

Commonwealth of Kentucky
Court of Appeals

NO. 2024-CA-0066-ME

D.C.

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE W. KENT VARNEY, JUDGE
ACTION NO. 23-AD-00021

CABINET OF HEALTH AND
FAMILY SERVICES; C.C.V., A
MINOR CHILD; AND J.V.

APPELLEES

AND

NO. 2024-CA-0068-ME

D.C.

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE W. KENT VARNEY, JUDGE
ACTION NO. 23-AD-00022

CABINET OF HEALTH AND
FAMILY SERVICES; K.G.V., A
MINOR CHILD; AND J.V.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: THOMPSON, CHIEF JUDGE; KAREM AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Appellant, D.C. (Mother), appeals the Pike Family Court’s January 4, 2024, Findings of Fact and Conclusions of Law and Orders of Judgment terminating her parental rights to her minor children, C.C.V. and K.G.V. (Children). Appellee, J.V. (Father), has not appealed the orders and has not otherwise been active in these appeals.

Mother’s counsel has filed a brief compliant with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012) and *Anders v. California*, 386 U.S. 738 (1967) along with a motion to withdraw. By virtue of filing an *Anders* brief, counsel was required to identify “‘anything in the record that might arguably support the appeal[,]’ . . . and objectively demonstrate the issues identified are wholly frivolous.” *A.C.*, 362 S.W.3d at 371 (quoting *Anders*, 386 U.S. at 744). Appellee, the Cabinet for Health and Family Services, Commonwealth of Kentucky (Cabinet) has filed a response brief. Mother has not filed a supplemental *pro se* brief, though she had the opportunity to do so. *See id.* After a thorough review of the record on appeal, the relevant law, and the briefs filed, for the reasons stated herein, we affirm. We have also granted the motion of Mother’s counsel to withdraw by separate Order.

BACKGROUND

The genesis of the underlying proceedings regarding this case began in the Pike Family Court in early 2019. One month after C.C.V.'s birth, the Cabinet brought a dependency, neglect, and abuse (DNA) petition against Mother and Father based on substance abuse issues.¹ Law enforcement had discovered both parents to be intoxicated while in a caretaking role of C.C.V. after the parents' vehicle had been pulled over. C.C.V. was removed and placed with grandparents, who agreed they would supervise the child with the parents at all times. A few days later, a second DNA petition was filed after the Cabinet discovered that the parents had been left unsupervised with C.C.V. at the grandparents' home.² The parents were provided case plans and C.C.V. was ultimately returned to Father's custody, with Mother to have visits, in February of 2020.

Approximately two weeks after C.C.V. was returned to Father's custody, the Cabinet filed another DNA petition due to environmental concerns and multiple domestic violence incidents occurring in the home between Mother and Father while C.C.V. was present.³ C.C.V. was found to be a dependent child and placed with a relative.

¹ Case No. 19-J-00040-001.

² Case No. 19-J-00040-002. This case was later dismissed without prejudice.

³ Case No. 19-J-00040-003.

K.G.V. was born in early 2021. In September of 2021, another domestic violence incident occurred between Mother, Father, and a paternal grandmother, resulting in Mother obtaining a Domestic Violence Order (DVO) against Father for herself and behalf of the Children.⁴ The Cabinet also filed a fourth DNA petition for C.C.V. and its first DNA petition for K.G.V.⁵ In addition to domestic violence, there were continuing concerns of narcotics being used in the home by some family members. Mother regained custody of Children in October of 2021.

In February of 2022, the Cabinet filed a fifth DNA petition for C.C.V. and a second petition for K.G.V. after the parents violated the DVO. Additionally, drug paraphernalia, including needles used for the intravenous injection of illicit substances, alcohol bottles, and unmarked pill containers were discovered in places accessible to the Children in Mother's home.⁶ The DVO was violated once again in April of 2022 when Father came to Mother's home. Eventually, in July of 2022, the family court changed the goal of Children from reunification to adoption and entered permanency orders with custody to remain with the Cabinet.

