

RENDERED: FEBRUARY 16, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2023-CA-0765-ME

K.G.H.D.

APPELLANT

v. APPEAL FROM DAVIESS FAMILY COURT  
HONORABLE ANGELA THOMPSON, JUDGE  
ACTION NO. 22-AD-00071

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

APPELLEES

OPINION AND ORDER  
AFFIRMING  
AND GRANTING MOTION TO WITHDRAW

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BEFORE: ACREE, COMBS, AND ECKERLE, JUDGES.

ECKERLE, JUDGE: Appellant, K.G.H.D. (Mother), appeals from an order of the Daviess Family Court terminating her parental rights. Her appointed counsel filed

an *Anders*<sup>1</sup> brief and now moves to withdraw. After thorough review of the record, we affirm the order of the Daviess Family Court, and we grant counsel's motion to withdraw.

Mother gave birth to Appellee, T.C.D. (Child), in September 2013. The Father, B.J.D. (Father), is now deceased. On June 17, 2019, Appellee, the Cabinet for Health and Family Services (the Cabinet), filed a dependency/neglect/abuse (DNA) petition against Mother and Father after they tested positive for methamphetamine use. The District Court granted the petition, concluding that the parents were unable to care for Child due to substance abuse. The District Court placed Child in the Cabinet's custody. The case was then transferred to the Family Court. Following a dispositional hearing in May 2020, the Family Court returned Child to his parents. Father died on September 3, 2021.

On March 23, 2022, the Cabinet filed another DNA petition, alleging neglect or abuse of Child by Mother. The petition alleged that Mother and Child were living in a homeless shelter, and Mother had been using methamphetamine. The petition further alleged that Mother was depressed and possibly suicidal due to her husband's death, and she had been neglecting Child's needs. Mother stipulated to dependency without admission of facts.

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

The Family Court granted the petition and placed Child in the Cabinet's custody. The Court directed Mother to comply with her case plan to address her issues of mental health, substance abuse, and lack of stable housing. The Cabinet's dispositional report filed April 26, 2022, indicated that Mother had not begun working on her case plan. Subsequent review orders on June 28, 2022, August 23, 2022, and November 15, 2022, also reported that Mother had not completed any tasks on her case plan.

On November 8, 2022, the Cabinet filed a petition to terminate Mother's parental rights involuntarily. The Cabinet continued services to Mother, but she did not comply with her case plan or participate in services. On March 21, 2023, the Family Court directed Mother to complete a parenting assessment. Mother neither completed the assessment nor requested any assistance with obtaining the assessment.

The Family Court conducted an evidentiary hearing on May 9, 2023. The Cabinet introduced the records from the DNA actions as well as its own records concerning Child's placement. The Cabinet also introduced the testimony of its two workers who handled the case, Kathy Poe and Paula Hazel. In addition, the Family Court heard testimony from Child's therapist and foster parent. Finally, Mother testified on her own behalf. Mother admitted to her ongoing mental-health

and substance-abuse issues, as well as her failure to seek treatment or comply with her case plan.

Thereafter, on May 19, 2023, the Family Court entered findings of fact, conclusions of law, and a separate order granting the Cabinet's petition to terminate Mother's parental rights. Mother now appeals. Additional facts will be set forth below as necessary.

Mother's appointed counsel has filed an *Anders* brief in compliance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). In *A.C.*, this Court adopted and applied the procedures identified in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to appeals from orders terminating parental rights where counsel cannot identify any non-frivolous grounds to appeal. *A.C.*, 362 S.W.3d at 364. Those procedures require counsel to engage in a thorough and good faith review of the record. *Id.* "[I]f counsel finds his [client's] case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw." *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400).

Counsel complied with the requirements of *A.C.* and *Anders* by providing Mother with a copy of the brief and informing her of the right to file a *pro se* brief raising any issues she found meritorious. *Id.* at 371. Mother has not filed a *pro se* brief. Under *A.C.*, we agree with counsel that no grounds exist to

disturb the Family Court’s order terminating parental rights. Consequently, we shall grant counsel’s motion to withdraw.

