

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 18, 2002 Session

**STATE OF TN DEPT. OF CHILDREN'S SVCS. v. T. S. W., ET AL.**

**Appeal from the Juvenile Court for Coffee County  
No. 76J Tim Brock, Judge**

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**No. M2001-01735-COA-R3-JV - Filed May 10, 2002**

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J. A. J. is the father of T. L. J., date of birth 7-25-92; C. S. J., date of birth 7-1-93; and S. S. J., date of birth 7-21-94. A petition to terminate his parental relationship was filed on May 13, 1996. The mother of the children surrendered her parental rights in 1997. She is not involved in this litigation. The case was heard on January 11, 2001 and resulted in a judgment terminating the relationship. J. A. J. appeals, insisting that the grounds for termination were not proved by clear and convincing evidence. We affirm.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., and PATRICIA J. COTTRELL, J.J., joined.

Robert Thomas Carter, Tullahoma, Tennessee, for the appellant, J. A. J.

Ralph M. Bard, Tullahoma, Tennessee, Guardian Ad Litem.

Paul G. Summers, Attorney General & Reporter; Douglas Earl Dimond, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services (DCS).

**OPINION**

**I.**

These children entered state custody in 1994 and 1995. DCS prepared several plans of care in 1994 and 1995, obligating J. A. J. to communicate with DCS, to provide a safe living environment for the children, to attend parenting classes, to be counseled, to maintain contact with the children, to be law-abiding and to support his children.

The proof clearly establishes that J. A. J. essentially failed to comply with a plan of care. He visited the children haphazardly; in 1994, he visited the children only one time, and subsequent years only rarely.

He was sentenced to prison on February 21, 1996, for ten years following a conviction for possession of marijuana and LSD and habitual driving offender charges. He was paroled in November 1998, and began regular weekend visits with the children which ended when he was returned to prison for a parole violation in July 1999. He was convicted for attempted assault on his girlfriend and her four-year-old child. From November 1998 to July 1998 is the only time that he visited regularly, excepting an incident in which he was hospitalized.

Kimberly Williams was Mr. J. A. J.'s case manager from late July 2000 until trial on January 11, 2001. She testified that he visited twice in August and twice in September 2000, but did not contact the Department or visit the children thereafter, except to call Ms. Williams the week before trial to ask her why she had contacted his mother. At the time of trial, he had not visited at all in nearly four months.

He paid no support for his children during the approximately seven years they were in state custody until his latest release from prison, when he was required by a court ordered income assignment to pay support from his wages. He testified that he nonetheless had not paid support for a month, since he had been fired from his job.

Carol Keith, who had fostered T. L. J. since August 2000, testified that the children wanted to be adopted and had no bond with or affection for their father. David Dale, who had raised C. J. S. and S. S. J. since they came into custody as infants in 1993 and 1994, testified that the children had no particular bond with or affection for their father.

J. A. J. testified that he had attended some counseling, but not regularly. He produced certificates that he received for anger management, parenting skills, and substance abuse programs that he completed while incarcerated in 1996. He attributed his failure to visit between June 1995 and his going to jail in February 1996 to being disabled after a car accident. He explained that he had not visited the children recently because he could not afford the \$30.00 round trip cab fare to Tullahoma (where the children live) from Manchester, where he lived. He admitted that he had not contacted the Department in three months.

The trial court found that J. A. J. had failed to comply substantially with his plan of care responsibilities; that he had failed to provide a safe home, as evidenced by his lack of electricity in the home; that he admitted he did not attend weekly counseling sessions; and visited the children only sporadically. The trial court found that J. A. J. had not refrained from illegal activity, as evidenced by his several criminal convictions, and had not paid support for the children. Whereupon the court found that termination of J. A. J.'s parental rights was in the children's best interest, especially given the children's needs and the possibility that they could be adopted. The trial court further found that the state had proved a second ground to terminate J. A. J.'s parental rights, namely

his failure to remedy the persistent conditions in his life that prevented the children's return to him despite reasonable efforts by available social service agencies.

## II.

If grounds for termination of parental rights exist, the state must establish by clear and convincing evidence the existence of one of the grounds. *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995); *State Department of Human Services v. Defriece*, 937 S.W.2d 954, 960 (Tenn. Ct. App. 1996). This burden is satisfied when the proof eliminates any serious doubts concerning the correctness of the conclusion drawn from this evidence. Furthermore, the heavy burden of proof prevents unwarranted termination or interference with biological parents rights to their children. *In re: M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

The thrust of these cases is that a parent's rights may be terminated only in a limited number of statutorily defined circumstances. Before termination, one or more of the asserted statutory grounds must be presented by clear and convincing evidence. The court must also find by clear and convincing evidence that termination is in the best interest of the children. *In.re: M.W.A. Id.*

In this jurisdiction, a ground exists to terminate parental rights if there is clear and convincing evidence that:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3)(A).

The proof clearly established that J. A. J. had failed for seven years to remedy the conditions that prevented his children's return to him. He had not visited the children in nearly four months, and his illegal activities kept him in prison for extended periods.

### III.

In order to terminate parental rights, a court must determine that clear and convincing evidence proves not only that grounds exist, but also that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c). The legislature has mandated how a court should make the latter determination:

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 guideline promulgated by the department pursuant to § 360-5-101.

Tenn. Code Ann. § 36-1-113(i).

The listed factors are not exhaustive. The statute does not require every factor to appear before a court can find that termination is in a child's best interest.

The trial court held that termination of J. A. J.'s parental rights was in the children's best interest pursuant to most of the statutory factors: He failed to make lasting adjustment in his circumstances after reasonable efforts by social service providers. Tenn. Code Ann. §§ 36-1-113(i)(1) and (2). He failed to regularly visit or develop a meaningful relationship with the children. Tenn. Code Ann. §§ 36-1-113(i)(3) and (4). As to C. S. J. and S. S. J., who had been with the Dales practically since birth, the proof is clear that a change of caretakers would have been traumatic. Tenn. Code Ann. 36-1-113(i)(5). The proof is also clear that J. A. J. could not provide a safe and secure home, Tenn. Code Ann. § 36-1-113(i)(7), and that he paid little or no support. Tenn. Code Ann. § 36-1-113(i)(9).

We find the trial court properly found that termination of J. A. J.'s parental rights was in the children's best interest.

The judgment is affirmed at the cost of the appellant.

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WILLIAM H. INMAN, SENIOR JUDGE