

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 2, 2015

IN RE MASON M.

Appeal from the Chancery Court for Lawrence County
No. 1416806 Stella L. Hargrove, Chancellor

No. M2014-02569-COA-R3-PT – Filed July 17, 2015

Mother appeals the termination of her parental rights; Father surrendered his parental rights prior to trial. The trial court found that four grounds for termination of Mother's parental rights had been established. Mother does not challenge any of the grounds for her termination; instead, she contends that the termination was not in the child's best interests. Finding no error, we affirm.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

M. Wallace Coleman, Jr., Lawrenceburg, Tennessee, for the appellant, Brooklyn R. T.¹

Herbert H. Slatery, III, Attorney General and Reporter, and Ryan L. McGehee, Assistant Attorney General, and Leslie Curry, Nashville, Tennessee, for the appellee, Tennessee Department of Children's Services.

OPINION

Brooklyn R. T. ("Mother") and Brandon S. M. ("Father") had one child together, Mason M., born July 2011. The couple met in 2009 when Mother was eighteen years old, and, six months later, the parties moved in together. According to Mother, Father began verbally and physically abusing her within the next year. When Mother became pregnant, the abuse by Father ceased, but the violence began again after their child was born.

¹ This court has a policy of protecting the identity of children in parental termination cases by initializing the last names of the parties.

On October 15, 2012, Mason entered the custody of the Tennessee Department of Children's Services ("the Department"), following an injury sustained during an incident of domestic violence. The injury occurred when Father assaulted Mother while she was holding the child. Father was arrested for domestic violence and aggravated child abuse, and Mother and the child were sent to Crockett Hospital.

At the hospital, Child Protection Services Investigator Christopher Rose interviewed Mother who told Mr. Rose about Father's physical abuse and that Father was addicted to drugs and alcohol. Mother also revealed that she took Lortab and Xanax, but that she had prescriptions for these drugs. She also stated that she took Percocet for her back pain, but that she obtained the medication from a friend. Furthermore, prior to Mason being taken into the Department's custody, Mother had been placed on judicial diversion for stealing \$840 from her former employer, Wal-Mart. According to the terms of her diversion, she was to pay restitution and court costs and submit to supervision throughout her probation.

In November 2012, the Lawrence County Juvenile Court adjudicated the child to be dependent and neglected upon finding an extensive history of domestic violence in the home. The court further ordered that the child have no contact with Father, and the child was ordered to remain in the Department's custody.

Mother subsequently entered into four unsuccessful permanency plans throughout the pendency of the case. The first was entered into on November 6, 2012, and Mother agreed to pay child support as ordered by the court, to attend regular classes for victims of domestic violence, to take only prescribed medications and pass random drug screens, to refrain from physical violence in the home or around Mason, to maintain a drug-free environment, to bring snacks and necessities to her weekly supervised visits with Mason, to participate in a mental health assessment, and to participate in a drug and alcohol assessment. She was also required to resolve all pending legal matters and refrain from incurring any new criminal charges. Mother signed a revised plan in April 2013 that allowed her to participate in therapeutic supervised visitations with the child. The plan was revised again on July 15, 2013, requiring Mother to meet all the requirements of the prior plans and set up a mental health intake appointment. The plan was revised for the last time on January 3, 2014, and restated the requirements of the previous plans.

The Department filed its petition to terminate the parental rights of Mother and Father on May 16, 2014. Father surrendered his parental rights on July 8, 2014. The case against Mother went to trial on October 7, 2014, during which several witnesses testified, including Mr. Rose, Mother, the maternal grandfather of the child, and the child's foster father.

The evidence introduced at trial established that, since Mason was taken into the Department's custody, Mother failed to refrain from engaging in criminal behavior. She

failed to pay restitution to Wal-Mart and violated the terms of her diversion when she failed to inform her probation officer that she had been booked based on a criminal summons charging her with two counts of theft of up to \$500. She was subsequently charged with an additional count of theft of up to \$500, two charges of failure to appear in court, and four counts of violation of probation, including failure to refrain from the use of illegal drugs. Two of the three charges of theft were for stealing prescription medications from family members. Furthermore, Mother made only one child support payment despite a court's order to pay \$310 per month entered in March 2013. That payment was made in February 2014 to post bond for her arrest upon failure to pay child support. Mother also failed to complete a mental health intake as required by the permanency plans and failed to submit to a drug screening test.

As a result of her criminal charges, Mother was in and out of jail from the time Mason was taken into the Department's custody. Mother was incarcerated from December 18, 2012 through February 25, 2013; from September 9, 2013 through September 11, 2013; from February 11, 2014 through March 29, 2014, and from June 12, 2014 through the time of trial.

