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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1230-ME

T.L.M., SR.

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 21-AD-00010

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.D.B.; AND
Z.D.M., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1232-ME

T.L.M., SR.

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 21-AD-00009

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.D.B.; AND
T.L.M., JR., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CALDWELL, GOODWINE, AND JONES, JUDGES.

JONES, JUDGE: T.L.M., Sr. (“Father”) brings this appeal from the Hopkins Circuit Court’s order terminating his parental rights to his two minor children, Z.D.M. and T.L.M., Jr. (“the children”). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Father filed *Anders*¹ briefs stating that she did not believe there were any meritorious issues for her to present to this Court and that in her professional opinion an appeal would be frivolous. Counsel then filed motions seeking the Court’s permission to withdraw from her representation of Father on appeal. The Court advised Father of his right to continue these appeals *pro se* and he was provided with additional time to file briefs of his own choosing. Father did not file briefs or take any other action in relation to these appeals. The Cabinet filed a combined appellee brief in support of the circuit court’s orders of termination.

Following a review of the record and all applicable law, we grant counsel’s motions to withdraw by separate order and affirm the circuit court’s

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

orders terminating Father's parental rights.²

I. BACKGROUND

T.L.M., Jr., was born in May 2012, and Z.D.M. was born in October 2014. This family has a very long history with the Cabinet dating back to 2013, before the birth of Z.D.M. Over the years, Father has perpetrated domestic violence on Mother in front of the children, has failed to successfully maintain his sobriety, has engaged in a pattern of criminal behavior resulting in frequent jail time, and has refused to abide by prior orders regarding the care of children.

The children were removed from the care of their parents in 2015 as part of dependency, neglect, and abuse ("DNA") actions. Father stipulated to neglect as part of those proceedings, and the Cabinet received custody of the children. The Cabinet and Father agreed to a case plan. Initially, Father did not make much progress toward completion of his case plan. In time, however, Father began working his case plan in earnest and completed it to the Cabinet's satisfaction. This allowed Father to regain custody of the children on July 2, 2018. In the order restoring custody, Father was directed to continue cooperating with in-home services and to refrain from having any contact with Mother.

² The children's biological mother, K.B., voluntarily terminated her parental rights as part of the proceedings below, waiving her right to appeal the termination of her rights. Mother has not entered an appearance in these appeals despite being named as an appellee. Mother is mentioned in this Opinion only inasmuch as is necessary to place this matter in the proper factual and procedural context.

The family's reunification was short lived; the children were returned to the Cabinet's custody under an emergency order on September 23, 2019, after Father repeatedly violated the order prohibiting him from having contact with Mother. During the DNA proceedings stemming from this second removal, Father admitted violating the court's order on at least three occasions and stipulated to neglect. The court ordered the children committed to the Cabinet's custody on October 21, 2019. Pursuant to the Cabinet's recommendation, Father was ordered to follow the recommendations of his substance abuse assessment, remain substance free, utilize skills learned from domestic violence and parenting programs, complete a follow-up with a mental health provider regarding poor decision making, submit to random urine screens, cooperate with the Cabinet, and abide by all court orders. Father was incarcerated at the time this order was entered.

When Father was released from custody, he began working his case plan with the Cabinet. He made substantial progress in doing so and the Cabinet began trial in-home visitation between Father and the children in March 2020. However, in early July 2020, the Cabinet learned that Father had been arrested and jailed for assaulting Mother. Father was convicted of the offense and ordered to serve sixty-two days. Upon his release, he contacted the Cabinet to begin working his case plan. Because Father's prior case plan had expired, the Cabinet updated it;

most of Father's tasks remained the same but the Cabinet added a new requirement for Father to complete a new batterer's intervention assessment.

Father was unable to make much progress on the updated case plan because he was arrested again on January 27, 2021. This time, Father was charged with public intoxication (controlled substance), which was also a probation violation of his 2016 criminal convictions. He was convicted of the new offense and his parole was revoked. Unless paroled, the earliest Father is scheduled to be released from custody is October 30, 2023. Father has participated in the limited services available to him in prison but has not been able to fully complete his case plan due to his incarceration.

On March 12, 2021, the Cabinet petitioned to terminate father's parental rights to both children. The family court held a hearing on the termination petitions on September 7, 2021, at which Mother; Father; a Cabinet representative, Emilee Miller; the children's foster parent; and Father's mother testified.

The testimony demonstrated a history of drug use and domestic violence in the family, both of which took place in the children's presence. It also revealed a past pattern of criminal conduct by Father as well as Father's prior refusal to abide orders related to the children's care, such as not having contact with Mother.

Ms. Miller, the family's designated case worker, testified that while Father was able to complete many aspects of his case, his behavior suggests that he has not been able to put the skills he has learned to use. Despite having received many services from the Cabinet, Father has not consistently maintained sobriety and has continued to periodically engage in criminal conduct and commit domestic violence against Mother. The testimony also indicated that while Father owns a home and roofing business, his support of the children has been limited to the time they were in his care.

Ms. Miller explained that the Cabinet has been working with Father since 2015 and has provided him with a plethora of services. Despite the Cabinet's best efforts, Father has been unable to consistently maintain a lifestyle compatible with parenting children. Ms. Miller does not believe that Father is able to parent the children at this time, and she is unaware of any additional services the Cabinet could provide to Father that will allow him to do so in the immediate foreseeable future.

