

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs June 2, 2016

**IN RE RYDER R.**

**Appeal from the Juvenile Court for Williamson County  
No. 27193 Sharon Guffee, Judge**

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**No. M2015-02461-COA-R3-PT – Filed August 5, 2016**

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This case involves the termination of a mother’s parental rights to her son. The trial court found that two statutory grounds for termination were proven by clear and convincing evidence – abandonment by willful failure to support and persistence of conditions. The trial court also concluded that termination of the mother’s parental rights was in the child’s best interest. We conclude that there is not clear and convincing evidence of either ground for termination relied upon by the trial court. Therefore, we reverse the termination of the mother’s parental rights.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and BRANDON O. GIBSON, JJ., joined.

David M. Jones, Franklin, Tennessee, for the appellant, Kayla P.

P. Marlene Boshears, Franklin, Tennessee, for the appellee, Jacqueline P.

Karen Johnson, Brentwood, Tennessee, for the appellee, Guardian ad Litem.

**OPINION**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Ryder R. was born in November of 2006 to unmarried parents, Kayla P. (“Mother”) and Adam R. (“Father”). As they have struggled with drug addiction, Ryder’s parents have come and gone throughout his life, and Ryder has been the object of numerous juvenile court

proceedings. Before his first birthday, Ryder found himself the subject of two petitions for dependency and neglect and two petitions for custody. Besides the court proceedings, the one constant has been his paternal grandmother (“Grandmother”), with whom Ryder has lived much of his life.

On August 30, 2012, Father, who at that time had custody of Ryder, filed an emergency motion to change custody to Grandmother due to his incarceration. On September 13, 2012, Ryder’s guardian ad litem filed the most recent petition for dependency and neglect, requesting that the child be placed with the Tennessee Department of Children’s Services (“DCS”). Mother lived in a halfway house.

On November 5, 2012, the juvenile court held a hearing on Father’s motion to change custody and an adjudicatory hearing on the petition for dependency and neglect. Mother, Father, and Grandmother attended. The parties agreed that Ryder was dependent and neglected, and the court awarded custody to DCS. The court granted Mother supervised visitation at the discretion of DCS. The court also recommended that DCS place Ryder with Grandmother.

The initial family permanency plan dated October 22, 2012, identified two permanency goals: “exit custody with relative” and “return to parent.” At a meeting in July of the following year, the child and family team, which is typically composed of DCS staff, parents, guardians, and others with a significant influence in the child’s life, decided to add permanent guardianship as a goal. The juvenile court ultimately ratified a new family permanency plan dated July 15, 2013, which identified the permanency goals as “permanent guardianship” and “return to parent.”

On August 20, 2013, DCS moved for a permanent guardianship for Ryder under Tennessee Code Annotated § 37-1-801.<sup>1</sup> The parties consented to the permanent guardianship, and on August 30, 2013, the juvenile court entered an order naming Grandmother the permanent guardian. The court also granted the parents supervised visitation of at least four hours each month, provided that each parent submitted to a drug screen prior to the visit. The parents forfeited their right to visit if they missed two consecutively scheduled visits. In the event their rights were forfeited, the order granting the permanent guardianship allowed the parents to petition the court to reinstate visitation.

After the permanent guardianship was established, Mother failed to exercise her right to visitation and failed to pay child support for Ryder. On July 9, 2014, Mother filed a

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<sup>1</sup> Under the statute, juvenile courts are authorized to “establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding or a delinquency proceeding.” Tenn. Code Ann. § 37-1-801 (2014).

motion seeking to reinstate visitation, but at the July 28 hearing on her motion, she tested positive for cocaine. As a consequence, the court continued the hearing until September 15, 2014.

Mother could not appear for the September 15 hearing; she was in the midst of serving a 120-day sentence for contempt for failure to pay child support. The court dismissed Mother's motion to reinstate visitation. In addition, the court required Mother to "show proof of six months of clean drug screens prior to filing another Motion as to this child."

As a further complication, Mother learned during her incarceration that she was pregnant. After her release from jail on November 29, 2014, she moved to Kentucky. There, she lived with the father of her unborn child and his father. Mother gave birth to her daughter, Ryder's half-sister, in April of 2015.

