

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

NO. 2021-CA-1390-ME

A.L.F., BIOLOGICAL FATHER

APPELLANT

v.

APPEAL FROM BRACKEN CIRCUIT COURT  
HONORABLE STOCKTON B. WOOD, JUDGE  
ACTION NO. 21-AD-00005

CABINET FOR HEALTH AND  
FAMILY SERVICES; C.R., FOSTER  
PARENT; H.N.L.F., A MINOR CHILD;  
AND S.M.W., BIOLOGICAL  
MOTHER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GOODWINE, JONES, AND MAZE, JUDGES.

JONES, JUDGE: A.L.F. (“Father”) brings this appeal from the Bracken Circuit Court’s order terminating his parental rights to his minor child, H.N.L.F. (“Child”).

In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d

361 (Ky. App. 2012), counsel for Father filed an *Anders*<sup>1</sup> brief, which was accompanied by a motion to withdraw. Thereafter, this Court advised Father of his right to continue this appeal *pro se*, and he was provided with additional time to file a brief of his own choosing. Father did not file a brief or take any other action in relation to this appeal. The Cabinet filed an appellee brief in support of the circuit court's order of termination.

Following careful review of the record, and all applicable law, we grant counsel's motion to withdraw by separate order and affirm the circuit court's order terminating Father's parental rights.<sup>2</sup>

## **I. BACKGROUND**

Child was born in February 2012. The family was living in Ohio in 2016 when Child was first removed from her parent's care due to Mother's substance misuse and Father's domestic violence against Mother. At that time, Child was placed in the care of J.W., her maternal aunt ("Maternal Aunt"). In January 2017, the Ohio court awarded Maternal Aunt permanent custody of Child. Sometime thereafter, Maternal Aunt and Child began residing in Kentucky. In

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

<sup>2</sup> Appellee, S.W., is Child's biological mother. Mother's parental rights were also terminated as part of the order on appeal. However, Mother has not appealed and has not entered an appearance in this appeal despite being named as an appellee. This Opinion considers only the propriety of the circuit court's termination of Father's parental rights. Mother is mentioned only insofar as is necessary to place this matter in the proper factual and procedural context.

April 2019, the family came to the attention of the Cabinet for Health and Family Services (“the Cabinet”) after concerned citizens reported seeing Child and her cousins, one of whom was only two years of age, playing in the road unsupervised. Maternal Aunt subsequently lost and regained custody three times. Ultimately on June 16, 2020, the circuit court entered an order committing Child to the Cabinet’s custody. On March 9, 2021, the Cabinet changed its permanency goal for Child from reunification to adoption. It filed the petition giving rise to the termination order at issue on May 5, 2021.

The trial court held an evidentiary hearing on September 9, 2021.<sup>3</sup> Mother and Father were present at the hearing along with their respective counsel. Child’s guardian *ad litem*, a Cabinet representative, and the Cabinet’s legal counsel were also present at the hearing. The Cabinet called Courtney Conley, the family’s ongoing social worker since September 2020, to testify on its behalf. Ms. Conley recounted the circumstance giving rise to Child’s initial removal from Mother and Father and the events leading up to her commitment to the Cabinet’s custody in June of 2020.

With respect to Father, Ms. Conley testified he has not maintained any type of consistent or meaningful relationship with Child since she was removed from his care in 2016. During the time Child was in Maternal Aunt’s care, Father

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<sup>3</sup> The hearing was conducted remotely using video conferencing technology.

would occasionally visit Child; however, such visitation was sporadic. Father did not visit Child or otherwise maintain any contact with her following her removal from in-home care in June 2020. Additionally, over the years Father has been incarcerated numerous times preventing him from being able to provide support and stability for Child.

For a substantial period of time, Father neglected to contact the Cabinet to set up a case plan. Though Father was incarcerated during part of this time, the Cabinet attempted to communicate with him and sent him incarcerated parent packets. He did not respond. In fact, Father took no steps to set up a plan with the Cabinet until March 2, 2021, shortly before the Cabinet changed its plan from reunification to adoption. Although Father case planned with the Cabinet in March 2021 and August 2021, at the time of the final hearing, Father had yet to complete any steps in his case plan, including drug testing, therapy, finding stable housing, and cooperating with the Cabinet.

Given the fact that Child had been removed from Father's care in 2016, and he had yet to place himself in a position to parent and support Child, Ms. Conley did not believe that there were any additional services the Cabinet could provide to Father that would lead to a reasonable expectation of future improvement in Father's ability to parent.

Ms. Conley also testified that due to Father's failure to visit and/or maintain contact with Child, Child felt no significant bond with him. In contrast, Child had blossomed since entering the Cabinet's care, making great strides in her interaction with others. Ms. Conley reported that Child was happy and was making progress overcoming her speech delay. At the time of the hearing, Child was residing in an adoptive home and was bonded and attached to her foster family.

