

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 1, 2023

IN RE ANDREW L.

**Appeal from the Juvenile Court for Unicoi County
No. JV8641 David R. Shults, Judge**

No. E2022-01465-COA-R3-PT

This is a termination of parental rights case. Mother appeals the trial court's order terminating her parental rights, arguing that the trial court erroneously found that grounds existed for termination and that such termination was in the child's best interest. Having carefully reviewed the record, we affirm.

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

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Randa Pinnex, Elizabethton, Tennessee, for the appellant, Krista J.

Regina L. Shepherd, Elizabethton, Tennessee, for the appellees, Mark R. and Susan R.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

Andrew L. ("Child") was born in July 2016 to Krista J. ("Mother") and Alex L. ("Father").¹ On January 23, 2018, the Department of Children's Services ("DCS") received a referral for a drug-exposed child and a lack of supervision regarding Child. Mother was found passed out in a field with Child, who was dressed only in a long-sleeve t-shirt and a wet diaper and was extremely cold. Additionally, law enforcement located a loaded syringe, which was believed to contain an illegal substance, and pill bottles without a name prescribed to them. Child was transported to a local emergency room for treatment, and Mother was taken to a local hospital for assessment. Upon meeting with the DCS case

¹ This Court has a policy of protecting the identities of children involved in parental termination cases and accordingly abbreviates certain names appearing in the Opinion.

manager, Mother was periodically crying, incoherent, and unable to hold herself up. Pursuant to an ex parte custody order entered on January 25, 2018, the Juvenile Court of Unicoi County (“trial court”) determined that there was probable cause to believe that Child was dependent and neglected and there was an immediate threat to his health and safety. Accordingly, Child was placed into DCS’s legal and physical custody as “it [was] contrary to the welfare of the child to remain in the home.”² DCS later performed a home study on the maternal grandparents, Mark R. (“Grandfather”) and Susan R. (“Grandmother”) (collectively, “Grandparents”), and Child was placed with Grandparents as a “kinship” placement.

On February 28, 2018, a permanency plan was ratified, which set forth numerous responsibilities with which Mother was to comply. Pursuant to this plan, Mother was required to comply with all court orders, visit Child regularly and abide by the rules of visitation, and pay child support. Mother signed the plan. According to testimony at trial, while Mother was in a drug treatment program, she gave Grandmother access to her checking account as well as to her accounts and bills. During this time, Grandmother received a statement from the state indicating that Mother was delinquent in her child support. Grandmother thereafter made child support payments from Mother’s checking account. However, once Mother exited her drug treatment program and took over her checking account from Grandmother, no further child support payments were made.

On October 1, 2018, the trial court entered an order wherein Child exited DCS custody to the custody of Grandparents. On November 7, 2018, the trial court entered another order finding that Child was dependent and neglected and a victim of severe abuse perpetrated by Mother, pursuant to Tennessee Code Annotated section 37-1-102. This finding was based on Child’s hair follicle drug screen which was positive for marijuana and methamphetamine.

On January 5, 2022, Grandparents and Father, as co-petitioner, filed a petition to terminate the parental rights (“Petition”) of both Mother and Father as to Child. Father consented to the termination of his parental rights. The Petition alleged multiple grounds for termination against Mother, but at trial, Grandparents elected to only pursue the grounds of abandonment for failure to pay child support and of severe child abuse. Trial on the matter occurred on May 25, 2022, and August 12, 2022. In its final order dated September 16, 2022, the trial court determined that Grandparents had proven by clear and convincing evidence the grounds of abandonment for failure to pay child support and of severe child abuse and, further, that it was in Child’s best interests that Mother’s parental rights be terminated.³ This appeal followed.

² During this incident, Father was incarcerated and, therefore, not considered for custody.

³ The trial court’s final order also stated that Father “agreed to the surrender and termination of his parental rights evidenced by his signature as Co-Petitioner on the Petition for Termination of Parental Rights.” Although the record reflects that Father was served with a copy of the notice of appeal, he was not initially served with a copy of Mother’s and Grandparents’ briefs. Pursuant to an order of this Court,

ISSUES PRESENTED

Mother raises three issues for our review on appeal, restated as follows:

1. Whether there was clear and convincing evidence to find that Mother abandoned Child by a failure to support.
2. Whether there was clear and convincing evidence to find that Mother committed severe child abuse.
3. Whether termination of Mother's parental rights was in Child's best interests.

STANDARD OF REVIEW

“A parent's right to the care and custody of her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010)). Although this right is considered to be both fundamental and constitutionally protected, it is not absolute. *In re J.C.D.*, 254 S.W.3d 432, 437 (Tenn. Ct. App. 2007). This right “continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination.” *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). “[T]he state as *parens patriae* has a special duty to protect minors,” *Hawk v. Hawk*, 855 S.W.2d 573, 580 (Tenn. 1993) (quoting *Matter of Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)), and “Tennessee law . . . thus . . . upholds the state's authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child.” *Id.*

Under Tennessee law there exist “[w]ell-defined circumstances . . . under which a parent's rights may be terminated.” *In re Roger T.*, No. W2014-02184-COA-R3-PT, 2015 WL 1897696, at *6 (Tenn. Ct. App. Apr. 27, 2015). These circumstances are statutorily defined. *Id.* (citing *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005)). “To terminate parental rights, a court must determine that clear and convincing evidence proves not only that statutory grounds exist but also that termination is in the child's best interest.” *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). “‘Clear and convincing evidence’ is ‘evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” *Id.* (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). This heightened burden of proof “minimizes the risk of erroneous decisions.” *In re M.L.P.*, 228 S.W.3d

Mother and Grandparents were ordered to refile their briefs and serve a copy on Father. While Grandparents complied with this Court's initial order, Mother did not, and the Court issued a subsequent order directing the Clerk of this Court to serve a copy of Mother's brief on Father. Pursuant to this subsequent order, the Clerk of this Court mailed a copy of Mother's brief on June 28, 2023, to Father at his last known address. To date, no filing has been received by Father indicating that he has any interest in participating in this appeal.

