

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs December 21, 2001

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES v.
JENNIFER A. GORRELL, ET AL.**

**Appeal from the Juvenile Court for Greene County
No. 13425 Tom Wright, Judge**

FILED MARCH 25, 2002

No. E2001-01363-COA-R3-JV

The State of Tennessee, acting through the Department of Children's Services, seeks the termination of parental rights as to A.L.L. and C.H.G. The Trial Judge declined to terminate the parental rights as to A.L.L., and awarded permanent custody of her to the Department of Children's Services. The State appeals this determination. He did terminate the parental rights of both the mother and the father as to C.H.G., which the mother appeals. We affirm.

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

HOUSTON M. GODDARD, P.J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and CHARLES D. SUSANO, JR., JJ., joined.

J. Russell Pryor, Greeneville, Tennessee, for the Appellant/Counter-Appellee, Jennifer Gorrell

Paul G. Summers, Attorney General and Reporter and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the Appellee/Counter-Appellant, State of Tennessee, Department of Children's Services

MEMORANDUM OPINION

This is a suit filed by the State of Tennessee, Department of Children's Services, seeking to terminate the parental rights of the mother of A.L.L.¹ (d.o.b. 9/15/86) and the mother and father of her half-sister, C.H.G. (d.o.b. 01/29/97).

¹ A.L.L. was born out of wedlock and her father, who perhaps is unknown, was not made a party to the suit.

The Trial Judge declined to terminate the parental rights as to A.L.L. and awarded permanent custody of her to the Department of Children's Services. He did terminate the parental rights of both the mother and the father as to C.H.G.

The mother appeals the Trial Judge's termination of her parental rights as to C.H.G. and the State appeals his failure to terminate the parental rights as to A.L.L.

As to the appeal of the mother, we find this is an appropriate case for affirmance under Rule 10 of this Court.

As to the Trial Judge's failure to terminate the parental rights of the mother as to A.L.L. and awarding permanent custody of her to the Department of Children's Services, we note the Trial Court made the following findings:

The Court believes that the fact, the nine factors, to the extent that they apply in this case, support termination with regard to [A.L.L.], but I just believe that the factors not set forth in the nine factors there outweigh those factors and I find by clear and convincing evidence that it is not in [A.L.L.'s] best interest that Mrs. Gorrell's parental rights be terminated with regard to [A.L.L.]; that she should remain in permanent foster care. I do not believe that it is in [A.L.L.'s] best interest for her to ever be released until she is an adult or to be returned to reside with Mrs. Gorrell and would not approve such a change in her placement. But because of her age and the significant trauma that she has gone through at this age and to the certain extent that she has gone through it with her mother, her obvious desires expressed through her caseworker, from the Traces and Mr. Bailey, the guardian *ad litem*, to maintain that relationship with her mother, the Court believes that I might do more harm than good by severing it legally, even though it might not be severed from a practical standpoint. And I'm sure that perhaps that is a surprise to everyone since I'm the one that has pushed so hard to get this proceeding taken care of. I think that the Statute required it. I think that it is necessary and appropriate for the State to pursue it, having heard all of the evidence and considered all of the factors with regard to [A.L.L.]. Even though there is significant grounds to terminate, I'm not going to do it and therefore, it's granted in the most part and denied, the Petition that is, in, with regard to the child, [A.L.L.] Gorrell.

Further, it appears from the record that she has been in the custody of an unmarried foster mother for several years and has expressed a desire to remain there. The proof also shows that A.L.L. wants to continue to have a relationship with her mother. Finally as to this issue, it appears that should an application for permission to appeal to the Supreme Court be sought and granted, A.L.L. will most likely be within one year of reaching her majority before the question as to the mother's parental rights is resolved.

Given the above-stated facts, we find that the evidence does not preponderate against the Trial Judge's finding that termination of her mother's parental rights was not in her best interest and, accordingly, the appeal of the State of Tennessee should likewise be affirmed under Rule 10 of this Court.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against the mother, Jennifer Gorrell, and the State of Tennessee equally.

HOUSTON M. GODDARD, PRESIDING JUDGE