Father testified on his own behalf. Father maintained that between 2016 and 2019 while Child was in Maternal Aunt's care, he visited Child and provided financial support and various necessities for Child. He admitted, however, that he stopped providing support in 2019 and that he had not seen Child for over a year. Father believes he is in a much better place in his life and with additional time would be able to provide for and parent Child. He stated that he is now sober and employed full-time. At the time of the hearing he was living in a homeless shelter so that he could save money for a residence. He noted that he receives positive support from his sister and personnel at the shelter. He maintained that part of his delay in completing his case plan was due to problems with his medical card, which he had cleared up.

Father acknowledged his past shortcomings, including his prior incarcerations and failure to maintain contact with Child. He believes, however,

that he is able to change his behavior. He does not wish for Child to remain in foster care and is working to get his life in order so Child can reside with him. He stated that he did not previously seek custody because he was not in a financial position to care for Child.

Following the testimony, the circuit court entered its order terminating parental rights and order of judgment and findings of fact and conclusions of law on October 28, 2021. This appeal followed.

## 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.* “Once 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.

KRS<sup>4</sup> 625.090 sets forth the requirements which must be met before a court in Kentucky can involuntarily terminate a parent’s rights to his child. First, as it concerns this appeal, the lower court must determine that the child is an abused or neglected child or that the child was previously determined to be an abused or neglected child 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 interest of the child. KRS 625.090(1)(c). Finally, the lower court must find by 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 child will not continue to be an abused or neglected child 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. *Id.* “Broad discretion is afforded to courts to determine whether parental

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<sup>4</sup> Kentucky Revised Statutes.

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 CR<sup>5</sup> 61.02).

An abused or neglected child includes a child whose health or welfare is harmed or threatened with harm when her parent “[a]bandons . . . the child[.]” KRS 600.020(1)(a)7. In paragraph 9 of its findings of fact, the circuit court explained how Father had abandoned Child by failing to visit or support her for many years, most notably after her commitment to out-of-home care in June 2020. The circuit court specifically noted that Father’s abandonment was not limited to his time in prison. Despite having been released, Father did not support Child or timely work to reestablish a relationship with Child. These facts are sufficient to

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<sup>5</sup> Kentucky Rules of Civil Procedure.



support the circuit court's conclusion that Father abandoned child. *M.P.R. v. Cabinet for Health and Family Services*, 520 S.W.3d 409, 414 (Ky. App. 2017).

The next requirement is that the termination petition must have been filed by the Cabinet "with the court pursuant to KRS 620.180 or 625.050[.]" KRS 625.090(1)(b)1. Child was committed to the Cabinet's custody, and the Cabinet subsequently filed its petition seeking termination of parental rights on or about May 5, 2021, satisfying KRS 625.090(1)(b)1.

Regarding the existence of grounds for termination, the circuit court determined that: (1) Father had abandoned Child for a period of not less than ninety (90) days, KRS 625.090(2)(a); (2) for a period of not less than six (6) months Father had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for Child and that there was no reasonable expectation of improvement in parental care and protection, considering Child's age, KRS 625.090(2)(e); (3) that Father, for reasons other than poverty alone, had continuously or repeatedly failed to provide or was 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, KRS 625.090(2)(g); and (4) that Child had 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, KRS 625.090(2)(j).

Again, we can discern no error in the circuit court's conclusions that KRS 625.090(2)(a), (g), (e), and (j) exist in this case. At the time of the final hearing, Father had not seen the Child for over a year and offered no credible explanation for his failure to maintain contact with Child, especially following his release from prison. While Father took some belated actions to set up a case plan with the Cabinet in early 2021, those actions were far too little and much too late. Father offered no excuse for his failure to take action earlier. The fact is that Father failed to maintain a lifestyle consistent with his parenting obligations. His repeated pattern of criminal conduct resulted in frequent incarcerations, which kept him from being able to maintain steady employment and housing suitable for a child. Aside from some minimal support and sporadic visits prior to 2019, Father had done nothing for Child since her removal from his and Mother's care in 2016. And, despite his protestations otherwise, there is nothing to suggest that Father is likely to improve in the immediately foreseeable future such that Child would not be abused and neglected if returned to his care.

Lastly, the circuit court concluded that termination of Father's rights was in Child's best interest. The circuit court weighed the appropriate factors and made a reasoned determination that termination was best for Child. Child was

living in a supporting pre-adoptive home, was making great progress, and had established appropriate relationships with her caregivers. In contrast, Child was not significantly bonded to Father given the substantial amount of time he had been absent from her life. Considering Father's inability to provide Child with stable housing, contribute to her well-being, and his failure to timely complete any aspect of his case plan, we cannot disagree in the least with the circuit court's conclusion that termination was best for Child.

### **III. CONCLUSION**

For the foregoing reasons, we affirm the Bracken Circuit Court's order terminating Father's parental rights.

ALL CONCUR.

**BRIEF FOR APPELLANT:**

Jeffrey A. Harrington  
Cynthiana, Kentucky

**BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:**

Dilissa G. Milburn  
Mayfield, Kentucky