

RENDERED: SEPTEMBER 27, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2024-CA-0179-ME

B.W.

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 23-AD-00022

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; A.N.S.S., A CHILD;  
AND H.S.W.

APPELLEES

AND

NO. 2024-CA-0180-ME

B.W.

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 23-AD-00023

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

APPELLEES

AND

NO. 2024-CA-0182-ME

H.S.W.

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 23-AD-00022

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; A.N.S.S., A  
CHILD; AND B.W.

APPELLEES

AND

NO. 2024-CA-0183-ME

H.S.W.

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE STEPHEN M. JONES, JUDGE  
ACTION NO. 23-AD-00023

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

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CETRULO, L. JONES, AND McNEILL, JUDGES.

McNEILL, JUDGE: On December 27, 2023, the Laurel Circuit Court entered orders terminating B.W.’s (“Father’s”)<sup>1</sup> and H.S.W.’s (“Mother’s”) parental rights relative to their twin minor daughters, A.N.S.S. and M.R.R.S. In accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Father and Mother filed notices of appeal on their behalf and, subsequently, filed *Anders*-type<sup>2</sup> briefs reaching the conclusion that no meritorious claim of error exists that would justify reversal of the orders terminating parental rights in this case. Counsel accompanied the briefs with motions to withdraw,

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<sup>1</sup> B.W. is the children’s putative father.

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

which were passed to this merits panel. After careful review, we affirm the circuit court's orders terminating Father's and Mother's parental rights; and, as counsel have fully complied with the requirements of *A.C.* and *Anders*, we have granted through separate orders their motions to withdraw.

Pursuant to *A.C.*, the function of this Court is "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. Such review is analogous to a palpable error review, requiring only that we ascertain whether any error affects the substantial rights of a party. *Id.* 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 trial court.

The background of this matter is as follows. A.N.S.S. and M.R.R.S. were born on August 29, 2021, at UK Hospital. Both children were diagnosed with neonatal abstinence syndrome ("NAS") after birth and immediately admitted to the Neonatal Intensive Care Unit due to respiratory distress. In September 2021, dependency/neglect/abuse ("DNA") proceedings were initiated against Father and Mother, and the children were removed from their custody by court order and placed in the custody of the Cabinet for Health and Family Services ("Cabinet"). Removal was based upon Mother's drug use, her prior history (her rights to two

other children were involuntarily terminated in 2019), and the Cabinet's prior substantiation of sex abuse against Father. The children have remained in foster care since September 9, 2021, when they came home from the hospital after birth. As a result of the DNA proceedings, on May 23, 2022, the children were adjudged to be neglected; and on July 8, 2022, they were committed to the custody of the Cabinet. In February of 2023, the Cabinet then petitioned the Laurel Circuit Court to terminate Father's and Mother's parental rights. An evidentiary hearing was held on December 6, 2023, regarding the Cabinet's petitions. Upon consideration of the evidence adduced at that hearing, the circuit court, as indicated, granted the Cabinet's petitions. These consolidated appeals followed.

Having said that, we now proceed to the substance and propriety of the circuit court's decisions to terminate Father's and Mother's parental rights. In its dispositive orders to that effect, the circuit court accurately summarized the evidence as follows:

8. After the twins' removal, the Cabinet offered reunification services to both parents. Both parents missed the initial reunification case planning conference on September 14, 2021, but negotiated case plans later that month. Both parents' plans were very similar. Both were asked to complete substance abuse, mental health and parenting assessments and follow any recommendations. Both were asked to call in daily to see if either was scheduled for a random drug screen. [Father] was also asked to undergo a sex abuse perpetrator assessment. Visitation was set up between the parents and the twins weekly.

9. Both parents were referred to New Hope, a local provider that offered all their required services, including random drug screening. Both parents were also referred to RTEC, a local low-income conveyance provider for assistance with transportation to New Hope or other providers. Later, [Mother] was also referred to the Targeted Assistance Program (TAP) that could also assist with transportation.

10. During the initial six-month reunification case planning period, [Father] made but missed an intake appointment with New Hope. He made no other progress on his plan and was sometimes difficult for the Cabinet to locate. [Mother] told her caseworker that she had kicked him out of their home.

11. During the initial six-month period, [Mother] completed all her assessments. She called in for random drug screens and tested positive for methamphetamine in November 2021.

