

RENDERED: JUNE 17, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1437-ME

M.L.B.

APPELLANT

v. APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 21-AD-00011

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; L.N.B., A MINOR
CHILD; AND T.N.B.

APPELLEES

AND

NO. 2021-CA-1438-ME

M.L.B.

APPELLANT

v. APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 21-AD-00012

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; C.L.B., A MINOR
CHILD; AND T.N.B.

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: GOODWINE, JONES, AND MAZE, JUDGES.

MAZE, JUDGE: This is an appeal from the Fleming Circuit Court’s Termination of Parental Rights and Order of Judgment entered on November 2, 2021. Counsel for Appellant has filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). By Order entered on February 2, 2022, Appellant was granted thirty (30) days in which to file a *pro se* supplemental brief. He has failed to do so and the issues now stand submitted.

Appellees L.N.B. (born February 2, 2011) and C.L.B. (born March 5, 2018), are the children of Appellant M.L.B. (Father) and Appellee T.N.B.¹ (Mother). The children were committed to the custody of the Cabinet for Health and Family Services (Cabinet) by orders of the Fleming District Court in Case No. 20-J-00031-001 (L.N.B.) and Case No. 20-J-00032-001 (C.L.B.) entered on August 13, 2020. A trial on the Cabinet’s petition for termination of parental

¹ T.N.B. has not joined the within appeal.

rights commenced in the Fleming Circuit Court via Zoom on September 29, 2021 and concluded on September 30, 2021.

Teresa Bruns, a Family Care Coordinator/Case Manager with KVC KSTEP, testified that she had worked with Father since February 6, 2020, and that following two referrals he failed to complete the services offered by KSTEP. The first referral was closed as incomplete while the second terminated due to noncompliance, including multiple missed visits. She further testified that Father refused to participate in residential treatment until such time as it was determined that both the children were his.

Christopher Blake Compton has been the social worker assigned to the family since December of 2020. He stated that the Cabinet became involved based upon allegations of domestic violence, concerns about the environment in the home, and a history of substance abuse by both parents. Despite lengthy contact with the family, Compton testified that Father had never signed a case plan with him. Indeed, he stated that despite repeated attempts he had little contact with Father, reporting only a single successful communication, the week of trial.

Compton testified that Father failed to complete a court-ordered hair follicle test and, at the time of trial, had an active warrant in addition to his previous criminal convictions for burglary and forgery. He further stated that

Father has had no contact with the children since they were removed from the home and placed with M.C., their foster mother.

The family's previous social worker, Katie Thompson, testified that Father was never compliant, repeatedly testing positive for marijuana, methamphetamine, amphetamine, and MDMA (Ecstasy). He failed to participate in intensive outpatient or residential treatment. He did not return calls or provide random drug screens. Although a case plan was negotiated, he immediately refused a drug screen on the grounds that he would test dirty.

M.C. testified that, since she has had the children in her care, Father has contacted her only one time, in order to obtain the information he needed to file taxes. He did not speak to or inquire about the children. However, she stated that the children are "great," that they "play outside" and are learning and growing.

Father testified that he now lives in Indiana and has been sober for six months, attending AA meetings, and accumulating savings. He admitted that he had failed to complete the mental health assessment and domestic battery assessment as provided in his original case plan with Ms. Thompson.

Based upon the foregoing, the trial court entered its findings of fact and conclusions of law on November 2, 2021. The court found that pursuant to KRS² 600.020 the children had been adjudicated neglected by the Fleming District

² Kentucky Revised Statute.

Court. The court further found specifically that Father has abandoned the children for more than ninety (90) days. The court held that both parents failed to provide essential care and protection for the children for a period of no less than six (6) months and that there is no reasonable expectation of improvement given the children's ages. As to Father, the trial court found that he "has scarcely been involved" in his children's lives "at all." The court also found that Father had failed to cooperate with the elements of his case plan.

The court found that both parents had failed, for reasons other than poverty alone to provide "essential food, clothing, shelter, medical care or education reasonably necessary and available for the well-being" of the children and there was no reasonable expectation of improvement. Specifically, as to Father, the trial court held that although he "appeared to be working" he "offered no credible evidence" that he had supported his children while they were in foster care.

The court concluded that, in spite of the Cabinet's efforts to reunify the family, the parents had failed to complete drug treatment as required and given this fact and considering the factors set forth in KRS 625.090(3), termination of parental rights was in the best interests of the children. This appeal followed.

In *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), this Court approved the procedure provided in *Anders v.*

California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), for use in appeals from orders terminating parental rights. The Court found that, while indigent parents are entitled to counsel during the appellate process, they do not have the right to bring frivolous appeals. *A.C.*, 362 S.W.3d at 367. Thus, in order to fulfill counsel's duties to his client under such circumstances, "counsel should, at a minimum, review the circuit court's (1) neglect and/or abuse determination; (2) finding of unfitness under KRS 625.090(2); and (3) best-interests determination." *Id.* at 371. Clearly, the brief filed by Appellant's counsel herein meets those requirements. Based upon this finding, the Court will grant his motion for leave to withdraw by contemporaneous Order.

The decision of a trial court terminating parental rights may only be disturbed where it is found to be "clearly erroneous." *J.M.R. v. Commonwealth, Cabinet for Health and Family Servs.*, 239 S.W.3d 116, 120 (Ky. App. 2007), *overruled on other grounds by Colvard v. Commonwealth*, 309 S.W.3d 239 (Ky. 2010). Further, we are required to give "a great deal of deference" to the findings of the trial court. *Commonwealth, Cabinet for Health and Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

KRS 625.090(1) provides for termination of parental rights where:

- (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;

....

(b) The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180; and

(c) Termination would be in the best interest of the child.

The trial court herein has specifically found that the children were adjudicated neglected by the district court. Further, the Cabinet filed its petition for the termination of parental rights in the circuit court. Finally, the trial court found that, based upon the parents' failure to take advantage of the services offered by the Cabinet, based upon the children's positive progress in terms of their physical, mental, and emotional development, and based upon the parents' failure to prove by a preponderance of the evidence that the children would not continue to be abused or neglected if returned to them, termination of their parental rights is necessary and appropriate.

Further, the trial court found as required by KRS 625.090(2):

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

....

(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 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[.]

As set forth above, the trial court’s findings were clearly supported by “substantial evidence.” *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Here, as in *C.A.W. v. Cabinet for Health and Family Services, Commonwealth*, 391 S.W.3d 400 (Ky. App. 2013), the record demonstrates that Father abandoned his children based upon his failure to comply with the required assessments and drug screens. Similarly, the record reflects that Father failed to provide “essential parental care and protection” as provided by KRS 625.090(2)(e). Indeed, as noted in the trial court’s findings, Father has simply not been involved in his children’s lives. Further, while Father testified that child support had been paid out of his check since he has been employed, he produced no evidence of such payment. Finally, the testimony of M.C. that the

children have been in her care since December of 2019 supports the trial court's finding that the children have been in foster care for the period of time set forth in KRS 625.090(2)(j).

Based upon this Court's independent review of the trial court's record, we affirm the Order Terminating Parental Rights and Order of Judgment entered by the Fleming Circuit Court.

ALL CONCUR.

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