

FILED

09/18/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 1, 2023

IN RE TINSLEY L.

Appeal from the Circuit Court for Bradley County
No. V-20-318 J. Michael Sharp, Judge

No. E2022-00965-COA-R3-PT

In this appeal from the termination of parental rights, the mother does not challenge the grounds for terminating her rights. Rather she argues that the evidence was less than clear and convincing that termination was in the child's best interest. After a review of both the statutory grounds for termination and the best interest determination, we affirm.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II and KENNY W. ARMSTRONG, JJ., joined.

Jessica M. Conine, Chattanooga, Tennessee, for the appellant, Tiera L.

Jonathan Skrmetti, Attorney General and Reporter, and Mara L. Cunningham, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

OPINION

I.

In July 2020, the Tennessee Department of Children's Services petitioned to terminate the parental rights of Tiera L.¹ ("Mother") to her two youngest children, Tinsley and an older brother ("Brother"). DCS also sought to terminate the parental rights of the children's father. At the start of the trial, Mother surrendered her rights to both children. The trial proceeded, with the court ultimately terminating the father's parental rights.

¹ Mother's name is spelled differently throughout the record. We use the spelling shown on the notice of appeal and used by Mother in her appellate brief.

Later, Mother revoked her surrender as to Tinsley. *See* Tenn. Code Ann. § 36-1-112(a)(1) (Supp. 2023) (providing for revocation of a surrender of parental rights). And, after a two day trial, the court terminated her parental rights. It terminated on the grounds of abandonment by wanton disregard and severe child abuse. The court also determined that termination was in the best interest of the child.

II.

A parent has a fundamental right, based in both the federal and state constitutions, to the care and custody their child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996); *In re Adoption of Female Child*, 896 S.W.2d 546, 547 (Tenn. 1995). But parental rights are not absolute. *In re Angela E.*, 303 S.W.3d at 250. The government’s interest in the welfare of a child justifies interference with a parent’s constitutional rights in certain circumstances. *See* Tenn. Code Ann. § 36-1-113(g) (Supp. 2020).

Tennessee Code Annotated § 36-1-113 describes both the grounds and procedures for terminating parental rights. *In re Kaliyah S.*, 455 S.W.3d 533, 546 (Tenn. 2015). First, parties seeking termination of parental rights must prove the existence of at least one statutory ground for termination. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); Tenn. Code Ann. § 36-1-113(c)(1). If they prove the existence of one or more statutory grounds, they then must prove that termination is in the child’s best interest. Tenn. Code Ann. § 36-1-113(c)(2).

Because of the constitutional dimension of the rights at stake in a termination proceeding, parties seeking to terminate parental rights must prove both the grounds and 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 at 546). This heightened burden of proof serves “to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights.” *Id.* “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 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.

We review the trial court’s findings of fact “de novo on the record, with a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise.” *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); TENN. R. APP. P. 13(d). We then “make [our] own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim.” *In re Bernard T.*, 319 S.W.3d at 596-97. We review the trial court’s conclusions of law de novo with no presumption of correctness. *In re J.C.D.*, 254 S.W.3d 432, 439 (Tenn. Ct. App. 2007).

A.

On appeal, Mother concedes that grounds exist to terminate her parental rights. She argues only that clear and convincing evidence does not support the determination that termination was in the child's best interest. Despite Mother's concession, before taking up her issue, we "must review the trial court's findings as to each ground for termination." *In re Carrington H.*, 483 S.W.3d 507, 525-26 (Tenn. 2016).

1. Abandonment by Wanton Disregard

The court found Mother had abandoned her child under a statutory definition of "abandonment" applicable to parents who were incarcerated either when the petition to terminate was filed or at any point during the four-month period preceding the filing of the petition. *See* Tenn. Code Ann. § 36-1-102(1)(A)(iv) (Supp. 2020). Under this definition, the incarcerated or formerly incarcerated parent is deemed to have abandoned her child if, among other things, she "engaged in conduct prior to incarceration that exhibit[ed] a wanton disregard for the welfare of the child." *Id.* § 36-1-102(1)(A)(iv)(c).

Here, the definition could apply because Mother was incarcerated during a portion of the four-month period preceding the filing of the termination petition. She had been arrested at a Walmart and charged with burglary and possession of a Schedule II drug (fentanyl) and drug paraphernalia. Mother remained in jail for 72 days, securing her release on bond only about two months before the petition to terminate was filed.

