

RENDERED: MARCH 8, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2023-CA-0479-ME

T.A.T.

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE SQUIRE WILLIAMS, III, JUDGE  
ACTION NO. 22-AD-00028

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; C.F.W.; AND J.G.W., A  
CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CETRULO, LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: On April 5, 2023, the Franklin Circuit Court, Family Court Division, entered an Order Terminating Parental Rights and Order of Judgment, terminating T.A.T.'s (Mother's) parental rights to her biological child, J.G.W.

(Child). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed a notice of appeal on her behalf and, subsequently, filed an *Anders*-type<sup>1</sup> brief reaching the conclusion that no meritorious claim of error exists that would justify reversal of the order terminating parental rights in this case. Counsel also filed a motion to withdraw, which was passed to this merits panel. On August 28, 2023, this Court entered an order allowing Mother to file a supplemental *pro se* brief within thirty days. No supplemental brief was filed. After careful review, we affirm the circuit court's order terminating Mother's parental rights; and, as counsel has complied with the requirements of *A.C.* and *Anders*, we have granted his motion to withdraw as counsel by separate order.

Pursuant to *A.C.*, the function of this Court is “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 v. California*, 386 U.S. 738, 744 (1967)). Such review is analogous to a palpable error review, requiring only that we ascertain whether any error affects the substantial rights of a party. *Id.* at 370. If we are in agreement with an appellant's counsel that there is no nonfrivolous ground for appealing the termination of parental rights, it is appropriate to affirm the trial court.

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

In Kentucky, a family court may terminate the parental rights of a parent upon satisfaction of a three-part test by clear and convincing evidence. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the family court must find the child “[a]bused or neglected[,]” as defined by Kentucky Revised Statute (KRS) 600.020(1). KRS 625.090(1)(a). Second, termination must be in the child’s best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness as set out in KRS 625.090(2). KRS 625.090(2). The family court’s termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

Here, the family court specifically found that the requisite elements of this test were satisfied, including that Mother was unfit to parent on three grounds, those specified in KRS 625.090(2)(e), (g), and (j).<sup>2</sup> The family court’s decision to

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<sup>2</sup> In relevant part, KRS 625.090(2) provides:

No 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 the following grounds:

....

- (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 parental 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;

terminate Mother's parental rights is consistent with the evidence of record and conform to applicable law. The family court's detailed and thorough order to that effect provides in relevant part as follows:

The Respondent, [C.F.W.<sup>3</sup>], is the legal father of the Petitioner child by virtue of having affixed his name to the child's birth certificate. The Respondent, [Mother], is the biological mother of [Child]. The Petitioner child, [Child], a male, was born on March 7, 2020.

This Court first became involved with this family shortly after [Child's] birth. When he was approximately three (3) months old, the Cabinet received allegations of his parental abuse or neglect when medical providers indicated that he was under-nourished and that his parents were non-cooperative with their directives. The Cabinet attempted to preserve the child's placement in his home but also found the Respondent to be uncooperative. As such, the Cabinet filed a petition alleging their abuse or neglect of [Child] and requesting his removal from their custody. This Court first placed

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....

(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[.]

<sup>3</sup> The family court also terminated the parental rights of C.F.W. C.F.W. did not appeal that decision.

[Child] in the Cabinet's custody on June 16, 2020[,] and he has remained continuously in the Cabinet's custody and control thereafter, for over thirty-two (32) months. This Court adjudicated the Cabinet's petition and found that [Child] had indeed been neglected by his parents. Both parents were ordered to cooperate with the Cabinet's case plan, designed to reunite the family, which included their completion of parenting classes, maintenance of stable housing and employment, completion of evaluations with Dr. Ebben, attendance at supervised visits with [Child] and individual mental health counseling, and cooperation with all recommendations from their evaluations. Both parents subsequently were ordered to pay child support for [Child's] substitute care and provision.

....

The Respondent mother, [Mother], attended more of the services enumerated on her Cabinet case plan [than C.F.W.], but continued to present with significant concerns about her parenting abilities and stability. [Mother] completed parenting classes in 2021, completed both Drs. Whitten and Ebben evaluations, and attended mental health counseling services with New Vista. She also attended a majority of her supervised visits with [Child] and has established appropriate housing.