On April 20, 2015, Grandmother filed a petition to terminate parental rights in the Juvenile Court for Williamson County, Tennessee. Grandmother alleged different statutory grounds for terminating Mother's and Father's parental rights. For Mother, Grandmother alleged abandonment by willful failure to support, abandonment by willful failure to visit, abandonment by wanton disregard, and persistence of conditions.

The juvenile court conducted a two day trial on the petition on October 12 and 28, 2015. Before presenting proof, counsel for Grandmother acknowledged that the ground of abandonment by wanton disregard did not apply to Mother.<sup>2</sup> Consequently, Grandmother proceeded against Mother on three statutory grounds.

The court heard the testimony of Mother, Father, Grandmother, Ryder's therapist, and the Court Appointed Special Advocates volunteer assigned to Ryder's case. The court also heard from Ryder in chambers. As for the claims of abandonment by willful failure to visit or support, the proof went largely unchallenged. Mother had not visited with Ryder in nearly two years, since Christmas Eve of 2013. In addition, Mother had paid Grandmother only \$245 during the four month period preceding the filing of her petition for parental termination, although Mother's child support obligation to Grandmother during that period was \$75 per week.

As for persistence of conditions, Mother, who was 28 at the time of trial, testified that she had struggled with drug addiction since the age of 16. She admitted to, in the past, abusing various pills and using marijuana, cocaine, methamphetamine, and heroin. Mother

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<sup>2</sup> To proceed on the basis of abandonment by conduct that exhibits a wanton disregard for the welfare of the child, the parent must be incarcerated at the time the petition for termination of parental rights was filed or at any time within four months immediately preceding the filing of the petition. *See* Tenn. Code Ann. § 36-1-102(1)(A)(iv) (2014).

was hospitalized twice for drug overdoses and required resuscitation on both occasions. She had participated in detoxification, rehabilitation, and other treatment programs at eight different facilities. Mother stated that her longest period of sobriety had been for nine months. Mother conceded she was a drug addict, but she passed a drug screen, which was administered on the second day of the trial.

Mother suffered from a mood disorder. Previously, she had been diagnosed with an anxiety disorder and clinical depression. Mother admitted taking prescription medication for depression and anxiety and to assist with sleep.

After the petition for termination of parental rights was filed, Mother returned to Tennessee. Mother had lived in approximately ten different places since Ryder was born. At the time of trial, she was living with her aunt.

Mother was also unemployed and had not worked in over a year. She had no vehicle and no driver's license due to past convictions for DUI and driving with a suspended license. Her infant daughter's father had been supporting her since she was released from jail, and she also received food stamps.

Rather than Mother's recent troubles, Grandmother testified it was eight-year-old Ryder's desire to be adopted that prompted her petition to terminate parental rights. Grandmother denied suggesting adoption to Ryder. As described by Grandmother, the idea developed with the young child over a period of time:

First would be about a year ago. Ryder has a friend who was adopted, and I guess they got to talking about it. And he had mentioned it and that was it. He never brought it up again.

To be honest, I don't know how many months ago, it's been a while, he had seen the movie Minions, which I haven't seen, but apparently it's about foster care and adoption.

And then he also watched what I did watch with him, a video of the Three Stooges. And they're in foster care and there was a lot of rejection. And it was a lot of rejection if they would go to a foster home and be returned. And at the end of the movie they finally were adopted. And that's when he pretty much became, I'd almost say to the point of upset with being adopted.

Grandmother agreed that Ryder was obsessed with the idea being adopted, but instead of treating the obsession, Grandmother testified that she and the young child "took a while just really discussing specifically what [adoption] would mean, so that we would both have an understanding of where that would lead."

Grandmother also testified to the vastly different attitudes Ryder had toward Father and Mother. Grandmother agreed that Ryder had a great love and affection for Father. Grandmother said Ryder referred to her son as “dad.” In contrast, Ryder referred to Mother by her given name and became “extremely upset” when Mother was mentioned. Ryder’s therapist corroborated this and even testified that, if he referred to Mother as mom, Ryder would become angry. According to Grandmother, Ryder was “petrified that he will have to see [Mother] again at this point.”

The juvenile court entered a lengthy final order on November 24, 2015. On the second day of the trial, before the first witness was called, Father announced that he agreed to the termination of his parental rights, so the final order only addressed termination of Mother’s rights. The court found clear and convincing evidence of two<sup>3</sup> statutory grounds for termination – abandonment by willful failure to support and persistence of conditions. The court also found clear and convincing evidence that termination was in Ryder’s best interest. Mother timely filed a notice of appeal.