12. During the first six months, the parents generally kept their scheduled visits with the children, missing an extended holiday visit in November due to oversleeping. They only visited once in January 2022 and then had no contact with the twins until April 18, 2023.

13. The parents negotiated a second reunification case plan on March 8, 2022. The plan remained unchanged for the following six months and neither parent made any progress at all. Although the Cabinet managed to maintain some contact with [Father] during this time it could not with [Mother]. On April 4, 2022, the TAP program dropped [Mother] for non-participation and on May 23, 2022, New Hope did the same. [Father] was dropped from New Hope's program for non-participation on May 23, 2022. Neither parent had

contact with either of the children during this six-month period.

14. Both parents attended the August 31, 2022, case planning conference and their case plans did not change. [Mother] missed a scheduled intake appointment at New Hope on October 3, 2023, but other than making the appointment she took no steps toward reunification in the following six months. [Father] did not do anything on his case plan during this period and neither parent had contact with their children. The Cabinet sent letters to the parents when it could not maintain regular contact with them.

15. [Father] attended the February 21, 2023, case planning conference but [Mother] did not. She negotiated a case plan on April 11, 2023. Both parents' plans remained the same. [Father] missed intake appointments at New Hope on April 21 and 28, finally completing the intake process on May 1, 2023, and began services. [Mother] completed her New Hope intake on April 21, 2023.

16. Since February 2023, [Father] called in for random drug screens for a time, testing positive for methamphetamine, amphetamine, Xanax, and Gabapentin on June 13. He tested positive for alcohol on June 19 and 26. He only completed three of 12 required parenting classes and New Hope apparently again closed their services because of lack of participation. He missed another intake appointment with them as recently as October 19, 2023.

17. [Mother] was jailed for a time in May 2023 and then served a period of house arrest. During that period of house arrest she was non-randomly drug tested and was negative except for prescribed Suboxone. Since then, she has been randomly screened by New Hope with the same results. She completed parenting classes on

June 19, 2023, but still has not completed her mental health assessment.

18. The parents re-established contact with their children in April 2023, visiting twice that month. Since then, they have kept their scheduled visitation sessions. The parents' contact with the children was supervised from April until mid-November, when the court ordered weekly unsupervised visits at a local playground over the Cabinet's objection in the underlying juvenile cases. During the termination of parental rights hearing, the parents' caseworker testified that increased or unsupervised visitation was not favored due to the parents' failure to utilize skills learned in parenting classes and their failure to use their visitation time constructively as outlined below.

19. During the parents' supervised visits since April 18, 2023, they first missed three of five scheduled visits in May. Since then, they have kept their visits regularly. During visits, the parents typically only interact with the children an average of 15 minutes out of the hour-long session. They often play on their mobile phones during visits. The Cabinet worker supervising these visits from April 18 until mid-November can discern no parental bond between either child or either parent. The children sometimes cry when [Father] picks either of them up.

20. [The children] have lived with their foster parents since coming home from the hospital after birth in September 2021. They are the only parents either child knows, and they refer to them as "mom" and "dad." Both children have a strong parental bond with their foster parents. They get along with two other children in the home, aged seven and nine. Family activities include trips to Dollywood and other trips and activities that include extended family. Both girls refer to foster grand parents as "mamaw" and "papaw." This year, the girls



tended their own pumpkin patch. The foster parents hope to adopt the twins.

21. No child support was ordered for either parent concerning th[ese] child[ren].

Before proceeding to the findings rendered by the circuit court based upon this evidence, we pause to note that termination of a party's parental rights is proper upon satisfying a three-part test by clear and convincing evidence. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the court must find the child "abused or neglected" as defined by KRS<sup>3</sup> 600.020(1). KRS 625.090(1)(a). Second, the family court must find at least one ground of parental unfitness. KRS 625.090(2). Third, termination must be in the child's best interest. KRS 625.090(1)(c). The family court's termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

Here, the circuit court made the requisite findings, supported by sufficient evidence of record, to support its orders terminating Father's and Mother's parental rights. Specifically, it determined the evidence reflected the children were "neglected" consistently with how the term is defined in KRS

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<sup>3</sup> Kentucky Revised Statute.

