

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 23, 2020 Session

FILED
04/29/2020
Clerk of the
Appellate Courts

IN RE ISABELLA W.

**Appeal from the Juvenile Court for Knox County
No. 147106 Timothy E. Irwin, Judge**

No. E2019-01346-COA-R3-PT

D. MICHAEL SWINEY, C.J., with whom THOMAS R. FRIERSON, II, J., joins, concurring and dissenting.

I concur with the majority’s opinion except as to the holding that the ground as to the “failure to manifest an ability and willingness to assume custody” was not satisfied. This Court is split on this issue, and I agree with the line of cases that hold that the parent has to be able and willing rather than just either of the two. *See In re Aymyn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, at *12-14 (Tenn. Ct. App. June 20, 2018). I concur in all the rest of the majority’s opinion including termination of the father’s parental rights. Given this Court’s clear and irreconcilable split as to this question of statutory interpretation, I request the Tennessee Supreme Court accept and resolve this issue once it has the opportunity to do so.

D. MICHAEL SWINEY, CHIEF JUDGE