Ms. Miller further testified that the children are continuing to make progress since being recommitted to the Cabinet's care. The children's therapist recommended that their visits with Father cease so that they can move forward in their treatment. The children, especially T.L.M., Jr., have continued therapeutic

needs, which the Cabinet is able to meet should the children remain in its care.

The Cabinet's ultimate goal for the children is adoption.

For his part, Father acknowledged his past shortcomings. He believes that he has substantially completed all his case plans and that upon his release he will be able to parent the children. He explained that he would be able to utilize the skills learned, notwithstanding his inability to do so in the past. He further testified that he has a strong bond with the children despite the fact that they have been in foster care for most of their lives. He does not want to have his parental rights terminated and believes that once he is released, he will be able to regain custody and parent the children. He believes that Mother is the root cause of most of his past problems and now that she has agreed to voluntarily terminate her rights, he will be able to move on.

Following the testimony, the family court entered findings of fact and conclusions of law and judgments terminating Father's parental rights to both children on October 5, 2021. Father's appointed counsel filed *Anders* briefs with this Court.

II. ANALYSIS

In *A.C.*, this Court adopted the procedures identified in *Anders* to appeal from orders terminating parental rights when counsel has concluded that the appeal is frivolous. *A.C.*, 362 S.W.3d at 371. Counsel is required to "conduct[] a

thorough, good-faith review of the record[.]” *Id.* “[O]nce counsel has reached the conclusion that the appeal is wholly frivolous, counsel ‘should so advise the court and request permission to withdraw.’” *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400). “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.* This review “is akin to palpable error review requiring us only to ascertain error which ‘affects the substantial rights of a party.’” *A.C.*, 362 S.W.3d at 370.

KRS³ 625.090 sets forth the requirements which must be met before a court in Kentucky can involuntarily terminate a parent’s rights to his children. First, as it concerns these appeals, the lower court must determine that the children are abused or neglected children or that the children were previously determined to be abused or neglected children by a court of competent jurisdiction. KRS 625.090(1)(a)1.-2. Second, a petition seeking the termination of parental rights must have been filed by the Cabinet pursuant to KRS 620.180 or 625.050. KRS 625.090(1)(b)1. Third, the lower court must find that termination is in the best interests of the children. KRS 625.090(1)(c). Finally, the lower court must find by

³ Kentucky Revised Statutes.

clear and convincing evidence the existence of one or more of the eleven grounds (a) through (k) listed in KRS 625.090(2). Even if all these requirements are met, the court may choose in its discretion not to terminate a parent’s rights if the parent has established by a preponderance of the evidence that the children will not continue to be abused or neglected if returned to the parent. KRS 625.090(5).

After the termination hearing, the lower court is required to make findings of fact and conclusions of law supporting its decision on the termination petition. KRS 625.090(6). “Broad discretion is afforded to courts to determine whether parental rights should be terminated, and our review is limited to a clearly erroneous standard.” *Cabinet for Health and Family Services v. H.L.O.*, 621 S.W.3d 452, 462 (Ky. 2021). Factual findings which are supported by substantial evidence of record are not clearly erroneous. *R.M. v. Cabinet for Health and Family Services*, 620 S.W.3d 32, 37 (Ky. 2021). “Substantial evidence is that which is sufficient to induce conviction in the mind of a reasonable person.” *Id.* “When the findings are supported by substantial evidence, then appellate review is limited to whether the facts support the legal conclusions which we review *de novo*. If the [lower] court’s factual findings are not clearly erroneous and the legal conclusions are correct, we are limited to determining whether the [lower] court abused its discretion in applying the law to the facts.” *H.L.O.*, 621 S.W.3d at 462 (citing *L.D. v. J.H.*, 350 S.W.3d 828, 829-30 (Ky. App. 2011)).

Having reviewed the evidence in light of the termination statute, we cannot identify any manifest error by the family court, which substantially affects Father's rights. Father stipulated to neglect at least twice as part of the previous DNA proceedings satisfying the first termination requirement. KRS 625.090(1)(a)1.-2. The Cabinet filed the petitions at issue after the children had been in its custody for a significant period of time, satisfying KRS 625.090(1)(b)1. Next, while the family court found several of the conditions listed in KRS 625.090(2) were satisfied, only one is required to support termination. It is undisputed that the children have been in foster care under the responsibility of the cabinet for thirty-two of the previous forty-eight months, which easily satisfies KRS 625.090(2)(j).

As to best interests, the family court's order indicates that the family court considered each of the factors. After having done so, the family court made a reasoned decision that termination was in the children's best interests. It is not our place to second guess this determination, especially where the children had been in foster care for so long without any lasting change in Father's ability to comply with the law and maintain his sobriety.

In conclusion, the record plainly shows that Father has failed to maintain a lifestyle consistent with his parenting obligations despite having received services from the Cabinet since 2015. While he has completed classes

and other services, he has not been able to put the skills he has learned into practice. As a result, these children have been in foster care most of their lives. They are entitled to some degree of permanency. And, despite his protestations otherwise, there is nothing to suggest that Father is likely to improve in the immediately foreseeable future such that these children would not be abused and neglected if returned to his care upon his release from custody.

III. CONCLUSION

For the foregoing reasons, the orders of the Hopkins Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET
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