

RENDERED: SEPTEMBER 2, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0721-ME

A.N.W.

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00010

CABINET FOR HEALTH AND FAMILY
SERVICES; A.S.L.-W., A MINOR CHILD;
AND D.E.L.

APPELLEES

AND

NO. 2021-CA-0723-ME

A.N.W.

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00011

CABINET FOR HEALTH AND FAMILY
SERVICES; D.E.L., JR., A MINOR CHILD;
AND D.E.L.

APPELLEES

AND

NO. 2021-CA-0725-ME

A.N.W.

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00012

CABINET FOR HEALTH AND FAMILY
SERVICES; A.D.A., A MINOR CHILD;
D.E.L.; AND B.D.A.

APPELLEES

AND

NO. 2021-CA-0728-ME

A.N.W.

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00013

CABINET FOR HEALTH AND FAMILY
SERVICES; N.J.A., A MINOR CHILD;
AND B.D.A.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CALDWELL, CETRULO, AND COMBS, JUDGES.

CETRULO, JUDGE: The Fleming Circuit Court granted the petitions of the appellee, Cabinet for Health and Family Services (the “Cabinet”), for termination of parental rights of appellant A.N.W. (“Mother”), the biological mother of A.S.L.-W.; D.E.L., Jr.; A.D.A.; and N.J.A. (the “children”). The Cabinet filed petitions individually for each of the children, and orders terminating parental rights were consolidated in this appeal. After reviewing the record and the applicable law, we affirm.

I. FACTS AND BACKGROUND

Mother had four children: A.S.L.-W. was born in November 2009 (“daughter”); D.E.L., Jr. was born in January 2012 (“oldest son”); A.D.A. was born in October 2013 (“middle son”); and N.J.A. was born in July 2016 (“youngest son”). The three oldest children are the biological children of D.E.L.; the youngest child is the biological child of B.D.A. (“custodial Father”).¹

In March 2021, via Skype videoconferencing software, the Fleming Circuit Court held a combined hearing (“termination hearing”) relating to the parental rights of Mother, D.E.L., and the custodial Father.² At the termination hearing, Mother, D.E.L., and the custodial Father were present and represented by

¹ At the termination hearing, B.D.A. stated that although not all of the children were his biological children, all four children lived with him: “I’ve been with these kids throughout their whole lives, pretty much. To me, they’re all my kids.”

² The Fleming Circuit Court subsequently terminated parental rights of all three parents, but this appeal relates only to Mother’s parental rights.

counsel. The children were represented by the same guardian *ad litem*. The hearing included testimony from various mental health professionals, case workers, and the parents.

In 2016, the Cabinet became involved with this family due to allegations of neglect of the children and allegations of physical abuse by Mother toward her oldest son. At the termination hearing, Lauren Tackett, the family's ongoing social worker ("SW Tackett"), testified that in 2018 the children were removed from Mother's care and placed with their great-grandmother. After approximately eight months, the great-grandmother became terminally ill and was no longer able to care for the children. The children were then returned to Mother and custodial Father. Shortly thereafter, in August 2019, the children were committed to the Cabinet's custody. In June 2020, the Fleming Circuit Court approved a goal change in the children's case plan to adoption.

At the termination hearing, SW Tackett stated that despite her attempts to work with Mother toward reunification, "things with the family were not getting any better." Mother "ha[d] not fully taken responsibility yet for the maltreatment" of the children; Mother lacked insight into why corporal punishment was not appropriate;³ and Mother did not understand how her behavior and mental

³ SW Tackett testified that all the children stated – and Mother admitted to – hitting the children with tree switches, a belt, and an open hand on their bottom. Mother testified that she did not use

health issues led to the maltreatment of the children. SW Tackett testified that because Mother had not successfully completed any tasks set forth on the *most recent* case plan, the Cabinet was unable to move forward with a case plan for reunification. SW Tackett stated that she was not aware of any additional services the Cabinet could offer the family toward reunification.

At the termination hearing, the court also heard testimony from Corey Birch, an employee at the University of Kentucky Center on Trauma and Children (“CTAC Birch”). CTAC Birch met with the family on January 15 and 22, 2020 and served as team leader in the family’s assessment.⁴ CTAC Birch tested Mother’s cognitive ability and found that she read at a fifth-grade level and comprehended at a ninth-grade level; therefore, she was able to understand and participate in the testing and interview process.⁵ CTAC Birch testified that Mother

tree switches, but a previous social worker told her that she was permitted to hit the children on their bottoms as long as it did not leave a mark.

