

RENDERED: OCTOBER 29, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-0497-ME

B.T.H.

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT  
HONORABLE BRANDI H. ROGERS, JUDGE  
ACTION NO. 20-AD-00017

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY SERVICES;  
K.A.F., A MINOR CHILD; AND C.A.B.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND JONES, JUDGES.

CLAYTON, CHIEF JUDGE: B.T.H. (“Father”) is the biological father of a minor child, K.A.F. (“Child”). Father appeals from the Union Family Court’s order terminating his parental rights to Child.

After reviewing the record and applicable law, we affirm the trial court's orders terminating Father's parental rights. Further, we grant appellant counsel's motion to withdraw from representation of Father by separate order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On September 13, 2016, Child was born in Henderson County, Kentucky, to C.A.B. ("Mother"). Father was ultimately determined to be Child's father via a paternity test, and the family court entered an order to such effect on August 9, 2017. On August 28, 2020, the Cabinet for Health and Family Services (the "Cabinet") filed a petition to involuntarily terminate the parental rights of both Mother and Father as to Child (the "Petition").

The family court held a hearing regarding the Petition on February 25, 2021. Father appeared at the hearing with counsel. Although the family court appointed a warning order attorney for Mother, she failed to appear at the hearing or to otherwise respond in this action.

At the hearing, Rebecca Brooks, a caseworker for the Cabinet, testified that she had first become involved with the family in 2013 when Mother was a minor and in foster care. Thereafter, Brooks testified that, on December 14, 2017, she filed a juvenile dependency, neglect, and abuse petition regarding Child, alleging that, in March of 2017, Mother had made a threat in a text message to a friend to kill both herself and Child (the "First Dependency Petition"). As a result,

Mother entered a treatment center, and Child entered the care of his maternal grandmother.

Brooks further alleged in the First Dependency Petition that, in July of 2017, Mother attempted suicide by stealing her mother's prescription medication and ingesting all the pills in the bottle. Consequently, Mother was hospitalized and subsequently discharged to a rehabilitation center. However, in August of 2017, Mother voluntarily left the state of Kentucky, with Child remaining in his maternal grandmother's care. The First Dependency Petition alleged that Child was dependent due to Mother's actions and unmet mental health needs.

Thereafter, on January 11, 2018, the family court held a temporary removal hearing and Child's maternal grandmother received temporary custody of Child. The family court subsequently held an adjudication hearing and entered an order finding that Child was dependent on January 25, 2018. The family court based its dependency findings on the fact that Mother had seemingly abandoned Child and her whereabouts remained unknown, Mother had substantial untreated mental health and substance abuse issues, Father was incarcerated at that time, and Father had no contact with Child at that time. In a disposition order also dated January 25, 2018, the family court ordered that Child remain in the custody of his maternal grandmother.

Thereafter, the family court entered a permanent custody order on June 13, 2019, awarding Child's custody to his maternal grandmother. The family court explained in its order that Child's maternal grandmother had been Child's sole caregiver and financial supporter for over one year; that Mother's whereabouts were still unknown; that Mother had made no progress on her case plan and had made no contact with Child; that Father was incarcerated and had agreed that permanent custody should go to Child's maternal grandmother; and that Child was bonded to his maternal grandmother and integrated into her home.

Less than two months later, the Cabinet filed a second juvenile dependency, neglect, or abuse petition on August 6, 2019, alleging that Child's maternal grandmother had reported that she could no longer care for Child due to her various medical and financial issues. The family court entered an order on that same day granting the Cabinet emergency custody of Child. Child has remained in foster care since that date. The family court granted both parents supervised contact in a temporary removal hearing order entered on August 15, 2019.

Brooks testified that she was able to contact Father when he appeared at a disposition hearing on October 16, 2019, regarding the second dependency petition. Thereafter, Brooks developed a case plan with Father based upon the court-approved recommendations made by the Cabinet at the dispositional hearing. Specifically, the case plan asked Father to complete a parental capacity

assessment; take random drug screening tests; obtain a psychological evaluation; follow any providers' recommendations; and obtain and maintain stable housing, utilities, and employment. However, Brooks testified that she had received no documentation from Father that he had completed any of the preceding case plan steps. Further, Brooks testified that she had not been able to communicate consistently with Father since setting up the case plan and had only spoken with him approximately four times since October of 2019.

