

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2024-CA-0085-ME

P.L.

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT  
HONORABLE HEATHER FRYMAN, JUDGE  
ACTION NO. 23-AD-00013

CABINET FOR HEALTH & FAMILY  
SERVICES; A.R.J.K.B., A MINOR  
CHILD; AND M.A.B.

APPELLEES

AND

NO. 2024-CA-0086-ME

P.L.

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT  
HONORABLE HEATHER FRYMAN, JUDGE  
ACTION NO. 23-AD-00014

CABINET FOR HEALTH & FAMILY  
SERVICES; B.E.T.L., A MINOR  
CHILD; AND M.L.

APPELLEES

AND

P.L.

APPELLANT

v.

APPEAL FROM HARRISON CIRCUIT COURT  
HONORABLE HEATHER FRYMAN, JUDGE  
ACTION NO. 23-AD-00015

CABINET FOR HEALTH & FAMILY  
SERVICES; M.A.B.; AND M.R.L.W.,  
A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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

KAREM, JUDGE: P.L. (“Mother”) appeals from the Harrison Circuit Court’s findings of fact, conclusions of law, and orders terminating parental rights to her minor children. Finding no error, we affirm the Harrison Circuit Court’s orders.

**FACTUAL AND PROCEDURAL BACKGROUND**

Mother is the biological mother of A.B., born in October 2016, M.W., born in March 2018, and B.L. born in June 2019 (collectively, the “Children”).<sup>1</sup>

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<sup>1</sup> The Children’s putative fathers did not appeal the family court’s termination of their parental rights.

The Cabinet for Health and Family Services (the “Cabinet”) petitioned to involuntarily terminate Mother’s parental rights to the Children on July 10, 2023. The family court held a hearing on November 29, 2023, at which Mother was present and represented by counsel.

On December 28, 2023, the family court entered findings of fact, conclusions of law, and orders terminating Mother’s parental rights to the Children. These appeals followed.

Mother’s counsel has filed a motion for leave to withdraw as counsel and to file briefs pursuant to *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, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). By order entered on May 30, 2024, this Court passed the motion to withdraw to this merits panel, ordered that the Clerk file the tendered *Anders* brief, and permitted Mother to proceed *pro se* and file a supplemental brief within thirty (30) days thereof, which Mother failed to do.

We will discuss further facts as they become relevant.

## **ANALYSIS**

### **1. Anders and A.C.**

In *A.C.*, a panel of this Court adopted the principles and procedures laid out in *Anders* in the criminal setting to appeals from orders terminating parental rights, concluding that “an indigent parent defending a termination of

parental rights action enjoys a statutory right to counsel during the appeal[.]” *A.C.*, 362 S.W.3d at 367 (citation omitted). However, as in *Anders*, “that right to counsel ‘does not include the right [of an indigent parent] to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing a frivolous appeal.’” *Id.* (quoting *Smith v. Robbins*, 528 U.S. 259, 278, 120 S. Ct. 746, 760, 145 L. Ed. 2d 756 (2000)).

Consequently, under Kentucky law, it is necessary to utilize *Anders*-type briefs and procedures in termination of parental rights cases wherein appointed counsel does not believe there are any non-frivolous claims to appeal. *Id.* at 369. Therefore, upon a good faith review of the record:

if counsel finds his [client’s] case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel’s brief should be furnished [to] the indigent and time allowed him to raise any points that he chooses; the court – not counsel – then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.

*Anders*, 386 U.S. at 744, 87 S. Ct. at 1400.

As previously discussed, Mother’s counsel submitted an *Anders* brief in compliance with *A.C.* and *Anders* in this case. Thus, *A.C.* obligates us to independently review the record and establish whether the appeal is, in fact, frivolous. *A.C.*, 362 S.W.3d at 371.