## II. ANALYSIS

On appeal, Mother argues that Grandmother failed to prove by clear and convincing evidence either statutory ground for termination relied upon by the trial court. Mother also argues that Grandmother failed to prove by clear and convincing evidence that termination of her parental rights was in Ryder’s best interest.

### A. STANDARD OF REVIEW

In Tennessee, proceedings to terminate a biological parent’s rights to their child are governed by statute. *In re Kaliyah S.*, 455 S.W.3d 533, 541 (Tenn. 2015). Tennessee Code Annotated § 36-1-113 sets forth the grounds and procedures for terminating parental rights. *Id.* at 546. Parties seeking termination of parental rights must first prove the existence of at least one of the statutory grounds for termination listed in Tennessee Code Annotated § 36-1-113(g). Tenn. Code Ann. § 36-1-113(c)(1) (2014). Second, they must prove that terminating parental rights is in the child’s best interest, considering, among other things, the factors listed in Tennessee Code Annotated § 36-1-113(i). *Id.* § 36-1-113(c)(2) (2014).

Because of the constitutional dimension of the rights at stake in a termination proceeding, the parties seeking to terminate parental rights must prove both the grounds and

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<sup>3</sup> The court did not find that Mother had abandoned Ryder by willful failure to visit. From the record, Mother could not have visited during the four-month period preceding the filing of Grandmother’s petition for termination of parental rights. After her release from jail, Mother did not have sufficient time before the filing of Grandmother’s petition to accumulate “six months of clean drug screens,” which was a court ordered prerequisite for visitation.

the child's best interest by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citing Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808-09 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002)). "Clear and convincing evidence" leaves "no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). It produces a firm belief or conviction in the fact-finder's mind regarding the truth of the facts sought to be established. *In re Bernard T.*, 319 S.W.3d at 596.

Because of this heightened burden of proof in parental termination cases, an appellate court must adapt its customary standard of review. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). We review each of the trial court's specific factual findings de novo in accordance with Tennessee Rule of Appellate Procedure 13(d), presuming the finding to be correct unless the evidence preponderates against it. *In re Adoption of Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013). Then, we make our own assessment of "whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights." *In re Carrington H.*, 483 S.W.3d 507, 524 (Tenn. 2016) (citing *In re Bernard T.*, 319 S.W.3d at 596-97), *petition for cert. docketed sub. nom. Vanessa G. v. Tenn. Dep't of Children's Servs.*, (U.S. Apr. 22, 2016) (No. 15-1317). "The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review de novo with no presumption of correctness." *Id.* (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)).

## B. STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

### 1. Abandonment by Willful Failure to Support

The parental termination statute defines "abandonment" in five alternative ways. *See* Tenn. Code Ann. § 36-1-102(1)(A)(i)-(v) (2014). Abandonment includes circumstances in which a parent has "willfully failed to support" or "willfully failed to make reasonable payments toward the support of the child" for a period of four consecutive months immediately preceding the filing of a proceeding to terminate parental rights. *Id.* § 36-1-102(1)(A)(i). The statute defines "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" as "the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child." *Id.* § 36-1-102(1)(D) (2014). "Token support" in turn "means that the support, under the circumstances of the individual case, is insignificant given the parent's means." *Id.* § 36-1-102(1)(B) (2014).

A finding that support was "insignificant" in light of the parent's "means" requires evidence regarding both the actual financial support paid and the parent's "means." *In re*

Z.J.S., No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at \*11 (Tenn. Ct. App. Jun. 3, 2003). “In the context of token support, the word ‘means’ connotes both income and available resources for the payment of debt.” *In re Adoption of Angela E.*, 402 S.W.3d at 641 (citing *In re Z.J.S.*, 2003 WL 21266854, at \*11 n.24; *Black’s Law Dictionary* 1070 (9th ed. 2009)). “The definition of token support itself requires consideration of the circumstances of the individual case.” *In re K.C.*, No. M2005-00633-COA-R3-PT, 2005 WL 2453877, at \*9 (Tenn. Ct. App. Oct. 4, 2005) (citing Tenn. Code Ann. § 36-1-102(1)(B)). A party seeking termination on the ground of abandonment by willful failure to support “must prove by clear and convincing evidence that the opposing party had the capacity to pay support but made no attempt to do so and did not possess a justifiable excuse.” *In re Adoption of Angela E.*, 402 S.W.3d at 641.