"Wanton disregard" is not a defined term. Acts amounting to wanton disregard typically "reflect a 'me first' attitude involving the intentional performance of illegal or unreasonable acts and indifference to the consequences of the actions for the child." *In re Anthony R.*, No. M2014-01753-COA-R3-PT, 2015 WL 3611244, at *3 (Tenn. Ct. App. June 9, 2015). So "probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child." *In re Audrey S.*, 182 S.W.3d 838, 867-68 (Tenn. Ct. App. 2005). But the actions constituting wanton disregard must have occurred at a point in time when the parent had knowledge of the child's existence, which can include "a child *in utero*." *In re Anthony R.*, 2015 WL 3611244, at *3.

We conclude that clear and convincing evidence supports the court's determination that Mother abandoned her child by engaging in conduct that exhibited a wanton disregard for the child's welfare. Less than three months before Tinsley's birth, Mother brought an older sibling, Brother, to the hospital for a pulmonary appointment. The hospital admitted Brother for failure to thrive and poor weight gain. It was subsequently discovered that Mother was living with Brother, despite an order from a juvenile court prohibiting Mother from contacting the child. This led DCS to petition for temporary legal custody of Brother

and three of Mother's other children. As grounds, DCS cited Mother's violation of the no-contact order and concerns over the extreme nutritional and medical neglect of Brother. Later that same year, Mother was indicted and arrested for aggravated child abuse/neglect of Brother. *See* Tenn. Code Ann. § 39-15-402(a)(1) (2018).

DCS also petitioned for temporary legal custody of Tinsley shortly after her birth. The child was born premature due to drug exposure. A prenatal drug screen was positive for THC.² Although Mother was provided lodging near the hospital so that she could be close to Tinsley, Mother did not adhere to the child's feeding schedule, either showing up late or not at all.

2. Severe Abuse

A parent's rights may also be terminated if "[t]he parent . . . has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court." Tenn. Code Ann. § 36-1-113(g)(4). To prove this ground, DCS offered into evidence an order of the juvenile court from the dependency and neglect proceedings involving Tinsley, Brother, and the three other children. In addition to determining that the children were dependent and neglected, the juvenile court found that Mother had committed severe child abuse.

The severe child abuse determination stemmed from Mother's treatment of Brother. Brother was GI-tube dependent due to swallow dysfunction and suffered from chronic lung disease and tracheomalacia.³ He was "not allowed to eat solid food" and was "incapable of swallowing even his own saliva."

At twenty-one months, Brother was hospitalized due to extreme nutritional and medical neglect. The previous year a doctor had expressed concern "about the child's weight and granulation tissue around his GI-tube and had made an appointment with a nutritionist." But Mother never followed up with that appointment and did not ensure that Brother regularly saw a doctor. His GI-tube had not been "looked at or changed" for many months. Due to severe malnutrition, Brother's brain had stopped growing, likely permanently, and he was developmentally impaired. *See* Tenn. Code Ann. § 37-1-102(b)(27)(B) (Supp. 2019) (defining "severe child abuse" as "[s]pecific . . . neglect towards a child that in the opinion of qualified experts has caused . . . severe developmental delay . . . or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct").

² THC or tetrahydrocannabinol "is a marijuana metabolite." *Interstate Mech. Contractors, Inc. v. McIntosh*, 229 S.W.3d 674, 677 (Tenn. 2007).

³ Tracheomalacia is a "[s]oftening of the cartilages of the trachea." *STEDMAN'S MEDICAL DICTIONARY* 928740, Westlaw (database updated Nov. 2014).

Brother also suffered from “pulmonary aspiration in his lungs that ha[d] led to pneumonia” caused by being fed solid food. Mother maintained that Brother did not need the feeding tube and could eat by mouth. The juvenile court found that Mother “ignored every medical requirement” despite “having knowledge and being specifically advised by medical professionals as to the special care that the child needed.” Mother’s conduct “plac[ed] the child at risk of aspirating and asphyxiating.”