As with [C.F.W.'s] evaluation, Dr. Whitten's only recommendation was that [Mother] complete parenting classes and that the Cabinet monitor her parenting abilities for 1-2 years. Dr. Ebben provided much more in depth evaluation and noted significant concerns. He opined that [Mother] was at a high risk for future child maltreatment and provided her a guarded prognosis. Of significant concern was the level at which her child maltreatment score was elevated even given her high levels of defensiveness during that testing. He noted that she demonstrated possible depression and other personality disorder features and that he needed

additional mental health information from [Mother] before he could provide fuller assessment (which she failed to provide him). Dr. Ebben did recommend that she not be permitted unsupervised contact with [Child] and that she maintain stable housing and ability to provide for herself. Even after he observed [Mother] with [Child], he did not see reason to amend his initial opinion of her parenting capacity.

Upon subsequent review of [Mother's] New Vista services, which included psychiatric evaluation, medication management, case management, and mental health counseling, he noted that her condition appeared to be continuously moderate in severity of symptoms, so she had not made much progress therein. At New Vista, [Mother] has been diagnosed with Adjustment Disorder, Major Depressive Disorder, Anxiety Disorder, and Borderline Personality Disorder (BPD). Dr. Ebben testified that those diagnoses comported with his findings and described BPD as one of the most difficult illnesses to treat because it typically arose during childhood, often resulting from abuse/neglect and/or difficult parental relationships, and effectively wired the formative brain incorrectly. As the brain cannot be re-wired in adulthood, effective treatment takes years of DBT therapy and medication, among other techniques, just so the patient can begin to recognize their brain's mis-cues and respond accordingly. Primary traits in those with BPD include black and white thinking, high levels of impulsivity, high levels of misunderstanding environmental cues, extreme emotional lability and continual relationship difficulties. This diagnosis combined with her elevated risk of future child maltreatment scores do not suggest likelihood of successful parenting in the future and [Mother] did not have the capacity to provide minimally acceptable parenting for [Child] at the time of Dr. Ebben's evaluation.

[Mother] has been engaged with New Vista counseling services for almost two (2) years. That agency also provided her psychiatric care and case management services. [Mother] testified that she has discontinued her case management services because she is “doing so well now,” even though she lacks personal transportation or driver’s license, remains unemployed, was denied Social Security Disability, and admits relying on charitable organizations for her housing and utility bills. [Mother] denies taking or needing any psychotropic medications although her New Vista records suggest otherwise and Dr. Ebben testified they could help her BPD symptoms. Despite participating in two (2) years of DBT and CBT treatments there, she continues to present as defensive and easily agitated, as observed both in mental health sessions and her own trial testimony. She additionally continues to blame doctors, the Cabinet, the Court, and others for [Child’s] medical condition at removal and appears to accept no responsibility for her undernourished condition or her lack of cooperation with various medical and Cabinet services at the time. She also offers no viable excuse for failing to maintain contact with [Child’s] caregivers to inquire about his ongoing medical condition and blames others for her own lack of knowledge about his current health status.

While [Mother] had some periods of inconsistent attendance at her supervised visits with [Child], she has attended them regularly in recent months, along with her own mother. However, during those visits she rarely leaves her chair to play with [Child] (now three years old), despite being asked to do so. [Child] has been injured during those visits due to his mother and grandmother’s failure to adequately supervise his play. They also routinely engage in inappropriate conversations in [Child’s] presence, loudly using profanity and disparaging collaterals to this case. [Mother] also has begun including an unknown male via video conferencing during those visits and introducing

him to [Child] as a potential future step-father. The Cabinet has no information about this individual's background or even his name. Mother and grandmother also argue often during the visits and other staff have had to intervene when they have [been] verbally aggressive with the supervising Cabinet social worker.

The statutory grounds raised in the Cabinet's petition require a trial court to consider future parental conduct, based upon current and previous parental behaviors. In making those determinations, as well as deciding whether termination of parental rights is in a child's best interest, this Court is required to consider the factors set forth in KRS 625.090(3). The first factor involves whether a parent has been properly diagnosed with mental illness or mental retardation. KRS 625.090(3)(a). Regarding this factor, there was credible evidence presented that the Respondent mother suffers from mental illness or mental retardation "that renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time[.]" Specifically, medical records reveal and Dr. Ebben testified regarding [Mother's] diagnoses, which include Borderline Personality Disorder, a condition which even after years of successful treatment, remains one of the most difficult illnesses to treat and does not make for ideal parenting abilities. Its most significant traits include black and white thinking, high levels of impulsivity, high levels of misreading environmental cues, extreme emotional lability, and constant relationship problems – all factors which impede successful parenting.

