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Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0238-ME

K.S.

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE DEANNA WISE HENSCHEL, JUDGE
ACTION NO. 22-AD-00059

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES AND K.J.S., A
MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0242-ME

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v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE DEANNA WISE HENSCHEL, JUDGE
ACTION NO. 22-AD-00060

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, KAREM, AND LAMBERT, JUDGES.

ACREE, JUDGE: In this consolidated appeal, Appellant, K.L.S. (Mother) appeals the McCracken Circuit Court’s January 23, 2023 orders terminating her parental rights to K.J.S. and D.L.S., her two children. We affirm.

BACKGROUND

Appellant, K.L.S. (Mother) is the mother of K.J.S., born May 5, 2014, and D.L.S., born January 26, 2016. Both children live in foster care. Their father (Father) died by suicide on July 17, 2021.

The family court heard testimony regarding the circumstances of this family at a termination of parental rights hearing held January 19, 2023. The Cabinet called Madelyn Prowell, a Cabinet social worker, to testify first. Prowell testified the Cabinet first became involved with this family in September 2019 upon discovering both parents were homeless and had been charged with possession of methamphetamines, possession of drug paraphernalia, and wanton endangerment; the wanton endangerment charge resulted from Father driving a vehicle under the influence of methamphetamine and with methamphetamine in the vehicle while the children were passengers. This prompted the Cabinet to file

removal petitions for both children, who were then placed in the custody of the Cabinet.

Prowell testified that the parents stipulated to neglect and received case plans. The case plans required both parents undergo parenting classes, mental health assessments, and substance abuse assessments, and Father was required to complete anger management classes. Mother was initially cooperative and made substantial progress on her case plan. Eventually, the parents were given unsupervised visitation in November 2019. During a home visit in January 2020, Prowell discovered alcohol in the home, which was a violation of the parents' bond conditions. She discovered Father had punched holes in the bathroom walls out of anger. Father completed additional anger management classes, and the children were returned in March 2020.

A second Cabinet social worker, Angela Haggerty, testified her involvement with the family began in October 2020, when the Cabinet opened a new case after Father punched out a rear car window while the children were in the back seat of the car. This caused the children to be exposed to broken glass. Haggerty testified that, in February 2021, the Cabinet became aware of several concerns regarding the children, including that the children were truant, that the children were possibly not receiving prescribed medication, and that the children had behavioral problems at school. A home visit by a Cabinet worker revealed the

house had garbage and feces throughout, that neither of the house's two toilets were functional, and that every door in the house was broken. The family also struggled to keep utilities activated for the house. Though the Cabinet did not pursue removal immediately, the parents received a safety plan requiring them to clean up the house and to repair at least one toilet.

Ashlee Richardson, another Cabinet social worker, testified that she became involved with the family in March of 2020. She testified the Cabinet referred the family to the Family Preservation Program, which involved weekly social worker home visits to help develop parenting skills and to address behavioral problems. She testified the Cabinet opened its second investigation in February 2021 following the previously mentioned home visit. The Cabinet again provided the parents with a case plan, which included rectifying the condition of the home, maintaining sufficient income to provide for the children's needs, further mental health and substance abuse assessments, maintaining reliable transportation, ensuring the children regularly attended school, and ensuring the children took the prescribed medication. Father was again instructed to undergo an anger management assessment.

Richardson further testified that the parents failed to make significant progress on their case plans, and Richardson filed a non-removal petition. Prior to the hearing on the petition on April 26, 2021, K.J.S. severely injured his finger; the

finger became infected and remained untreated for several days. The family court looked at pictures of the finger and the parents argued as to the severity of the injury. On motion of the county attorney, the family court amended the petition to a removal, found the children were neglected, and removed the children to the custody of the Cabinet. The children have remained in Cabinet custody since.

The Cabinet subsequently discovered Father drove under the influence of methamphetamine a second time on July 16, 2020. The children were passengers in the vehicle. Father died by suicide on July 17, 2021. Mother was on a video call with Father when he killed himself. Richardson testified that Mother has since made limited progress on her case plan and has been unable to maintain housing or employment. She also testified that Mother was incarcerated at the time of the January 19, 2023 hearing for possession of methamphetamines, possession of drug paraphernalia, failure to appear, and for skipping bail.

Richardson testified that K.J.S. has developmental and cognitive problems, including low IQ, aggressive behavior, and decreased social competence; K.J.S. could not be placed in a therapeutic foster home and instead had to reside in a hospital. D.L.S. displayed similar problems, including aggressive behavior, negative attention-seeking, and difficulty following instructions. Richardson testified that she did not believe Mother lacked the ability to address her own mental health issues resulting from the death of Father.

Mother, despite her incarceration, appeared in-person to testify on her own behalf. She explained her landlord would not allow her to continue living in the home where Father died. She also acknowledged she had used methamphetamine shortly after leaving rehab in October 2022. She testified she had not had a home since July 2021. Mother expressed her desire to engage in joint therapy with the children to process Father's death. She hoped she could be released on probation so she could live with the children in a "mommy and me" rehabilitation center where she could receive treatment.

