

# Commonwealth of Kentucky

## Court of Appeals

NO. 2023-CA-1450-ME

S.S.W., NATURAL MOTHER

APPELLANT

v. APPEAL FROM HARDIN FAMILY COURT  
HONORABLE DAWN LONNEMAN BLAIR, JUDGE  
ACTION NO. 23-AD-00120

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND  
FAMILY SERVICES AND S.J.B. AND  
R.C.B.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CALDWELL, McNEILL, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: S.S.W. (“Mother”) appeals from the involuntary termination of her parental rights to her minor child, S.J.B. (“Child”),<sup>1</sup> who was born in 2021. We affirm.

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<sup>1</sup> To protect the privacy of Child, we do not refer to Child or her natural parents by name. *See also* Rules of Appellate Procedure (“RAP”) 5(B)(2). Child’s natural father, R.C.B., has not appealed from the family court’s termination of his parental rights.

## FACTUAL AND PROCEDURAL HISTORY

On June 13, 2022, the Cabinet for Health and Family Services (“the Cabinet”) filed a dependency, neglect, or abuse (“DNA”) petition against Mother based on allegations of Mother being unable to meet Child’s needs, sexual abuse and/or trafficking of Child’s older sibling, and Mother’s use of marijuana in the children’s presence. Child was placed in the temporary custody of the Cabinet. On June 29, 2022, Mother stipulated to abuse or neglect and on July 13, 2022, Child was committed to the care of the Cabinet.

On July 6, 2023, the Cabinet filed a petition to involuntarily terminate Mother’s parental rights to Child. The Cabinet alleged, *inter alia*, that Mother had failed to provide or was incapable of providing essential parental care and protection for at least six months. The Hardin Family Court held a final termination trial in November 2023, at which a Cabinet social worker, Mother, and Child’s older sibling testified.

The social worker relayed Mother’s case plan in her trial testimony. The case plan included: cooperating with the court, cooperating with the Cabinet and all service providers and a pending Indiana Child Protective Service investigation, signing releases of information for service providers, substance abuse and mental health assessments and following any recommendations

therefrom, age-appropriate parenting classes, obtaining stable housing and employment, and complying with random drug screens.

The social worker testified that while Mother had maintained stable housing and eventually did a psychosocial assessment, Mother did not fully comply with the required drug screening protocol. The social worker also testified that Mother had cooperated somewhat with the Cabinet and eventually did intensive outpatient treatment as recommended. The social worker stated that Mother only “sort of” complied with requirements for substance abuse and/or mental health assessments by doing a crisis assessment, which does not give the Cabinet as much information.

As for drug screenings, despite signing a drug screen protocol agreement which required Mother to call in daily, Mother had not done so according to the social worker’s testimony. The social worker testified that while Mother did screen 13 times, it was never random, as she always chose when to test. Several of these screens came back positive for marijuana, including times when Mother was attending chemical dependency classes.

The social worker testified that Mother did not timely complete many of her case plan requirements, such as not participating in therapy until a full year after the case had opened. The social worker also testified that Mother was prescribed medications for her mental health diagnoses, but Mother reported she

was afraid to take them. According to the social worker, Mother did attend visitation regularly with Child. However, Child began to have problematic behaviors after visits with Mother. The social worker could not say with certainty what caused the behaviors.

The social worker concluded her testimony by saying while Mother's compliance had improved in recent months, the social worker still had concerns regarding Mother's mental health, marijuana use, and lack of full compliance with court-ordered therapy or psychiatric appointments.

Child's then-15-year-old sister ("Sister")<sup>2</sup> was the next witness to testify. Sister testified that Mother was a "very bad influence" and allowed Sister to be raped repeatedly for six months by a family friend. Sister stated that not only did Mother know about the rape, but she encouraged it, asking the rapist "what kinds of sex toys they needed." Sister also spoke on other instances of poor parenting decisions on Mother's part, such as: Mother's smoking marijuana in the car while Sister and Child were present, despite Sister having asthma; Mother's using Sister to help shoplift when she was younger; Mother's pawning Sister's belongings and claiming they were stolen; and Mother's blaming Sister for Sister and Child's being removed by the Cabinet. Sister testified that living with Mother

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<sup>2</sup> Sister was also subject of a separate termination of parental rights case.

had caused her “pain, depression, anxiety and suicidal thoughts” and begged the judge to terminate Mother’s parental rights.

Mother also decided to testify on her own behalf. Mother claimed to have done different assessments than requested because some places would not take her insurance, or she had difficulty locating them. Mother also testified that her visits with Child were “amazing,” saying Child wanted to go home with her after every visit. When asked about her marijuana use, Mother stated that she has smoked openly since she was 16 years old and that she believed marijuana to be legal in Kentucky. Mother said Sister’s testimony was not “the complete truth” but she agreed with some of it. Mother finished her testimony by stating that despite her shortcomings, she believed it was in Child’s best interest to be with her.

The family court took the matter under advisement at the end of trial. About three weeks after the trial, the family court entered findings of fact and conclusions of law and an order terminating Mother’s parental rights to Child. Mother filed a notice of appeal by counsel.

In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*-type brief<sup>3</sup> stating no meritorious claim of error exists that would justify reversal of the

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<sup>3</sup> See generally *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

termination of Mother's parental rights. Counsel accompanied the brief with a motion to withdraw. Mother's counsel certified that she provided Mother with a copy of the brief and the motion to withdraw and informed Mother of her right to file a supplemental brief. This Court entered an order passing the motion to withdraw to the merits and giving Mother 30 days to file a supplemental brief. Mother did not file a supplemental brief.

Upon review, we grant counsel's motion to withdraw by separate order and affirm the family court's termination of Mother's parental rights.

## ANALYSIS

### *Anders* Brief Considerations

If counsel concludes there are not proper grounds for appellate relief from an involuntary termination of parental rights, counsel must nonetheless submit 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). The *Anders* brief here does not refer to anything in the record that might arguably support the appeal. Instead, it simply states that Mother contends she is the best person to have custody and control of Child as Child's biological mother. Nonetheless, 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).

Such review is analogous to a palpable error review, requiring only that we ascertain whether any error affects the substantial rights of a party. *A.C.*, 362 S.W.3d at 370. If such a review results in the Court’s agreement with an appellant’s counsel that there is no nonfrivolous ground for appealing the termination of parental rights, it is appropriate to affirm the family court. Nonetheless, in reviewing the family court’s decision upon our independent review of the record, we keep in mind specific requirements for granting an involuntary termination of parental rights. *See id.* at 371-72 (noting involuntary termination of parental rights “requires strict application of statutory standards”).

### **Statutory Requirements for Involuntary Termination of Parental Rights**

Before terminating parental rights, the family court must find clear and convincing evidence<sup>4</sup> to support each of three parts of the standard established by KRS<sup>5</sup> 625.090. First, the child must have been found to be an “abused or neglected” child as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, the family court must find at least one ground of parental unfitness as set forth in KRS 625.090(2). Third, termination must be in the child’s best interest. KRS 625.090(1)(c). In determining the child’s best interest and whether there are

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<sup>4</sup> *Clear and convincing evidence* “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 and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citations omitted).

<sup>5</sup> Kentucky Revised Statutes.

ground(s) of parental unfitness, the family court must consider the factors listed in KRS 625.090(3).

### **Requirements for Reviewing Involuntary Termination of Parental Rights**

“[T]ermination of parental rights is a grave action which the courts must conduct with utmost caution.” *M.S.S. v. J.E.B.*, 638 S.W.3d 354, 359 (Ky. 2022) (internal quotation marks and footnote omitted). Thus, the evidence to support termination must be clear and convincing. KRS 625.090; *see also Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982) (holding due process requires proof by at least clear and convincing evidence for termination of parental rights).

Even so, the decision of a family court to involuntarily terminate parental rights is accorded great deference on appellate review. The family court’s factual findings are reviewed under the “clearly erroneous” standard of CR<sup>6</sup> 52.01,<sup>7</sup> meaning they shall not be disturbed unless they are not supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). We review the family court’s determination that termination of

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<sup>6</sup> Kentucky Rules of Civil Procedure.

<sup>7</sup> CR 52.01 governs “all actions tried upon the facts without a jury” and provides in pertinent part: “Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”



parental rights is in a child's best interest for abuse of discretion. *D.J.D. v. Cabinet for Health and Family Services*, 350 S.W.3d 833, 837 (Ky. App. 2011).

### **Family Court Made Statutorily Required Findings**

The family court made the findings required in KRS 625.090 by clear and convincing evidence – specifically including 1) Child being an abused or neglected child, 2) at least one ground of parental unfitness, and 3) termination being in Child's best interest. And based upon our review of the record, substantial evidence supports the family court's factual findings on these matters. The family court also appropriately considered factors listed in KRS 625.090(3) for assessing whether termination was in Child's best interest.

#### **1) No Reversible Error in Family Court's Conclusion that Child Had been Adjudicated to be an Abused or Neglected Child or in its Independent Finding that Child was an Abused or Neglected Child**

First, the family court noted the prior adjudication that Child was abused or neglected in the DNA proceeding. (Indeed, Mother stipulated to abuse or neglect in the DNA proceeding.) The family court thus concluded Child had been adjudicated to be an abused or neglected child by a court of competent jurisdiction.

The family court also made an independent finding that Child was abused or neglected. This finding was based on factors including Child's being subjected to risk of physical or emotional injury due to exposure to domestic violence and Mother's engaging in a pattern of conduct rendering her incapable of

providing for Child's needs due to substance abuse. Its findings of fact in this regard are supported by substantial evidence and we discern no error in this regard.

**2) No Error in Finding At Least One Ground of Parental Unfitness as Set Forth in KRS 625.090(2)**

Second, the record also adequately supports the family court's determination that the Cabinet adequately proved the existence of at least one ground of parental unfitness by clear and convincing evidence. The family court concluded that for at least six months, Mother "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." *See* KRS 625.090(2)(e).