Additionally, Brooks testified that she had set up a visitation schedule for Father and Child between November 14, 2019, and March 7, 2020. There were eleven opportunities for him to visit Child; however, Father did not appear for any of them. Father did call to cancel one visit but did not give Brooks a reason for his cancellation. Moreover, Father never provided financially for Child or brought clothes or other items to Child. Because Father failed to attend any of the scheduled visits with Child, the family court suspended Father's visitation in May 2020. Additionally, the family court entered a permanency hearing order on July 15, 2020, ordering that the adoption was the permanency plan at that point and that Child would remain committed to the Cabinet. Brooks testified that she felt that she had provided all the services that she could to Father.

Brooks further testified that Child was doing well at the foster home in which the Cabinet had placed him in August of 2019 and that she had no

concerns about his care. She said he had no disabilities and has developed positively in terms of his physical, mental, and emotional well-being. Brooks also testified that the Cabinet had met all his needs consistently, that the Cabinet had facilities available for his care, and that the Cabinet was willing to accept him as a ward of the state. Finally, Brooks testified that it was in Child's best interest that the family court grant the Petition.

Thereafter, Father testified at the hearing that he had attempted to get in touch with Brooks multiple times but that she was never in the office when he called or visited the office. Father further testified that he had left Brooks two or three messages providing a new phone number. Father testified that he could not recall any conversations with any Cabinet staff members regarding reunification but did recall speaking with them about his case plan. Father admitted that he did not complete any tasks on his case plan but that he did not have the financial ability at the time to complete the required tasks on the case plan. Further, he stated that he did not think that he should have to do the tasks in the case plan because it was Mother's actions that had led to the current situation. Nevertheless, Father indicated regret for not having done so and a willingness to immediately perform the items on his case plan.

Additionally, Father testified that he did not exercise any of his visitation rights with Child because he was using methamphetamine in 2019 and

did not want Child to see him under the influence of the drug. He indicated that he was sober now, although he had not submitted any drugs screenings in that past year. Father stated that he was not participating in any counseling or other treatment at that time for his substance abuse.

On March 31, 2021, the family court entered an order terminating the parental rights of both Mother and Father. Father, via court-appointed counsel, filed a timely notice of appeal from the family court's order. Mother did not appeal. Father's counsel also filed a motion to withdraw as counsel in the appeal and a brief that comported with *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), citing counsel's inability to identify any issue with sufficient merit to support a meaningful argument on appeal and requesting that this Court conduct a complete examination of the record for prejudicial error and to determine if any non-frivolous issues had been overlooked. By order of this Court entered July 9, 2021, counsel's motion to withdraw was passed to this Panel. The Court also gave Father thirty days to file a *pro se* brief in this appeal, which he did not file.

## ANALYSIS

### a. *Anders and A.C.*

In *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), a panel of this Court adopted the principles and procedures laid

out in *Anders* in the criminal setting to appeals from orders terminating parental rights, concluding that “an indigent parent defending a termination of parental rights action enjoys a statutory right to counsel during the appeal[.]” *Id.* at 367. However, as in *Anders*, “that right to counsel ‘does not include the right [of an indigent parent] to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing a frivolous appeal.’” *Id.* (quoting *Smith v. Robbins*, 528 U.S. 259, 278, 120 S. Ct. 746, 760, 145 L. Ed. 2d 756 (2000)).

Consequently, under Kentucky law, it is necessary to utilize *Anders*-type briefs and procedures in termination of parental rights cases wherein appointed counsel does not believe there are any non-frivolous claims to appeal. Therefore, upon a good faith review of the record:

if counsel finds his [client’s] case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel’s brief should be furnished [to] the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.

*Anders*, 386 U.S. at 744, 87 S. Ct. at 1400.

