

RENDERED: JANUARY 12, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0287-ME

S.A.

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE BRUCE BUTLER, JUDGE
ACTION NO. 22-AD-00001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; N.R.A.; AND G.E.A., A
MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0288-ME

S.A.

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE BRUCE BUTLER, JUDGE
ACTION NO. 22-AD-00002

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

APPELLEES

AND

NO. 2023-CA-0289-ME

S.A.

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE BRUCE BUTLER, JUDGE
ACTION NO. 22-AD-00003

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; ECKERLE AND TAYLOR, JUDGES.

ECKERLE, JUDGE: S.A. (“Mother”) appeals the Grayson Circuit Court’s orders involuntarily terminating her parental rights to her minor children, G.E.A., T.F.A., and N.R.A.

Mother's counsel filed a motion for leave to withdraw as counsel and file 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). That initial brief was returned as deficient and a show cause order was entered. A checklist from the Clerk of the Court of Appeals noted three deficiencies, among them that counsel certify in the tendered brief that Mother has been informed of her right to file a brief *pro se*. Another brief was tendered, and the certification remained deficient. Counsel responded to the show cause order that she should not be sanctioned because her deficiency was clerical, not substantive, and her client had been informed of her right to file a brief.

Through an Order entered June 22, 2023, a panel of this Court found counsel's explanation lacking and assessed a \$50.00 sanction. The Order also directed the Clerk to file the tendered brief and passed to the merits panel counsel's motion to withdraw.¹ Additionally, per the Order, the Clerk of this Court mailed to Mother a copy of the Court's "Basic Appellate Practice" handbook, along with a copy of the aforementioned Order, should she desire to file her own brief. No brief was filed by Mother during the time permitted. Counsel timely paid the sanction. We now proceed with our review.

¹ "Upon receiving counsel's motion to withdraw and accompanying *Anders* brief, this Court shall enter an order granting the indigent parent thirty days to file a *pro se* brief and deferring counsel's motion to withdraw to the merits panel." *A.C.*, 362 S.W.3d at 371.

On January 20, 2022, the Commonwealth of Kentucky, Cabinet for Health and Family Services (“Cabinet”), pursuant to KRS² 625.050, filed a Petition for Termination of Parental Rights against Mother and N.A., the father. Three children were the subjects of the Petition: G.E.A., a female born on April 26, 2007; T.F.A., a female born on September 30, 2009; and N.R.A., a male born on January 23, 2014.

A trial was held on September 30, 2022, at which the Cabinet and Mother presented evidence. N.A. did not appear as he had an active warrant for his arrest. In short form, the evidence adduced showed that the children had been in an environment of substance abuse and domestic violence for many years. Once the Cabinet petitioned for the children’s removal in 2019, subsequent drug screens showed Mother had been using methamphetamine. Mother admitted as much, stating she began using methamphetamine while trying to separate from N.A. Mother would be arrested for drug trafficking within the year, and eventually, while incarcerated, stipulate that her children were abused or neglected. The children were later committed to the Cabinet’s custody. Case plan recommendations were made and reviewed with Mother, but she did not complete the recommended actions steps. Instead, Mother was arrested for drug trafficking.

² Kentucky Revised Statutes.

Mother would later complete some of her recommended therapy and parenting classes, but she was unable to submit consistently to drug screens. Three of the four drug screens she did complete were positive for methamphetamine. As of the date of the hearing, Mother testified that she was on parole and had participated in multiple substance abuse and mental health classes while incarcerated to earn time off her sentence. The children were doing well in their foster care environment and were receiving needed supports and therapies. Mother testified that she had been sober for less than a year and had been employed for approximately a week. She had not found a sponsor nor attended any AA/NA classes.

The parties submitted proposed findings of fact, conclusions of law, and judgments. The Circuit Court then entered its Findings of Fact and Conclusions of Law and Judgments Terminating Parental Rights (collectively “Orders”) on February 6, 2023.³ Mother appealed the Orders. Mother filed a CR⁴ 60.02 motion, claiming alleged changes in circumstances for both the children and herself, and it was denied. It is not the subject of this appeal.

³ Though the Circuit Court should enter its findings of fact, conclusions of law, and decision within 30 days of the conclusion of proof and argument of counsel, KRS 625.090(6), that timeline is not mandatory, and tardiness entering the Orders is waivable and can constitute harmless error. *See E.L.T. v. Cabinet for Health and Family Services*, 647 S.W.3d 561, 566-67 (Ky. App. 2022), and *D.H. v. Cabinet for Health and Family Services*, 640 S.W.3d 736, 742-43 (Ky. App. 2022). *Compare with K.M.J. v. Cabinet for Health and Family Services*, 503 S.W.3d 193, 194 (Ky. App. 2016).

⁴ Kentucky Rules of Civil Procedure.