⁴ Case No. 21-D-00134-001.

⁵ Case Nos. 19-J-00040-004 and 21-J-00176-001.

⁶ Case Nos. 19-J-00040-005 and 21-J-00176-002.

In November of 2022, Mother filed a separate civil custody action seeking to regain custody and for visitation of the Children.⁷ The relative foster care placements for the Children intervened in the civil custody case. In March of 2023, the Cabinet filed termination of parental rights (TPR) petitions for both Children in Pike Family Court. Ultimately, both the civil custody case and the TPR cases were set for a hearing in December of 2023; however, it appears the family court only conducted a hearing in the TPR cases that day, having determined that the TPR hearing would be dispositive regarding the civil custody case.

Testimony was taken from two of the Cabinet workers involved in the DNA cases, Mother, and Father. Both Cabinet workers testified that the parents previously had substance abuse issues and there existed significant domestic violence concerns throughout the pendency of the DNA cases. Each worker further testified that they did not believe either parent could provide essential parental care and protection for Children and there were no reasonable expectations for the parents' improvement. They stated that all services available to the Cabinet had been exhausted since the first Petition was filed and there was nothing else to offer the parents. Specifically, as to Mother, both workers acknowledged that she had completed case plans previously; however, they

⁷ Case No. 22-CI-00907.

explained that Mother did not demonstrate any of the skills she learned from the services provided as evidenced by the subsequent DNA petitions based on continuing domestic violence, substance abuse issues, and violation of court orders.

Mother admitted to previously having substance abuse issues, but testified she had been sober since September of 2020. Regarding the most recent DNA cases, Mother admitted to having violated the DVO in February of 2022 by offering Father a ride in her car. However, Mother claimed the second violation was outside of her control as she was sleeping when Father broke into her home in April of 2022. Mother further claimed the drug paraphernalia found in her home belonged to her uncle, who she had hired to remediate a mold problem while she and K.G.V. stayed with other family members. Although the record reflected that Mother stipulated to neglect, she testified that she did not remember doing so and that she did not know what stipulate meant. Mother additionally testified that she had recently obtained full-time employment and was going to school full-time, that she had stable housing, and that she had completed almost all of the tasks on her most recent case plan provided by the Cabinet.⁸ She provided no other evidence besides her testimony.

⁸ Of the two services D.C. (Mother) did not complete, both recommended by the University of Kentucky Targeted Assessment Program, one was a substance abuse program which Mother claimed would not accept her because she was not in active addiction. The other was a domestic

At the conclusion of the hearing, the family court found by clear and convincing evidence that termination of parental rights for both Children was appropriate. The court issued written Findings of Fact and Conclusions of Law and Orders of Judgment on January 4, 2024. These appeals followed.

STANDARD OF REVIEW

This Court reviews the orders of a family court to terminate a parent's rights for clear error, or in other words, such a decision will not be set aside unless there is no substantial, clear, and convincing evidence to support the lower court's decision. *See Cabinet for Health and Fam. Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010); Kentucky Rules of Civil Procedure (CR) 52.01. When a party files an *Anders* brief in a termination of parental rights case, this Court is not required to address every conceivable argument that an appellant could have raised on appeal. *A.C.*, 362 S.W.3d at 370. This Court's review is analogous to a palpable error review requiring only that we "ascertain error which 'affects the substantial rights of a party.'" *Id.* (quoting CR 61.02). "[A] palpable error determination turns on whether the court believes there is a 'substantial possibility' that the result would have been different without the error." *Hibdon v. Hibdon*, 247 S.W.3d 915, 918

violence program which did not accept Mother because the program would only accept voluntary clients and not court-ordered individuals.

(Ky. App. 2007) (quoting *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006)).

