

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs June 9, 2014

**IN RE KYLA P.**

**Appeal from the Juvenile Court for Wilson County  
No. 15514 Charles B. Tatum, Judge**

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**No. M2013-02205-COA-R3-PT - Filed August 26, 2014**

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Father appeals the termination of parental rights to his child. The maternal grandparents obtained custody of the child shortly after her birth due to evidence of drugs in the child's bloodstream. When the child was one year of age, Father was incarcerated and remained so two years later when the maternal grandparents filed a petition for termination of parental rights. The juvenile court found statutory grounds for termination of Father's parental rights and concluded that it was in the child's best interest to terminate Father's parental rights. On appeal, Father argues that the evidence did not support the juvenile court's conclusion that termination of Father's parental rights is in the child's best interest. We disagree and affirm the juvenile court's termination of Father's parental rights.

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

W. NEAL MCBRAYNER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

W. Michael Kilgore, Nashville, Tennessee, for the appellant, Jeremy P.

Georgina K. Hughes, Mount Juliet, Tennessee, for the appellees, Ronald S. and Linda S.

Tiffany D. Hagar, Lebanon, Tennessee, Guardian ad Litem.

## OPINION

### I. FACTUAL BACKGROUND

When Kyla P. was born on May 17, 2009, she had evidence of drugs in her bloodstream and suffered from symptoms of withdrawal. Kristina S. (“Mother”) was also found to have evidence of various drugs in her bloodstream, including methadone and benzodiazepines. After being informed of the situation, the Department of Children’s Services (“DCS”) discovered that Jeremy P. (“Father”) was also abusing drugs. Father testified that, around the time of Kyla’s birth, he was supplying drugs to Mother. Ronald S., Kyla’s maternal grandfather, also testified at the trial that Father had been buying drugs for Mother on the street prior to the birth of the child.

At a meeting that included the parents, DCS, Ronald S., and Linda S., the maternal step-grandmother, the parties decided that Ronald S. and Linda S. would be given temporary custody of Kyla. About a year later, in June 2010, the Wilson County Juvenile Court granted Ronald S. and Linda S. legal custody in dependency and neglect proceedings. Father stated that, at the time of those proceedings, he believed that he could regain custody or visitation after being released from incarceration and successfully passing a hair follicle test.

On March 14, 2012, Ronald S. and Linda S. filed a petition requesting the termination of Father’s and Mother’s parental rights. The juvenile court terminated Mother’s parental rights by order filed on December 11, 2012. The juvenile court subsequently held a trial on August 21, 2013, to determine whether to terminate Father’s parental rights. At the time, Father was incarcerated for a charge of failure to appear.

Ronald S. testified that, during the first four months of Kyla’s life, DCS set up visits with Kyla for Father and Mother at Ronald S. and Linda S.’s house. Ronald S. testified that Father’s visitation was set at twice a week for three to four hours. According to Ronald S., Father visited eight to ten times during the year before his incarceration and often left the visitations early. Ronald S. and Linda S. stated that the few times Father visited he barely held Kyla and did not seem to bond with her. He watched football with Ronald S. instead of spending time with Kyla. Ronald S. stated that on one occasion, Father and Mother argued in the driveway.

Father was transported from the Trousdale County Jail pursuant to the juvenile court’s order to testify at the trial. Regarding the first year after Kyla’s birth, Father testified that he visited Kyla every chance he could and that his initial visitation schedule was once a week for four hours. Mother and Father were living together immediately after the birth of Kyla. Father stated that he visited Kyla around ten or twelve times during this time period. He

brought his son from a previous relationship with him to see Kyla on a few occasions. According to him, Mother and he sometimes brought diapers and formula for Kyla. Father testified that his visitation was terminated once because Mother failed a drug test and a second time because Ronald S. told DCS that Father had threatened Mother. He tried to have his visitation reinstated, but he could not because of a failed drug test.

Ronald S. agreed that Father brought formula and diapers for Kyla at the very beginning of their custody of Kyla. Father stated that he attempted to give the maternal grandparents money, but they would not accept it. However, Ronald S. and Linda S. both testified that Father did not offer them money for Kyla's support. All parties agreed that Father paid a \$150 doctor's bill for Kyla's care. Father conceded at trial that he was ordered by the court to pay child support on June 16, 2010.

Father testified that he was "on the streets" for the first year of Kyla's life. Father testified that he wanted Kyla to be a part of his family's life. He stated that he is ready to change for his children. If he were awarded custody of Kyla, Father claimed that his family would help support him. In June 2010, when Kyla was a little over one year old, he was incarcerated for selling cocaine. Father testified that his last visit with Kyla was in September 2009, when she was four months old. He stated that he sent Kyla a Christmas card in 2010 and a birthday card in May 2011. However, he did not receive a response. He did not write to Kyla again because he was concerned that the letters were unwanted and a complaint would be filed against him with the corrections system. According to Father, if such a complaint had been filed, he would have lost as much as six months of his accrued time for good behavior. He also wrote a letter to Ronald S. and Linda S. to tell them that he wanted to stay in Kyla's life but did not want to take her away from them.