Mother testified that she was aware of her duty to pay child support, that she was capable of working, and that she had worked in a few places, but never had enough money to pay support. She testified that, while she only made one child support payment, she provided diapers, snacks, and clothes during her visits with Mason. She testified that she never provided documentation of her employment with the Department.

Jeffrey T., the maternal grandfather of the child, testified that if his daughter retains her parental rights, she and the child can stay with him and his girlfriend in their home. He testified that he had lived in the home for several years and that there is room in his home for Mother and the child. He further testified that he has a vehicle for her to drive, and that he plans on helping her get a job and resolving her legal matters. However, he also testified that he did not take Mason into his home when the child was first removed from Mother's custody because he was concerned about how caring for his grandson might affect his relationship with his new girlfriend.

Next, the foster father, Scott M., testified that although he and his wife only had Mason for three months by the time of trial, they love the child very much and wish to adopt the child. He testified that Mason calls him and his wife "mommy" and "daddy," and that they have a strong bond with the child.

By order entered on November 25, 2014, the trial court terminated the parental rights of Mother on the grounds of failure to provide a suitable home, abandonment by an incarcerated parent, substantial noncompliance with the permanency plans, and persistence of conditions. The trial court also found that the termination of Mother's parental rights was in the best interests of the child.

Mother appeals, but does not contest the trial court's findings with regard to grounds for termination. Instead, Mother argues that the trial court erred in concluding that clear and convincing evidence supports a finding that termination of her parental rights is in the child's best interest. Because the grounds for termination in this case are relevant to the trial court's holding of best interest, we will briefly consider the grounds for termination before analyzing the best interest issue.

STANDARD OF REVIEW

To terminate parental rights, two things must be proved by clear and convincing evidence: (1) the existence of at least one of the statutory grounds for termination, and (2) that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citing *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re Valentine*, 79 S.W.3d at 546) (other citations omitted). When a trial court has made findings of fact, we review the findings de novo with a presumption of correctness under Tenn. R. App. P. 13(d). *See In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d 240, 246 (Tenn. 2010). We next review the trial court's order de novo to determine whether the facts amount to clear and convincing evidence that one of the statutory grounds for termination exists and if so whether the termination of parental rights is in the best interests of the children. *Id.* The trial court's conclusions of law are reviewed de novo with no presumption of correctness. *In re Bernard T.*, 319 S.W.3d at 597.

ANALYSIS

I. GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Here, the trial court found four grounds to terminate Mother's parental rights: abandonment by failure to provide a suitable home, abandonment by an incarcerated parent, substantial non-compliance with the permanency plans, and persistence of conditions.

The trial court found that the Department provided or made available therapeutic supervised visitation, family violence counseling, alcohol and drug assessments, in-home alcohol and drug services, and referrals to mental health treatment. Instead of taking advantage of these opportunities and using them to help provide a suitable home for Mason, Mother continued to engage in criminal behavior, including behavior resulting in her incarceration, failed to find and keep steady employment, and failed to demonstrate the desire to create a safe, suitable home for Mason. As such, the trial court found Mother

abandoned the child by failure to provide a suitable home in accordance with Tenn. Code Ann. § 36-1-113(g)(1) and § 36-1-102(1)(A)(ii).

Next, the trial court found that Mother was incarcerated for part of the four months prior to the filing of the petition to terminate her parental rights and has since engaged in criminal behavior and been incarcerated again. Specifically, the trial court noted Mother's criminal history since the child had been taken into custody: charge of theft of property worth more than \$500, three counts of theft of up to \$500, two charges of failure to appear, and four counts of violation of probation. Despite the Department's efforts to explain the consequences of her continued criminal behavior, the trial court found that Mother continued to exhibit "a disregard for the law that demonstrates a lack of true desire to be reunited with her child." The trial court further found that Mother willfully failed to pay court-ordered child support; Mother testified that she was physically capable of working, but made only one child support payment since the child was taken into the Department's custody, and moreover, only so that she would be released from jail. Ultimately, the court found Mother had abandoned her child "through her failure to abide by the law and thus avoid incarceration and her failure to pay support" pursuant to Tenn. Code Ann. § 36-1-113(g)(1) and § 36-1-102(1)(A)(iv).

In addition, the trial court found that Mother repeatedly failed to substantially comply with the permanency plans according to Tenn. Code Ann. § 36-1-113(g)(2) and found that conditions still persist that would make a return of the child to Mother's custody against the child's best interest according to Tenn. Code Ann. § 36-1-113(g)(3) and § 36-1-113(i)(2). Specifically, the trial court found that Mother continued to engage in criminal behavior and violate her probation, failed to participate in mental health treatment, and failed to take a required drug screening test, despite the multiple revisions to the permanency plan and the Department's reasonable efforts to reunite Mother with her child. The court further found that Mother did not take appropriate advantage of these services or make more than minimal efforts to be reunited with her child; particularly, she never found steady employment and never supported the child, despite her capacity to do so.

