

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0058-ME

A.U. (NOW A.A.)

APPELLANT

v.

APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE BRANDI ROGERS, JUDGE
ACTION NO. 20-J-00010-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; J.B.; AND B.U., A MINOR

APPELLEES

AND

NO. 2021-CA-0059-ME

A.U. (NOW A.A.)

APPELLANT

v.

APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE BRANDI ROGERS, JUDGE
ACTION NO. 20-J-00011-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; R.S.; AND J.U., A MINOR

APPELLEES

AND

No. 2021-CA-0060-ME

A.U. (NOW A.A.)

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE BRANDI ROGERS, JUDGE
ACTION NO. 20-J-00012-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; J.A.A.; AND C.A., A MINOR

APPELLEES

OPINION AND ORDER
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KRAMER, AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: In this consolidated appeal, A.U. (now A.A.)¹

(hereinafter “Mother”) appeals from findings of abuse and neglect by the Webster Family Court. In accordance with *A.C. v. Cabinet for Health and Family Services*,

¹ We will use the parties’ initials because minor children are involved.

362 S.W.3d 361 (Ky. App. 2012), appointed counsel for Appellant filed notices of appeal and an *Anders*² brief arguing that no meritorious claim of error exists that would justify reversal of the orders on appeal. Counsel accompanied the brief with a motion to withdraw, which was passed to this panel. After careful review, we grant counsel's motion to withdraw, and affirm the family court's orders finding the minor children to be abused or neglected.

FACTS AND PROCEDURAL BACKGROUND

The Cabinet for Health and Family Services ("the Cabinet") received a report on December 17, 2019, that Mother's three minor children - B.U., J.U. and C.A. - were abused or neglected as defined by Kentucky Revised Statute ("KRS") 600.020(1). The children each have different biological fathers. A temporary removal hearing was conducted on February 3, 2020, after which the children were placed in temporary custody with qualified caregivers.

In February and March 2020, Mother failed to comply with orders to submit to urine and hair follicle drug screens. She also failed to appear for two court dates. On March 26, 2020, Mother fired her court-appointed counsel, who was granted leave to withdraw from representation. An adjudication hearing and show cause hearing was scheduled for April 13, 2020, and rescheduled for May 4,

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

2020. On April 2, 2020, Hon. Duncan A. Taylor was appointed to represent Mother.

The matter continued through 2020, with Mother either refusing to submit to drug screens or testing positive for amphetamine and methamphetamine when she did consent to testing. All attempts at reaching a resolution failed after Mother resisted further drug screens and refused to follow the recommendations of her substance abuse assessment provided by the Pennyroyal Center. Mother also refused to participate in a short in-person program recommended on September 9, 2020.

The following month, the Cabinet filed an amended petition based on its inability to make contact with Mother, in addition to her repeated, failed drug screens and refusal to follow substance abuse recommendations. An adjudication hearing was conducted on November 16, 2020, and the children were adjudged to be abused or neglected as set out in KRS 600.020(1). In support of the ruling, the court determined by a preponderance of the evidence that Mother created or allowed to be created a risk of physical or emotional injury by a pattern of conduct that rendered her incapable of caring for the immediate and ongoing needs of the children.

Thereafter, Mother appealed from the orders, findings of fact, and conclusions of law finding abuse and neglect. Attorney Taylor then determined

that the appeals were frivolous and filed an *Anders* brief pursuant to *A.C. v. Cabinet, supra*. Taylor certified that he informed Mother of her right to file a *pro se* brief raising any issues she deemed to be meritorious. Mother filed no brief.

ARGUMENTS AND ANALYSIS

Taylor now argues that he has an ethical duty to withdraw having determined that Mother's appeal is frivolous.³ After directing our attention to *A.C. v. Cabinet, supra*, Taylor points to KRS 600.020(1) which sets forth the grounds for which a minor child may be found to be abused and/or neglected.⁴ Such a finding can be made based on a preponderance of the evidence that a factor enumerated in KRS 600.020(1)(a) has occurred. The first factor in determining whether a child is abused and/or neglected is whether the child has had his or her health or welfare harmed or threatened with harm by a factor listed in KRS 600.020(1)(a). In support of its finding of harm or threat of harm, the circuit court determined that Mother created or allowed to be created a risk of physical or emotional injury by other than accidental means; that she engaged in a pattern of

³ The Cabinet agrees with Taylor's assessment of Mother's appeal.

⁴ KRS 600.020(1)(a) lists 10 factors upon which the trial court may find abuse and neglect. These factors were drafted by the Legislature using disjunctive ("or") language, such that the court may rely on one or many of the enumerated factors to find abuse and neglect. The relevant factors before us are 1) a risk of physical or emotional injury (KRS 600.020(1)(a)(2)) and 2) a pattern of conduct rendering the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to a substance use disorder (KRS 600.020(1)(a)(3)).

conduct that makes her incapable of caring for the immediate and ongoing needs of the children; and that Mother has parental incapacity due to a substance use disorder as defined by KRS 222.005(12).

After the adjudication hearing, the court went on to find that the allegations contained in the petition were proven by a preponderance of the evidence, *i.e.*, that Mother has a history of substance abuse and has been unable to provide clean drug screens; that she has refused to engage in treatment for said abuse; and that she has not provided the Cabinet with her current address. It concluded that these behaviors placed the children at a risk of harm and satisfied one or more of the factors set out in KRS 600.020(1).

A trial court has broad discretion in its determination of whether a child is dependent, neglected, or abused. *Dep't for Human Res. v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977). "The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence. The Kentucky Rules of Civil Procedure shall apply." KRS 620.100(3).

A "trial court's findings regarding the weight and credibility of the evidence shall not be set aside unless clearly erroneous." Kentucky Rule of Civil Procedure (CR) 52.01. "Under this standard, an appellate court is obligated to give a great deal of deference to the trial court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *D.G.R. v. Commonwealth, Cabinet for Health & Family Servs.*, 364 S.W.3d 106,

113 (Ky. 2012) (citations omitted). Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. *Smyzer v. B.F. Goodrich Chem. Co.*, 474 S.W.2d 367, 369 (Ky. 1971).

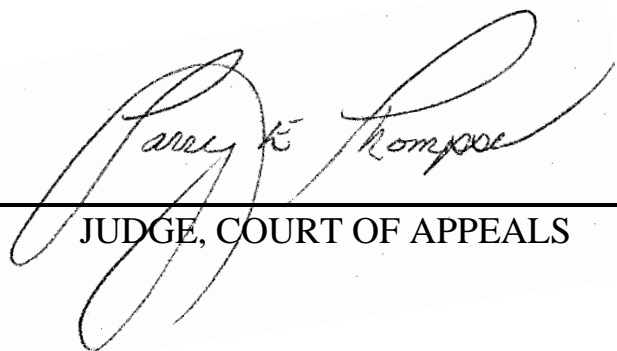
Cabinet for Health and Family Servs. on behalf of C.R. v. C.B., 556 S.W.3d 568, 573-74 (Ky. 2018).

CONCLUSION

The record contains evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable people. This evidence supports the Webster Family Court's findings of abuse and neglect. Accordingly, we grant attorney Taylor's motion to withdraw pursuant to *A.C.* and *Anders*, and affirm the findings of fact, conclusions of law, and orders of the Webster Family Court.

ALL CONCUR.

ENTERED: JULY 30, 2021



JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Duncan A. Taylor
Waverly, Kentucky

BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES:

Megan D. Randolph
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