RENDERED: NOVEMBER 3, 2023; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-1327-ME

A.S. APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 20-AD-00164

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND R.S., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; ACREE AND JONES, JUDGES.

ACREE, JUDGE: Appellant, A.S. (Mother), appeals the Kenton Circuit Court's October 13, 2022 Order involuntarily terminating her parental rights as to her child, R.S. (Child). Having independently reviewed the record, we affirm.

Mother gave birth to Child on September 6, 2009. On July 23, 2019, the Cabinet for Health and Family Services took custody of Child after law

enforcement found Child sleeping alone in a park with no shelter or supervision. Child alleged Mother also kicked Child. Law enforcement then arrested Mother and found her home in a deplorable condition. Presumably, Child resided in this home prior to law enforcement finding Child in the park. On August 22, 2019, a circuit court adjudged Child neglected.

The Cabinet then adopted a case plan for Mother which included a full mental health evaluation. Based on that evaluation, Mother's doctor gave her more recommendations to improve her condition, and the Cabinet gave Mother a time frame to comply with her doctor's recommendations. Mother failed to comply with those requirements and deadlines and, consequentially, the Cabinet initiated proceedings to involuntarily terminate Mother's parental rights.

Mother executed a waiver of appearance and consent to the Cabinet's disposition of Child pursuant to KRS[1] 199.550, but timely waived that consent. The Kenton Circuit Court then scheduled a hearing on the issue of terminating Mother's parental rights for September 2, 2022. Mother's appellate counsel indicates Mother failed to appear before the circuit court and presented no evidence to refute that presented by the Cabinet. Appellant's counsel asked for a continuance, but the court denied this request and proceeded with the termination proceedings. This appeal follows.

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[1] Kentucky Revised Statutes.

Appellant's counsel filed Mother's brief pursuant to the standard outlined by the United States Supreme Court in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1936, 18 L. Ed. 2d 493 (1967), and adopted by this Court in *A.C. v. Cabinet for Health & Family Services*, 362 S.W.3d 361 (Ky. App. 2012). Accordingly, her attorney believes no meritorious basis for this appeal exists. Both *Anders* and *A.C.* permit counsel to advise the court that his client's case lacks merit and request to withdraw, while also directing the court's attention to anything in the record which "'might arguably support the appeal.'" *A.C.*, 362 S.W.3d at 364-65 (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400). This approach solves an appointed attorney's "'dilemma of having to diligently represent the indigent client who wants to appeal while still complying with counsel's other ethical duties as a member of the Bar.'" *Id*. at 368 (citations omitted). When evaluating such an appeal, "this Court will fully examine the record and decide whether the appeal is wholly frivolous pursuant to *Anders*[.]" *Id*. at 371.[2]

A family court may only terminate parental rights if each requirement of KRS 625.090 has been met by clear and convincing evidence. First, the child

[2] This Court permitted Mother to file an unverified statement that was both out of time and substantially noncompliant with the Kentucky Rules of Appellate Procedure. The Cabinet responded with a timely and compliant brief for Appellee. Mother's unverified statement merely noted that in a dependency, neglect, or abuse (DNA) case relating to Child (*In re*: *R.S.*, No. 19-J-00627-001 (Kenton Cir. Ct. July 18, 2019)), a hearing is scheduled for December 15, 2023. She argues this means the instant adoption case is not final and appealable. However, she is mistaken; this adoption case stands independently of that DNA case.

must have "been adjudged to be an abused or neglected child" as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination must be "in the best interest of the child." KRS 625.090(1)(c). Third, the family court must find at least one of the grounds of parental unfitness provided by KRS 625.090(2)(a)-(k).

When weighing the evidence, "[t]he trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category . . . ." *M.P.S. v. Cabinet for Hum. Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998) (citing *Dep't for Hum. Res. v. Moore*, 552 S.W.2d 672, 675 (Ky. 1977)). And, as we articulated in *L.D. v. J.H.*:

> This Court's standard of review . . . in a dependency, abuse and neglect action is limited to whether the factual findings of the lower court are clearly erroneous. Whether or not the findings are clearly erroneous depends on whether there is substantial evidence in the record to support them. If the findings are supported by substantial evidence, then appellate review is limited to whether the facts support the legal conclusions made by the finder of fact. The legal conclusions are reviewed *de novo*. If the factual findings are not clearly erroneous and the legal conclusions are correct, the only remaining question on appeal is whether the trial court abused its discretion in applying the law to the facts.

350 S.W.3d 828, 829-30 (Ky. App. 2011) (citations omitted) (emphasis added).

Finally, and critical to the appeal at hand:

> Since the family court is in the best position to evaluate the testimony and to weigh the evidence, *an appellate court should not substitute its own opinion for that of the*

> *family court*. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision . . . will not be disturbed absent an abuse of discretion.

B.C. v. B.T., 182 S.W.3d 213, 219 (Ky. App. 2005) (emphasis added). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Pursuant to KRS 600.020(1)(a)8., a court properly enters a finding of abuse or neglect when, by a preponderance of the evidence, an individual "[d]oes not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being when financially able to do so or offered financial or other means to do so." KRS 600.020(1)(a)8.; *see also* KRS 620.100 ("The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence.").

Here, law enforcement found Child abandoned in a park with no shelter and no supervision. When law enforcement saw the Child's home, it was in a deplorable condition and not a suitable environment for Child to live. Having heard this evidence, the court determined Child was abused or neglected. This was not erroneous. Additionally, a court previously adjudged Child neglected on August 22, 2019. This evidence constitutes substantial evidence to support the

circuit court's findings of facts, and nothing in the record indicates this conclusion was incorrect.

It cannot be reasonably argued that the circuit court's ruling is not in the best interest of the child. Pursuant to KRS 625.090(3), the decision to terminate parental rights must be in the best interest of the child. Relevant here, KRS 625.090(3) enumerates several factors the court is to consider when making this determination. Those factors include whether the child is abused or neglected, and whether the Cabinet has made reasonable efforts to reunite the Child with Mother. KRS 625.090(3)(b), (c). As already discussed, the circuit court did not err when determining Child abused or neglected.

Additionally, the Cabinet presented evidence that it tried to reunite Child with Mother. The Cabinet gave Mother a case plan to make improvements on her personal health and parenting skills. Mother also had a full psychological evaluation, and her doctor gave her several recommendations and a time frame to complete those. Mother failed to complete her case plan, and she failed to follow through with her doctor's recommendations. The Cabinet made reasonable efforts to reunite Mother and Child, but Mother failed to comply with the reasonable requirements set forth in her case plan. Accordingly, substantial evidence exists that it is in the Child's best interest to terminate Mother's parental rights. Thus, the circuit court did not err here.

Finally, the record readily reflects and supports the circuit court's conclusion that grounds for termination under KRS 625.090(2)(j) exist here. Under KRS 625.090(2)(j), a court cannot involuntarily terminate parental rights, unless the court determines by clear and convincing evidence: "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[.]" KRS 625.090(2)(j). Here, the Cabinet took custody of Child in July 2019. The circuit court heard evidence on the issue of Mother's parental rights in September 2022. During this entire timeframe, Mother did not have custody of Child, nor did the Cabinet reunite the two. Thus, there is no question the Cabinet had custody of Child for more than fifteen months of the proceedings forty-eight months. Accordingly, substantial evidence exists to support the circuit court's findings that the requirements of KRS 625.090(2)(j) were met.

Therefore, having reviewed the record, the Kenton Circuit Court did not err when it terminated Mother's parental rights as to Child.

Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY:

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