Father stated that, if the judge did not terminate his parental rights, he wanted to resume visitation and have visitation with Kyla, his son, and a counselor. He stated that he no longer has contact with Mother. He said that he believed he could develop a bond with Kyla and that he has a bond with his son. Father testified that his intention is for Kyla to remain with Ronald S. and Linda S. while he has visitation with Kyla and he attends counseling with her.

At the time of trial, Kyla was four years old. Ronald S. and Linda S. both testified that Kyla has lived with them since she left the hospital following her birth. She has not lived with anyone else or at any other residence. Kyla does not know Father or Mother. She has not seen Father since September 2009, when she was four months old. Kyla does not ask about Mother or Father because she thinks Ronald S. and Linda S. are her parents. She calls Ronald S., "Daddy, Papa, Mr. [S.], or Ronald [S.] with her hands on her hips" mimicking

Linda S. She calls Linda S., “Nanny” or “Mama.” Kyla attends preschool and is progressing developmentally.

On the issue of support, Ronald S. testified that, when Father and Mother visited initially, they brought formula and diapers. Ronald S. acknowledged that he received the letter to which Father referred, but Ronald S. did not read it. Linda S. read the letter, but she did not remember its contents. Ronald S. and Linda S. said that they intend to adopt Kyla if Father’s parental rights are terminated.

In an order filed August 30, 2013, the juvenile court concluded that Father had abandoned Kyla pursuant to Tennessee Code Annotated section 36-1-102(1)(A)(iv) (2010) by willfully failing to visit and willfully failing to pay support for four months preceding his incarceration as well as being incarcerated for the four months prior to the filing of the petition. The juvenile court also found that it was in Kyla’s best interest to terminate Father’s parental rights.

## II. ANALYSIS

On appeal, Father does not argue that the juvenile court erred in concluding that statutory grounds existed to support termination. His sole argument on appeal is that the trial court erred when it determined by clear and convincing evidence that it was in the child’s best interest to terminate his parental rights. This Court has previously stated that a party’s failure to argue an issue in their brief constitutes a waiver of the issue. *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011). Because Father did not present an argument that the juvenile court erred in finding statutory grounds for termination of his parental rights, any such issue is waived. Therefore, we address only the issue raised on appeal, whether the termination of Father’s parental rights is in Kyla’s best interest.

Termination of parental rights is one of the most serious decisions courts make. As noted by the United States Supreme Court, “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *Santosky v. Kramer*, 455 U.S. 745, 787 (1982). Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, and of “severing forever all legal rights and obligations of the parent or guardian.” Tenn. Code Ann. § 36-1-113(l)(1) (Supp. 2013).

A parent has a fundamental right, based in both the federal and State constitutions, to the care, custody, and control of his or her own child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174-75 (Tenn. 1996); *In re Adoption of a Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995). While this right is fundamental, it is not absolute. The State may

interfere with parental rights, through judicial action, in some limited circumstances. *Santosky*, 455 U.S. at 747; *In re Angela E.*, 303 S.W.3d at 250.

Our Legislature has identified those situations in which the State's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth the grounds upon which termination proceedings may be brought. Tenn. Code Ann. § 36-1-113(g). Termination proceedings are statutory, *In re Angela E.*, 303 S.W.3d at 250; *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004), and parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

To terminate parental rights, a court must determine by clear and convincing evidence the existence of at least one of the statutory grounds for termination and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). This heightened burden of proof is one of the safeguards required by the fundamental rights involved, *see Santosky*, 455 U.S. at 769, and its purpose "is to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *see also In re Angela E.*, 303 S.W.3d at 250; *In re M.W.A.*, 980 S.W.2d at 622. "Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). Unlike the preponderance of the evidence standard, "[e]vidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable." *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005).

Appellate courts review the trial court's findings of fact in termination proceedings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. "In light of the heightened burden of proof in [termination] proceedings . . . the reviewing court must then make its own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim." *In re Bernard T.*, 319 S.W.3d at 596-97.

The Legislature has instructed courts to consider the following factors in making a best interest analysis:

- (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.

Tenn. Code Ann. § 36-1-113(i).

In conducting a best interest analysis, the focus is on what is best for the child, not what is best for the parent. *In re Marr*, 194 S.W.3d 490, 499 (Tenn. Ct. App. 2005); *White*

*v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004). We do not need to find that every factor applies in order to determine that the termination of parental rights is in the child's best interest. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005).

