

RENDERED: AUGUST 25, 2023; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0194-ME

G.B.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA JOHNSON, JUDGE
ACTION NO. 21-AD-500457

I.R., SR.; CABINET FOR HEALTH
AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND I.H.R., JR., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, DIXON, AND ECKERLE, JUDGES.

COMBS, JUDGE: Appellant, G.B. (Mother), appeals the termination of her parental rights to her minor child, I.H.R., Jr.

Mother's counsel, Bethanni Forbush-Moss, has filed a motion for leave to withdraw as counsel and to file a brief pursuant to *A.C. v. Cabinet for Health & Family Services*, 362 S.W.3d 361 (Ky. App. 2012), and *Anders v.*

California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). By Order entered on April 18, 2023, this Court passed the motion to withdraw to this merits panel, ordered that the tendered *Anders* brief be filed, and permitted Mother to proceed *pro se* and to file a supplemental brief within 30 days thereof. No supplemental brief has been filed. We now proceed with our review.

On October 27, 2021, the Cabinet filed a petition for the involuntary termination of Mother’s parental rights to I.H.R., Jr., a son, born on July 14, 2020. The Cabinet also sought to terminate the parental rights of the child’s father, I.R., Sr. The matter was tried on December 8, 2022.

On January 13, 2023, the trial court entered Findings of Fact and Conclusions of Law (FFCL) and entered an Order Terminating Parental Rights and Order of Judgment.

Where, as here, counsel files an *Anders* brief and a motion to withdraw, “we are obligated 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. In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204 (Ky. 2014), our Supreme Court explained as follows:

KRS^[1] 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child

¹ Kentucky Revised Statutes.

is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

The standard of our review is whether the trial court's findings are clearly erroneous. CR² 52.01.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. . . . [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.

C.A.W. v. Cabinet For Health & Family Services, Commonwealth, 391 S.W.3d 400, 403 (Ky. App. 2013) (internal quotation marks and citations omitted).

In the case before us, the trial court determined that the child has been adjudged to be abused or neglected as defined in KRS 600.020(1), thus satisfying the first prong of the tripartite test. A finding of neglect/abuse was entered with regard to Mother in the underlying Dependency, Neglect, and Abuse (DNA) proceeding. The trial court also found the child to be abused or neglected by each parent in this proceeding as defined in KRS 600.020(1).

² Kentucky Rules of Civil Procedure.

The second prong requires that the court find by clear and convincing evidence that termination would be in the best interest of the child. KRS 625.090(1)(c). In conducting its best interest analysis, KRS 625.090(3) requires the court to consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

The trial court properly considered each of these factors as set forth in detail at pages 7-10 of its Findings of Fact and Conclusions of Law. It concluded that it is in the best interest of the child that Mother's parental rights be terminated. We are satisfied from our independent review of the record that substantial evidence supports the trial court's findings – namely, the testimony of the Cabinet worker, Sara Wilson-Rhodes. The second prong of the tripartite test has been met.

The third and final prong, KRS 625.090(2), provides that “[n]o termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of [several enumerated] grounds[.]” Only one ground is required. Among them, KRS 625.090(2)(h) provides that:

1. The parent's parental rights to another child have been involuntarily terminated;
2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
3. The conditions or factors which were the basis for the previous termination finding have not been corrected[.]

In its Finding of Fact and Conclusions of Law, the trial court found that Mother has “a history of five (5) prior involuntary terminations of parental rights due to her substance abuse, domestic violence, and untreated mental health concerns” The trial court concluded as follows:

The Respondent mother's parental rights to another child have been involuntarily terminated in action Numbers, 05-AD-500361, 13-AD-500272, 13-AD-500273, 13-AD-500271; the child named in the present termination action was born on July 14, 2020, subsequent to or during the pendency of the previous termination; and, the conditions or factors which were the basis for the previous termination finding have not been corrected.

We are satisfied from our independent review of the record that substantial evidence supports the trial court's determination, thus satisfying the third prong of the tripartite test.

We conclude that no meritorious grounds exist for reversal in the case before us. *Anders, supra*. Accordingly, we affirm. By separate Order, we grant the motion to withdraw filed by Mother's counsel.

ALL CONCUR.

BRIEF FOR APPELLANT:

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