As previously discussed, in this case, Father’s counsel submitted an *Anders* brief in compliance with *A.C.* and *Anders*. Thus, *A.C.* obligates us to



independently review the record and establish whether this appeal is, in fact, frivolous. *A.C.*, 362 S.W.3d. at 371.

**b. Standard of Review**

An appellate court will only reverse a trial court's decision to terminate a parent's rights if such decision is clearly erroneous, meaning there is no substantial, clear, and convincing evidence to support the decision. Kentucky Rules of Civil Procedure ("CR") 52.01; *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Therefore, the trial court's findings will not be disturbed unless no substantial evidence exists in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

**c. Discussion**

The grounds for the involuntary termination of parental rights are set forth in Kentucky Revised Statutes ("KRS") 625.090, which provides that a circuit court may involuntarily terminate a parent's rights only if that court finds, by clear and convincing evidence, that a child is abused or neglected as defined in KRS 600.020(1), that termination is in the child's best interests, and the existence of one or more of ten specific grounds set out in KRS 625.090(2). KRS 625.090(1)(a)-(b), (2); *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007). Further, KRS

625.090(3) lays out factors for the trial court to consider in determining the child's best interests and the existence of grounds for termination.

In this case, the family court complied with all relevant statutory mandates to terminate Father's parental rights to Child. Under KRS 625.090(1)(a)2., the trial court concluded that Child was abused and neglected as defined in KRS 600.020(1), (3), (4), (7), (8), and (9). We find ample support in the record for the court's findings in this regard, including that Father had abandoned Child for more than ninety days by failing or refusing to maintain contact or support Child since October of 2019. Moreover, the court found no barriers to Father's completion of his case plan, as he was no longer incarcerated when he appeared for the disposition hearing in October of 2019. Further, the court found that Father had not provided Child with essential parental care or protection, food, clothing, shelter, medical care, or education since at least August of 2019 when Child entered foster care and despite having been gainfully employed since at least September of 2020.

The court next concluded that, pursuant to KRS 625.090(1)(c), it would be in Child's best interest that the court terminate Father's parental rights. The record also supported the court's findings in this regard, including evidence that Child was doing very well in his current foster placement and was progressing developmentally and bonding with his caregivers. In addition, Child had not seen

Father since Child was under one year of age, and Father did not attempt to rectify the situation over the years.

The court next concluded under KRS 625.090(2)(e) that Father, “for a period of not less than six (6) months,” had “continuously or repeatedly failed or refused to provide or ha[d] been substantially incapable of providing” Child with “essential parental care and protection” and that there was “no reasonable expectation of improvement” in Father’s care and protection, considering Child’s age. Additionally, the court concluded under KRS 625.090(2)(g) that Father, “for reasons other than poverty alone,” had “continuously or repeatedly failed to provide or [wa]s incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available” for Child’s well-being and that there was “no reasonable expectation of significant improvement in Father’s conduct in the immediately foreseeable future,” considering Child’s age. The circuit court supported its conclusion with findings that Father had failed to provide any financial support to Child and had failed to maintain contact with the Cabinet or make any progress on his case plan, which had resulted in Child remaining in foster care since August of 2019. Moreover, Father had been gainfully employed since approximately September of 2020.

Finally, the trial court stated that it had considered the factors included in KRS 625.090(3), including the lack of effort and adjustments made by Father in

his circumstances, conduct, or conditions to make it in Child's best interest to return Child to his home within a reasonable period, considering Child's age. Moreover, the family court found that the Cabinet had made reasonable efforts to reunite Child with Father pursuant to KRS 625.090(3)(c).

### **CONCLUSION**

Having reviewed the record in detail pursuant to *Anders* and *A.C.*, we agree with counsel's belief that the evidence shows that Father does not have grounds warranting relief and find that the evidence is more than sufficient to support the family court's findings of fact, conclusions of law, and judgment. Accordingly, we do not believe the family court's decision to grant termination of Father's parental rights to Child was in error.

For the foregoing reasons, we affirm the order of the Union Circuit Court.

Furthermore, by separate order, we grant the motion of Cobie D. Evans to withdraw as counsel for Father.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET  
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