

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 10, 2015

**IN RE ADDISON B., ET AL.**

**Appeal from the Juvenile Court for Montgomery County**  
**Nos. 141134, 141135, 141136, 141137, 141138, 141139 Wayne C. Shelton, Judge**

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**No. M2014-02265-COA-R3-PT – Filed May 13, 2015**

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The trial court found clear and convincing evidence that Mother had abandoned her children by failing to visit and engaging in conduct prior to incarceration that exhibited a wanton disregard for the children’s welfare. The trial court then found by clear and convincing evidence that it was in the best interest of the children to terminate Mother’s parental rights. Mother appealed. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

James R. Potter, Clarksville, Tennessee, for the appellant, Shannon R.

Herbert H. Slatery, III, Attorney General and Reporter, and Ryan L. McGehee, Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

**OPINION**

In this matter, the Tennessee Department of Children’s Services (“the Department” or “DCS”) seeks to terminate the parental rights of Shannon R. (“Mother”) to Jordan L. R., Brendon M. R., Alyssa A. R., Aleigha Y. R., Alexis M. R., and Addison N. B.<sup>1</sup> DCS involvement with the family began in 2009 when the children were removed from Mother because Aleigha tested positive for drugs at birth. The children returned to

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<sup>1</sup> The children are listed in birth order. Another of Mother’s children lives with her father and is not involved in this action. Additionally, the trial court terminated the parental rights of the various fathers of the six children. None of the fathers are involved in this appeal.

Mother for a trial home visit in September 2009, but it ended the following December when Mother tested positive for drugs and was a victim of domestic violence. Another trial home visit occurred in June 2010, but ended quickly when Mother tested positive for drugs.<sup>2</sup> A third trial home visit began in August 2011 and ended in September 2011 due to Mother's drug use and the birth of Alexis, who was born drug exposed.<sup>3</sup>

The Department filed the petition for termination of parental rights on April 3, 2014, alleging the grounds of abandonment by failing to visit and abandonment by incarcerated parent (wanton disregard). The trial court found that both of these grounds existed and that it was in the best interest of the children to terminate Mother's parental rights. Mother appealed.

#### STANDARD OF REVIEW

"A parent has a fundamental right to the care, custody, and control of his or her child." *In re Serenity B.*, No. M2013-02685-COA-R3-PT, 2014 WL 2168553, at \*1 (Tenn. Ct. App. May 21, 2014) (*perm. app. denied* July 14, 2014). Only when there is a compelling state interest may the state interfere with parental rights. *Id.* "An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian." Tenn. Code Ann. § 36-1-113(1)(1).

Terminating a parent's fundamental parental rights has severe consequences; thus, termination cases require a higher standard of proof. *In re Serenity B.*, 2014 WL 2168553, at \*2. To terminate parental rights, the court must find by clear and convincing evidence that at least one statutory ground for termination exists and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). "Clear and convincing evidence 'establishes that the truth of the facts asserted is highly probable, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.'" *In re Serenity B.*, 2014 WL 2168553, at \*2 (quoting *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004) (internal citations omitted)).

This Court must review the trial court's factual findings de novo with a presumption of correctness, unless the evidence preponderates to the contrary. *Id.*; TENN. R. APP. P. 13(d). Upon reviewing a decision to terminate parental rights, this Court's duty is to "determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements necessary to terminate parental rights." *In re Serenity B.*, 2014 WL 2168553, at \*2.

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<sup>2</sup> This visit is not discussed in the parties' briefs, but is alluded to in Exhibit 11 and the permanency plans.

<sup>3</sup> Five of Mother's children were born drug exposed.

## ANALYSIS

### Abandonment by Failure to Visit

Mother was jailed on December 22, 2013 for failing to pay child support for her oldest child, Angel. Abandonment by the parent is a ground for termination of parental rights. Tenn. Code Ann. § 36-1-113(g)(1). The definition of “abandonment” applicable to this case is as follows:

A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent’s or guardian’s incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. . . .

