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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0349-ME

J.T.W.

APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00003

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY
AND A.J.W., A CHILD

APPELLEES

AND

NO. 2021-CA-0350-ME

J.T.W.

APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00004

CABINET FOR HEALTH AND
FAMILY SERVICES,

COMMONWEALTH OF KENTUCKY
AND J.J.M.W., A CHILD

APPELLEES

AND

NO. 2021-CA-0351-ME

J.T.W.

APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00005

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
J.S.H., FATHER; AND M.D.F.H., A
CHILD

APPELLEES

AND

NO. 2021-CA-0352-ME

J.T.W.

APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00006

CABINET FOR HEALTH AND
FAMILY SERVICES,

COMMONWEALTH OF KENTUCKY;
J.S.H., A CHILD; AND J.S.H.,
FATHER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, GOODWINE, AND JONES, JUDGES.

JONES, JUDGE: Appellant, J.T.W. (“Mother”), appeals the Bracken Circuit Court’s orders terminating her parental rights to four of her children. In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*¹ brief conceding that no meritorious error exists for an appeal to this Court. Counsel accompanied the briefs in each appeal with a motion to withdraw. Following careful review of the record, and all applicable law, we grant counsel’s motion by separate order and affirm the circuit court’s respective orders terminating Mother’s parental rights to these four children.

I. BACKGROUND

There are four children at issue in this appeal: A.J.W., a female, born in February of 2014; J.J.M.W., a male, born in February of 2017; J.S.H., a female,

¹ *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

born in July of 2018; and M.D.F.H., a female, born in May of 2019 (collectively referred to herein as the “Children”).²

The Cabinet for Health and Family Services (“the Cabinet”) became involved with this family in March of 2019, while Mother was still pregnant with M.D.F.H., the youngest of these four children. The Cabinet was concerned about domestic violence and substance abuse in the home. The three older children were not immediately removed; instead, the Cabinet put a prevention plan in place which required Father to leave the home and both parents to remain substance free. Around the time of M.D.F.H.’s birth, Mother tested positive for amphetamine, methamphetamine, and THC, and M.D.F.H. was born substance affected testing positive for amphetamine and ecstasy. The Cabinet removed the three older children as well as the infant from Mother’s care. Following an unsuccessful relative placement, the Cabinet placed the Children in a state approved home, where they have remained since 2019.

The Cabinet established a case plan whereby Mother could work toward regaining custody of the Children. Among various conditions, Mother was to remain drug free, submit to regular drug screenings, complete parenting classes, undergo domestic violence training, pay child support, and maintain appropriate

² The paternity of A.J.W. and J.J.M.W. is unknown. J.S.H. and M.D.F.H. have the same father, J.S.H. (“Father”). Father’s rights were also terminated below. Father has not appealed. These appeals relate only to the termination of Mother’s rights.

housing. Mother was unsuccessful in making progress toward completion of her case plan despite the Cabinet's efforts to assist her. Among other failures, Mother repeatedly tested positive for drug use, failed to drug test regularly, did not pay child support even while employed, and lived a transitory lifestyle moving from motel to motel and other temporary housing. Mother's lack of progress prompted the Cabinet to change its permanency goal to adoption and petition for termination of Mother's parental rights.

The circuit court held a final hearing on February 11, 2021, via Skype videoconferencing software. Mother, with the assistance of her court-appointed counsel, participated in the final hearing. The Children's guardian *ad litem* also participated in the hearing.

The Cabinet called one witness, the family's ongoing social worker, Rachel Colgan-Bradford. Ms. Colgan-Bradford testified about the Cabinet's efforts for reunification and Mother's inability to complete her case plan. Ms. Colgan-Bradford explained that Mother's inability to work to overcome her substance abuse problem was one of the biggest barriers preventing her reunification with the Children. Mother was required to submit to weekly drug screens; however, she either failed to submit herself for testing or tested positive. Eventually, the court ordered all Mother's visitation with the Children to cease until she returned three consecutive clean screens. As a result, at the time of the

hearing, Mother had not seen the Children since October 24, 2019. Ms. Colgan-Bradford also testified that even though Mother was employed prior to the COVID-19 pandemic, she did not pay child support. At the time of the final hearing, Mother's child support arrearage was over \$6,000.00. Mother also failed to establish appropriate and stable housing. She moved frequently, sometimes living out of motels. She failed to keep the Cabinet updated with a good address. While Mother did complete domestic violence training and parenting classes, Ms. Colgan-Bradford did not believe Mother was able to put the skills she was taught into practice. Prior to the termination of her visitation, Mother demonstrated an inability to properly interact with and control the Children during her visitations. She also expressed questionable views on parenting such as believing that it was beneficial for children to see their parents arguing.