ANALYSIS

Parental rights may be involuntarily terminated after three determinations are made: (1) the child is “[a]bused or neglected[,]” as defined by Kentucky Revised Statutes (KRS) 600.020(1); (2) the termination must be in the child’s best interest; and, (3) at least one ground of parental unfitness as set out in KRS 625.090(2) exists.⁹ KRS 625.090; *see also Cabinet for Health and Fam. Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014).

⁹ In relevant part, Kentucky Revised Statutes (KRS) 625.090(2) provides:

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:

....

(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;

....

(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; or

The *Anders* brief filed on Mother's behalf does not take issue with the family court's findings that the Children were abused or neglected or that the terminations were in the Children's best interest. As noted by the court, Mother had stipulated to the neglect of the children. Similarly, while the *Anders* brief does note issues with the family court's findings concerning some of the KRS 625.090(2) factors,¹⁰ the brief concedes that the evidence presented at trial supports a finding under KRS 625.090(2)(e), namely that Mother, though she wanted to provide care, was incapable of doing so and that her inability was not likely to improve. While the family court found multiple conditions of KRS 625.090(2) existed, it only needed to have found one statutory condition to support termination. *See E.L.T. v. Cabinet for Health and Family Servs.*, 647 S.W.3d 561, 569 (Ky. App. 2022).

After our careful review of the record, we hold that the family court's findings are supported by substantial evidence. While Mother has made strides in attempting to maintain her sobriety and elevating her station in life, the Cabinet demonstrated continuing concerns that Mother is incapable of providing essential

(k) That the child has been removed from the biological or legal parents more than two (2) times in a twenty-four (24) month period by the cabinet or a court.

¹⁰ The *Anders* brief (*Anders v. California*, 386 U.S. 738 (1967)) contends that the family court miscalculated the months K.G.V. was in foster care as pertaining to KRS 625.090(2)(j) and that KRS 625.090(k) was not applicable to either Child.

care by her failing to display the skills she learned from the variety of services provided in her previous case plans and maintaining contact with problematic individuals, whether it was Father or a family member who was abusing substances.

The remaining arguments identified in the *Anders* brief are that: (1) Mother's defense potentially suffered because no pleading¹¹ was filed on her behalf in the TPR cases; and, (2) her separate civil custody case was not adjudicated before the TPR hearing. We address these in turn.

Firstly, Mother was represented by counsel at all pertinent times,¹² no default judgments were entered against Mother, and during the TPR hearing Mother was permitted to testify, cross-examine all witnesses at length, and otherwise present her case fully. Notably, the TPR hearing was initially continued for three months in order for Mother's counsel to have more time to prepare her case, and her counsel did not attempt to file an answer, or any other pleading. The *Anders* brief does not propose, nor can we discern from the record, what sort of information would have been included in a pleading that could have substantially altered the outcome of the case in any way.

¹¹ "Pleading" is a term of art and is limited under the Kentucky Rules of Civil Procedure (CR) to complaints and answers to complaints. *See* CR 7.01.

¹² Mother's current counsel was appointed for her after her previous counsel who represented her during the Termination of Parental Rights hearing passed away.

Finally, we find no error in the family court's decision to conduct a hearing in the TPR cases before adjudicating Mother's civil custody case. It is well within a family court's discretion to determine the appropriate time to conduct a hearing, or when to grant or deny continuances. *See Montgomery v. Commonwealth*, 320 S.W.3d 28, 47 (Ky. 2010). The family court reasonably decided that the outcome of the TPR cases would have a determinative effect on the civil custody case and chose to continue the civil custody case until such a time as the TPR cases could be addressed.

CONCLUSION

After a thorough review of the record on appeal, we hold there are no nonfrivolous arguments which could be brought on Mother's behalf which would support reversal herein. Accordingly, we affirm the Pike Family Court's January 4, 2024, Findings of Fact and Conclusions of Law and Orders of Judgment for both C.C.V. and K.G.V.

ALL CONCUR.

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