On review of an order terminating parental rights, we ask whether the Family Court’s findings were clearly erroneous. *Cabinet for Families & Children v. G.C.W.*, 139 S.W.3d 172, 178 (Ky. App. 2004). The Family Court’s factual findings will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Res.*, 706 S.W.2d 420, 424 (Ky. App. 1986). “[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR<sup>2</sup> 52.01.

Because termination of parental rights involves a fundamental liberty interest, the statutory findings must be supported by clear and convincing evidence. *Cabinet for Health & Fam. Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). “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.” *Cabinet for Health & Fam. Servs. v. K.S.*, 585 S.W.3d 202, 209 (Ky. 2019) (quoting *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky. App. 1998)).

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<sup>2</sup> Kentucky Rules of Civil Procedure.

KRS<sup>3</sup> 625.090 sets out the findings necessary to support an involuntary termination of parental rights. First, the Family Court must find that the child is “an abused or neglected child[.]” KRS 625.090(1)(a)2. In this case, the District Court found that Child was abused or neglected in the 2019 DNA petition. In addition, the Family Court found that Child was abused or neglected based on the facts presented in the termination action. The evidence supporting this finding was not disputed. We find no basis to disturb this finding.

Second, “the circuit court must find the existence of one or more of [the] specific grounds set forth in KRS 625.090(2).” *M.E.C. v. Commonwealth, Cabinet for Health & Family Servs.*, 254 S.W.3d 846, 851 (Ky. App. 2008). The Family Court made findings, by clear and convincing evidence, under KRS 625.090(2)(e), (g), and (j):

(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;

...

(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

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<sup>3</sup> Kentucky Revised Statutes.

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;

...

[and]

(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[.]

Each of these findings was supported by substantial evidence. Mother has failed to complete her case plan, including failing to complete mental-health and substance-abuse assessments. She has not used any of the services or resources offered by the Cabinet. She has continued to use illegal drugs. Prior to the termination of her visits, Mother failed to exercise her visitation with Child consistently. Furthermore, she has failed to provide essential clothing, food, shelter, and medical care for Child. Given her consistent failures to comply with her case plan, there is no reasonable expectation of improvement in the foreseeable future. Finally, Child was in the care of the Cabinet for 11 months in 2019-2020 and over seven months immediately preceding the filing of the petition.

Lastly, the Family Court must find termination of parental rights would be in the child's best interests, after considering the factors set forth in KRS 625.090(3)(a)-(f). The Family Court again noted Mother's long-standing mental-

health and substance-abuse issues, as well as her unwillingness to address these issues. Although Mother blamed these issues on depression stemming from the death of her husband, she admitted that she has experienced these issues all of her life. Nevertheless, Mother has not sought treatment for either her mental-health or her substance-abuse issues despite repeatedly being offered services.

The Family Court also found that the Cabinet made reasonable efforts to reunite Mother and Child. The Family Court next found that Child made significant progress in his foster home, and his foster parents plan to adopt him. Thus, the Family Court concluded that termination of Mother's parental rights would be in Child's best interests.

Mother does not dispute any of the Family Court's findings of fact or conclusions of law under KRS 625.090. Indeed, the evidence supporting those findings was largely uncontroverted. Consequently, we conclude that the Family Court did not clearly err by granting the petition to terminate Mother's parental rights.

Accordingly, we affirm the order of the Daviess Family Court terminating Mother's parental rights.

IT IS FURTHER ORDERED that, pursuant to *A.C. v. Cabinet for Health and Family Services, supra*, the motion to withdraw by appointed counsel, Robert F. Sexton, is GRANTED.



ALL CONCUR.

ENTERED: February 16, 2024



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JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Robert Franklin Sexton, III  
Owensboro, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:

Leslie M. Laupp  
Covington, Kentucky