

RENDERED: JUNE 3, 2022; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-1071-ME

J.M.

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOE G. BALLARD, JUDGE  
ACTION NO. 21-AD-00006

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND B.S.J., A  
MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1076-ME

J.M.

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOE G. BALLARD, JUDGE  
ACTION NO. 21-AD-00002

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND

FAMILY SERVICES; AND W.B.M., A  
MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1077-ME

J.M.

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOE G. BALLARD, JUDGE  
ACTION NO. 21-AD-00004

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND K.P.N.R.,  
A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GOODWINE, MAZE, AND McNEILL, JUDGES.

McNEILL, JUDGE: J.M. (Mother) appeals from the Hart Circuit Court's findings of fact, conclusions of law, and judgment terminating parental rights to her minor

children.<sup>1</sup> 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*<sup>2</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 grant counsel's motion to withdraw by separate order.

Mother's oldest child, B.S.J., was born on September 29, 2010. B.S.J. was removed from Mother's care by the Cabinet for Health and Family Services (CHFS) when she tested positive for methamphetamine shortly after birth. Mother also tested positive for methamphetamine. B.S.J. was placed with the maternal grandmother, who was awarded permanent custody in 2011. K.P.N.R. was born on December 15, 2014. The record before us indicates he remained in Mother's legal custody (*i.e.*, CHFS did not immediately intervene), but resided with the maternal grandmother. W.B.M. was born on March 10, 2019. Four days after his birth, Mother left W.B.M. with a neighbor. When W.B.M. was approximately five months old, the neighbor took him to a doctor who diagnosed him with failure to thrive. CHFS filed a petition for emergency custody after receiving a report concerning W.B.M.'s health. W.B.M. was placed into foster care on August 15,

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<sup>1</sup> The circuit court also terminated the parental rights of the father of minor child B.S.J. Father did not appeal. The father of minor child K.P.N.R. is deceased, and there is no known putative father of W.B.M.

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

2019. Shortly after W.B.M. entered foster care, CHFS visited the home of maternal grandmother, where K.P.N.R. and B.S.J. resided. The home was in a deplorable condition and an unsafe environment for the children. B.S.J. and K.P.N.R. were removed and placed into foster care on August 22, 2019. Not long after removal, both Mother and maternal grandmother tested positive for methamphetamine.

CHFS entered into a case plan with Mother in which she was required to complete the following tasks: complete substance abuse and mental health assessments and follow all recommendations; complete parenting classes; comply with drug screens; and maintain stable housing and employment. Mother failed to make substantial progress on her case plan. Although she completed the substance abuse and mental health assessments, Mother was discharged from an intensive outpatient program for non-compliance and also failed to consistently show for drug screens. Mother did have a couple of months of consistently clean drug screens that resulted in her being able to have supervised visits with B.S.J. and K.P.N.R. for a short period of time. However, she has had no contact whatsoever with W.B.M. since she left him with the neighbor and did not seek to have contact with him after removal. Mother did not complete parenting classes. By the time the circuit court conducted the termination hearing on July 12, 2021, Mother was in her third inpatient substance abuse treatment program. She admitted to being

addicted to drugs for at least sixteen years and that methamphetamine was her drug of choice. Finally, Mother admitted during her testimony that she had no contact with CHFS from June 2020 until June 2021. Following a final hearing, the circuit court entered judgments and orders terminating Mother's parental rights to each of her three children. This appeal followed.

In Kentucky, termination of parental rights is proper upon satisfaction, by clear and convincing evidence, of a tripartite test. *Cabinet for Health and Family Serv. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, KRS<sup>3</sup> 625.090(1) 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 filed an *Anders* brief stating that the instant appeal is frivolous. However, pursuant to *Anders*, counsel identifies portions of the record that might arguably support Mother's appeal.<sup>4</sup> These

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<sup>3</sup> Kentucky Revised Statute.

<sup>4</sup> *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400.

arguments primarily focus on the assertion that Mother was in inpatient treatment at the time of the termination hearing and would be able to resume working her case plan once she achieves sustained sobriety. Counsel also identifies CHFS's failure to make reasonable efforts to reunite Mother with her children as a potential argument. We interpret these arguments as broad assertions that termination was not in the best interest of the children. *See R. M. v. Cabinet for Health and Family Services*, 620 S.W.3d 32, 38 (Ky. 2021); KRS 625.090(3).

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. The circuit court adjudged each of the children to be abused 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), the circuit court found multiple factors. The circuit court found that Mother had abandoned B.S.J. and W.B.M. for a period of not less than ninety (90) days pursuant to KRS 625.090(2)(a). At the time of the final hearing in 2021, Mother had not had custody of B.S.J. for approximately eleven years. Mother abandoned W.B.M. with a neighbor in 2019 when he was just four days old and has had no contact whatsoever with him since that time, nor did she ever request visitation with him. Accordingly, we discern no error.

For each of the children, the circuit 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 circuit court's findings were supported by clear and convincing evidence. The district court record shows that Mother was ordered to pay child support for each of the children, but testimony from CHFS Supervisor Rhonda Robertson, revealed that Mother never provided for the children. Mother has never provided essential food, clothing, shelter,

medical care, or education for the children. When K.P.N.R. and B.S.J. were removed, the home was in a deplorable condition. Court-Appointed Special Advocate Sonya Atwell testified that the structure of the home was in such ill-repair that wind was blowing inside of the home. The floors were rotten, electrical cords were exposed, and the home had no insulation. Finally, it is undisputed that the children were in foster care for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights. We discern no error.

The circuit court also found that termination would be in the best interest of each of the children pursuant to KRS 625.090(1)(c). Although Mother was a resident at an inpatient treatment facility at the time of the termination hearing, it was her third attempt to seek inpatient treatment since the children were removed. She failed to make progress on her case plan and, while she did have several visits with the older children, she made no requests to visit W.B.M. When asked why she had no contact with CHFS from June 2020 – June 2021, Mother testified, “I felt like I didn’t need to cause I was hooked on meth.” Testimony from CHFS Supervisor Rhonda Robertson indicated that each of the children had made significant progress in foster care. Although they would not be adopted together, all three children will likely be adopted.



After conducting a thorough and independent review of the record, we conclude that more than sufficient evidence supports the circuit court's findings of fact, conclusions of law, and judgments terminating Mother's parental rights to her three children. The circuit court complied with all relevant statutory mandates for involuntarily terminating Mother's parental rights, and the circuit court conducted an evidentiary hearing where Mother was present and testified on her own behalf. There is no legal basis or reason to set aside the circuit court's judgment terminating Mother's parental rights. We agree with counsel that no valid basis exists to warrant relief from the judgment. *A.C.*, 362 S.W.3d at 371.

Accordingly, the circuit court did not err by terminating Mother's parental rights as to her three children, and we affirm the Hart Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET  
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SERVICES, COMMONWEALTH OF  
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