

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**  
July 29, 1999  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

IN RE: ) LOUDON COUNTY  
The Adoption of Chelsey ) 03A01-9811-CH-000380  
Kaye Dunaway, D.O.B. 10/1/93 )  
)  
BY: )  
Thomas Allyn Jones and )  
Lisa Marie Jones ) HON. FRANK V. WILLIAMS, III,  
) CHANCELLOR  
Plaintiffs-Appellants )  
)  
v. )  
)  
CHARLES EDWARD DUNAWAY )  
)  
Defendant-Appellee ) REVERSED AND REMANDED

JERROLD L. BECKER OF KNOXVILLE FOR APPELLANTS

TIMOTHY L. BALDRIDGE OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P.J.

Thomas Allyn Jones and his wife Lisa Marie Jones file a petition for Mr. Jones to adopt Mrs. Jones' daughter, Chelsea Kaye Dunaway, born on October 1, 1993, and to terminate the parental rights of her father, Charles Edward Dunaway. The Trial Court found that there had not been an abandonment of the child

by Mr. Dunaway and, therefore, declined to terminate parental rights.

The Joneses appeal, raising the following issue:

I. Whether the Plaintiffs/Appellants met their burden in proving that the Defendant/Appellee has abandoned the minor child pursuant to Tenn. Code Ann. § 36-1-102(1)(A)(i).

T.C.A. 36-1-102, referenced in the foregoing issue, provides in pertinent part the following:

**36-1-102. Definitions.--** As used in this part, unless the context otherwise requires:

(1)(A) "Abandonment" means, for purposes of terminating the parental or guardian rights of parents(s) or guardian(s) of a child to that child in order to make that child available for adoption, that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or make reasonable payments toward the support of the child;

. . . .

(D) For purposes of this subdivision (1), "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means that, for a period of four (4) consecutive months, no monetary support was paid or that the amount of support paid is token support.

The Trial Court filed a "FINDING OF FACT AND ORDER" which, as pertinent, states the following:

1. That no abandonment has occurred on the part of the Father/Defendant and that the Father has not intended to abandon the child.

2. There was not a payment of child support by the Defendant within the four months next preceding the filing of the adoption petition and that the Defendant had the ability to pay some amount during the four months next preceding the filing.

Mr. Dunaway concedes that he did not make payments for four months next preceding the filing of the termination petition which, of course, would meet the test of clear and convincing evidence required under T.C.A. 36-1-113(c)(1).<sup>1</sup>

While it may be true that the father did not intend to abandon the child, under the specific directives of the Code Section, which does not address intent, he has abandoned the child.

We recognize that it might be salutary if the Legislature had chosen to grant some discretion to the trial court in cases such as this, but it has not, and we decline to rewrite the unambiguous language of the statute.

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(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination or parental or guardianship rights have been established.

T.C.A. 36-1-113(c)(2) requires that before parental rights may be terminated the trial court must find that it is in the best interest of the child that parental rights be terminated. The Trial Court having determined there was no abandonment, of course, did not reach this question.

Because the Trial Court had an opportunity to observe the parties testifying and our further belief that additional evidence on this question might be helpful, we remand the case to the Trial Court to determine whether termination of the father's parental rights is in the best interest of the child.

For the foregoing reasons the judgment of the Trial Court as to abandonment is reversed and the cause remanded for further proceedings consistent with this opinion. Costs of appeal are adjudged against Mr. Dunaway.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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William H. Inman, Sr.J.