In this case, Mother argues that the amount of support she paid during the applicable four-month period was more than token support and that her failure to pay the full amount ordered was not willful. Mother’s child support obligation for Ryder was set at \$75 per week, consisting of \$50 per week for current support and \$25 per week toward an arrearage. The petition to terminate Mother’s parental rights was filed on April 20, 2015. During the four-month period preceding the filing of the termination petition, Mother made child support payments of \$75 on December 15, 2014; \$35 on December 30, 2014; \$75 on January 23, 2015; \$75 on March 19, 2015; and \$60 on April 17, 2015. Mother testified that she also sent an Easter basket for the child.

In addition, child support payment records from the Tennessee Department of Human Services (“DHS”) reflect that Mother made a payment of \$240 toward child support on April 17, 2015. DHS credited the payment toward a child support arrearage that Mother owed to the State of Tennessee for Ryder rather than what she owed to Grandmother. Mother testified that this was a mistake and that she meant for the payment to go toward the amount she owed Grandmother. In any event, the payment went toward her support obligation for Ryder. She also paid an additional \$20 toward the amount owed the State during the relevant four-month period.

Having carefully examined the record, we conclude that the evidence does not clearly and convincingly demonstrate that Mother willfully failed to support Ryder during the pivotal four-month period. As petitioner, Grandmother had the burden to prove by clear and convincing evidence that Mother “had the capacity to pay support but made no attempt to do so and did not possess a justifiable excuse.” See *In re Adoption of Angela E.*, 402 S.W.3d at 641. The court found that Mother was “able bodied and capable of working full time and she has the capacity to make at least \$500.00-600.00 per week in the hospitality industry. However, the evidence reflected that Mother was released from jail approximately three weeks before the beginning of the four-month period. She was pregnant and, in Mother’s words, “swollen really bad.” She also lacked a driver’s license or transportation. She gave birth toward the latter part of the four-month period.

We also conclude that the support Mother paid Grandmother during the four-month period was more than token. According to Mother's testimony, her sole source of income during the relevant time period came from her boyfriend, who was a welder. Grandmother presented no proof regarding the income of Mother's boyfriend. Mother also received food stamps. Given this record and the circumstances, Mother's payments to Grandmother during the four-month period preceding the filing to the petition to terminate were not insignificant given Mother's means.

## 2. Persistence of Conditions

The ground for termination found at Tennessee Code Annotated § 36-1-113(g)(3) is commonly referred to as "persistence of conditions." *In re Audrey S.*, 182 S.W.3d at 871. Persistence of conditions focuses "on the results of the parent's efforts at improvement rather than the mere fact that he or she had made them." *Id.* at 874. To establish persistence of conditions, among other things, the child must "ha[ve] been removed from the home of the parent or guardian by order of a court for a period of six (6) months." Tenn. Code Ann. § 36-1-113(g)(3) (2014). Based on the language of the statute, we have previously held that the order removing the child must be "based on a judicial finding of dependency, neglect, or abuse." *In re Audrey S.*, 182 S.W.3d at 874; *In re Alysia S.*, 460 S.W.3d 536, 574 (Tenn. Ct. App. 2014).

Therefore, in examining whether the ground of persistence of conditions has been established, we begin by examining the order or orders that removed Ryder from Mother's home.<sup>4</sup> *See, e.g., In re Alleyanna C.*, No. E2014-02343-COA-R3-PT, 2015 WL 4773313, at \*14 (Tenn. Ct. App. Aug. 10, 2015) (describing the presence of the necessary court order of removal as "the threshold consideration for this statutory ground"); *In re Makenzie L.*, No. M2014-01081-COA-R3-PT, 2015 WL 3793788, at \*12 (Tenn. Ct. App. June 17, 2015), *perm. app. denied* (Tenn. Oct. 15, 2015) (considering the sufficiency of the removal order as a threshold matter for the ground of persistent conditions even though it was not raised as an issue by either party on appeal). We note at the outset that our review is hampered by the fact that most of the orders entered over the years in the various proceedings related to Ryder are not included in the record before us. The juvenile court described the lengthy procedural history of the litigation in its final order, and we have attempted to piece together the procedural history from that recitation and from the orders that do appear in the record. We examine the relevant orders in sequence.