⁴ CTAC Birch stated that the Cabinet refers families to CTAC for parenting evaluations “usually when the Cabinet is having a difficult time deciding what’s in the children’s best interests.” He described the evaluation as a multi-layered process that included interviewing the parents; interviewing the children; interviewing the family’s social worker and/or therapists; reviewing mental health records; and performing various tests to diagnose, in part, depression, trauma, substance abuse risks, and physical child abuse.

⁵ Throughout the record, questions were raised as to Mother’s cognitive ability. However, Mother disagreed with any allegations that she was not mentally competent. She testified that she was in regular classes in school but had access to tutoring within the special education department. Mother testified that she received her GED (General Education Development diploma) in 2011 and passed one semester of college courses in early childhood education at Maysville Community College. Prior to their removal, Mother stated that she was able to help her children with their schoolwork.

had been diagnosed with schizophrenia, a major depressive disorder, and post-traumatic stress disorder (“PTSD”). He testified that Mother had a difficult time meeting the children’s needs and following through with executive functioning tasks, such as getting the children to appointments. CTAC Birch reported that Mother had been the victim of sexual assault – both as a child and as an adult – which had a negative impact on her mental health and skewed her perception of what is normal in relationships and of what constitutes protective caregiving. Additionally, CTAC Birch expressed concerns about Mother’s lack of empathy for her children’s experiences, her failure to take responsibility for the children’s removal, and her poor ability to detect risk to her children.

Mother testified that she has been seeing a therapist since the beginning of the Cabinet’s involvement. She stated that her parenting methods had improved with the assistance of parenting classes, reading materials, and educational videos. She stated that she was consistently taking her prescribed medicine and had no current schizophrenia symptoms. She testified that she had completed numerous aspects of her *previous* case plans: parenting classes, medication compliance, mental health evaluations and treatment, continued negative drug screens, and home improvements. She stated that she had not returned to work because she struggled to stay on task while employed at a factory in 2018. She blamed the Cabinet for failing to provide her daughter with

counseling after she was sexually assaulted and blamed third parties for failing to properly schedule appointments. Mother admitted to sending her daughter to live with D.E.L. despite knowing of, and being the recipient of, D.E.L.'s violent behavior. She denied that any of her actions caused emotional issues with her children and stated if her children had PTSD, as therapists have stated, the trauma disorder was caused by the children being removed from her care.

In May 2021, the Fleming Circuit Court entered an order terminating parental rights of Mother (“termination order”)⁶ finding that – based upon clear and convincing evidence – the statutory requirements of KRS⁷ 625.090 had been met, termination of Mother’s parental rights was in the best interest of the children, and the Cabinet was best qualified to receive custody of the children. Also in May 2021, the circuit court entered additional findings of fact and conclusions of law in

⁶ The circuit court entered separate termination orders for each child, but due to the consistency of the verbiage, we will refer to one termination order for this consolidated appeal.

⁷ Kentucky Revised Statute.

support of the termination order.⁸ Mother appealed.⁹ Additional facts and termination hearing testimony will be added as necessary.

II. STANDARD OF REVIEW

We use the clearly erroneous standard when reviewing whether the termination of parental rights was lawful. *C.J.M. v. Cabinet for Health and Fam. Servs.*, 389 S.W.3d 155, 160 (Ky. App. 2012). “Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.” *Cabinet for Health and Fam. Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014) (internal quotation marks omitted); *see also* CR¹⁰ 52.01. Substantial evidence is evidence that, when “taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in

⁸ The circuit court entered separate findings of fact and conclusions of law for each child, but again, due to the consistency of the verbiage, we will refer to one findings of fact and conclusions of law for this consolidated appeal.

⁹ Mother’s legal counsel filed an appellate brief commonly referred to as an “*Anders* brief,” *Anders v. California*, 386 U.S. 738, 87 S. Ct. 738, 18 L. Ed. 2d 493 (1967), essentially stating the appeal lacks meritorious assignments of error to raise. However, a parent’s right to counsel – in Kentucky parental rights termination cases – is rooted in statute, KRS 625.080(3). Pursuant to *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), an “*A.C.* brief” need only say that, after a conscientious examination of the record, counsel concluded there are no non-frivolous grounds for reversal. Here, the motion to withdraw is addressed by separate order. Mother did not file an additional *pro se* brief.

¹⁰ Kentucky Rule of Civil Procedure.

the minds of reasonable men.” *Blankenship v. Lloyd Blankenship Coal Co., Inc.*, 463 S.W.2d 62, 64 (Ky. 1970) (internal quotation marks and citation omitted).

