

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 12, 2009

IN THE MATTER OF: L.M.S.

Appeal from the Juvenile Court for Wilson County

No. 7967 Barry Tatum, Judge

No. M2008-01336-COA-R3-PT - Filed July 13, 2009

The mother of a ten-year-old child appeals the termination of her parental rights. The child was removed due to alleged sexual abuse of the child by the mother's husband and the fact that the mother could not or would not protect the child from further abuse by her husband and other registered sexual offenders in the mother's immediate family. After months of the Department's reasonable but unsuccessful efforts to help the mother remedy the conditions that led to the removal of the child, the Department filed a petition to terminate the mother's parental rights. Following a three day trial, the trial court found that the mother had failed to substantially comply with the requirements of the permanency plans, that the conditions that led to the removal persisted, and that termination was in the best interests of the child. The mother appealed contending the evidence was insufficient to prove the requisite grounds by clear and convincing evidence. We affirm.

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

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Elizabeth L. Youmans, Lebanon, Tennessee, for the appellant, C.S.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Lindsey O. Appiah, Assistant Attorney General, for the State of Tennessee, Department of Children's Services.

MEMORANDUM OPINION¹

L.M.S., born in October 1998, has suffered from neglect, physical abuse and sexual abuse during much of her ten years of life. C.S., mother of L.M.S. (hereinafter “the child”), comes from a family with a long and tragic history of generations of sexual abuse. Like the child, C.S. was also the victim of sexual abuse as a child.

C.S. is the adoptive mother of the child; she is also the biological paternal grandmother of the child. In 1999, the child was removed from her biological parents, T.B. and B.E., when she was eight months old, after being brought to a hospital emergency room with two broken legs and suffering from severe malnutrition. Her biological parents surrendered their parental rights, at which point she was placed in the custody of her biological paternal grandmother, C.S. Thereafter, C.S. (hereinafter “Mother”) and her husband, L.S., adopted the child.

The Department of Children’s Services again became involved with Mother’s family as a result of a referral made on June 10, 2004, when it was alleged that the child was the victim of sexual abuse. During an interview of the child by Anna Wiggington, an Investigator with Child Protective Services, Ms. Wiggington learned that L.S. had penetrated the child’s vagina on three separate occasions. The child informed Ms. Wiggington that L.S. “had put his private in her privates,” and the child described other acts of penetration with objects including his tongue and fingers. The child reiterated the details when she was later examined and interviewed at Our Kids, and additionally stated that she had told Mother several months prior to the June referral that “daddy was touching her” and that “daddy lay on the bed and tried to press against her.” Mother later informed the Department that she did nothing after the child told her of these acts as she “didn’t observe anything to cause her to think that [L.S.] was sexually abusing [the child].”

Following the Department’s initial investigation, it was decided that the child would stay with Mother provided that L.S. did not stay in the home with them. A safety plan was developed that allowed for supervised visits by L.S. with the child, and which required L.S. to complete a psychosexual evaluation. The service plan also required the entire family to complete family counseling and Mother and L.S. to complete parenting classes.

It soon became apparent that Mother and L.S. were not complying with two of the most critical components of the safety plan as L.S. was found at the home while Mother was not supervising his contact with the child, and L.S. was remaining in the home overnight. Mother later acknowledged that L.S. had been staying overnight on a consistent basis in violation of the safety

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

plan; however, she explained that she needed L.S. to stay with the family and that he was a good father.

Throughout the months the Department was attempting to help Mother protect the child from further abuse, Mother repeatedly and continuously denied that any sexual abuse or improprieties had occurred and she insisted that she needed L.S. around, as she depended on him in many ways. At all times material to this matter, instead of being focused on the child's welfare, Mother remained focused on L.S. staying in the home with her and the child.²

Rebecca Zahurones, the child's clinical therapist at the Rape and Sexual Abuse Center, testified that Mother's lack of belief was the key component that prevented Mother from providing the emotional support and protection the child needed. Lisa Lyons, one of Mother's counselors at the Rape and Sexual Abuse Center, explained that Mother was "not accepting of the allegations" that L.S. had sexually assaulted the child. Ms. Lyon's also testified that Mother's "non-believing" was an impediment to Mother accepting the fact the child had been abused and thus taking the steps necessary to prevent future abuse. More troubling, as Ms. Lyons testified, was the fact that Mother told the child that the child was at fault, not L.S.

During a visit on February 16, 2005, Mother told a caseworker, Daphne Ray, in the child's presence, that L.S. was innocent of the accusations, an assertion that Ms. Ray explained rendered the child "visually distressed." Cheryl McAdams, a counselor at Kids First who worked with Mother's family, testified that the child was feeling a lot of guilt because the child blamed herself for L.S. being out of the home.

Another very troubling event occurred on August 8, 2005, when Mother took the child to a therapy appointment with Ms. Zahurones at the Rape and Sexual Abuse Center. What was troubling was that Mother and the child were accompanied by L.S. Ms. Zahurones testified that it was extremely unusual for the perpetrator of the abuse to attend a therapy session. Ms. Zahurones further stated that the child was "very agitated" and that the child "appeared just really anxious and unfocused" due to the presence of L.S.

Ms. Zahurones testified that Mother had been a victim of sexual abuse as a child and it was very significant that Mother had not received any treatment or therapy for the ramifications of that abuse. Ms. Zahurones testified to the effects of Mother's victim mentality on her ability, or inability, to properly parent the child, who has special needs as a result of her abuse. As she explained, Mother's mentality put her in the position of perpetuating emotional incest in the child, which she defined as a pattern of the parent being so emotionally dependent on the child that the child believes it becomes her job to "make the parent okay." After setting forth additional events and discussions

²In addition to the threat L.S. posed to the child, Mother permitted her adult son, C.S., to live in her home. This was problematic as her son was a convicted and registered sexual offender, as well as having been convicted two additional times for domestic abuse. Mother testified that she did not believe that her son was guilty of any of the offenses, despite the fact that her son pled guilty to each offense.

with Mother that caused her concern, Ms. Zahurones testified that she believed Mother was not capable of protecting the child due in part to her denial, which Mother expressed throughout the entire time Ms. Zahurones was involved, and Mother's inability to perceive the harm that L.S. posed to the child.

Mother also exhibited threatening behavior against those who believed the child had been abused and who opposed L.S. having unsupervised contact with the child. For example, in June of 2005, Mother threatened Ms. McAdams, in the child's presence, following Ms. McAdams' testimony that the child had been abused. On the same day, Mother made similar threats to the Guardian ad Litem, Ms. Dishmon, who was advocating for the child's protection. Following these incidents, several witnesses testified that the child's progress deteriorated and the child ceased to verbalize her feelings and began acting out at school.

The petition for termination of Mother's parental rights came on for trial in August of 2007. Following a three day trial, the trial court found that Mother had failed to substantially comply with the requirements of the permanency plans, that the conditions that led to the removal of the persisted, and that termination was in the best interests of the child.³ We have examined this tragic record closely and find the evidence clearly and convincingly supports each of the trial court's findings, including the fact that the requirements of the permanency plans were reasonable and related to the conditions that led to the child's removal. Accordingly, we affirm.

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against the Department of Children's Services due to the appellant's indigency.

FRANK G. CLEMENT, JR., JUDGE

³The Department filed a petition to terminate the parental rights of Mother and L.S., who was the adoptive father. The trial court terminated both parents' rights. Mother perfected an appeal; L.S. did not. Accordingly, L.S.'s parental right has been terminated and the order terminating his parental rights is now final.