Because counsel for Mother filed an *Anders* brief, “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 (citing *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400). We review the Orders under the three-prong test for an involuntary termination: (1) was the child abused or neglected as defined in KRS 600.020(1); (2) was termination of the parental rights in the child’s best interests; and (3) was at least one of the enumerated termination grounds of KRS 625.090(2)(a)-(j) in existence. *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014) (citing KRS 625.090). The Circuit Court’s decision must be based upon clear and convincing evidence, and the standard of review of this decision is under the clearly erroneous standard of CR 52.01. *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. 2008). Accordingly, we review the decision on these prongs to see if they are supported by substantial evidence, which is evidence “sufficient to induce conviction in the mind of a reasonable person.” *R.M. v. Cabinet for Health and Family Services*, 620 S.W.3d 32, 37 (Ky. 2021). Appellate review of the decision to terminate parental rights is for clear error, a standard that affords great deference to the Circuit Court’s findings and permits the Circuit Court “wide discretion in terminating parental rights.” *K.H.*, 423 S.W.3d at 211. When the

“facts are not seriously disputed[,]” the “appellate courts are disinclined to disturb trial-court findings[.]” *R.M.*, 620 S.W.3d at 38 (footnotes and citations omitted).

Abuse or neglect

All three children suffered from abuse or neglect. Other competent courts previously made such a finding in part based on Mother’s stipulation to the same. The Circuit Court herein also made such a finding, based on substantial evidence adduced at the hearing that the children met the definition of “abused or neglected child” per KRS 600.020(1)(a)4., 7., 8., and 9. We have reviewed the hearing and agree the evidence is sufficient to induce conviction in the mind of a reasonable person. Mother missed large portions of the children’s lives. Mother failed drug tests. Mother did not comply with orders and her case plan’s identified goals. And Mother’s actions resulted in the children remaining committed to the Cabinet and remaining in foster care for more than 34 cumulative months out of 48 months. Accordingly, the Circuit Court did not err by finding the children were abused or neglected.

Best interests of the children

Substantial evidence also existed for the Circuit Court’s finding that it was in the best interests of the children to terminate Mother’s parental rights. KRS 625.090(1)(c). There are six factors a court shall consider when making this best-interests-of-the-children determination:

(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.

KRS 625.090(3)(a)-(f).

Here, the Circuit Court considered the above and found the factors supported termination as in the best interests of the children. Specifically, the Circuit Court found acts of abuse had occurred against the children, KRS

625.090(3)(b), a finding that is supported by Mother's stipulation below and multiple court holdings. The Circuit Court also found the Cabinet employed reasonable efforts to reunite Mother with the children, KRS 625.090(3)(c), but Mother refused to engage in services, a finding that is supported by substantial evidence introduced by the Cabinet at the final hearing. The Circuit Court also found Mother made no adjustments in her circumstances, conduct, or conditions to make it in the children's best interests to return to Mother's home within a reasonable amount of time, KRS 625.090(3)(d), a finding that is supported by substantial evidence of noncompliance with Mother's case plan. The Circuit Court also found per KRS 625.090(3)(e) that the children's physical, emotional, and mental health were being supported in foster care and would not improve if returned to Mother; this finding is supported by substantial evidence introduced by the Cabinet at the final hearing showing that the children were thriving in foster care and receiving support services for their emotional and mental health needs. Accordingly, the Circuit Court properly considered the factors and made a conclusion that termination was in the best interests of the children, which is a finding supported by substantial evidence.

Enumerated termination grounds

Substantial evidence also existed for the Circuit Court finding that at least one of the KRS 625.090(2) grounds for terminating parental rights existed.

Here, the Orders found: Mother abandoned the children for a period of not less than 90 days, KRS 625.090(2)(a); Mother, for a period of not less than six months, continuously and repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child, KRS 625.090(2)(e); and Mother, 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 children's well-being and that there is no reasonable expectation of significant improvement in Mother's conduct in the immediately foreseeable future, considering the age of the child, KRS 625.090(2)(g). Additionally, the Circuit Court found KRS 625.090(2)(j) was satisfied because the children had been in foster care under responsibility of the Cabinet for 15 cumulative months out of 48 months preceding the filing of the petition to terminate parental rights. Each of these findings is supported by clear and convincing evidence in the record. Since the children entered foster care in 2019, Mother failed to accomplish case plan tasks. Mother used drugs. Mother did not maintain contact with her children nor provide financial support while the children have been in foster care. The children also have significant emotional needs that are not being met by Mother. Accordingly, more than one of the KRS

625.090(2) grounds for terminating parental rights was proven by clear and convincing evidence.

KRS 625.090(5) discretion

Finally, the *Anders* brief filed on behalf of Mother argues that the Circuit Court should have used its discretion per KRS 625.090(5) to refrain from terminating parental rights. Pursuant to that provision, a court may, in its discretion, determine not to terminate parental rights if the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child. As shown above, though, there was clear and convincing evidence to satisfy all prongs of the test to terminate parental rights; thus, the Circuit Court could make a decision on termination that fits within its “wide discretion[.]” *K.H.*, 423 S.W.3d at 211. Because its decision fell within the range of permissible decisions, the Family Court did not abuse its discretion under KRS 625.090(5).

Conclusion

We have independently reviewed the record and find the Circuit Court’s findings on all three prongs of the test for involuntary termination of parental rights were supported by substantial evidence that was clear and convincing. The Family Court’s decision to terminate parental rights is not clearly erroneous. Thus, we affirm. By separate Order we also grant the motion to withdraw filed by Mother’s counsel.

ALL CONCUR.

BRIEF FOR APPELLANT:

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