Regarding the second factor, for "[a]cts of abuse or neglect . . . toward any child in the family," KRS 625.090(3)(b), the totality of the evidence presented at trial is sufficient to convince this Court that the Petitioner child has been abused or neglected within the meaning of KRS 600.020(1). This resulted from the Petitioner child being subjected to parental neglect of his material,



emotional, and healthcare needs. The Petitioner child has further [been] abused or neglected by the Respondent parents' failure or inability to comply with this Court's remedial orders and the Cabinet's court-approved case treatment plan so that the Petitioner child could be safely returned to parental custody, and by the failure or inability of the Respondent parents to do what is necessary to materially support the child.

Regarding the third factor, for the Cabinet's "reasonable efforts . . . to reunite the child with the parent." KRS 625.090(3)(c), it is clear to this Court that the Cabinet made appropriate referrals to parenting classes, supervised visitation sessions, mental health counseling, and various other services. The Cabinet social worker testified that, under the circumstances of this case, she was unaware of any other services which the Cabinet could provide or refer the Respondent parents to that would allow for the safe reunification of the Respondent parents with the Petitioner child within a reasonable period, considering the age of the child. With due consideration given to the next factor, set forth in KRS 625.090(3)(d), this Court finds itself in agreement with that assessment.

The next, fourth, factor concerns "[t]he 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[.]" KRS 625.090(3)(d). Regarding this factor, the Cabinet's caseworker testified that as of the date of the filing of the petition in this TPR [termination of parental rights] action, the Respondent parents have not been fully compliant with the Court's remedial orders out of the aforesaid DNA actions, particularly with respect to completion of mental health treatment to alleviate their individual risk factors or application of proper parenting techniques during supervised visitation sessions with [Child]. As a result of all the foregoing and more, the

Petitioner child has been unable to return safely to parental custody and care.

Regarding the fifth factor, set forth in KRS 625.090(3)(e), it is clear to this Court that the Petitioner child's physical, mental, and emotional needs have been met while in the Cabinet's care and custody and the child is expected to make continuing improvements in these areas upon termination of parental rights. At removal from parental custody, [Child] was three (3) months old. He presented with a heart defect, kidney problems, underweight, and lacking in age-appropriate neck control, with a flattened rear skull. Despite the parents' ongoing claims of medical malpractice delaying [Child's] necessary feeding therapy when in their custody, the foster parent found no problems with [Child's] eating at placement. He did not require any feeding therapy in foster care and quickly gained weight until he attained, and has maintained, adequate weight. He no longer requires ongoing cardiology treatment as that issue has largely remedied itself. Additionally, the kidney issues, which may have been attributable to the improper feeding and diet he was given by the Respondent, also resolved. His head shape and muscle control are now appropriate and he successfully completed occupational and physical therapy recently. When he first attended visits with his birth parents, [Child] returned to foster care "a completely different child" per his foster mother. He returned very unsettled and fussy and began having terrible night terrors that continued for months. After months of foster parent reassurance during those night terrors, they too have now dissipated. The Respondent advised the foster parents in March 2021 that [Child] was autistic but he has been screened for autism while in foster care and carries no such diagnosis. The Cabinet social worker testified that she has visited regularly with the Petitioner child in the foster home and concurs with the foster mother in that [Child] is doing much better since removal from parental custody and is attached to the foster parents, who obviously have invested

significant care and time into his improvements in their home, which have been substantial. This foster home is willing to adopt [Child] and the Cabinet foresees no barriers to their successful adoption of this child into their family.

The final factor this Court is required to consider is the parent's "payment or . . . failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so." KRS 625.090(3)(f). As noted above, the Respondent parents have not paid all ordered substitute financial assistance since the Petitioner child has been in state care and have not made any other provision for his daily ongoing material needs.

From the totality of the evidence presented, this Court is not persuaded that the Petitioner child would not continue to be abused or neglected as described in KRS 600.020(1) if returned to parental custody. Even if this Court had been persuaded that the Petitioner child would not continue to be abused or neglected if returned to parental custody, under the circumstances of this case, this Court would not be inclined to exercise the discretion granted to it by KRS 625.090(5) to do so. Instead, this Court has concluded that termination of parental rights is in the best interest of the Petitioner child, and the Cabinet for Health and Family Services has facilities available to accept the care, custody and control of the child and is the agency best qualified to receive custody.

Findings of Fact and Conclusions of Law at 2-11.

This Court has undertaken the appropriate review and agrees with counsel for Mother that there is no nonfrivolous ground that would justify reversal of the family court. The family court thoroughly reviewed the evidence and correctly applied the applicable law.

For the foregoing reasons, the April 5, 2023, Order Terminating Parental Rights and Order of Judgment entered by the Franklin Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jason Apollo Hart  
Frankfort, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:

Kevin Martz  
Covington, Kentucky