## **2. Standard of Review**

The applicable standard of review in a termination of parental rights proceeding is the “clearly erroneous” standard outlined in Kentucky Rule of Civil Procedure 52.01. *M.E.C. v. Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008). Under that standard, “the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.” *W.A. v. Cabinet for Health and Family Services*, 275 S.W.3d. 214, 220 (Ky. App. 2008). “Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Smyzer v. B.F. Goodrich Chemical Co.*, 474 S.W.2d 367, 369 (Ky. 1971) (citation omitted).

## **3. Discussion**

Kentucky Revised Statute (“KRS”) 625.090 sets forth the requirements that must be met before a court in Kentucky can involuntarily terminate a parent’s rights to her child. First, as it concerns this appeal, the family court must determine that the Children are abused or neglected or that the Children were previously determined to be abused or neglected by a court of competent jurisdiction. KRS 625.090(1)(a)1.-2. Second, the Cabinet must have filed a petition seeking the termination of parental rights under KRS 620.180 or 625.050. KRS 625.090(1)(b). Third, the family court must find that termination is

in the Children's best interests. KRS 625.090(1)(c). Finally, the family court must find by clear and convincing evidence the existence of one or more of the eleven grounds (a) through (k) listed in KRS 625.090(2). Even if all these requirements are met, the family court may choose in its discretion not to terminate a parent's parental rights if the parent has established by a preponderance of the evidence that the Children will not continue to be abused or neglected if returned to the parent. KRS 625.090(5).

In the case before us, substantial evidence supports the family court's conclusions regarding the termination of parental rights proceedings. First, Mother had been found to have neglected the Children in the underlying Dependency, Neglect, and Abuse case. Additionally, the family court found, by clear and convincing evidence presented at the termination hearing, that the Children were abused and neglected as defined in KRS 600.020(1). Specifically, the family court found that the hearing testimony showed that Mother did not make significant progress on her case plan until the Children had been in care for approximately fifteen (15) months.

The next statutory factor requires that the court find by clear and convincing evidence that termination would be in the Children's best interests. KRS 625.090(1)(c). In conducting its best interest analysis, KRS 625.090(3) requires the court to 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.

Here, the family court properly considered these factors, as outlined in detail on pages 7-8 of its findings of fact and conclusions of law, and concluded that it was in the Children's best interests to terminate Mother's parental rights.

We are satisfied from our independent review of the record that substantial

evidence supports the family court’s findings – namely, the evidence demonstrating continuing parental neglect of the Children’s material, emotional, and healthcare needs. Moreover, the record reflects significant concerns regarding Mother’s protective capacity as it relates to A.B.’s sexual abuse allegations against her stepfather’s father and physical discipline administered by her maternal grandmother.

Additionally, as previously discussed, Mother failed to successfully complete the items on her case plan and the Children had been in the Cabinet’s continuous custody since their removal in October 2021. Further, the Cabinet social worker testified that, under the circumstances of the case, she was unaware of any other services that the Cabinet could provide or refer to Mother to allow her to safely reunite with the Children.

Finally, as previously discussed, KRS 625.090(2) provides that “[n]o 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 [several enumerated] grounds[.]” Only one ground is required. Among them, KRS 625.090(2)(e) provides 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[.]”

In its findings of fact and conclusions of law, the family court made extensive findings regarding Mother’s repeated failure or refusal to provide essential parental care and protection for the Children, including the fact that Mother had been given extensive time and resources to assist her in appropriate caregiving and had made no significant improvement in her circumstances since the Children were first removed from the home. Moreover, the Children had been in foster care under the Cabinet’s responsibility for fifteen (15) cumulative months out of the forty-eight (48) months preceding the filing of the termination petition. *See* KRS 625.090(2)(j). From our independent review of the record, we are satisfied that substantial evidence supports the family court’s determination, thus satisfying the required statutory factor.

### **CONCLUSION**

Based on the foregoing, we find no error in the family court’s termination of Mother’s parental rights. Substantial evidence in the record supported the family court’s conclusions, and the factors in KRS 625.090 were met. Accordingly, we affirm the family court’s findings of fact, conclusions of law, and order terminating Mother’s parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jan Shaw  
Alexandria, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH & FAMILY  
SERVICES:

Kevin Martz  
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