

RENDERED: SEPTEMBER 8, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000130-ME

L.J.N., JR.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE D. MICHAEL FOELLGER, JUDGE
ACTION NO. 16-AD-00043

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND S.N.N., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, JOHNSON AND D. LAMBERT, JUDGES.

COMBS, JUDGE: Appellant, L.J.N., Jr., (Father), appeals from a judgment terminating his parental rights. As we find no grounds for reversal, we affirm.

On March 3, 2016, the Appellee, Cabinet for Health and Family Services (the Cabinet), filed a Petition for Involuntary Termination of Parental

Rights in the interest of S.N.N., a female child born in 2015. Father was married to S.N.N.'s mother¹ when the child was born and was determined to be her father by genetic testing. By Order of April 30, 2015, the child was adjudged a neglected child by the Kenton Family Court in Case No. 15-J-431-001.

The case was tried on November 18, 2016. The social services worker, Ms. Currans, testified on behalf of the Cabinet. Father was represented by appointed counsel; due to his incarceration, he testified by phone. On December 14, 2016, the court entered Findings of Fact and Conclusions of Law and Judgment Terminating Parental Rights.

The court found that the child has resided in foster care since March 30, 2015, and that she was committed to the Cabinet by Order of the Kenton Family Court. The court found that Father was incarcerated when the child was born, that he had failed to provide parental care and protection necessary for the child's well-being, that he had never met the child, and that it would be unreasonable to expect Father's conduct to improve since he had never cared for the child.

Additionally, the court found that for reasons other than poverty alone, Father had continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary for the child's well being. Specifically, the court found: that the child's

¹ The child was removed from Mother shortly after birth due to Mother's history with the Cabinet. Subsequently, Mother consented to the termination of her parental rights.

foster parents had provided for the child exclusively since she was discharged from the hospital after her birth; that Father admitted never having sent as much as a card to the child, much less having provided any necessities of life; and that it was unreasonable to expect his “conduct to change in the immediately foreseeable future, considering he failed to provide for the child during her time of greatest need as an infant.”

The court found that it is in the child’s best interests for the parental rights of Father to be terminated. It found that the Cabinet had attempted to render services, directly or indirectly, to keep the family together; and, that although Father had participated in the Cabinet’s services, he had not demonstrated any lasting parental improvements. Father completed an Inside-Out Dad program. He testified that he also completed a new directions program to assist him with transitioning out of jail in 2013. However, after he was released from jail in 2013, Father committed a new offense and was again incarcerated. Father did not complete the substance abuse or mental health assessment on the case plan that the social worker mailed to him. Father admitted having met with the social worker at least twice and having received the plan, but he did not contact the social worker to report any of the progress that he claimed to have made. The court found that there were no additional available and reasonable reunification services which the Cabinet could offer that were likely to bring about lasting parental adjustment that might enable a return of the child to the parent.

The court found that Father's criminal history poses a risk to any child in his care. He was convicted of burglary twice, criminal attempt to commit first-degree robbery, criminal mischief twice, and wanton endangerment.

The court also found that since coming into foster care, the child has made improvements, which are expected to continue. The social worker testified that the child has lived with the foster family her entire life, that it is the only family she has ever known, and that she is doing "wonderfully." The child has no medical or mental health concerns and is thriving in foster care.

In the accompanying Judgment, the court found that the child is a neglected child as defined in KRS² 600.020(1). It reiterated the findings set forth above and ordered that Father's parental rights be terminated.

On January 12, 2017, Father filed a Notice of Appeal to this Court. On February 9, 2017, Father's counsel filed a motion for leave to withdraw and to file a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). His motion was passed to a merits panel by Order of this Court entered on March 7, 2017. In that Order, counsel was directed to file a response within ten days certifying that he had informed Father of his right to file a supplemental brief, *pro se*, raising any issues that he might deem meritorious. Father was permitted to proceed *pro se* and was allowed to file a supplemental

² Kentucky Revised Statutes.

brief within 30 days of this Court's Order. On March 16, 2017, Father's counsel filed a Response certifying that he did inform Father of his right to file a supplemental brief, *pro se*. No supplemental brief has been filed. By separate Order, we grant counsel's motion to withdraw.

When counsel files an *Anders* brief, "we are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal." *A.C. v. Cabinet*, at 372. In reviewing a decision to terminate parental rights, we apply a clearly erroneous standard. "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *Com., Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citations omitted).

KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

Cabinet for Health & Family Servs. v. K.H., 423 S.W.3d 204, 209 (Ky. 2014).

In the case before us, the court found that the child is a neglected child as defined in KRS 600.020(1). The first prong of the test has been satisfied.

The court also found that termination is in the child's best interests.

“In conducting a best interest analysis, a trial court must consider the six factors enumerated in KRS 625.090(3)(a)-(f).” *K.H.*, 423 S.W.3d at 212. Those statutory factors are:

- (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.

The court properly considered the applicable statutory factors. As noted above, it found that the child was a neglected child. KRS 625.090(3)(b). It considered the Cabinet's reunification efforts. KRS 625.090(3)(c). The court

considered Father's efforts – that he failed to demonstrate any lasting parental improvements. KRS 625.090(3)(d). The court considered that the child was thriving in the care of her foster family and that she had no medical or mental health concerns. KRS 625.090(3)(e). Finally, the court considered that Father had never provided for the child. KRS 625.090(3)(f). Thus, the second prong of the tripartite test has been satisfied.

The third prong of the tripartite test requires that at least one of the termination grounds in KRS 625.090(2)(a)-(j) exists. The court determined, *inter alia*, that Father, 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. KRS 625.090(2)(e). Specifically, the court found that Father had:

never provided care or protection to this child in her entire life, and admitted during testimony that he has never met this child. Further the social worker testified that she never recalled [Father] asking about how the child was doing during any conversation the two had. Given that [Father] has never cared for this child, it would be unreasonable to expect his conduct to improve, given his failure to do so during the entirety of her life.

The third prong of the test has been satisfied, and the court's findings were duly supported by a substantial evidentiary foundation.

Accordingly, we affirm the December 14, 2016, Judgment terminating Father's parental rights to the child, S.N.N.

ALL CONCUR.

BRIEF FOR APPELLANT:

Justin D. Durstock
Ft. Mitchell, Kentucky

BRIEF FOR APPELLEE:

John C. Brewer, II
Campton, Kentucky