III. ANALYSIS

“While the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution.”

M.E.C. v. Commonwealth, Cabinet for Health & Fam. Servs., 254 S.W.3d 846, 850 (Ky. App. 2008).

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

K.H., 423 S.W.3d at 209.

A. Adjudged Abused/Neglected

At the termination hearing, SW Tackett testified that the children were previously adjudged to be abused and/or neglected by the Fleming District Court on the basis that (1) Mother was not compliant with her schizophrenia medication management and mental health treatment; (2) she was not properly supervised with the children in accordance with court orders; and (3) Mother and custodial Father

violated a court order not to use physical discipline on the children. The circuit court refers to this adjudication in its findings of fact and conclusion of law – stating that the children were “previously adjudicated neglected by the Fleming District Court.” This first element is easily assessed and met.

B. Best Interest: KRS 625.090(3)

KRS 625.090(3)(a)-(f) outline the six factors a circuit court must consider when determining the child’s best interest and a ground for termination. *K.H.*, 423 S.W.3d at 212. The circuit court does not need to specifically address each factor, as long as the court’s findings reflect that each factor was properly considered. *Id.* Specifically, KRS 625.090(3)(a)-(f) state that

[i]n determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in

KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child’s best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child’s welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

First, KRS 625.090(3)(a), relating to parental mental health, is relevant here because Mother suffers from mental illness as defined by KRS 202A.011(9).¹¹ The court aptly noted in the findings of fact and conclusions of law that Mother

reports being diagnosed with schizophrenia. . . . Although she appears to be compliant with her medication currently, she testified that she has been noncompliant for up to six months just a few years ago. [Custodial Father] is her primary source of support and shows little insight into her condition, testifying that he did not see any issue with leaving [Mother] alone with

¹¹ KRS 202A.011(9) defines “[m]entally ill person” as “a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person’s affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors[.]” While the court recognized that Mother’s mental health concerns were being managed through medicine, the court properly included her history of mental illness in its analysis.

the [children] (despite court orders) even if she were not properly taking her medication.

Further, at the termination hearing, SW Tackett testified that Mother did not understand how her mental health issues led to the maltreatment of the children. Additionally, CTAC Birch testified that Mother's own trauma and the residual mental health issues led to a lack of empathy for her children's experiences, her failure to take responsibility for the children's removal, and her poor ability to detect risk to her children.

Second, applying KRS 625.090(3)(b), relating to acts of abuse or neglect, the court recognized that at least one of the children¹² was "abused or neglected" as defined by KRS 600.020(1). The statute states, in part, "[a]bused or neglected child" means a child whose health or welfare is harmed or threatened with harm when . . . (a) [h]is or her parent . . . (1) [i]nflicts or allows to be inflicted upon the child physical or emotional injury . . . [or] (2) [c]reates or allows to be created a risk of physical or emotional injury[.]" KRS 600.020(1). The circuit court was provided with hours of testimony satisfying this element. Custodial Father and Mother used corporal punishment for discipline despite being instructed by the court to refrain from such actions. Also, numerous mental health professionals testified that the children had been harmed emotionally and

¹² The statute only requires the abuse or neglect to be inflicted upon "*any* child in the family[.]" KRS 625.090(3)(b) (emphasis added).

physically by custodial Father's and Mother's maltreatment. At the termination hearing, Jessica Chatman, a mental health professional ("MHP Chatman"), testified that the daughter "did experience some significant physiological and emotional distress . . . which would be an emotional injury evidenced by the impairment shown from the standardized assessment that she completed."

Daughter's functional impairments were "likely a result of an on-going threat of violence and repeated pattern of dysfunctional caregiver behavior." Further, the court referred to testimony that Mother

struggled to care for the [children] without the assistance of her grandparents in the past, that she lacked empathy for her [daughter's] experience as a victim of neglect and abuse, that she sent the [daughter] to live with [D.E.L.], whom [Mother] alleged had abused her in the past. [Mother's] dismissiveness and lack of understanding into why sending a child to live with the mother's alleged abuser is problematic, and speaks volumes about this case.