139, 143 (Tenn. Ct. App. 2007).

Due to this heightened burden of proof, we must adapt our customary standard of review:

First, we must review the trial court's specific findings of fact de novo in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court's specific factual findings will be presumed to be correct unless the evidence preponderates otherwise. Second, we must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights.

In re Audrey S., 182 S.W.3d at 861.

DISCUSSION

The trial court determined that two separate grounds existed for termination of Mother's parental rights: abandonment by failure to support and severe child abuse. We will address the propriety of each of these grounds below.

Failure to Support

In its order terminating Mother's parental rights as to Child, the trial court first found that Mother had abandoned Child by failure to support pursuant to Tennessee Code Annotated section 36-1-113(g)(1).

Tennessee Code Annotated section 36-1-113(g)(1) provides that parental rights may be terminated if "[a]bandonment by the parent or guardian, as defined in § 36-1-102, has occurred." Section 36-1-102 provides, in pertinent part, that "abandonment" means:

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

Tenn. Code Ann. § 36-1-102(1)(A)(i).

Here, the trial court determined that Mother had abandoned Child by a failure to support or make reasonable payments toward Child's support during the four-month

statutory period, which it found began on September 5, 2021, and concluded on January 4, 2022. In its order, the trial court noted Mother’s testimony that she has been declared by the Veterans Administration to be disabled “based on service connected health issues” and received \$3,400.00 per month in disability benefits and that “she has money left over each month after she pays her bills.” Nevertheless, despite having income, Mother admitted that she had not paid child support during the four months preceding the filing of the Petition, and she “offered no valid reason why she did not provide child support for the benefit of [Child] during that period of time.” Accordingly, the trial court determined that, by clear and convincing evidence, Mother abandoned Child due to her failure to pay child support or make reasonable payments towards Child’s support for a period of four consecutive months preceding the filing of the Petition. We agree. Based on our review of the record, it appears that Mother, although having the ability to do so, failed to pay any support towards Child in the four consecutive months leading up to the Petition. In fact, Grandmother testified that Mother did not offer to pay child support until *after* the Petition was filed and, even then, did not provide any support until after giving her deposition. Of course, under the text of the statute, it matters not as to what occurred subsequent to the filing of the Petition in terms of child support.⁴

In light of the foregoing, we find no error by the trial court in concluding that clear and convincing evidence existed to terminate Mother’s parental rights on the ground of abandonment for failure to support.

Severe Child Abuse

Pursuant to Tennessee Code Annotated section 36-1-113(g)(4), termination of parental rights may be based upon a determination that “[t]he parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child.” Tenn. Code Ann. § 36-1-113(g)(4). Here, in an order entered November 7, 2018, the trial court found, by clear and convincing evidence, that Child was a victim of severe abuse perpetrated by Mother pursuant to section 37-1-102(27)(E), which, in part, defines “severe child abuse” as “[k]nowingly or with gross negligence allowing a child under eight (8) years of age to ingest an illegal substance or a controlled substance that results in the child testing positive on a drug screen, except as legally prescribed to the child.” Tenn. Code Ann. § 37-1-102(27)(E). This finding was based upon Child’s hair follicle drug screen which was positive for marijuana and methamphetamine, and the court’s prior order was

⁴ In her brief, Mother attempts to argue that her failure to pay child support was not willful—an affirmative defense. However, upon reviewing the record on appeal, we find no indication that Mother attempted to raise this affirmative defense in either her pleadings or during trial. “The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure.” Tenn. Code Ann. § 36-1-102(1)(I).

entered into evidence at trial. We conclude that the finding in this prior order constitutes clear and convincing evidence that Mother perpetrated severe child abuse against Child within the meaning of the statute. Accordingly, we find no error by the trial court's finding that clear and convincing evidence existed to terminate Mother's parental rights on the ground of severe child abuse.

Best Interests

Once it is determined that a ground exists for terminating a party's parental rights, the focus then shifts to whether termination is in the child's best interest. *In re Audrey S.*, 182 S.W.3d at 877. Tennessee Code Annotated section 36-1-113(i) provides a non-exhaustive list of factors for the court to consider in its best interest analysis. Making a determination concerning a child's best interest "does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)'s . . . factors and then a determination of whether the sum of the factors tips in favor of or against the parent." *In re Audrey S.*, 182 S.W.3d at 878. Rather, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." *Id.* In its order, the trial court made specific findings as to each best interest factor and ultimately determined that it was in Child's best interest to terminate Mother's parental rights. In particular, the trial court emphasized Mother's ongoing lack of stability and her inability to provide Child with a proper environment and meet his needs. The trial court also highlighted the fact that Mother has failed to financially support Child or maintain regular visitation with Child. Further, the trial court determined Child is bonded to Grandparents and sees them as his parents and that Grandparents provide Child with a safe and stable home that meets all of his needs.

We agree with the trial court's assessment and findings and, like the trial court, note Mother's continued lack of stability and lack of bonding with Child. Child appears to be doing well in the care of Grandparents and has a healthy attachment to them. Accordingly, we find that there was clear and convincing evidence in the record to support the trial court's finding that it was in Child's best interest that Mother's parental rights be terminated.

CONCLUSION

Based on the foregoing, we affirm the trial court's termination of Mother's parental rights.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE