved in all areas. [L.M.G.S.] and his brothers participate fully in all family activities, including recreational camping trips, eating out, etc. [L.M.G.S.] and his brothers are fully integrated into their foster family and he considers his foster parents as his parents.

With respect to B.I.S., the family court noted:

[B.I.S.] has lived with his foster family since entering foster care in 2018 when he was only five months old. His two brothers have lived there with him since they entered foster care. [B.I.S.] was referred to First Steps for delays in speech, communication and emotional domains. These services have been successful and he has improved in all areas. [B.I.S.] and his brothers participate fully in all family activities, including recreational camping trips, eating out, etc. [B.I.S.] and his brothers are fully integrated into their foster family.

With respect to T.E.S., the family court noted:

[T.E.S.] has been placed with his two brothers since entering foster care. He has lived with his foster family since he was four days old and is fully integrated in their family. He participates fully in all family activities, including recreational camping trips, eating out, etc. He has had no developmental issues and is making good progress.

Considering those findings, the family court concluded the children's best interests warranted terminating father's parental rights, explaining in relevant part:

In regard to [Father], the court is cognizant of his progress over the past year, especially when compared to his almost complete lack of progress for the preceding two years since his first child entered foster care. And therein lies the rub. [Father] has an obvious and admitted

decades-long substance abuse problem and related criminal activity. He, by his own admission, has completed multiple substance abuse treatment programs over the years with no long-term success. His completion of the IOP<sup>[4]</sup> at New Hope over the past year appears to reflect the most progress he ever made. However, the court is troubled that he recently appears to have substituted use of alcohol, even to intoxicating levels, in place of other substances he had used before. Likewise, even when he knew alcohol was becoming a problem, he decided to dispense with a second IOP and drug treatment for the alcohol on his own just in the past several months, even soon before the final hearing in this termination action. This court cannot help but conclude that his preexisting pattern has reasserted itself. Added to that is the fact that [Father] is receiving prescriptions for a painkiller and other medication from the director of a drug rehabilitation program with which he has never apparently had a relationship. [Father] offered no evidence to explain this obvious incongruity that, while not necessarily decisive in and of itself, gives the court pause considering his substance abuse history.

...

And finally, and most importantly, the court must weigh all these factors against [the children's] need for permanency in a timely fashion. Th[ese] [are] very young child[ren] who [are] obviously deeply bonded with [their] foster family. The court cannot break that bond considering so many obvious issues with both parents.<sup>[5]</sup> Specifically, [Father], despite some progress, is not currently able to offer care for th[ese] child[ren] and this situation will not change soon. His plan to rely on the

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<sup>4</sup> "IOP" refers to "intensive, out-patient drug counseling program."

<sup>5</sup> As the caption of this opinion indicates, K.M. (Mother) did not appeal the termination of her parental rights to these children.

foster family for continued care is one telling admission of this inability.

The family court's understanding of the evidence was consistent with the record, and its application of the statutory best interest factors was consistent with the law. Accordingly, the family court committed no error or abuse of discretion. The Court has undertaken the appropriate review and agrees with counsel for Appellant that there is no nonfrivolous ground that would justify reversal of the trial court in this consolidated matter. Therefore, we affirm the December 4, 2020 orders of the family court terminating Father's parental rights to the children, T.E.S., L.M.G.S., and B.I.S.

ALL CONCUR.

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