DCS met its burden of proving this ground for termination. The juvenile court’s finding from the dependency and neglect proceeding served as conclusive proof that Mother committed severe child abuse against Brother. *See In re Heaven L.F.*, 311 S.W.3d 435, 439-40 (Tenn. Ct. App. 2010) (holding the issue of whether a mother committed severe child abuse was res judicata when the issue was fully litigated in a previous dependency and neglect action). Under the parental termination statute, a parent’s rights may be terminated when the parent “ha[s] committed severe child abuse against any child.” Tenn. Code Ann. § 36-1-113(g)(4); *see also In re Trinity S.*, No. E2021-00098-COA-R3-PT, 2021 WL 3486188, at *6 (Tenn. Ct. App. Aug. 9, 2021); *In re Kayden A.*, No. W2020-00650-COA-R3-PT, 2021 WL 408860, at *10 (Tenn. Ct. App. Feb. 5, 2021).

B.

Because “[n]ot all parental misconduct is irredeemable,” our parental termination “statutes recognize the possibility that terminating an unfit parent’s parental rights is not always in the child’s best interests.” *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). So even if a statutory ground for termination is established by clear and convincing evidence, termination of parental rights must also be in the child’s best interest.

Tennessee Code Annotated § 36-1-113(i) lists the factors that courts must consider in making a best interest analysis. The “factors are illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). Although “[f]acts relevant to a child’s best interests need only be established by a preponderance of the evidence, . . . the combined weight of the proven facts [must] amount[] to clear and convincing evidence that termination is in the child’s best interests.” *In re Carrington H.*, 483 S.W.3d at 535.

Mother argues that the evidence is not clear and convincing that termination of her parental rights is in Tinsley’s best interest.⁴ According to Mother, she completed the requirements of permanency plans, continued visitation, and maintained a relationship with

⁴ In making her argument, Mother relies on the current list of twenty best interest factors. *See* Tenn. Code Ann. § 36-1-113(i) (Supp. 2023). But those factors did not take effect until April 22, 2021, after DCS filed its petition to terminate Mother’s parental rights. *See* 2021 Tenn. Pub. Acts 509 (ch. 190). We apply the statutory factors in effect at the time of the filing of the petition. *See In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017).

the child. On appeal, she submits that evidence that Tinsley’s custodian was “a good caregiver and want[ed] to adopt th[e] child” was not sufficient to show clearly and convincingly that termination of her parental rights was in the child’s best interest.

We conclude that the combined weight of the proven facts amounted to clear and convincing evidence that termination is in the child’s best interest. The court found that there had been little, if any, change in Mother’s circumstances since the child had been removed over two and one-half years ago. *See* Tenn. Code Ann. § 36-1-113(i)(1) (Supp. 2020). At trial, Mother was serving a sentence stemming from her treatment of Brother. Mother pleaded guilty to abuse or neglect of a child under eight years of age. *See id.* § 39-15-401(b) (Supp. 2023). Although she expected to be released in a matter of months, Mother also had unresolved burglary and possession of fentanyl charges.

The court found that Mother had failed to effect a lasting adjustment after efforts by DCS such that a lasting change did not appear possible. *See id.* § 36-1-113(i)(2). DCS had worked with Mother since 2015. She had six children, none of whom were in her custody. The children had been in and out of DCS custody on multiple occasions. Despite offering services during these various episodes, Mother “ha[d] failed to fully engage . . . [DCS] or its service providers until recent months.”

The court found no meaningful relationship between Tinsley and Mother. *See id.* § 36-1-113(i)(4). The child was removed from Mother at the hospital. Since she was nine days old, Tinsley had lived with Mother’s cousin (“Foster Mother”). Mother’s visitation had consisted primarily of inconsistent, short, supervised visits.

The court found a change in caregivers or physical environment would be detrimental to the child’s well-being. *See id.* § 36-1-113(i)(5). Foster Mother’s home was the only home the child had known for nearly three years. The child had bonded with Foster Mother and looked to Foster Mother to provide for her needs.

Mother had committed severe child abuse, and she had pleaded guilty to abuse or neglect of a child under the age of eight. *See id.* § 36-1-113(i)(6). And the court found that Mother “ha[d] shown little if any remorse for the severe abuse of [Brother].”

The court found there was crime in Mother’s home “and in her life in general.” *See id.* § 36-1-113(i)(7). In addition to serving out her current sentence, the court noted Mother’s “pending burglary and possession of fentanyl charges.” And Mother had “a history of abusing drugs, . . . rendering her consistently unable to care for the child in a safe and stable manner.” *See id.*

III.

We affirm the termination of Mother’s parental rights. The record contains clear and convincing evidence to support two statutory grounds for termination of parental

rights. We also conclude that terminating Mother's parental rights was in the child's best interest.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE