

STATE OF TENNESSEE,)
DEPARTMENT OF CHILDREN)
SERVICES,)

Petitioner - Appellee,)

v.)

TINA MARIE TAYLOR, and)
RICHARD DAVID SMITH,)

Respondents - Appellants,)

and)

STATE OF TENNESSEE,)
DEPARTMENT OF CHILDREN'S)
SERVICES,)

Petitioner - Appellee,)

v.)

TINA MARIE TAYLOR, and)
DAVID EUGENE McWHIRTER,)

Respondents - Appellants.)

) Appeal No.
) 01A01-9610-CV-00472
)
) Overton Circuit
) Nos. 3068 & 3146

FILED

February 26, 1997

Cecil W. Crowson
Appellate Court Clerk

**COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE**

APPEALED FROM THE CIRCUIT COURT OF OVERTON COUNTY AT
LIVINGSTON, TENNESSEE

THE HONORABLE JOHN MADDUX, JUDGE.

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AFFIRMED AND REMANDED

HERSCHEL P. FRANKS, JUDGE

CONCUR:
GODDARD, P. J.
MURRAY, J.

The Trial Court terminated the parental rights of Tina Marie Taylor to her four children, and the parental rights of Richard David Smith to his child. These parties have appealed.

Tina's children, David, Jeremy and James, were determined to be dependent and neglected children and placed in custody of the State on March 19, 1992. These children have remained continuously in foster care until the time of trial.

On May 27, 1995, Tina and Smith's child Jessie, was placed in State custody, due to dependency and neglect. In November of 1994, Tina entered into a foster care plan relating to the three older children and on June 20, 1995, Taylor and Smith entered a plan of care relating to Jessie. On July 20, 1995, the State petitioned the Court to terminate Tina's parental rights to her three older children, alleging she had failed to comply with the foster care plan and that the children had been removed from the custody of the parent for more than one year, that the conditions that led to the children's removal still existed, and there was little likelihood that the conditions would be remedied at an early date.

On April 16, 1996, the State filed a petition to

terminate Tina and Smith's parental rights to Jessie, alleging that they had not complied with the provisions of the foster care plan, and that the child had been removed from the custody of his parents for more than six months.

The Trial Judge ordered the cases consolidated for trial, over the objection of Tina, and at the conclusion of the trial, the Trial Judge in terminating the parties parental rights found:

The mother of these children, Tina Marie Taylor, has admitted that she cannot handle the three older boys. And that she is not up to being a parent of the three older boys. . . . and it is obvious to the Court that even though they had completed their requirements in terms of going to the meetings that they were supposed to go to and going to the treatment programs they were going to, that they had no intention of living their life like they are supposed to, which would be the basis for them to continue to be the parents of these children.¹

. . . .

The Court finds that in regard to Tina Taylor that it's not in the best interest of these children to be returned to her as a parent. It's certainly not in the best interest of these children to be returned to be exposed to the conduct of Mr. Richard Smith. The reason that it's not in the best interest of the children is that Tina Taylor recognizes that she doesn't have the ability to control or to take care of or to parent or to handle the three older boys. And it's obvious to the Court based on all of this that she certainly does not have the ability to take care of the younger child either.

. . . .

And when you look at the activities of Mr. Richard Smith, the terms drinking, drugs, and violence just automatically come right to the top of the list of activities that he's been involved in.

¹The alleged father of the three older children was a party defendant, but was not before the Court.

On appeal, Tina argues that the Trial Court should not have consolidated the two cases for trial, "when a chance of prejudice to the appellant far outweighed the need for speed or judicial economy?". We conclude from this record that no prejudice to Tina or the judicial process resulted from the consolidation of the two cases, and that the order of consolidation was in the Trial Judge's sound discretion, in accordance with Rule 42.01 of the Tennessee Rules of Civil Procedure. *See Van Zandt v. Dance*, 827 S.W2d 785 (Tenn. App. 1991).

Both parents insist that grounds for the termination of their parental rights were not established by clear and convincing evidence.

The Trial Judge in making his determination pointedly stated that he was "very favorably impressed with the credibilities of the witnesses" who were offered by the State. The evidence offered by these witnesses established that the parents had not complied with the foster care plan, that Smith had abused Tina and assaulted another, and that both parties had placed the youngest child in positions of danger and they were not drug and alcohol free. There is clear and convincing evidence of the grounds for termination set forth in T. C. A. §36-1-113(g)(2)(3).

Essentially the parents did not comply with the foster care plan, did not visit the children, as agreed, but continued to follow their lifestyles, which would be detrimental to the children. The conduct and circumstances of both defendants is such as to render them unable to properly care for the children and due to the lapse of time, such

conduct is unlikely to change in the foreseeable future.

While two of the older children testified that they would like to return to their mother, the evidence establishes that this would not be in their best interest under all of the circumstances.

Accordingly, we are constrained to affirm the judgments of the Trial Court and remand with costs of appeal assessed to the appellants.

Upon remand, the Trial Judge will establish reasonable fees for the attorneys for appellants.

Herschel P. Franks, J.

Houston M. Goddard, P. J.

Don T. McMurray, J.