

RENDERED: SEPTEMBER 30, 2022; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-0749-ME

W.C.H., JR. AND A.F.L.

APPELLANTS

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
FAMILY COURT DIVISION  
HONORABLE DEANNA WISE HENSCHEL, JUDGE  
ACTION NO. 21-AD-00017

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES AND L.C.H., A  
MINOR CHILD

APPELLEES

AND

NO. 2021-CA-0752-ME

W.C.H., JR. AND A.F.L.

APPELLANTS

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
FAMILY COURT DIVISION  
HONORABLE DEANNA WISE HENSCHEL, JUDGE  
ACTION NO. 21-AD-00018

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES AND C.J.H., A  
MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CALDWELL, TAYLOR, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: W.C.H., Jr. (Father) AND A.F.L. (Mother) appeal from the McCracken Family Court's Findings of Fact and Conclusions of Law terminating parental rights to their minor children. In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for the parents filed an *Anders*<sup>1</sup> brief stating that the appeal is frivolous, which was accompanied by a motion to withdraw as counsel. After a careful review of the record, we affirm. We further grant counsel's motion to withdraw by separate order.

C.J.H. was born on December 9, 2019. She tested positive for amphetamine and methamphetamine shortly after birth. Mother also tested positive. The Cabinet for Health and Family Services (CHFS) was notified, and investigative worker Erin Graves went to the hospital to interview the parents. She

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

noticed the car seat intended to transport C.J.H. home from the hospital was infested with roaches.

While C.J.H. remained in the hospital, Ms. Graves visited the parents' home. There was another child in the home, L.C.H., born October 22, 2018. Ms. Graves noticed that L.C.H. was dirty and unable to stand or bear weight on his legs. The home was very dirty with holes in the walls and signs of roach and mice infestations. There was no designated area for C.J.H. to come home from the hospital. Mother stated they had a bassinette, but had not yet put it together. Mother gave many excuses for how she could have tested positive for methamphetamine at C.J.H.'s birth before eventually admitting she had used illicit substances during her pregnancy. Father denied using substances and denied knowledge of Mother's use. Both parents admitted to untreated mental health disorders. CHFS filed a petition for emergency custody, which was granted. A dependency, neglect, or abuse (DNA) case proceeded in the family court. The children were adjudged neglected or abused by both parents. CHFS filed petitions for termination of parental rights in the family court on March 18, 2021. Following a final hearing, the family court entered judgments and orders terminating the parental rights of both parents to each of the children. These appeals follow.

In Kentucky, termination of parental rights may be granted upon satisfaction, by clear and convincing evidence, of a tripartite test. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, Kentucky Revised Statute (KRS) 625.090(1)(a) requires that a child be adjudged neglected or abused. Second, KRS 625.090(1)(c) requires that termination must be in the child’s best interest. Third, at least one of the conditions set out in KRS 625.090(2) must be established. The family court’s termination decision will be reversed only if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

On appeal, counsel for Mother and Father filed an *Anders* brief stating that the instant appeal is frivolous. When appointed counsel files an *Anders* brief, the Court of Appeals is bound 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.<sup>2</sup> The family court adjudged each of the children to be abused

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<sup>2</sup> We note that *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361, 371 (Ky. App. 2012), requires counsel’s *Anders* brief to refer to “**anything in the record that might arguably support the appeal.**” (Emphasis added.) Counsel’s brief is noncompliant in that regard. Furthermore, counsel’s Statement of the Case fails to comply with the mandates of Kentucky Rule of Civil Procedure 76.12(4)(c)(iv) in that it does not contain “a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample references to the specific pages of the record[.]” Notwithstanding, this Court has conducted a thorough review of the record below. Counsel for the parents is hereby cautioned that future briefs of this caliber are not acceptable to the Court and may result in

or neglected pursuant to KRS 625.090(1)(a)2. Although CHFS was required to prove only one of the factors listed in KRS 625.090(2), for each of the children, the family court made the following findings pursuant to KRS 625.090(2):

(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[.]

Upon careful review of the record, the family court's findings were supported by clear and convincing evidence. Although the parents completed

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sanctions. See *K.M.J. v. Cabinet for Health and Family Services*, 503 S.W.3d 193, 196 (Ky. App. 2016).

parenting classes, they otherwise made no progress on their case plans. Both Mother and Father continued to test positive for methamphetamine throughout the DNA and termination actions. They did not utilize services offered by CHFS to address their substance abuse issues. When asked about their current substance abuse issues at the final hearing, both parents invoked the Fifth Amendment to the United States Constitution and refused to answer. The parents did not utilize services to address their mental health issues and Father admitted he self-medicated with methamphetamine. Although they brought snacks and diapers to visits, the parents never provided essential food, clothing, shelter, medical care, or education for the children. Furthermore, of the 63 opportunities the parents were given to visit the children, they attended only 28 of those visits. The other 35 visits were either cancelled, or Mother and Father did not show up even if they had confirmed to CHFS they would attend. Testimony from Mother revealed, and the family court found, that the parents received COVID-19 stimulus money, but none of the money went towards the care of the children. Mother testified she believed she was entitled to keep the money because “[C.J.H.] was in my stomach and I had [L.C.H.] the entire time.” Finally, it is undisputed that the children were in foster care for fifteen cumulative months out of 48 months preceding the filing of the petition to terminate parental rights. We discern no error.

The family court also found that termination would be in the best interest of each of the children pursuant to KRS 625.090(1)(c). C.J.H. was born premature and tested positive for illicit substances at birth. She is currently meeting all of her developmental milestones and is thriving with her foster family. She is in the only home she has ever known. L.C.H. has undergone physical, occupational, and speech therapy since removal. He is meeting his goals and continues to improve with ongoing therapy. L.C.H. also sees an early childhood mental health specialist who testified L.C.H. is being seen for Unspecified Trauma Related Disorder. He has frequent and intense tantrums, separation issues, and struggles with attachment. The foster parents have been participating in therapy and L.C.H. has had a decrease in negative behaviors and improved bonding with the foster parents. Again, we find no error by the family court.

After conducting a thorough and independent review of the record, we conclude that more than sufficient evidence supports the family court's findings of fact, conclusions of law, and orders terminating the parents' parental rights to their two children. The family court complied with all relevant statutory mandates for involuntarily terminating the parents' parental rights, and the family court conducted an evidentiary hearing where Mother and Father were present and testified. There is no legal basis or reason to set aside the family court's judgment

terminating the parents' parental rights. We agree with counsel that no valid basis exists to warrant relief from the judgment. *See A.C.*, 362 S.W.3d at 371.

For the foregoing reasons, the Findings of Fact and Conclusions of Law of the McCracken Circuit Court, Family Court Division, are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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