

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0265-ME

T.S.

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE N. WILLIAMS, JUDGE
ACTION NO. 20-AD-00033

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND N.S., A
CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: GOODWINE, K. THOMPSON, AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: T.S.¹ (“Mother”) appeals from a judgment of the
Franklin Circuit Court terminating her parental rights as to her minor child N.S.

(“Child”). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362
S.W.3d 361 (Ky. App. 2012), appointed counsel for Appellant filed a notice of

¹ We will use the parties’ initials because a minor child is involved.

appeal and an *Anders*² brief arguing that no meritorious claim of error exists that would justify reversal of the judgment on appeal. Counsel accompanied the brief with a motion to withdraw, which was passed to this panel. After careful review, by separate order, we grant counsel's motion to withdraw, and affirm the family court's judgment terminating Mother's parental rights as to Child.

FACTS AND PROCEDURAL HISTORY

On November 2, 2020, the Commonwealth of Kentucky, Cabinet for Health and Family Services ("the Cabinet") filed a petition in Franklin Circuit Court, Family Division, to involuntarily terminate Mother's parental rights as to Child. Child was born on July 2, 2019, and was in foster care under the responsibility of the Cabinet continuously since October 8, 2019. Child was committed to the Cabinet by way of an order rendered by the Franklin Circuit Court in Case No. 19-J-00197.³

In support of the petition, Courtney Parr, a social worker employed by the Cabinet, testified that she first became involved with Child in October 2019, due to concerns of unsafe living conditions, domestic violence between Mother and Father, and suspected drug use in the home. The Cabinet filed a juvenile

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

³ The Cabinet also sought to terminate the parental rights of R.C., the biological father ("Father"). He is not a party to this appeal.

dependency, neglect, and abuse petition on October 8, 2019, alleging neglect by Mother and Father. The court entered an emergency custody order placing Child in the care of the Cabinet. Child was then placed with her maternal grandparents, who are certified foster parents, and continues to remain under their care.

Thereafter, the court entered an adjudication hearing order on November 4, 2019, finding Child to be neglected by Mother. A disposition hearing order was entered on January 7, 2020.

The Cabinet developed three case treatment plans in 2019 and 2020. Though Mother participated in the case planning meetings, Ms. Parr testified that neither Father nor Mother completed his or her case plan.

Parr continued to have monthly contact with Mother, and a drug abuse and mental health assessment resulted in a recommendation that Mother engage in individual counseling and complete an outpatient substance abuse program. Ms. Parr testified that Mother did not complete either component of the recommendation. Ms. Parr also stated that Mother has failed to remain sober and has tested positive for methamphetamine and amphetamines on numerous occasions between October 2019 and February 2020. Mother tested positive again in December 2020.

Mother has not completed parenting classes, nor maintained stable housing or employment. Mother has not maintained consistent contact with Child.

When Mother did have supervised visits with Child, according to the record, most of those visits did not go well because Mother was distracted by her cell phone rather than interacting with Child. On one occasion, Mother arrived for a visit but refused to participate after believing that someone “had a hit out” on her. On another, Mother had a black eye and was covered in mud.

Ms. Parr testified that neither Mother nor Father has provided any food, clothing, medical care, or educational supplies for Child since October 2019. In March 2020, the court ordered Mother to pay \$182.50 per month for Child’s care. Mother is in arrears on this obligation. Ms. Parr stated that neither Mother nor Father has made sufficient progress toward their court-approved case plans to reunite with Child, and she is not aware of any additional services the Cabinet could offer to promote reunification. Ms. Parr was not convinced that there was any reasonable expectation of improvement by Mother. She stated that she visits monthly with Child and her maternal grandparents, and finds that Child is happy and bonded with them. Ms. Parr saw no barriers to Child’s successful adoption by her grandparents and believes that Child’s best interests would be served by terminating Mother’s parental rights.

The court then engaged in a thorough analysis of the facts in light of Kentucky Revised Statutes (“KRS”) Chapter 625. It examined any acts of abuse or neglect (KRS 625.090(3)(b)); the Cabinet’s efforts at reunification (KRS

625.090(3)(c)); parental efforts to bring about reunification (KRS 625.090(3)(d)); Child's physical, emotional, and mental health (KRS 625.090(3)(e)); and, the "payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so." KRS 625.090(3)(f). The court then found that all reasonable efforts toward reunification had been made; that Child's physical, mental, and emotional needs have been met while in the Cabinet's care and custody; that the Cabinet foresees no barriers to adoption at this time; and, that Child's best interests are served by termination.

As for the elements of KRS 625.090(2), the court found that Mother abandoned Child for not less than 90 days (KRS 625.090(2)(a)); continuously or repeatedly failed for a period of not less than six months, or was substantially incapable of providing essential parental care or protection to Child (KRS 625.090(2)(e)); and, for reasons other than poverty alone, continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary for Child's well-being with no expectation of significant improvement considering the age of Child (KRS 625.090(2)(g)).

The court determined that the statutory elements were satisfied and the Cabinet was entitled to a judgment terminating Mother's parental rights as to Child. This appeal followed.

ARGUMENTS AND ANALYSIS

Counsel for Appellant, Hon. Douglas C. Howard, states that he has an ethical duty to withdraw having determined that Mother's appeal is frivolous.⁴ He has tendered a motion to that effect which now stands ready for adjudication. In support of his motion, Mr. Howard asserts that he can find no meritorious issues upon which to proceed in furtherance of this appeal. He has tendered a brief to this Court in compliance with *A.C. v. Cabinet for Health and Family Services, supra*. In *A.C.*, a panel of this Court adopted and applied the procedures set out in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to appeals from orders terminating parental rights wherein counsel is unable to identify any non-frivolous grounds for appeal. *A.C.*, 362 S.W.3d at 364. It did so to strike a fair balance between appointed counsel's duty not to file a frivolous appeal and an indigent parent's right to counsel and full representation. *Id.* at 369.

Consistent with *A.C.*, Mr. Howard has requested that this Court conduct our own inquiry into the record to determine what, if any, reversible factual and legal errors affecting Appellant's substantive rights the family court may have committed in its adjudication and disposition of the matter before us.

⁴ The Cabinet agrees with Howard's assessment of Mother's appeal.

A family court may involuntarily terminate a person's parental rights upon finding proof, by clear and convincing evidence, that each element of a three-part test has been satisfied. KRS 625.090. First, proof must be adduced that the child is abused or neglected. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). The Franklin Circuit Court, Family Division, engaged in a thorough and comprehensive analysis of the facts and their application to KRS Chapter 625. Child was found to be abused or neglected; the court determined that termination was in Child's best interest; and, the court found at least one ground of parental unfitness. KRS 625.090(1)(a); KRS 625.090(1)(c); and, KRS 625.090(2). These elements were proven by clear and convincing evidence. KRS 625.090(1).

CONCLUSION

Having conducted a thorough review, we agree with Mr. Howard and the Cabinet that the record reveals no non-frivolous grounds for appeal. As such, and in accord with *A.C., supra*, we grant Mr. Howard's motion to withdraw from representation by a separate order and affirm the findings of fact and conclusions of law of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Douglas C. Howard
Frankfort, Kentucky

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

Jennifer E. Clay
Louisville, Kentucky