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<sup>4</sup> Mother did not raise this issue on appeal. However, "in an appeal from an order terminating parental rights the Court of Appeals must review the trial court's findings as to each ground for termination . . . regardless of whether the parent challenges these findings on appeal." *In re Carrington H.*, 483 S.W.3d at 525-26.

By our count, four petitions for dependency and neglect were filed during 2007 and 2008. During the 2007 proceedings on the first two petitions, the juvenile court held a preliminary hearing and gave custody to Father and Grandmother, limiting Mother to supervised visits. This appears to be the first order removing Ryder from Mother's custody. However, after the preliminary hearing, two of the petitioners, maternal grandmother and the guardian ad litem, withdrew their petitions, and Father amended his petition for dependency and neglect to a custody petition. The court then awarded joint custody to Father and Grandmother. Mother regained joint custody with Father for a brief period, but Grandmother and maternal grandmother filed two additional petitions for dependency and neglect after Mother and Father were arrested in 2008. After another preliminary hearing, the court awarded Grandmother custody. However, again at the request of the petitioners, the court dismissed both petitions for dependency and neglect and granted custody to Grandmother and Father. The court later amended its previous order to grant only Grandmother custody.

The orders removing Ryder from Mother's custody in 2007 and 2008 cannot form the basis for the finding of persistence of conditions. The orders are not in the record, so we are unable to determine whether they contain a finding of dependency, neglect, or abuse. Further, based on the court's description of each of the proceedings, it is unlikely that any of the orders contained such a finding. Each of the orders followed a preliminary hearing, but apparently, the court dismissed the petitions for dependency and neglect prior to an adjudicatory hearing.<sup>5</sup> By rule, "[t]he adjudicatory hearing is the proceeding at which the court determines whether the factual allegations of the petition are true and whether the evidence supports a finding that a child is . . . dependent, neglected or abused." Tenn. R. Juv. P. 28(a)<sup>6</sup>; *see also In re Audrey S.*, 182 S.W.3d at 875-76 (absent an adjudicatory hearing on the petition or an order that reflects a finding of dependency, neglect, or abuse, reliance on persistence of conditions as a ground for termination is misplaced).

After Grandmother was awarded custody in 2008, according to the juvenile court's final order, custody of Ryder changed at least twice more. The court placed Ryder with third-parties by agreement and then, after a hearing on April 30, 2012, Father was awarded custody. Although Mother was later awarded *visitation* through various additional orders, the record does not reveal that Mother ever regained custody of Ryder or that he ever returned to Mother's home after the entry of the orders in 2007 and 2008.

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<sup>5</sup> We have previously explained that "[t]he statutes and rules governing procedure in the juvenile courts provide for three types of hearings in cases where a child is alleged to be dependent, neglected, or abused: (1) preliminary hearings; (2) adjudicatory hearings; and (3) dispositional hearings." *In re Audrey S.*, 182 S.W.3d at 874. The function of the preliminary hearing "is to allow the juvenile court to decide whether the child should be removed from the parent's custody pending the adjudicatory hearing." *Id.* at 875.

<sup>6</sup> The General Assembly ratified amendments to the Rules of Juvenile Procedure effective July 1, 2016. H. Res. 145 & S. Res. 79, 109<sup>th</sup> Gen. Assemb., Reg. Sess. (Tenn. 2016). Substantially similar language to Tennessee Rule of Juvenile Procedure 28(a) now appears at Rule 307(a).

In 2012, while *Father* had custody of Ryder, and Mother had *only supervised visitation*, Father filed an emergency motion to change custody from himself to Grandmother because he was incarcerated. Days later, the child’s guardian ad litem filed a petition for dependency and neglect asking for the child to be placed in DCS custody, as Father was incarcerated and Mother was living in a halfway house. On November 5, 2012, the juvenile court held an adjudicatory hearing, and by agreement of the parties, the court adjudicated Ryder dependent and neglected. The court also awarded DCS physical and legal custody of Ryder and recommended placement with Grandmother. This order, entered on November 9, 2012, is in the record and “was based on a judicial finding of dependency, neglect, or abuse.” *In re Audrey S.*, 182 S.W.3d at 874.