600.020(1)(a)4., 7., 8. (abandonment), and 9.<sup>4</sup> It noted the children had been previously adjudicated to be neglected. And, based upon what is set forth above, it found that Father and Mother had failed to demonstrate the children would not continue to be neglected if returned to their care. KRS 600.020(1); KRS 625.090(1)(a). It found Father and Mother unfit to parent on the grounds specified

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<sup>4</sup> In relevant part, KRS 600.020(1) provides that “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

...

4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

...

7. Abandons or exploits the child;

8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being when financially able to do so or offered financial or other means to do so. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person’s religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months[.]

in KRS 625.090(2)(a), (e), (g) and (j).<sup>5</sup> Regarding the children's best interests, it found Father and Mother had failed to make reasonable efforts or adjustments to make it in the children's best interests to return to their custody within a reasonable period of time, considering their ages. KRS 625.090(3)(d). The circuit court also determined the Cabinet had offered Father and Mother reasonable services and had made reasonable efforts to reunify them with the children, and that it was unlikely

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<sup>5</sup> In relevant part, 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:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

...

(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[.]

additional services would bring about lasting parental adjustment capable of permitting reunification. KRS 625.090(3)(c) and (4). Continuing in the vein of the children's best interests, the circuit court added:

10. In examining the applicable sections of KRS 625.090(3)(a)-(f), the court has carefully considered the parents' efforts and adjustments made in their circumstances, conduct and conditions. The parents' efforts comprise two time periods, before and after April 2023.

a. Prior to April 2023, neither parent made anything like consistent progress toward reunification. There were fits and starts, but neither one followed through on services. This reached an unfortunate peak in the period between January 2022 and April 2023, when neither had any contact with their daughters.

b. After April 2023, the parents showed some improvement, although [Father] was testing positive for illegal drugs as recently as June 2023. Both parents' obvious substance abuse problems seem to have benefitted from their treatment in a Suboxone-based program. They visit consistently since then although the court is concerned about their apparent failure to interact with the children during a good portion of their time with their daughters.

c. The parents urge the court to primarily focus on the time since April 2023 and not on the preceding 18 months. The parents blame lack of transportation for many of their failures at reunification services. They point out that they were reduced to walking to services, visitation, etc. The court admires the fact that the parents walked when they had no transportation. However, the court also must consider that the parents were referred to multiple potential sources of transportation assistance including RTEC and the TAP program over the past two

years and failed to even inquire. When pressed, [Mother] blamed her failure to apply at RTEC on something she had heard from a family member about their policies. And [Mother] testified about owning several vehicles, including a Nissan, a Mercedes C240 purchased for \$3500.00 and that she still owned a Chevrolet truck. She blamed her lack of transportation on each vehicle's mechanical failure and that she was misled by the sellers as to their condition.

d. According to [Mother], the parents also moved to Leslie County for a time, apparently renting different places to live. She testified that it took, "a good amount of money" to pay rent for those places. She testified they moved back to Laurel County when they found the cell signal in Leslie County inadequate to make calls required by their case plans.

e. Even viewing the parents' actions in the best possible light for them, it still evidences a lack of interest and effort on their part until this termination action was filed. Neither appeared at the first scheduled hearing date and [Mother] blamed this on her fear of arrest on what she thought was an outstanding warrant. She blamed her failure to appear at the termination hearing concerning two other children on being provided the wrong hearing date. It appears to the court that the parents have excuses for their long-term failure to get their lives in order but no real reasons.

f. The court must contrast the parents' efforts with the progress [the children] made since entering foster care in September 2021. They know no other parents than their foster parents and have obviously thrived and progressed in their home. They have a deep bond with their foster parents and little bond with their biological parents. This is not hard to understand, especially since the parents disappeared completely from their lives for about half the time they spent in foster care.

g. On balance, the court cannot and will not risk the permanency that [the children] desperately need after 26 months in foster care. The parents hopefully will continue to improve but a few months' progress on their part is not enough to justify leaving th[ese] child[ren] in limbo any longer.

The Court in the case now before it has undertaken the appropriate review and agrees with counsel for Father and Mother that there is no nonfrivolous ground that would justify reversal of the circuit court. Therefore, we AFFIRM the December 27, 2023 orders of the Laurel Circuit Court terminating Father's and Mother's parental rights to the children, A.N.S.S. and M.R.R.S.

ALL CONCUR.

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