

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0775-ME

E.D.M., NATURAL MOTHER

APPELLANT

v. APPEAL FROM HARDIN FAMILY COURT
HONORABLE M. BRENT HALL, JUDGE
ACTION NO. 23-AD-00001

A.G.S., A CHILD; AND CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CETRULO, AND TAYLOR, JUDGES.

CETRULO, JUDGE: This is an appeal from the order of the Hardin Family Court terminating the parental rights of E.D.M. (“Mother”).¹ Counsel for Mother filed this appeal, submitted a brief pursuant to *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012) (“*Anders* brief”), and moved to

¹ The father of the Child was deceased prior to trial.

withdraw as Mother's counsel. Counsel informed Mother of her right to submit an additional brief, *pro se*, and Mother declined to do so. By separate order, this Court granted counsel's motion to withdraw.

A.G.S. ("Child") was born in February 2020 and was removed from Mother's care in January 2021. Child has remained in the custody of the Cabinet for Health and Family Services ("the Cabinet") since that time. The removal was pursuant to an emergency custody order, which alleged that Child was at risk of harm due to Mother's substance abuse, failure to continue mental health treatment, and environmental neglect. Following the emergency removal, results of a hair follicle test on Child were positive for methamphetamine. Mother stipulated to neglect, and Child was placed with a paternal aunt in another state ("foster mother"). After Mother failed to make sufficient progress in the court-approved treatment plan to allow for the safe return of Child, the Cabinet moved to terminate parental rights. The trial occurred in April 2023, with testimony presented from foster mother, the Cabinet worker, Mother, Mother's sponsor, Mother's fiancé, Mother's case manager, and the director of The Commitment House.²

The evidence at trial revealed that Mother had been in treatment at The Commitment House since January 2023, following an arrest in December

² The Commitment House is an alcohol rehab and drug treatment center specializing in substance abuse, alcoholism, dual-diagnosis, and addiction recovery that Mother attended.

2022. Witnesses from The Commitment House testified on behalf of Mother regarding her progress during the two months preceding trial. Mother testified that she was now undergoing therapy, had enrolled in parenting classes, and had been sober since January 2023. However, she acknowledged that she had failed to complete her case plan prior to the most recent treatment; had not been sober; and had not completed court-ordered drug tests or treatment programs in the past. She had continued to use methamphetamine during much of the two years preceding trial. She testified that she had not seen her daughter in a year but had spoken to her on video calls, although she agreed that those calls were sometimes inconsistent. Mother believed, however, that she could ultimately complete her case plan if given more time to do so.

The Cabinet worker and foster mother testified that Child had been with foster mother since January 2021. Foster mother initially flew to Kentucky with Child once a month for in-person visits with Mother. This had ended after Child turned two, due to financial constraints. However, foster mother had offered to pay for a single ticket for Mother to visit, and Mother had never accepted that offer. Mother had not paid any child support or contributed to any care for Child. Phone contact had been inconsistent, although it had improved since Mother had entered The Commitment House. Mother had not maintained mental health treatment and had only begun parenting classes in the weeks prior to trial.

Likewise, Mother had only begun and regularly passed drug screens since February 2023. Another child had been removed from Mother's care in 2018 due to her substance abuse and mental health issues.

Following trial, the family court entered its judgment terminating Mother's parental rights, based on clear and convincing evidence. The family court found that Child was first placed in the Cabinet's custody in 2021, and had remained in the Cabinet's continuous care since that time. Child was found to be neglected and abused as part of the DNA actions. Additionally, during the termination proceeding, the family court found Child to be neglected or abused pursuant to Kentucky Revised Statute ("KRS") 600.020(1)(a)3., 4., 7., 8., and 9.

Further, the family court found that Mother had failed to engage in services upon Child's removal. While the court acknowledged that Mother had been having video calls with Child for a few weeks preceding trial, she had previously failed to maintain contact with Child for long periods of time. Likewise, the family court found that Child entered foster care, and Mother had abandoned Child for a period of not less than 90 days. Mother had failed to provide Child with adequate care, supervision, food, clothing, shelter, and education or necessary medical care. Mother had provided no support for Child, although she was capable of working. She had failed to complete parenting classes

and mental health treatment, and she had admitted to continuing abuse of alcohol and drugs until December 2022.

While the family court recognized Mother's recent accomplishments, the court determined Mother had failed to make sufficient progress toward identified goals in the case plan to allow for the safe return of Child at any time in the reasonably foreseeable future. Termination of Mother's parental rights was found to be in the best interest of Child. This appeal followed.

STANDARD OF REVIEW

[O]ur 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. Kentucky Rules of Civil Procedure ("CR") 52.01. "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." [*Cabinet for Health & Fam. Servs. v. T.N.H.*, 302 S.W.3d [658,] 663 [(Ky. 2010)]. Due to the fact that "termination decisions are so factually sensitive, appellate courts are generally loathe to reverse them, regardless of the outcome." *D.G.R. [v. Commonwealth, Cabinet for Health & Fam. Servs.]*, 364 S.W.3d [106,] 113 [(Ky. 2012)].

Cabinet for Health & Fam. Servs. v. K.H., 423 S.W.3d 204, 211 (Ky. 2014).

When counsel files an *Anders* brief, this Court independently reviews the record to ensure "the appeal is, in fact, void of nonfrivolous grounds for reversal." *C.J. v. M.S.*, 572 S.W.3d 492, 494 (Ky. App. 2019) (citing *A.C.*, 362

S.W.3d at 372). Again, however, we defer to the family court unless the record is devoid of substantial evidence to support the family court's findings. *K.H.*, 423 S.W.3d at 211. Substantial evidence is "that which is sufficient to induce conviction in the mind of a reasonable person." *Ball v. Tatum*, 373 S.W.3d 458, 464 (Ky. App. 2012) (internal quotation marks and citation omitted).

ANALYSIS

KRS 625.090 governs involuntary termination of parental rights upon the Cabinet's filing of a petition. The statute provides that a family court "may involuntarily terminate parental rights if it finds, by clear and convincing evidence, that the child is an abused or neglected child as defined in KRS 600.020(1) and that termination serves the best interest of the child." *C.J.M. v. Cabinet for Health & Fam. Servs.*, 389 S.W.3d 155, 160 (Ky. App. 2012) (citing KRS 625.090(1)(a)-(c)). Further, under KRS 625.090(2), the family court must show the existence of one or more of several enumerated factors. *Id.*

First, there is no dispute that Child had been abused or neglected as defined in KRS 600.020. Child was born in February 2020. An emergency custody order was issued in January 2021 due to Mother's substance abuse, failure to continue mental health treatment, and environmental neglect. A hair follicle test was performed on Child at the time of removal and was positive for

methamphetamine. An adjudication hearing was held in February 2021, and Mother stipulated that the facts were true and that Child was abused or neglected.

Next, the family court found that termination of Mother's parental rights was in the best interest of Child. To determine the Child's best interest, the family court must consider the six factors outlined in KRS 625.090(3), as detailed in *K.H.*, 423 S.W.3d at 212. Specifically, KRS 625.090(3)(a)-(f) state that

[i]n determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall 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.

In reviewing those factors, the family court noted that Mother had admitted to relapsing and abusing alcohol, methamphetamines, and Adderall. Mother had stipulated to neglect and failed to complete parenting classes, substance abuse treatment, drug testing, and other requirements imposed by the family court for a period of nearly two years. While Mother had recently enrolled in classes and entered a rehabilitation facility, those steps did not occur until after she was arrested in December 2022. The family court found that the Cabinet had made reasonable efforts to reunite Child with Mother, but that Mother had not made efforts until after Child had been in care for 27 months.

Although Mother was capable of work, and there was no evidence of a mental illness or disability to preclude her from providing some financial care, she provided no care to Child. The family court noted that due to her long history of substance abuse, Mother had also lost custody of another child who has since been adopted. Child had been in foster care since before she was two years old. Testimony from foster mother indicated that Child was doing well but had some medical issues that required extra services and care. Finally, the court noted that

Child's physical, mental, and emotional needs had been met while in care and that she was attached to her foster parents who intended to adopt her if parental rights were terminated.

Finally, the family court must find, by clear and convincing evidence, the existence of at least one of the 11 grounds outlined in KRS 625.090(2), as required by *K.H.*, 423 S.W.3d at 212.

The Cabinet alleged that Mother met three of the grounds – KRS 625.090(2)(e), (g), and (j) – which state

(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 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[.]

Specifically, the Cabinet asserted, and the Court found, that Mother had no reasonable expectation of improvement and had failed to provide essential parental care to Child for a period of not less than six months. KRS 625.090(2)(e). Additionally, the Cabinet alleged that Mother had failed to provide essential food, clothing, shelter, or medical care, and that there was no reasonable expectation of significant improvement in the immediately foreseeable future. KRS 625.090(2)(g). The family court agreed. Finally, the Cabinet proved that Child had been in foster care under the responsibility of the Cabinet for at least 15 cumulative months out of the 48 months preceding the filing of the petition. KRS 625.090(2)(j).

The family court's order found that Child was abandoned by her parent for a period of not less than 90 days, pursuant to KRS 625.090(2)(a). The court pointed out that Child had been in foster care for 27 months. The court noted that Mother had failed to engage in treatment until her most recent arrest in December 2022. She had a long history of substance abuse and testified that she had not completed her case plan but had recently, in the weeks prior to the trial, enrolled in classes and engaged with mental health services. Before the most recent arrest, however, Mother failed to comply with the case plan; failed to provide care for Child; and failed to provide any financial assistance.

Additionally, Mother had not seen Child personally for much of Child's life, as she was placed with foster mother, who lived in Massachusetts. Initially, foster mother had flown with Child for monthly visitation until Child turned two and required her own ticket. However, foster mother had offered to purchase a plane ticket for Mother to fly to Massachusetts, which Mother never accepted. Phone contact was reported to be inconsistent, although improved since her recent entry into a rehabilitation facility in December 2022.

Thus, the family court found the presence of four of the grounds under KRS 625.090(2), although the statute requires only one, and the court outlined its findings with regard to each one.

Upon review, we conclude that the family court made an individualized finding of neglect and considered all of the factors set forth in the relevant statutes. We further find that the family court's findings were amply supported by substantial evidence, sufficient to meet the requirements found in KRS 625.090. *See K.H.*, 423 S.W.3d 204. As such, the family court did not err when it determined termination of parental rights was in Child's best interest, and the Judgment is therefore AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

Melody Casey
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**BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
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