Because Mother does not challenge the termination of her parental rights on any of the grounds, the trial court's findings on these grounds are final. *In re Alexis L.*, No. M2013-01814-COA-R3-PT, 2014 WL 1778261, at *2 (Tenn. Ct. App. Apr. 30, 2014); *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011) (citing *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006)). Nevertheless, we have determined that the Department proved each of the four grounds found by the trial court by clear and convincing evidence. Thus, we affirm the trial court's ruling on each ground. We will now address whether termination of Mother's parental rights was in the child's best interest.

II. BEST INTERESTS OF THE CHILD

Mother contends that the Department failed to show by clear and convincing evidence that termination was in the child's best interest. The Tennessee General Assembly has provided a list of factors for the court to consider when conducting a best interests analysis. *See* Tenn. Code Ann. § 36-1-113(i)(1)-(9). This list is not exhaustive, and a trial court is not required to find the existence of each enumerated factor before it determines that terminating a party's parental rights is in the best interests of the child. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). Instead, a court is required to weigh both the factors listed in Tenn. Code Ann. § 36-1-113(i) and any other relevant factors to determine whether terminating a parent's rights is in the child's best interests. Tenn. Code Ann. § 36-1-113(i). One such factor is incarceration of a parent because it causes a delay in a parent's ability to take custody of her child, and such a delay is a strong indication that termination is in the child's best interests. *In re Dominique L.H.*, 393 S.W.3d 710, 718 (Tenn. Ct. App. 2012).

The child's best interests must be viewed from the child's, rather than the parent's, perspective. *Id.* at 718 (quoting *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004)). Ultimately, the relevancy and weight given to each factor depends on the unique facts of each case. *In Audrey S.*, 182 S.W.3d at 878. Depending on the circumstances of the particular parent and particular child in question, the consideration of one factor may determine the outcome of the analysis. *Id.* (citing *White*, 171 S.W.3d at 194).

The trial court found that termination of Mother's parental rights was in the best interests of the child because Mother "failed to make adjustments in her employment situation, her conduct, or her living conditions to make it safe and in Mason's best interest that he is returned to her custody." Specifically, Mother failed to find steady employment that would enable her to provide a home for Mason, despite her testimony that she was capable of working; Mother also failed to make a lasting adjustment of her behavior by continuing to engage in criminal conduct resulting in incarceration, despite the Department's reasonable efforts and many revisions of the permanency plan that could have resulted in the child's return to Mother. The trial court also noted its concern that Mother has been charged twice with the theft of prescription drugs. Finally, the court noted that Mother made only one child support payment since Mason was taken into state custody despite her capability to work.

Mother submits that she was incarcerated in the four months preceding the filing of the petition, but contends that she maintained regular visitation while out of jail and that she had a stable home available to her. However, the trial court acknowledged that Mother attempted to maintain regular visitation when she was not incarcerated, but she continued to engage in criminal conduct which jeopardized visitation with her child. As for having a stable home, Mother testified that she lived on and off with her father and that she could return to her father's home with the child. Her father testified that he has

lived in the same home for seven years, that he had room in his home for Mother and the child, and that he would help her find a job. However, the trial court found that he “also testified that he did not take Mason into his home when the child was first removed from Mother’s custody because he was concerned about how caring for his grandson might affect his relationship with his new girlfriend,” and that this did not signify to the court that Mason would have a stable and secure family support system in the home of the maternal grandfather.

Mother further argues that Mason was only in the home of his foster parents for three months by the time of trial, and that there was no proof that Mason would incur harm as a result of change in his caretaker if he were to be reunited with Mother. *See* Tenn. Code Ann. § 36-1-113(i)(5). However, the foster father’s testimony reveals that the foster family has a strong bond with the child despite the fact the child was only in the home for three months by the time of trial. In addition, the child has been in foster care since being adjudicated dependent and neglected in November 2012. Moreover, a trial court is not required to find the existence of each enumerated factor before it determines that terminating a party’s parental rights is in the best interests of the child. *In re M.A.R.*, 183 S.W.3d at 667. The trial court relied on six of the nine enumerated factors to determine that termination of Mother’s parental rights was in the best interests of the child.²

From the totality of the circumstances, we conclude that clear and convincing evidence exists to support the trial court’s conclusion that termination of Mother’s parental rights is in the child’s best interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Brooklyn R. T.

FRANK G. CLEMENT, JR., JUDGE

² The trial court specifically relied upon Tenn. Code Ann. § 36-1-113(i)(1), (2), (3), (6), (7) and (9), finding that each of these factors weighed against Mother.