The Family Court entered an Order Terminating Parental Rights for each child and corresponding Findings of Fact and Conclusions of Law on January 23, 2023, terminating her parental rights to both children. Mother now appeals.

ANALYSIS

We note at the outset that Mother's attorney has filed her brief 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). Her attorney therefore believes these appeals lack merit. *Anders* and *A.C.* permit appointed counsel to advise the court that their client's case lacks merit and request to withdraw, while also directing the court's attention to anything in the record which "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). This approach solves an

appointed attorney’s “dilemma of having to diligently represent the indigent client who wants to appeal while still complying with counsel’s other ethical duties as a member of the Bar.” *Id.* at 368 (citations omitted). When evaluating such an appeal, “this Court will fully examine the record and decide whether the appeal is wholly frivolous pursuant to *Anders*[.]” *Id.* at 371.

The family court has broad discretion in an action for termination of parental rights. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116. (Ky. App. 1998). The standard of review in a termination case is confined to the clearly erroneous standard in CR¹ 52.01, based upon clear and convincing evidence, and the findings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support them. *Id.* at 116; *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 423 (Ky. App. 1986). “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.” *Rowland v. Holt*, 70 S.W.2d 5, 9 (Ky. 1934).

KRS² 625.090 provides a three-part test to determine whether parental rights may be terminated, and each part must be satisfied by clear and convincing

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes.

evidence. First, the child must have “been adjudged to be an abused or neglected child” as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination of parental rights must be “in the best interest of the child.” KRS 625.090(1)(c). Finally, the trial court must find at least one of the grounds of parental unfitness listed in KRS 625.090(2)(a)-(k).

In the instant case, the family court found both K.J.S. and D.L.S. were abused or neglected for three reasons: Mother “[c]ontinuously or repeatedly fail[ed] or refuse[d] to provide essential parental care and protection for the child[ren], considering the age of the child[ren]” per KRS 600.020(1)(a)4.; Mother did not “provide the child[ren] with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child[ren’s] well-being” per KRS 600.020(1)(a)8.; and Mother “[f]ail[ed] to make sufficient progress toward identified goals as set forth in the court-approved case plan” resulting in the children’s commitment to the Cabinet and remaining in foster care for at least fifteen cumulative months in a four year period pursuant to KRS 600.020(1)(a)9.

The family court was not clearly erroneous in reaching these conclusions because substantial evidence supports each of them. The squalid conditions that the children were subjected to, as described in testimony at the termination hearing, more than satisfy both KRS 600.020(1)(a)4. and 8. The children were in the car when Father was driving under the influence of

methamphetamine – not once, but twice. And, because Mother did not make adequate progress on her assigned case plan, the children remained in Cabinet custody for a cumulative period of at least fifteen months per KRS 600.020(1)(a)9. For these reasons and others as detailed above, the family court was not clearly erroneous in determining both children were abused or neglected.

The family court determined termination of Mother’s parental rights would be in the best interest of both children. KRS 625.090(3) supplies six factors that a family court shall consider in making this determination:

- (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.

KRS 625.090(3)(a)-(f).

The family court explicitly discussed each of these six factors insofar as they were applicable to this case. In its ruling, the court discussed the efforts of the Cabinet to reunite the parents with the children and that these efforts were ultimately futile. The court noted any effort or adjustment Mother made to her circumstances and conduct – most notably, that she remained incarcerated – were insufficient to return the children to her. The court discussed the diminished mental and physical health of the children as a result of what they observed at home. The family court extensively discussed acts of neglect or abuse toward the children and did not have to discuss factors (a) and (f) because they were inapplicable to the case. Accordingly, the family court committed no clear error in determining termination would be in the best interest of the children.

KRS 625.090(2) provides eleven grounds upon which a court may find parental unfitness, and the court must prove at least one of these grounds by clear and convincing evidence as a prerequisite to termination of parental rights.

The family court in the instant case determined three of these grounds applied to

Mother:

(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[.]

KRS 625.090(2)(e), (g), (j).

As previously discussed, the children were subjected to an extremely unsanitary home environment, including feces and garbage. On at least one occasion, an injury was left untreated and became infected. These reasons and others more than demonstrate Mother failed to provide essential parental care and

protection and failed to provide essential shelter and medical care to the children. And, because Mother repeatedly failed to complete the Cabinet's assigned case plans and was arrested for drug-related crimes, there is no reasonable expectation of significant improvement in Mother's conduct. We find no clear error in the family court's application of KRS 625.090(2)(e) and (g). And, because the children were in foster care under the responsibility of the Cabinet for fifteen cumulative months out of a four-year period, the family court did not err in applying KRS 625.090(2)(j).

CONCLUSION

Based on the foregoing, we affirm the McCracken Circuit Court's termination of Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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