

RENDERED: AUGUST 20, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-0245-ME

M.R.F.

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 20-AD-00016

THE CABINET FOR HEALTH AND  
FAMILY SERVICES; M.G.F., A  
MINOR; M.N.P.; R.F.; AND S.F.

APPELLEES

AND

NO. 2021-CA-0246-ME

M.R.F.

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 20-AD-00017

THE CABINET FOR HEALTH AND  
FAMILY SERVICES; H. D. F., A  
MINOR; M.N.P.; R.F.; AND S.F.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

COMBS, JUDGE: The Appellant, M.R.F. (Father), appeals from orders of the Greenup Family Court terminating his parental rights to his two minor children in these consolidated appeals. After our review, we affirm.

Father's appointed counsel, Amy Rollins Craft, filed a motion for leave to withdraw and to file a brief pursuant to *A.C. v. Cabinet for Health & Family Services*, 362 S.W.3d 361 (Ky. App. 2012), and *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). By an order entered on April 14, 2021, this Court noted that counsel duly certified that copies of the *Anders* brief and motion to withdraw were provided to Father and that he was informed of his right to file a brief, *pro se*, on his own behalf in order to raise any issue he deemed meritorious; no response to the motion to withdraw was filed. This Court passed the motion to withdraw to the merits, ordered that the tendered *Anders* brief be filed, and permitted Father to proceed, *pro se*, to file a supplemental brief within 30 days thereof. No supplemental brief was filed.

Father and M.N.P. (Mother) are the biological parents of two minor children, M.G.F. and H.D.F., twins, who were born on the same date in 2012. On March 23, 2020, the Cabinet filed petitions for the involuntary termination of

parental rights in Greenup Family Court in the interest of M.G.F.<sup>1</sup> and in the interest of H.D.F.<sup>2</sup>

On January 27, 2021, a final hearing was conducted remotely by Zoom. Each of the children was represented by their respective guardians *ad litem*. Mother and Father each attended remotely from the Boyd County Detention Center. Mary Cochran, the DCBS<sup>3</sup> case manager, testified. An employee of A+ Drug Testing also testified -- as did Mother and Father. We have carefully reviewed the recorded proceedings.

On January 28, 2021, the Greenup Family Court entered findings of fact and conclusions of law and orders terminating parental rights and orders of judgment as to each child. The court's findings as to each child provide as follows:

Based upon clear and convincing evidence presented at trial, the Court makes the following Findings of Fact:

...

9. [Mother] and [Father] have failed to protect and preserve the fundamental right of [the child] to a safe a nurturing home; [the child] is an abused or neglected child as defined in KRS 600.020, and it is in the best

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<sup>1</sup> No. 20-AD-00016.

<sup>2</sup> No. 20-AD-00017.

<sup>3</sup> Department of Community Based Services.

interest of the subject child that the parental rights of [Mother] and [Father] be terminated.

10. [Mother] and [Father] have abandoned [the child] for a period of not less than ninety (90) days. . . . [Father] had sporadic visitation with the child but has not visited or supported her since February of 2020.

11. [Mother] and [Father], for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential care and protection for [the child] and there is no reasonable expectation of improvement in parental care and protection considering the age of the child. Both of the parents have an extensive history of substance abuse and, despite treatment, have continued to abuse illegal substances and engage in criminal activity.

12. [Mother] and [Father], for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the well-being of [the child] and there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child. . . . [Father] has continued to abuse illegal substances and recently pled guilty to charges involving illegal drug use and was sentenced to 3 years. . . . Neither parent is in a position to provide their [sic] child with food, clothing, shelter or medical and educational care. Further, there is no reasonable expectation of significant improvement in the immediately foreseeable future.

13. [Mother] and [Father] had engaged in a pattern of conduct due to alcohol or other drug abuse for a period of not less than ninety (90) days that has rendered them incapable of caring for the immediate and ongoing needs of [the child], and they have refused or failed to complete

available treatment for alcohol or other drug abuse. . . . The father tested positive for methamphetamines and amphetamines since the child came into care and most recently in 2020 when he incurred his current criminal charge.

14. [The child] has most recently been in foster care under the care of the Cabinet for Health and Family Services since March 11, 2019.

15. The Cabinet for Health and Family Services has rendered or attempted to render reasonable services to [Mother] and [Father] since [the child] entered foster care in an effort to keep the family together.

16. The Court has considered the services rendered or attempted to be rendered by the Cabinet for Health and Family Services and the other factors listed in KRS 625.090(2), (a) through (k) and finds that termination of parental rights would be in the interest of [the child].

Father appeals. (Mother has not appealed.) This Court consolidated the appeals for each twin by our order entered on July 9, 2021.

In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014), our Supreme Court explained as follows:

KRS<sup>[4]</sup> 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best

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

interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

The standard of our review is whether the trial court's findings are clearly erroneous. CR<sup>5</sup> 52.01.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. . . . [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.

*C.A.W. v. Cabinet For Health & Family Services, Commonwealth*, 391 S.W.3d 400, 403 (Ky. App. 2013) (citations and internal quotation marks omitted).

Where -- as here -- counsel files an *Anders* brief and a motion to withdraw, “we are obligated 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. We have independently reviewed the record, and we are satisfied that no “non-frivolous grounds” for reversal exist. The family court made the requisite findings with respect to Father to satisfy the tripartite test of KRS 625.090 as to each child, finding: that the child is an abused or neglected child as defined in KRS 600.020; that termination of Father’s parental rights would be in

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

the child's best interest; and that grounds for termination under KRS 625.090(2) exist. Only one ground is required. The court determined that grounds exist under KRS 625.090(2)(g) as set forth in paragraph 12 of the court's findings noted above.

KRS 625.090(g) provides:

That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child[.]

Ms. Cochran's testimony -- which is summarized in the Cabinet's brief -- also provides a substantial evidentiary foundation to support the trial court's findings.

Accordingly, we affirm. By separate order we grant counsel's motion to withdraw.

ALL CONCUR.

BRIEF FOR APPELLANT:

Amy Rollins Craft  
Greenup, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:

Dilissa G. Milburn  
Mayfield, Kentucky