The order entered on November 9, 2012, despite including a finding of dependency and neglect, cannot support termination of Mother’s parental rights on the basis of persistence of conditions. The persistent conditions ground applies “only where the prior court order removing the child from the parent’s home was based on a judicial finding of dependency, neglect, or abuse.” *Id.* (emphasis added). The order adjudicating the dependency and neglect petition did not remove Ryder from Mother’s custody<sup>7</sup> or home. At that point, Ryder had not resided with Mother for years.<sup>8</sup> Mother resided at a halfway house. A removal from Father’s home and custody does not provide a basis for terminating Mother’s

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<sup>7</sup> The order entered after the preliminary hearing provided that Ryder was “removed from the custody of the father” and placed in the temporary custody of DCS subject to further orders of the court.

<sup>8</sup> If Mother had custody of Ryder at his removal in 2012, the result may have been different, despite Mother no longer living with Ryder. See *In re Steven C.*, No. M2014-01944-COA-R3-PT, 2015 WL 11112551 (Tenn. Ct. App. June 15, 2015), *perm. app. denied*, (Tenn. Sept. 9, 2015). In *In re Steven C.*, an unwed father claimed that he lived alone at the time his infant son was removed through a dependency and neglect order. *Id.* at \*4. Therefore, he argued that the order was insufficient to support a finding of persistence of conditions because the child was not “removed” from his home. *Id.* We said,

There is no reasonable construction of the statute to suggest a requirement that the child be physically present in the home of the parent whose rights are being terminated when the child comes into DCS custody in order for the ground of persistence of conditions to be established; in the clear interpretation and application of the statute, the operative determination is that the child has been removed from the custody of the parents due to certain conditions. This plain sense interpretation of the statute is shown in the circumstances of this case, where Steven was three weeks old when he came into the custody of DCS as a result of his mother leaving the rehabilitation program she had agreed to attend and his father – by his own testimony – being in circumstances which rendered him unable to care for him.

Steven was removed from the custody of both parents due to dependency and neglect[.]

*Id.* at \*4-5. In the case before us, the record does not contain any order removing Ryder from Mother’s home or her custody based on a judicial finding of dependency, neglect, or abuse.

parental rights on the ground of persistent conditions. *See, e.g., In re Destaney D.*, No. E2014-01651-COA-R3-PT, 2015 WL 3876761, at \*5 (Tenn. Ct. App. June 23, 2015) (“The legal deficiency concerning the trial court’s determination regarding this ground for termination lies in the fact that the Children were not removed from Father’s home.”); *In Re Jayden B.T.*, No. E2014-00715-COA-R3-PT, 2015 WL 3876573, at \*10 (Tenn. Ct. App. June 23, 2015), *perm. app. denied*, (Tenn. Sept. 25, 2015) (“the ground of persistence of conditions leading to the removal of the child is not applicable when the child was not removed from the home of the parent whose rights are at issue”); *In re K.M.K.*, No. E2014-00471-COA-R3-PT, 2015 WL 866730, at \*7 (Tenn. Ct. App. Feb. 27, 2015) (reversing termination of a father’s parental rights based on persistent conditions when the children were not removed from his home); *In re Maria B.S.*, No. E2012-01295-COA-R3-PT, 2013 WL 1304616, at \*11 (Tenn. Ct. App. Apr. 1, 2013) (“without removal from that parent’s home, the ground of persistent conditions is inapplicable”); *In re B.P.C.*, No. M2006-02084-COA-R3-PT, 2007 WL 1159199, at \*7 (Tenn. Ct. App. Apr. 18, 2007) (reversing a finding of persistent conditions where the child was removed from the mother’s home and not the father’s, even though the father was unable to care for the child at the time of removal).

A prior order removing the child from the parent’s home or custody based on a judicial finding of dependency, neglect, or abuse is “[a]n essential prerequisite to establishing persistence of conditions.” *See In re Aiden R.*, No. E2015-01799-COA-R3-PT, 2016 WL 3564313, at \*9 (Tenn. Ct. App. June 23, 2016). The record before us lacks that essential prerequisite. Therefore, we find insufficient evidence to support termination of Mother’s parental rights on the basis of persistence of conditions.

### III. CONCLUSION

Because the petitioner failed to prove by clear and convincing evidence at least one of her alleged grounds for terminating Mother’s parental rights, we reverse the judgment of the juvenile court.

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W. NEAL MCBRAYER, JUDGE