Tenn. Code Ann. § 36-1-102(1)(A)(iv). “[W]illfully failed to visit” means “the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation[.]” Tenn. Code Ann. § 36-1-102(1)(E). The failure to visit a child is “willful” when the person is “aware of his or her duty to visit . . . , has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so.” *In re Audrey S.*, 182 S.W.3d 838, 864 (Tenn. Ct. App. 2005). Tennessee Code Annotated § 36-1-102(1)(C) defines token visitation as “perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child.”

Mother was incarcerated part of the four months preceding the April 2, 2014 filing of the termination petition. The pertinent four month period immediately preceding her incarceration would be August 21, 2013 to December 21, 2013.<sup>4</sup>

Bernice Messenger, Mother’s DCS Family Service Worker, testified that only one visit occurred in September, and no visits occurred in October, November, or December 2013. Ms. Messenger testified that visits “were set up, but [Mother] would call and cancel due to different circumstances, and I know once, she said they called her to work. . . . And if her mom wouldn’t come to the visit, then she didn’t want to visit.” She also

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<sup>4</sup> Tenn. Code Ann. § 1-3-105(17) indicates that “‘Month’ means a calendar month.”

testified that it was very hard to contact Mother to discuss visitation, stating, “when I call or send letters or anything, I never get a response.” As for Mother’s claim that she lacked transportation, Ms. Messinger stated that she could have arranged transportation if asked. Ms. Messinger testified that when visits did occur, “once they [the children] come from a visit with the mom, they have behavior issues, so they have to take about a week or so to get them back on track.”

Jordon’s foster mother, Ms. Brock, testified that Mother had only called him three times in two and one-half years. Ms. Tedescucci, the foster mother for the other five children, testified that it had been a long time since there had been a phone call about the children, the phone calls had never been regular, and “a lot of times” it was the grandmother who called.

Mother’s grandmother, the children’s great-grandmother, testified to joining Mother and Mother’s mother (“Grandmother”) for a supervised visit with the children “around” August 28, 2013, and to another in September with her husband and her daughter. Grandmother testified to two visits in August, one “between the 15th and 18th,” and one on the 28th, and one visit on September 6th with Jordan. She stated that Mother attended all these visits. Grandmother testified that no visitations occurred in October because Robert Wright, the DCS contractor who set up and supervised the visits, said “he didn’t have the hours.” Grandmother agreed that no visits occurred in November or December either, but she did not expressly blame Mr. Wright. She testified that, “We made every visit possible that we could that we – we were able – that they let us.” She also stated that she “never had difficulty contacting” Ms. Messenger.

Mother testified to two visits in August and one in September. She stated that there were no visits in October, November, or December because there were “no hours” and that DCS had not done enough to facilitate visitation. She testified that she called Ms. Messenger about visitation, but that it was not “fixed.” She admitted that when she called Ms. Messenger, Ms. Messenger would ask her to take drug screens. Mother said she did not trust the drug testing agency, Workforce Essentials, because they said her hair follicle test showed use of methamphetamine. Mother testified that she had “never done that drug.” Mother also said that she did not stay in regular contact with Ms. Messenger because she did not get along with her. Mother blamed DCS for not facilitating more visitation.

The trial court found that the visitations that occurred “were token at best,” and Mother brought additional parties to the visitations “rather than spending that time with the children focusing on bonding and spending one-on-one time with them.” The court found that the abandonment for failure to visit ground was met by clear and convincing evidence. We agree.

## Abandonment by Wanton Disregard for the Children's Welfare

This ground for parental termination applies when “the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child[.]” Tenn. Code Ann. § 36-1-102(1)(A)(iv). The statutory language referencing wanton disregard is not limited by the four-month requirement at the beginning of the section. *In re Audrey S.*, 182 S.W.3d at 871. The language of the “wanton disregard” provision does, however, require incarceration “at or near the time of the filing of the termination petition.” *Id.* at 865. Although Tenn. Code Ann. § 36-1-102(1)(A)(iv) does not specifically define “wanton disregard,” Tennessee courts have held that “probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *Id.* at 867–68; *see also In re H.A.L.*, No. M2005-00045-COA-R3-PT, 2005 WL 954866, at \*6 (Tenn. Ct. App. Apr. 25, 2005).

