

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2010 Session

IN RE JULIAN G. ET AL.

**Appeal from the Juvenile Court for Davidson County
No. 97803 Betty Adams Green, Judge**

No. M2009-01440-COA-R3-PT - Filed January 25, 2010

Mother of three minor children appeals the termination of her parental rights. The trial court terminated Mother's parental rights on the grounds of abandonment by willful failure to support, failure to provide a suitable home, the persistence of the conditions that resulted in removal from Mother's custody, and Mother's failure to substantially comply with the permanency plan and upon the finding that termination was in the children's best interests. We affirm the trial court in all respects.

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 HERSCHEL P. FRANKS, P.J., and ANDY D. BENNETT, J., joined.

C. Michael Cardwell, Nashville, Tennessee, for the appellant, A.G.M.

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

Kelli Barr Summers, Brentwood, Tennessee, Guardian ad Litem.

MEMORANDUM OPINION¹

A.G.M. is the mother of three minor children, Julian A.G., Jordan A.M., and Jonah A.M. The man officially identified as the father of the children, Brian M., surrendered his parental rights to all three children and is not a party to this appeal. Another man, Jesus A., was identified by Mother and in the petition as possibly being the father of one of the children. He was served but did not answer; his rights, if any, were terminated at the same time as Mother's, and he did not appeal.

Julian and Jordan first entered the custody of the Department of Children's Services on June 29, 2006, after Jordan was found to have sustained rib fractures that likely occurred from non-accidental trauma. Julian was less than two years old and Jordan was only four months old at that time and had been residing with Mother and Brian M. up to that time. Thereafter, both children were placed in a series of foster homes. For a while, Mother was able to reside with the children in the foster homes; however, confrontations arose between Mother and the foster parents that necessitated they be moved to other foster homes. On one occasion the confrontation was so severe that a restraining order was issued against Mother requiring that she stay away from the foster home. On November 28, 2006, the juvenile court ordered the placement of the children into the Department's custody. The children were subsequently placed in the home of Jordan's paternal grandmother, Lorrie M.

On August 16, 2007, the children were adjudicated dependent and neglected based in part on Jordan's injury, the parents' inability to maintain stable housing, and Brian M.'s drug addiction. On December 13, 2006, the first permanency plan was entered into and required that Mother maintain stable housing and employment; participate in individual counseling as well as any other services recommended by professionals; complete a parenting assessment and follow the recommendations; and visit regularly with the children. Because Mother failed to satisfy the permanency plan requirements, subsequent permanency plans with the same requirements as the first were entered into on January 22, 2007 and October 6, 2007.

Although Mother had a tumultuous relationship with Brian M., resulting in many separations, Mother married Brian M. shortly before giving birth to her third child, Jonah

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.

A.M. on November 8, 2007; however, they soon separated again due to his drug problems. Mother and the infant Jonah briefly lived with one of Brian M.'s relatives; however, when Mother reconciled with Brian M., the relative asked that they leave. Mother and Brian M. then chose to live in their vehicles; fortunately they placed Jonah with Lorrie M., who was already caring for Julian and Jordan.

On February 26, 2008, Mother entered into a permanency plan for Jonah, which was essentially the same as for the other children with the added requirement that Mother undergo a mental health assessment.

A final permanency plan for all three children, entered into on October 13, 2008, required Mother to maintain stable housing and employment, participate in individual counseling to deal with her victimization and anger management issues, complete parenting education classes, regularly visit the children, and notify the Department of any phone number and address changes within two weeks of their occurrence. The Department made arrangements and offered to pay for supervised weekly visitation, arranged counseling sessions, and attempted to assist Mother establish a stable residence; however, the Department experienced great difficulty providing Mother with assistance because she moved approximately a dozen times from the time the children were taken into the Department's custody through the trial and failed to keep in contact on a regular basis.

Further, Mother did not comply with the Department's requirements in several respects, namely, she failed to do counseling (individual counseling or anger management), pay child support despite her regular employment while the children were in the Department's custody, and possess safe, stable housing. Also, her relationship with Brian M., who continued to battle drug addiction, made her situation unstable.

On October 28, 2008, the Department filed a petition to terminate Mother's parental rights. Trial was held on February 20, February 21, and March 24, 2009. The children had continuously been living with Lorrie M. since they had been removed from Mother's home, and at trial, Lorrie M. expressed a desire to adopt the children. On June 17, 2009, the juvenile court held that Mother's parental rights should be terminated for abandonment by failure to support, abandonment for failure to provide a stable home, substantial noncompliance with the permanency plan, and persistent conditions. The court also held that termination was in the children's best interests.

ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn.

1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

The party seeking to terminate parental rights must prove two elements. That party, the petitioner, has the burden of proving that there exists a statutory ground for termination. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). Furthermore, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). See *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child).

The elements stated above must be established by clear and convincing evidence. See Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The clear and convincing evidence standard is a heightened burden of proof which serves to minimize the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *Matter of M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying this high standard produces a firm belief or conviction regarding the truth of facts sought to be established. *In re C.W.W.*, 37 S.W.3d at 474. The clear and convincing evidence standard defies precise definition. *Majors v. Smith*, 776 S.W.2d 538, 540 (Tenn. Ct. App. 1989). It is more exacting than the preponderance of the evidence standard, *Santosky v. Kramer*, 455 U.S. 745, 766 (1982); *Rentenbach Eng'g Co. v. General Realty Ltd.*, 707 S.W.2d 524, 527 (Tenn. Ct. App. 1985), yet it does not require such certainty as the beyond a reasonable doubt standard. *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn. Ct. App. 1992); *State v. Groves*, 735 S.W.2d 843, 846 (Tenn. Crim. App. 1987). Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence, see *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992), and it should produce a firm belief or conviction with regard to the truth of the allegations sought to be established. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. Ct. App. 1993); *Brandon*, 838 S.W.2d at 536; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. Ct. App. 1985).

Although the trial judge found four grounds upon which to terminate Mother's parental rights, the Department only needs to sustain the finding of one of the grounds. See Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838; *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best

interests of the child). The record before us fully supports the trial court's findings that Mother failed to provide any financial support despite her regular employment during the time children were in the Department's custody; that Mother failed to provide a stable home given that she only established a residence just a few weeks before trial and had been living in approximately a dozen locations prior to that, including a vehicle, and often with Brian M. Also, the record supports the trial court's findings that Mother failed to substantially comply with the permanency plan and that Mother failed to adjust the persistent circumstances and conditions that made it unsafe for the children to be in her home and in her custody, including her failure to utilize resources repeatedly offered to her. We, therefore, conclude that the Department presented sufficient evidence to establish a statutory ground for termination of Mother's parental rights.

In addition to proving at least one statutory ground upon which to terminate Mother's parental rights, the Department must also prove that termination of parental rights is in the children's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, III, 193 S.W.3d at 530; *In re A.W.*, 114 S.W.3d at 544. The trial court found the evidence more than sufficient to establish that termination of her parental rights was in the children's best interests. The record before us fully supports the finding that termination is in the children's best interests.

We, therefore, affirm the termination of Mother's parental rights on the grounds that she failed to support the children, to provide a stable home, substantial noncompliance with the permanency plan, and persistent conditions, and on the basis that termination of her rights is in the children's best interests.

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

FRANK G. CLEMENT, JR., JUDGE