Third, as it relates to KRS 625.090(3)(c) and the Cabinet's steps towards reunification, the court determined that the Cabinet made reasonable efforts to reunite the family, but Mother did not make sufficient progress on her most recent case plan. SW Tackett testified that the Cabinet gave Mother referrals for mental health treatment, substance abuse treatment, and parenting classes, but despite this, "things with the family were not getting any better." Additionally, the Cabinet offered – and Mother and custodial Father accepted – parenting classes;

the Cabinet determined that a second round of parenting classes was necessary; however, SW Tackett testified that they declined additional classes, stating that the parenting courses did not help the first time.

Fourth, relating to KRS 625.090(3)(d) and the efforts and adjustments Mother has made, the court's findings of facts and conclusions of law stated that Mother and custodial Father "have failed to take advantage of the services offered by the Cabinet" and their limited progress on the case plan is "unacceptably minimal." The court stated that although the parents had completed some parenting classes, they still failed "to take even a modicum of responsibility for [their children] remaining in foster care, placing blame on either the Cabinet, Mother's grandparents, or other third parties." The court noted that Mother's "dismissiveness and lack of understanding into why sending a child's sibling to live with the mother's alleged abuser is problematic, and speaks volumes about this case."

Fifth, KRS 625.090(3)(e) relates to the physical, emotional, and mental health of the children. The court heard testimony that the children struggled emotionally and physically due to the maltreatment from Mother and custodial Father. Testimony revealed that the children required additional, specialized services for physical and emotional well-being. Testimony raised concerns about Mother's ability to perform executive functions, specifically taking

the children to the necessary medical appointments. MHP Chatman testified that the daughter was emotionally injured by Mother, and the older son and middle son were at risk of emotional injury if they continued to be subjected to the persistent threat of physical violence that they were experiencing and the repeated pattern of dysfunctional caregiver behavior. Moreover, the court stated that the children's conditions have "improved since placement in foster care and continued progress is expected if termination is granted."

Finally, pertaining to KRS 625.090(3)(f) and Mother's ability to provide physical care and maintenance, the court determined, after testimony by an employee of the Fleming County Child Support Office, that Mother "has failed to pay a very minimal amount of child support despite being capable of working." Specifically, testimony revealed that Mother was ordered to pay \$60 per month, starting in March 2020, yet as of the termination hearing in March 2021, she had only made one payment.

Clearly, the circuit court considered the factors of KRS 625.090(3) when analyzing the best interests of the children. We agree with the circuit court's findings of fact and conclusions of law that the children deserve "permanency, stability and safety" and Mother is unable to provide that for the children. Therefore, the court did not err in finding termination of Mother's parental rights was in the best interests of the children.

C. Ground for Termination: KRS 625.090(2)

Kentucky law also requires the existence of at least one factor enumerated in KRS 625.090(2). Here, the circuit court found that at least three of the factors in this statute were present. Relevantly, KRS 625.090(2) provides:

No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence . . .

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

. . .

(g) 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;

. . .

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]

In accordance with KRS 625.090(2)(e), the circuit court found Mother has “continuously or repeatedly failed or refused to provide essential parental care and protection for the [children], considering the age of the [children.]” The court pointed out that Mother struggled to care for her children without the assistance of her grandparents and that she lacked empathy for her children and their experiences. The court stated that Mother “consistently failed to participate in family therapy” when it was available. Additionally, the court determined that “[g]iven the [Mother’s] inability to take accountability and responsibility for [her] role in the [children’s] maltreatment after having been offered services for several years, the Court does not believe there is a reasonable expectation of improvement in [her] ability to care for the [children].” The court also stressed concern in Mother’s poor ability to detect risk to her children, exemplified by sending her daughter to live with an adult with a known history of domestic violence.

In accordance with KRS 625.090(2)(g), the circuit court found that Mother “failed to provide the [children] with adequate care, supervision, food, clothing, shelter and education or medical care necessary for the [children’s] well-being.” The court noted that Mother had only made one child support payment despite previously being employed, possessing a valid driver’s license, and testifying that her household had three vehicles. Additionally, the court heard testimony from CTAC Birch that Mother had a difficult time meeting the

children’s needs and following through with executive functioning tasks, such as getting the children to appointments.

In accordance with KRS 625.090(2)(j), the circuit court found Mother “failed to make sufficient progress towards identified goals in a court-approved case plan, resulting in the [children] remaining committed to the Cabinet and remaining in foster care for fifteen (15) out of the previous forty-eight (48) months.”

Therefore, the circuit court did not err in finding the existence of at least one of the termination grounds enumerated in KRS 625.090(2).

IV. CONCLUSION

For reasons contained herein, we AFFIRM the order of the Fleming Circuit Court terminating Mother’s parental rights.

ALL CONCUR.

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