The trial court found clear and convincing evidence that this ground had been met. Mother was incarcerated in December 2013. The petition for termination of parental rights was filed on April 3, 2014. Exhibit 8 shows that she was still incarcerated at the time of the filing of the petition to terminate her rights.<sup>5</sup> The trial court further found:

Prior to her incarceration, the mother engaged in activities that exhibited a wanton disregard for the welfare of the children. Specifically the mother failed to pay child support regarding another child placed out of her home and with his father and also the mother abused illegal substances prior to her incarceration. It is of great significance that the mother did test positive for methamphetamine just a few months prior to her incarceration when she submitted to a hair follicle screen. Additionally, the mother admitted on cross examination that she has used other drugs while the children were in foster care. In addition to her drug use, the mother's failure to return phone calls, failure to call the children's resource home to inquire about their welfare, failure to respond to the Department's requests when they came to her home, and failure to take any affirmative steps to maintain contact with DCS while her children were in foster care is overwhelmingly clear and convincing evidence of her wanton disregard for the welfare of her children. As such, the Court finds that the mother wantonly disregarded the welfare of the children by failing to pay support and comply with a previous court order, which resulted in her incarceration in the four (4) months prior to the filing of the Department's petition, by admittedly abusing illegal substances while the children were in foster care, and by

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<sup>5</sup> Exhibit 8 is an order, entered February 18, 2014, which states that Mother's “*Request for Rehearing/Early Release* is hereby denied until 4/24/14 or when her labor begins, whichever occurs first.” Mother was pregnant with her eighth child.

failing to make even minimal efforts to maintain contact with the children or DCS in order to work towards reunification with the children.

Again, we agree with the trial court.

### Best Interest

Once grounds for termination are found, we must examine whether it is in the best interest of the children to sever the parent-child relationship. Tenn. Code Ann. § 36-1-113(i) contains nine, non-exclusive statutory factors for courts to consider when conducting the best interest analysis.<sup>6</sup> While not specifically listing the statutory factors, the trial court clearly considered them in making its best interest determination:

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<sup>6</sup> These factors include:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The Court begins its analysis of the best interest of the children by finding that the mother and the alleged fathers of the children have failed to take any steps to reunify with the children, to maintain or establish a relationship with the children, and to provide the children with a safe and stable home. The Court finds that the children came into custody at very early ages, that they are in pre-adoptive homes, and that the children are currently in safe, stable, and loving homes. The Court finds that the efforts made by the parents in remedying the reasons the children were brought into custody have been minimal and that the conditions which led to the children's removal still exist, and would in all reasonable probability subject the children to further abuse or neglect and thus prevents the children's safe return to the care of the mother and the alleged fathers. The Court finds there is little likelihood that these conditions will be remedied at an early date so that the children could safely return to the care of the parents.

The Court finds that the parents have failed to pay any support beyond token support towards their respective children's care since the children entered DCS's custody.

The Court finds that there is not a meaningful relationship between the parents and their respective children due to the children being in custody for the majority of their young lives.

The Court finds that the continuation of a parent-child relationship greatly diminishes the children's chances of early integration into a safe, stable and permanent home.

The Court finds that it is in the best interest of the children to be adopted, as the children are in pre-adoptive homes that can offer them a safe and stable environment that the parents cannot provide.

The Court finds that it is in the best interests of the children to terminate the parental rights of [Mother and the various fathers], and allow the children to be adopted.

While we may have worded some of these findings a little differently, we have carefully reviewed the record and concur with the trial court's conclusion that clear and convincing evidence supports a finding that it is in the best interest of the children to terminate Mother's parental rights.

CONCLUSION

We affirm the judgment of the trial court in all respects. Costs of appeal are assessed against the appellant, Mother, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE