

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0692-ME

J.E.R.

APPELLANT

v. APPEAL FROM POWELL FAMILY COURT
HONORABLE MONICA LACY, JUDGE
ACTION NO. 22-AD-00002

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, McNEILL, AND TAYLOR, JUDGES.

McNEILL, JUDGE: J.E.R. (“Mother”) appeals from the Powell Family Court’s judgment terminating her parental rights to her minor child, A.A.D. (“Child”). In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), Mother’s counsel filed an *Anders*¹ brief stating he could identify

¹ *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

no non-frivolous grounds for appeal. After careful review, we affirm. We grant Mother's counsel's motion to withdraw by separate order.

BACKGROUND

Child was born on May 5, 2021, and was removed from parental custody on May 27, 2021, due to Child's testing positive for non-prescription narcotics at birth, and substance abuse concerns and instability of Mother and Child's father.² On May 28, 2021, the Cabinet filed a dependency, neglect, or abuse ("DNA") petition,³ and Child was placed in custody of the Cabinet. Mother received a case plan to work towards reunification; however, she never completed the plan as she was unreachable, incarcerated, or in rehabilitation. Mother is currently in a residential treatment facility in Somerset, Kentucky. Record ("R.") at 665.

The Cabinet filed a petition to terminate Mother's parental rights in the Powell Family Court on January 4, 2022. At the April 24, 2023 termination hearing, testimony was heard from the two case workers on Mother's case who detailed their attempts to contact Mother through letters, phone calls, home visits, and absent parent searches through LexisNexis. Video Record ("V.R.") at 10:44:28 AM-10:46:39 AM. The Cabinet's only contact with either of the parents occurred

² Child's father is now deceased.

³ *In re A.A.D.*, No. 21-J-00016-001.

in 2021, when one of the case workers made a home visit to Mother’s house prior to an upcoming court date. V.R. at 10:44:29 AM. The case worker was able to speak to the Child’s father; however, neither he nor Mother appeared for the scheduled October 4, 2021 hearing. V.R. at 10:46:31 AM. During the hearing, Mother testified that she never attempted to engage with Child after Child’s birth. V.R. 11:01:40 AM. The family court subsequently entered an order terminating Mother’s parental rights, and this appeal followed.

STANDARD OF REVIEW

A “trial court has wide discretion in terminating parental rights.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). Thus, “our review is limited to a clearly erroneous standard which focuses on whether the family court’s order of termination was based on clear and convincing evidence.” *Id.* (citing CR⁴ 52.01). “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.” *M.S.S. v. J.E.B.*, 638 S.W.3d 354, 360 (Ky. 2022) (citation omitted). As such, an appellate court will give deference to the trial court’s findings and should not interfere with those findings unless there

⁴ Kentucky Rules of Civil Procedure.

is no substantial evidence to support them. *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

ANALYSIS

Mother's attorney filed an *Anders* brief and a motion to withdraw, stating there were no meritorious grounds for appeal. *See Anders*, 386 U.S. 738, 87 S. Ct. 1396; *A.C.*, 362 S.W.3d 361. When an *Anders* brief is filed, this Court must "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. Under KRS⁵ 625.090, parental rights may be terminated when a court finds by clear and convincing evidence the following: (1) the child is or has been adjudged abused or neglected as defined in KRS 600.020; (2) termination is in the best interest of the child; and (3) at least one of the conditions in KRS 625.090(2)(a)-(k) exists. The family court found Child had been adjudged abused or neglected by Mother as defined in KRS 600.020(1). Review of the record further shows that Mother was absent, unreachable, or incarcerated throughout the entirety of the current case. *R.* at 651.

As to the second prong, the family court found that termination of parental rights was in Child's best interest. The court made findings illustrating that it considered all relevant factors in KRS 625.090(3). Specifically, the court

⁵ Kentucky Revised Statutes.

found the Cabinet has offered all reasonable services to Mother in an effort to keep the family together (KRS 625.090(3)(c)); Mother's efforts were insufficient to make it in Child's best interest to return home within a reasonable time, considering Child's age (KRS 625.090(3)(d)); and Child has improved physically, mentally, and emotionally since placement in her foster home (KRS 625.090(3)(e)). R. at 652.

The last statutory prong requires the family court to find that at least one of the eleven grounds in KRS 625.090(2) exists. Here, the trial court found that Mother has abandoned Child for a period of not less than ninety (90) days. KRS 625.090(2)(a). The family court also found justification for terminating parental rights under KRS 625.090(2)(e) and (g). The record makes clear that Mother never attempted to contact or inquire about Child once Child was placed in the Cabinet's care. Only one ground for termination needs to be proven by clear and convincing evidence under this section. *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Therefore, we need not examine the family court's findings as to the remaining grounds. We find no error in its termination of Mother's parental rights. Mother did not file a supplemental brief, and having independently reviewed the record, we agree with Mother's counsel that no meritorious grounds for appeal exist.

CONCLUSION

Based on the foregoing, the Powell Circuit Court's judgment terminating Mother's parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Charles Phillip West
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BRIEF FOR APPELLEE CABINET FOR HEALTH AND FAMILY SERVICES:

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