

RENDERED: MARCH 22, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0943-ME

C.B.D.C.

APPELLANT

v.

APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE HEATHER M. FRYMAN, JUDGE
ACTION NO. 22-AD-00027

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; J.A.C.B.;¹ AND X.A.C.B.,
A MINOR CHILD

APPELLEES

AND

¹ This global Opinion addresses five appeals, and each one has different Appellees. In No. 2023-CA-0943-ME, the Appellees are the Cabinet for Health and Family Services (“Cabinet”) and X.A.C.B.; in No. 2023-CA-0944-ME, they are the Cabinet and E.B.L.C.; in No. 2023-CA-0946-ME, they are the Cabinet and L.C.R.; in No. 2023-CA-0947-ME, they are the Cabinet and M.S.R.; and in No. 2023-CA-0948-ME, they are the Cabinet and T.C.R. J.A.C.B., the father of X.A.C.B., appears as an Appellee in No. 2023-CA-0943-ME. W.M.R., Jr. is listed as an Appellee on the docket pages for Nos. 2023-CA-0946-ME, 2023-CA-0947-ME, and 2023-CA-0948-ME, but his name does not appear in the notice of appeal, the briefs, or attached orders. W.M.R., Jr. is mentioned as the father of L.C.R. (in No. 2023-CA-0946-ME), M.S.R. (in No. 2023-CA-0947-ME), and T.C.R. (in No. 2023-CA-0948-ME). The father of E.B.L.C. (in No. 2023-CA-0944-ME) is listed as “unknown.” Under the Kentucky Rules of Appellate Procedure (“RAP”), the parties to the action below are automatically joined as parties to the appeal; and normally, fathers would be joined as appellees if they are not separately appealing. Thus, we list them here in the caption.

NO. 2023-CA-0944-ME

C.B.D.C.

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE HEATHER M. FRYMAN, JUDGE
ACTION NO. 22-AD-00028

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND E.B.L.C.,
A MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0946-ME

C.B.D.C.

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE HEATHER M. FRYMAN, JUDGE
ACTION NO. 22-AD-00029

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; W.M.R., JR.; AND L.C.R.,
A MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0947-ME

C.B.D.C.

APPELLANT

v.

APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE HEATHER M. FRYMAN, JUDGE
ACTION NO. 22-AD-00030

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; W.M.R., JR.; AND M.S.R.,
A MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0948-ME

C.B.D.C.

APPELLANT

v.

APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE HEATHER M. FRYMAN, JUDGE
ACTION NO. 22-AD-00031

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; W.M.R., JR.; AND T.C.R.,
A MINOR CHILD

APPELLEES

OPINION AND ORDER
AFFIRMING
AND GRANTING MOTION TO WITHDRAW

** ** * * * * *

BEFORE: CALDWELL, ECKERLE, AND McNEILL, JUDGES.

ECKERLE, JUDGE: Appellant, C.B.D.C. (“Mother”), appeals from the Harrison Family Court’s orders involuntarily terminating her parental rights to her minor children: Appellees, X.A.C.B. (born 2010); E.B.L.C. (born 2015); M.S.R. (born 2018); T.C.R. (born 2019); and L.C.R. (born 2020), (collectively, the “Children”).

Mother’s counsel filed a motion for leave to withdraw as counsel 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), tendering a brief. Mother, acting *pro se*, never filed a supplemental brief. Appellee, the Cabinet for Health and Family Services (“Cabinet”), filed a responsive, appellate brief. We have thoroughly reviewed the filed briefs and the record. For the reasons announced below, we AFFIRM the termination orders. We also GRANT the motion to withdraw.

BACKGROUND

Since May of 2021, the Children have resided in foster care. In February of 2022, the Family Court committed the Children to the Cabinet, where they remained committed throughout the entirety of the proceedings below. On

November 10, 2022, the Cabinet filed Petitions for Involuntary Termination of Parental Rights (“Petitions”) regarding the Children. *See* KRS² 625.050.