Finally, Ms. Colgan-Bradford testified that the Children required counseling and other assistive services such as speech therapy following their removal from Mother's care. The Children were in a pre-adoptive home together and were thriving there.

Mother testified on her own behalf. She told the court that she had been clean and sober for the past eight months and was pregnant with another child. She was living with her paramour in Ohio but hoped to move back to Kentucky after she gave birth; however, she did not have any solid plans in place

regarding where she would live if she moved back to Kentucky. Mother offered a variety of excuses for her failure to submit to drug screening such as losing her identification and being too exhausted from anemia to walk to the nearby screening location the Cabinet set up for her while she was living in Florence, Kentucky. Mother testified that she had a total of nine children, though none were currently in her custody. She said that her other five children lived with their fathers.

Following the hearing, the circuit court made written findings of fact and conclusions of law terminating Mother's rights to the Children. Mother's counsel filed notices of appeal and submitted *Anders* briefs, stating that no meritorious grounds for appeal exist. Counsel has filed a motion to withdraw from these cases and certified that he provided notice to Mother. Despite being given an opportunity to file *pro se* briefs, Mother has failed to do so and has not otherwise communicated with this Court.

II. ANALYSIS

“An *Anders* brief supplements a motion to withdraw filed after counsel has conscientiously reviewed the record and found the appeal to be frivolous.” *C.R.G. v. Cabinet for Health & Family Servs.*, 297 S.W.3d 914, 915 (Ky. App. 2009). Thereafter, this Court's duty is to review the record independently for prejudicial error. *Id.*

A family court may involuntarily terminate an individual's parental rights only upon satisfaction of a three-pronged test provided by KRS³ 625.090: (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 interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(k) exists.

The circuit court found that the first requirement was satisfied where Mother stipulated to a finding of neglect as part of the dependency, neglect, and abuse ("DNA") proceedings. KRS 625.090(1)(a)1. provides that the first requirement is met where "[t]he child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction[.]" The DNA court had jurisdiction to accept Mother's stipulation. We can discern no prejudicial error arising out of the circuit court's conclusion that the abuse and neglect prong of the test supported termination.

Next, the circuit court determined that: (1) Mother had abandoned the Children for a period of not less than ninety (90) days, KRS 625.090(2)(a); (2) for a period of not less than six (6) months Mother had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for the Children and that there was no

³ Kentucky Revised Statutes.

reasonable expectation of improvement in parental care and protection, considering the age of the Children, KRS 625.090(2)(e); and (3) Mother, for reasons other than poverty alone, had continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the Children's well-being and that there was no reasonable expectation of significant improvement in Mother's conduct in the immediately foreseeable future, considering the age of the Children, KRS 625.090(2)(g).

Again, we can discern no error in the circuit court's conclusions that KRS 625.090(2)(a), (e), and (g) exist in these cases. At the time of the final hearing, Mother had not seen the Children for well over a year due to her own failure to drug screen. Mother's excuses for not drug testing were unconvincing, especially given the Cabinet's efforts to find a testing location within walking distance. Mother also failed to pay child support even though she was employed for a time. And, despite being provided with various services by the Cabinet over an extended period of time, Mother demonstrated an inability to maintain consistent sobriety, maintain stable and appropriate housing, and put the skills taught to her through parenting and domestic violence classes to good use.

Lastly, the circuit court concluded that termination of Mother's rights was in the best interests of the Children. It is clear the circuit court weighed the

appropriate factors and made a reasoned determination that termination was best for the Children. The Children were living in a pre-adoptive home together, were receiving counseling and other assistance services, and were making great progress. Given Mother's inability to provide the Children with stable housing, contribute to their well-being even while she was employed, and her failure to complete some of the most important and fundamental elements of her case plan, we cannot disagree in the least with the circuit court's conclusion that termination was best for the Children.

III. CONCLUSION

For the foregoing reasons, we affirm the orders of the Bracken Circuit Court terminating Mother's parental rights to these four children.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET
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