The family court found clear and compelling evidence of Mother's failure to provide essential parental care and protection. It noted it could consider acts of abuse or neglect regarding other children when making its findings regarding this ground for termination. *See* KRS 625.090(3)(b). It indicated it found credible Sister's testimony about Mother's allowing Sister to be raped by a family friend, Mother's using marijuana in the children's presence, the family's homes being infested with vermin, Sister's being whipped by Mother, and Sister's never feeling safe with Mother.

The family court further found Mother admitted to not fully complying with the Cabinet's recommendations to obtain treatment for substance abuse and mental health concerns. It also found that Mother admitted to Child being exposed to domestic violence directed at Mother by Child's natural father.

Based on our review of the record, these factual findings are supported by substantial evidence. Thus, we discern no error in the family court's finding at least one ground of parental unfitness as set forth in KRS 625.090(2).<sup>8</sup>

**3) Family Court's Factual Findings Regarding Best Interests are Supported by Substantial Evidence and the Family Court Did Not Abuse its Discretion in Finding Termination in Child's Best Interest**

Finally, the family court's conclusion that termination of Mother's parental rights would be in Child's best interest is amply supported by the record. The family court quoted KRS 625.090(3) and made findings regarding each best

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<sup>8</sup> The family court also concluded that Mother:

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 there is no reasonable expectation of significant improvement in the mother's conduct in the immediately foreseeable future, considering the age of the child.

*See* KRS 625.090(2)(g). However, since the family court's finding of KRS 625.090(2)e grounds is supported by substantial evidence, we need not address the merits of the family court's factual findings about KRS 625.090(2)(g) grounds. Only one properly supported finding by clear and convincing evidence of one KRS 625.090(2) ground is required for termination. *See generally* KRS 625.090(2) ("No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds[.]").

interest factor listed in KRS 625.090(3), namely 1) mental illness or intellectual disability rendering the parent unable to meet Child's needs for extended periods, 2) acts of abuse or neglect toward any child in the family, 3) the Cabinet making reasonable reunification efforts, 4) Mother's efforts and adjustments in her conduct and circumstances to make a return to Mother's home in Child's best interests, 5) Child's physical, emotional and mental health and prospects for improvement if termination were granted, and 6) the parent's payment or failure to pay for a reasonable portion of Child's care if financially able to do so.

First, the family court found that Mother had been diagnosed with anxiety and depression but failed to timely complete recommended mental health assessments and had been inconsistent with attending appointments for mental health treatment. The family court also noted Mother's testimony that she had a mental impairment or learning disability.

Second, the family court found acts of abuse and neglect toward Child and her older sister, specifically noting it did not find credible Mother's denial of knowledge of Sister's being sexually abused and finding Mother failed to provide Child with adequate care, supervision, or necessities such as food and shelter.

Third, the family court found the Cabinet had provided reasonable reunification services, by offering appropriate referrals to services including parenting classes, counseling, drug screens, and supervised visitation.

Fourth, the family court found that Mother's efforts and adjustments were not sufficient to permit Child's return to Mother's home within a reasonable time due to factors including Mother's inconsistent attendance at mental health treatment, Mother's continuing to test positive for marijuana use, and Mother's reunification with Child's natural father whom Mother testified was violent.

Fifth, the family court found that Child's physical, emotional, and mental needs were met in the Cabinet's care and custody and that continued improvement was expected if the petition for termination was granted. The family court also noted that Child and Sister were placed together with a foster family and found it would not be in Child's best interest to separate the siblings.

Sixth, though the family court did not explicitly make a finding about Mother's financial ability to provide support, the family court found that Mother did not pay a formal child support obligation<sup>9</sup> and that Mother provided no substantial support for Child while Child was in the Cabinet's custody, except for sporadically providing snacks during visits with Child.<sup>10</sup>

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<sup>9</sup> No court-ordered child support obligation of record was noted.

<sup>10</sup> Despite the lack of explicit finding about whether Mother was financially able to contribute to Child's support, *see* KRS 625.090(3)(f), the family court's findings that Mother did not formally pay child support and did not provide substantial support other than occasional snacks at visits are supported by substantial evidence. And given the totality of its findings on best interest factors and our examination of the evidence in the record, we discern no abuse of discretion in the family court's finding termination to be in Child's best interest despite the lack of explicit finding about whether Mother was financially able to contribute to Child's support.

Based on our review of the record, the family court's factual findings regarding best interest considerations are supported by substantial evidence. Furthermore, we discern no abuse of discretion in the family court's determination that termination of parental rights was in Child's best interest.

In short, following our independent examination of the record and review of the family court's KRS 625.090 findings, "we agree with counsel's estimation and perceive no basis warranting relief on appeal." *A.C.*, 362 S.W.3d at 372. We grant counsel's motion to withdraw by separate order.

### **CONCLUSION**

For the foregoing reasons, we AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Amy L. Turner  
Elizabethtown, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY:

Leslie M. Laupp  
Covington, Kentucky