The juvenile court made the following findings at the conclusion of the trial:

Grounds have been established for willful failure to support and abandonment and failure to establish bond. Bond was clearly established with [Ronald S. and Linda S.]. This girl has known one home. It's a stable home. Her needs are being met. She's got five acres and a dog and most any toy she could want (inaudible) and other children. And we can only hope that drugs won't drag her down.

The juvenile court made these additional findings in its amended order terminating Father's parental rights:

- a. the Father, [Jeremy P.], has not established a meaningful relationship or otherwise bonded with the minor child.
- b. a bond has clearly been established between the Petitioners, [Ronald S.] and [Linda S.] and the child, KYLA [P.].
- c. the Petitioners have provided a safe and stable home for the child.
- d. the Petitioners are meeting the physical and emotional needs of the minor child.
- e. the minor child is interacting and has established relationships with other family members and children.
- f. the minor child calls the Petitioners Mom and Dad.
- g. the minor child does not know her biological mother or father.

As set out above, the trial court based its termination of Father's parental rights upon the lack of a bond and meaningful relationship with Father. *See* Tenn. Code Ann. § 36-1-113(i)(4). In response, Father states, "[Father's] contact with the child admittedly leaves much to be desired, however, the trial record reflects that when [Father] was permitted and free to see Kyla – he did so . . . . In fact, had Kyla been of a more aware age, a significant relationship would have been established." With regard to the change of caretakers, he states, "Kyla was approximately only one (1) year old at her oldest before [Father] was incarcerated – hardly able to establish a bonded relationship with *anyone*. What's more, [Father] is not seeking custody of Kyla – only the chance to be in her life."

Father's argument is similar to an argument this Court has previously rejected. In *In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005), the mother had been incarcerated for

an extended period of time. The trial court found grounds to support the termination of parental rights and subsequently concluded that it was in the best interest of the children to terminate. *Id.* at 859. On appeal, the mother argued that “regardless of whether her parental rights are terminated, [the children] will continue to reside with their current caretakers, and their day-to-day lives will not change in any significant respect . . . .” *Id.* at 879. This Court then stated the following:

In advancing the third consideration, [the mother] seeks to transform her lengthy incarceration from a statutory ground for terminating her parental rights into a factor that militates against termination. In essence, [the mother] is arguing that precisely because she has disabled herself from participating in her children’s day-to-day lives by engaging in criminal conduct that resulted in her incarceration, it cannot be in the best interests of [the children] to terminate her parental rights. This argument borders on hubris. It also completely ignores the compelling need of [the children] for a stable and permanent home life that will no longer be subject to disruption at the whim of [the mother].

*Id.* at 880-81. The same could be said of Father’s argument in the case at hand. Father argues that Kyla does not have a bond with him because he committed a crime and was incarcerated. He essentially argues that this fact should weigh against terminating his parental rights. Furthermore, he argues that he is not actually seeking custody but would like to be in Kyla’s life.

It is not in Kyla’s best interest to disrupt a stable home life with Ronald S. and Linda S., the only caretakers and parents Kyla has ever known, by introducing a stranger who Kyla has not seen since she was four months old. In the first year of Kyla’s life, before Father was incarcerated, he did not prove to be consistent with his visits to Kyla or to provide more than token support. There is ample support for the trial court’s conclusion that it is in Kyla’s best interest to have Father’s parental rights terminated.

For his part, Father argues that obtaining his GED and attending a parenting seminar constitute “an adjustment of circumstance, conduct, and conditions,” as well as, a “long-term adjustment,” and that his failure to make child support payments does not apply because there was no evidence that an order of support was sought. We conclude that, while laudable, Father obtaining his GED and attending a parenting seminar do not constitute such a change in circumstances that it would be in Kyla’s best interest not to terminate Father’s parental rights. Furthermore, regarding child support payments, Father himself testified that the court ordered child support on June 16, 2010, so we find his argument that no evidence was presented concerning child support to be without merit.



As stated above, we do not need to find that every statutory factor applies in order to determine that the termination of a parent's parental rights is in the child's best interest. *In re M.A.R.*, 183, S.W.3d 652, 667 (Tenn. Ct. App. 2005). In the case at hand, we conclude there is clear and convincing evidence that a meaningful relationship has not been established between Kyla and Father and that one has been established between Kyla and Ronald S. and Linda S. The evidence does not preponderate against the findings of the trial court.

### III. CONCLUSION

For these reasons, we conclude that there is clear and convincing evidence that it is in the child's best interest to terminate Father's parental rights. The Juvenile Court's judgment terminating Father's parental rights to Kyla P. is affirmed. Costs of this appeal shall be taxed to the appellant, Jeremy P., for which execution may issue, if necessary.

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W. NEAL McBRAYER, JUDGE