On March 13, 2023, the Family Court held a consolidated trial regarding the Petitions. None of the fathers of the Children appeared at that proceeding, and none has appealed the resulting, termination judgments.

Accordingly, we confine ourselves to the evidence introduced regarding Mother.

During the proceedings below, evidence was introduced that Mother has substance-misuse issues and has struggled to maintain her sobriety both before and after the Children were committed to the Cabinet. Mother had undergone a rehabilitation program while the Children were in foster care, but she subsequently failed a drug test. Mother’s substance misuse caused a host of issues with her Children. For example, Mother was unable to visit with them. The Family Court required Mother to have three, clean drug screens before visitation would be permitted. Mother was aware of the requirement that she call in every day to see if she needed to take a drug test, but she nonetheless would go months without following through on her requirements. In fact, Mother did not call in for a drug screen between October 1, 2022, and January 25, 2023. Mother claimed her job made it challenging to call, although she acknowledged that she could have made

² Kentucky Revised Statutes.

the calls. Accordingly, Mother had not visited with the Children since June of 2022.

Mother also failed to follow through with elements of her case plan. For example, her case plan required her to not have high-risk individuals in a caregiving role. Nonetheless, she dated a man who had a criminal past, substance-abuse history, and stints of incarceration, including during the time of the hearing.

In contrast to Mother's failures, the Children were making considerable, positive progress in their foster home. The Children's therapist testified that she had worked with the Children for over a year. Some of the Children had therapy sessions every one or two weeks. Individually, the Children suffered from varying, mental-health diagnoses, including depressed mood and anger issues, stemming from their experiences in Mother's home. At least one of the Children had been sexually abused while in Mother's home. The Children had been traumatized by Mother's struggles to maintain appropriate relationships with other adults. The Children were afraid to visit with Mother. They called their foster parents "mom" and "dad." The foster parents were actively involved in the Children's lives. Mother had provided no care for the Children in the six months preceding the hearing. The therapist opined that termination of parental rights was in the best interest of the Children.

The record was held open to obtain certified copies of Mother’s drug tests. The hearing was continued on May 3, 2023, where certified copies were introduced without objection. The hearing was then finally concluded, and the Family Court took the case under submission. On June 29, 2023, the Family Court issued its Findings of Fact and Conclusion of Law, as well as subsequent Judgments terminating parental rights in each of the Children’s cases. Mother timely appealed.³

ANALYSIS

Because Mother’s counsel 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 four-prong test for an involuntary termination: (1) was the child abused or neglected as defined in KRS 600.020(1); (2) did the Cabinet file “a petition with the court pursuant to KRS 620.180 or 625.050;” (3) was termination of the parental rights in the child’s best interests; and (4) was at least one of the enumerated termination grounds of KRS 625.090(2)(a)-(k) in existence. *See* KRS 625.090, and *Cabinet for Health and*

³ The Family Court issued Amended Findings of Fact and Conclusions of Law, and Amended Judgments, which were entered on July 14, 2023, correcting clerical mistakes related to birthdays and case numbers.

Family Services v. K.H., 423 S.W.3d 204, 209 (Ky. 2014). A family court’s decision must be based upon clear and convincing evidence, and review of this decision on appeal is conducted pursuant to the standard of clear error. CR⁴ 52.01; *see also M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008). Accordingly, we review the decision on these prongs to see whether it is 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 under the clear error standard affords great deference to a circuit court’s findings and permits a 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).

