

RENDERED: SEPTEMBER 1, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001882-ME

T.N.H., NATURAL MOTHER

APPELLANT

APPEAL FROM DAVIESS CIRCUIT COURT
DIVISION II,
v. HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 16-AD-00028

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; C.C.H. (NATURAL
FATHER); AND J.M.H (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001883-ME

T.N.H., NATURAL MOTHER

APPELLANT

APPEAL FROM DAVIESS CIRCUIT COURT
DIVISION II,
v. HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 16-AD-00029

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; C.C.H. (NATURAL
FATHER); AND R.R.H. (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001884-ME

T.N.H., NATURAL MOTHER

APPELLANT

APPEAL FROM DAVIESS CIRCUIT COURT
DIVISION II,
v. HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 16-AD-00030

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; C.C.H. (NATURAL
FATHER); AND E.M.H (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001885-ME

T.N.H., NATURAL MOTHER

APPELLANT

APPEAL FROM DAVIESS CIRCUIT COURT
DIVISION II,
v. HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 16-AD-00031

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; C.C.H. (NATURAL
FATHER); AND J.R.H (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001886-ME

T.N.H., NATURAL MOTHER

APPELLANT

APPEAL FROM DAVIESS CIRCUIT COURT
DIVISION II,
v. HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 16-AD-00032

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; C.C.H. (NATURAL
FATHER); AND H.L.H. (A MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: T.N.H. (Mother) appeals from the Daviess Circuit Court's Findings of Fact, Conclusions of Law, and Judgment Terminating Parental Rights in this case involving her five minor children.¹ In accordance with *A.C. v. Cabinet for Health and Family Servs.*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*² brief stating that the appeal is frivolous, which was

¹ The court also terminated the parental rights of the five children's father. His appeals, enumerated as 2016-CA-001373; 2016-CA-001375; 2016-CA-001376; 2016-CA-001378; and 2016-CA-001413, are addressed in a separate opinion.

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

accompanied by a motion to withdraw as counsel. After a careful review of the record, we affirm. We grant counsel's motion to withdraw by separate order.

The five children at issue in this appeal were respectively born in 2003, 2006, 2009, 2012, and 2013. As of the October 2016 final termination hearing, the youngest child was two and the oldest was thirteen. All children share the same biological mother and father.

In July 2014, the Cabinet for Health and Family Services filed a Dependency Neglect and/or Abuse (DNA) petition on behalf of the five children alleging domestic violence, medical neglect, and drug use by the parents. The Cabinet filed the petition in response to an incident where a physical altercation between the parents resulted in a burn by boiling water to one of the children. At this time, Mother and Father agreed to grant temporary custody of the three oldest children to a relative, while the Cabinet took custody of the two youngest children.

In November 2014, both parents stipulated to a finding of dependency by the court as to all children. Mother was ordered to comply with the Cabinet's case plan, which included: (1) attending mental health treatment; (2) submitting to random drug screens; (3) maintaining stable housing and employment; (4) abstaining from illegal drugs; and (5) attending domestic violence counseling.

Eventually the relative could no longer care for the three oldest children, and they were committed to the Cabinet in May 2015, joining their younger siblings in foster care. In February 2016, due to of the lack of progress on both parents' case

plans, the Cabinet moved to change the goals for each child to adoption, which the court granted.

In May 2016, the Cabinet filed Petitions for Involuntary Termination of Parental Rights for all five children. At this time, it had been several months since the Cabinet worker could establish contact with Mother at any of the phone numbers or addresses she provided. Because her whereabouts were unknown, a warning order attorney was appointed to provide constructive service. The warning order attorney's report stated he attempted service via certified mail to three different addresses, but never received a response. After failing to locate Mother, the circuit court appointed her an attorney and scheduled a termination hearing for August 2016.

At that hearing, Mother did not appear. Her attorney stated he had no contact with her regarding the termination proceedings, despite sending correspondence to all known addresses. Following the hearing, the circuit court terminated the parental rights of both parents to all five children. Mother's attorney forwarded this information to the same addresses he used previously. In late September 2016, she contacted her attorney and stated she had not received any of the previous correspondence from him or the warning order attorney. Shortly thereafter, Mother moved for relief from judgment, pursuant to CR³ 60.02. The court granted Mother's motion and reopened the case to allow her to present evidence on her behalf.

³ Kentucky Rule of Civil Procedure.

At this continuation of the final termination hearing, Mother cross-examined a Cabinet witness and testified on her own behalf. At the conclusion of the hearing, the circuit court again terminated Mother's parental rights to all five children.

This appeal followed.

On appeal, counsel for Mother filed an *Anders* brief stating that the instant appeal is frivolous. When appointed counsel files an *Anders* brief, the Court of Appeals is bound 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. In Kentucky, parental rights "can be involuntarily terminated only if there is clear and convincing evidence that . . . it would be in the best interest of the child to do so." *Cabinet for Health & Family Servs. v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006) (citing KRS⁴ 625.090; *Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982); *N.S. v. C & M.S.*, 642 S.W.2d 589, 591 (Ky. 1982)). KRS 625.090(1) also requires that a child be adjudged neglected or abused and that at least one of the conditions set out in KRS 625.090(2) be established by clear and convincing evidence in order to terminate parental rights.

In this case, we conducted a thorough and independent review of the record and conclude that more than sufficient evidence supports the circuit court's order terminating Mother's parental rights as to the five children. The circuit court rendered findings of fact which we adopt herein by reference. The court complied

⁴ Kentucky Revised Statute.

with all relevant statutory mandates for involuntarily terminating Mother's parental rights, and the court conducted an evidentiary hearing where Mother was present and testified on her own behalf. In fact, the circuit court gave her a second opportunity to present her argument when it reopened the case to hold a second termination hearing. We can find no legal basis or reason to set aside the circuit court's judgment terminating Mother's parental rights. We agree with counsel that no valid basis exists to warrant relief from the judgment. *See A.C.*, 362 S.W.3d at 361. Accordingly, the circuit court did not err by terminating Mother's parental rights as to all five of the children at issue.

For the foregoing reasons, the order terminating parental rights and judgment thereon by the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Samuel B. Lee
Owensboro, Kentucky

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

Kristy A. Fulkerson
Owensboro, Kentucky