

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Submitted on Briefs, April 25, 2006

**IN THE MATTER OF T.S. (A child under the Age of Eighteen), M.S.,  
Appellant, v. B. H., Appellee**

**Direct Appeal from the Juvenile Court for Washington County  
No. J10216 Hon. John L. Kiener, Judge**

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**No. E2005-02590-COA-R3-PT - FILED MAY 22, 2006**

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The Trial Court terminated the mother's parental rights. The mother has appealed and the determinative issue is whether the clear and convincing evidence established it was in the child's best interest to terminate the relationship.

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

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Shanell M. Schuyler, Johnson City, Tennessee, for appellant.

Ronald D. Tuech, Johnson City, Tennessee, for appellee.

Janie Lindamood, Johnson City, Tennessee, for appellee's Guardian Ad Litem.

**OPINION**

This action was initiated by the grandmother to terminate the parental rights of the mother. Service of process was made by publication on the mother, and a hearing was held and the mother's rights were terminated. However, subsequently, the mother contacted the guardian ad litem and an Agreed Order was entered, setting aside the termination of the mother's parental rights, and setting the issue for trial.

The trial was held on September 8, 2005, and at the beginning of the hearing, the parties stipulated there was a period of more than four months when the mother was not incarcerated but did not visit the child, thus grounds existed for termination. The agreed issue for hearing was whether the termination of the mother's parental rights was in the child's best interest.

Following the evidentiary hearing, the Trial Court, in its Order recites that the grandparents were present with counsel, as well as the father, the guardian ad litem, and the mother and her attorney, and that at the beginning of the hearing, the parties had stipulated there was clear and convincing evidence that grounds existed for terminating the mother's parental rights, and that the mother had committed criminal acts and used drugs. The Court stated that, based upon this admission/stipulation, the Court found that clear and convincing evidence existed the child was abandoned pursuant to Tenn. Code Ann. §36-1-113.

As to the child's best interests, the Court found the testimony showed that the child had been in the grandparents' custody for more than two years, that the child was progressing well, and was happy and well-adjusted. The Court observed that the grandparents were providing the child with a safe, stable, adequate, and loving home, and would continue to do so, as their intent was to adopt the child, and that the evidence showed that removing the child from the grandparents would be detrimental to him and not in his best interest.

The Court found that there was clear and convincing evidence that the mother's parental rights should be terminated, in that the mother did not provide a stable home for the child prior to removal, and that, according to the mother's own testimony, it would be at least two years or more before she was rehabilitated and could return to the local area. The Court further found the child had formed a parent/child bond with the grandparents, and would suffer significant and irreparable harm if removed from their home, and that returning the child to either parent would be detrimental to the child, and the best interest of the child required termination.

The mother has appealed raising these issues:

1. Whether the Court's decision that termination of mother's parental rights was in the child's best interests was supported by clear and convincing evidence?
2. Whether the Court erred in terminating mother's parental rights without making findings of fact and conclusions of law as to each of the factors listed in Tenn. Code Ann. §36-1-113(I)?

A parent has a fundamental right to the care, custody, and control of her child. *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208 (1972). This right is not absolute and may be terminated if there is clear and convincing evidence justifying termination under the applicable statute. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388 (1982); *In re Drinnon*, 776 S.W.2d 96 (Tenn. Ct. App. 1988). Further, the Court must find that a termination of parental rights is in the child's best interest. *Tennessee Dept. of Human Services v. Riley*, 689 S.W.2d 164 (Tenn. Ct. App.

1984); Tenn. Code Ann. §36-1-113(c).

When reviewing a trial court's decision to terminate parental rights, we have previously recognized that the termination must be affirmed if the record contains clear and convincing evidence to support any of the bases found by the trial court. *In re C.W.W.*, 37 S.W.3d 467 (Tenn. Ct. App. 2000). We have also explained that "clear and convincing evidence" is a more stringent requirement than a preponderance of the evidence, but less stringent than "beyond a reasonable doubt." *O'Daniel v. Messier*, 905 S.W.2d 182 (Tenn. Ct. App. 1995). In this case, the Trial Court terminated the parental rights of the mother based upon the ground of abandonment, which was stipulated. Once the court has found by clear and convincing evidence that grounds exist for termination, the court must determine that termination is in the child's best interest. Tenn. Code Ann. §36-1-113(c)(2); *In re A.D.A.*, 84 S.W.3d 592 (Tenn. Ct. App. 2002). The best interest analysis contained in Tenn. Code Ann. §36-1-113(I) requires the court to consider the following factors:

In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

- (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 or controlled substances 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).

Applying the foregoing factors to this case, there was clear and convincing evidence that termination of the mother's parental rights was in the child's best interest. Due to her incarceration and her future rehabilitation, mother had not been able to "make it safe and in the child's best interest to be in the home of the parent", and it was unclear whether it would be safe or in the child's best interest to be in the mother's home at any point in the future. The mother had almost completed the prison drug program, but was not yet back in the "real world" and still faced six months of rehabilitation in a halfway house, plus additional time in aftercare. Whether the mother would comply with her program once she was out of a custodial setting was not predictable.

The mother had not maintained visitation or steady contact with the child even when she was not incarcerated, and had no meaningful relationship with the child at the time of trial, which condition had existed for more than two years. The evidence established that a change of environment would be very disruptive to the child, who was repeatedly described as happy and well-adjusted in his grandmother's home. The mother has a history of criminal behavior and drug abuse, and no record of competently caring for the child. She also failed to support the child at all during the two years he had been with his grandmother. Thus, based on the statutory factors, the Trial Court correctly determined it was in the child's best interest to terminate the mother's parental rights.

Finally, the mother argues that the Trial Court erred in failing to make findings of fact and conclusions of law with regard to each of the factors listed in Tenn. Code Ann. §36-1-113(k), which states that the court "shall enter an order which makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing."

The statute does not require specific findings of fact as to each factor listed. However, the Trial Court did make specific findings of fact regarding the statutory factors. The Court found mother did not provide a stable home for the child prior to removal, and that, according to the mother's testimony, it would be at least two years or more before she was rehabilitated and could return to the local area. The Court found the child was flourishing in his current environment, and that it was in the child's best interest to have stability and continue his current progress.

The Court found that the testimony showed that the child had been in the grandparents' custody for more than two years, that the child was progressing well, and was happy and well-adjusted. The Court found the grandparents were providing the child with a safe, stable, adequate, and loving home, and would continue to do so, as their intent was to adopt. The Court found the other witnesses testified that removing the child from grandparents would be detrimental to him and not in his best interests. The Court stated "the child has been in custody for more than two years and is in need of a stable and loving environment now; that there is nothing but speculation that the Mother will be in a stable environment even in two years." The Court further found the child had formed a parent/child bond with the grandparents, and would suffer significant and irreparable harm if removed from their home. The Court found that returning the child to either parent would be detrimental to him, and that the best interest of the child required termination.

In sum, the statutory factors for terminating parental rights were stipulated, and termination was shown to be in the child's best interests based upon the statutory criteria. We conclude the Trial Court acted properly in terminating the mother's parental rights.

The Judgment of the Trial Court is affirmed and the cost of the appeal is assessed to the mother, M.S.

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HERSCHEL PICKENS FRANKS, P.J.