Using these standards, we have thoroughly reviewed the record and find no clear error in the Family Court’s Findings and Judgments. Regarding the first prong of the test for involuntary termination, the Children were adjudged to be abused or neglected, as defined in KRS 600.020(1), during an adjudication hearing on December 1, 2021. Additionally, the Family Court made the factual finding,

⁴ Kentucky Rules of Civil Procedure.

based on the totality of the evidence presented at the termination proceeding, that Mother neglected the Children by failing to protect and preserve their fundamental rights to safe and nurturing homes. Indeed, the evidence showed that Mother constantly plagued her own life and the lives of others with substance misuse. She also failed to provide virtually any support for the Children and made poor choices in relationships, opening her Children up to potential or actual harm. Moreover, Mother failed to make sufficient progress toward her identified goals in her case plan, resulting in the Children remaining in foster care for at least 15 out of 48 months. KRS 600.020(1)(a)9. Substantial evidence supported the Family Court's finding of neglect as it relates to each of the Children; thus, we will not disturb the Family Court's findings on this prong. *M.E.C.*, 254 S.W.3d at 850.

Regarding the second prong, the Cabinet filed petitions pursuant to KRS 625.050. Thus, this prong was met.

Regarding the third prong, the Family Court found that termination of parental rights was in the Children's best interests. KRS 625.090(1)(c), (3)(a)-(f). Specifically, the Family Court found that: Mother had committed acts of abuse or neglect toward the Children, KRS 625.090(3)(b); Mother had failed to pay a reasonable portion of substitute physical care and maintenance, KRS 625.090(3)(f); the Cabinet had made reasonable efforts to reunite the Children with Mother, and no additional services were likely to bring about parental adjustments

enabling a return of the Children to Mother within a reasonable time, considering the age of the Children, KRS 625.090(3)(c)-(d); and the Children's physical, emotional, and mental health had improved, and that progress was expected to continue, KRS 625.090(3)(e). These findings are supported by substantial evidence and are not clearly erroneous. Professionals involved in the Children's care had testified that termination of parental rights was in the Children's best interests. The evidence showed that Mother was not paying any monies toward substitute, physical care and maintenance. Mother had not made any reasonable efforts to reunite with the Children, including by not calling in for drug screens that might have enabled her to resume visitation. In other words, the Family Court's finding that terminating parental rights was in the best interests of the Children was supported by substantial evidence; thus, this prong was met. *R.M.*, 620 S.W.3d at 43.

Regarding the fourth prong, the Family Court found that clear and convincing evidence supported a finding that KRS 625.090(2)(e) and (g) were satisfied. The proof showed that Mother had, for a period of not less than six months, continually or repeatedly failed or refused to provide essential, parental care and protection for the Children, and there was no reasonable expectation of improvement in parental care and protection. Mother continued to struggle with substance misuse, refused to call in for drug screens, and did not provide support

for her Children. Thus, this prong was likewise met. Accordingly, all four prongs of the test for involuntary termination were met in the instant cases.

Mother's counsel notes in her *Anders* brief that Mother could argue that termination of her parental rights was not proper as of the time of the hearing because: (1) she had tested clean in January of 2023, shortly before the hearing date; (2) her home as of the date of the hearing was appropriate for having the Children back in her care; (3) all of her visits before she stopped having visits with the Children were appropriate; (4) her missed drug screens were due to work and transportation issues; (5) she had completed some tasks on her case plan, including parenting and anger management classes; (6) she is financially able to support the Children due to her employment as of the date of the hearing; and (7) she had learned lessons in rehabilitative care that were helping her to change the destructive people, places, and circumstances in her life and to become a better parent.⁵ While these claims do have some evidentiary basis, they do not negate the fact that substantial evidence supported each and every one of the Family Court's necessary findings for terminating parental rights. Accordingly, the Family Court's Findings and Judgments were not clearly erroneous.

⁵ ““That request [to withdraw] must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.” A.C., 362 S.W.3d at 371 (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400).

CONCLUSION

We have thoroughly reviewed the record and find the Family Court based its decision on clear and convincing evidence, and it was not clearly erroneous. Hence, we AFFIRM the orders and judgments terminating parental rights. We also GRANT the motion of counsel for Mother to withdraw.

ALL CONCUR.

ENTERED: _____



JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Jeffrey A. Herrington
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BRIEF FOR APPELLEE:

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