

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 3, 2022¹

IN RE AZHIANNE G.

Appeal from the Juvenile Court for Anderson County
No. J32755, 21-0649 Darryl Edmondson, Judge

No. E2022-00223-COA-R3-PT

This case involves the termination of a mother’s parental rights. The trial court’s order concluded that the child at issue was a victim of severe abuse perpetrated by the mother and that termination of her parental rights was in the child’s best interest. The mother now appeals. 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 D. MICHAEL SWINEY, C.J., and ANDY D. BENNETT, J., joined.

Christine L. Dummer, Knoxville, Tennessee, for the appellant, Barresha T.

Jonathan Skrmetti, Attorney General and Reporter, and Kathryn A. Baker, Senior Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

Azhianne G. (“Child”) was born to Barresha T. (“Mother”) in August 2012.² On

¹ Shaunlee G. (“Father”) was also a party to this case, and ultimately his rights were terminated. Upon receipt of the briefs, it was determined that Father was not included on the certificates of service. As a result, several orders were entered in an effort to protect Father’s due process rights in this appeal. On February 21, 2023, the Department of Children’s Services filed a motion for this Court to consider the post-judgment fact of Father’s death on August 13, 2022, and requested that he be removed as a party to this appeal. By order dated February 22, 2023, we granted the motion. We then proceeded to address the mother’s appeal.

² This Court has a policy of protecting the identities of children involved in termination of parental rights cases and accordingly redacts certain names appearing in the Opinion.

July 13, 2017, the Juvenile Court of Anderson County, Tennessee entered an emergency protective order placing Child in temporary state custody based on allegations that Child had been sexually abused by Mother. Child has remained in foster care continuously since that time. Subsequent to the removal, the trial court ordered that Child and Mother have no contact. An initial permanency plan was developed on July 27, 2017, and was later ratified by the Juvenile Court on August 25, 2017. Multiple other plans were later developed and put into place. While the goals of the plans initially were reunification or custody with a relative, adoption was subsequently added as a goal. Among other conditions required in these plans, Mother was to submit to a psychosexual evaluation and follow all of its recommendations.

On March 12, 2018, the Juvenile Court adjudicated Child dependent and neglected and found Child to be the victim of severe child abuse. This order was appealed to the Circuit Court of Anderson County, and the Circuit Court affirmed the severe abuse finding on February 21, 2020. Mother appealed the ruling of the Circuit Court to this Court. In an opinion issued on March 18, 2021, we affirmed the ruling of the Circuit Court. *See In re Azhianne G.*, No. E2020-00530-COA-R3-JV, 2021 WL 1038208 (Tenn. Ct. App. Mar. 18, 2021). Subsequent to this Court's opinion, the Juvenile Court entered an order wherein it determined that Child was to remain in foster care.

On June 11, 2021, the Department of Children's Services ("DCS") filed a "Petition to Terminate Parental Rights" ("Petition") as to Mother in the Anderson County Juvenile Court. In support of this Petition, DCS alleged the ground of severe child abuse pursuant to Tennessee Code Annotated sections 36-1-113(g)(4) and 37-1-102(b)(27). Specifically, it noted the prior order finding Mother to have perpetrated severe child abuse against Child. The Petition further alleged that it was in Child's best interests for Mother's parental rights to be terminated. Shortly prior to the previously-scheduled trial date, Mother filed a motion to continue, stating that she had not yet completed the long-requested psychosexual evaluation. A trial on the matter was held on December 17, 2021. Prior to hearing testimony, the trial court denied Mother's motion to continue and proceeded with the trial. On January 27, 2022, the trial court entered an order terminating Mother's parental rights on the ground of severe child abuse. It also found that there was clear and convincing evidence that such termination was in Child's best interest. This appeal followed.

ISSUES PRESENTED

Mother presents two issues for our review on appeal, restated as follows:

1. Whether the trial court erred in denying Mother's motion to continue.
2. Whether the trial court erred in finding that 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 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

Mother's Motion to Continue

Mother's first issue on appeal concerns the trial court's denial of her motion to continue. "The granting or denial of a motion for a continuance lies in the sound discretion of the court. The ruling on the motion will not be disturbed unless the record clearly shows abuse of discretion and prejudice to the party seeking a continuance." *State Dep't of Children's Servs. v. V.N.*, 279 S.W.3d 306, 317 (Tenn. Ct. App. 2008) (quoting *Blake v. Plus Mark Inc.*, 952 S.W.2d 413, 415 (Tenn. 1997)). In requesting a continuance, Mother bears the burden to "establish[] the circumstances that justif[ied] the continuance." *In re Paetyn M.*, No. W2017-02444-COA-R3-PT, 2019 WL 630124, at *5 (Tenn. Ct. App. Feb. 14, 2019) (citing *Osagie v. Peakload Temp. Servs.*, 91 S.W.3d 326, 329 (Tenn. Ct. App. 2002)). "Decisions regarding the grant or denial of a continuance are fact-specific and 'should be viewed in the context of all the circumstances existing' at the time of the request." *Id.* (quoting *Nagarajan v. Terry*, 151 S.W.3d 166, 172 (Tenn. Ct. App. 2003)). These circumstances include: "(1) the length of time the proceeding has been pending, (2) the reason for the continuance, (3) the diligence of the party seeking the continuance, and (4) the prejudice to the requesting party if the continuance is not granted." *Id.* (quoting *Nagarajan*, 151 S.W.3d at 172).

In her brief on appeal, Mother maintains that the trial court's denial of her motion resulted in prejudice to her case. Specifically, Mother asserts that the termination case had been pending only a few months and that there would be no prejudice to Child by continuing the case so as to allow Mother to complete her psychosexual evaluation. We are not persuaded by Mother's argument. As to the first factor, concerning the length of time the proceeding has been pending, Mother maintains that, since the matter had been pending only a few months, a continuance in her favor would not have resulted in prejudice to Child. In response to this assertion, we observe that Tennessee Code Annotated section 36-1-124(a) has made clear our legislature's desire to expedite termination matters, providing that,

[i]n all cases where the termination of parental rights or adoption of a child is contested by any person or agency, the trial court shall, consistent with due process, expedite the contested termination or adoption proceeding by entering such scheduling orders as are necessary to ensure that the case is not delayed, and such case shall be given priority in setting a final hearing of the proceeding and shall be heard at the earliest possible date over all other civil litigation other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

Tenn. Code Ann. § 36-1-124(a). Furthermore, Tennessee Code Annotated section 36-1-113(k) states that "[t]he court shall ensure that the hearing on the petition takes place within

six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the **child.**” Tenn. Code Ann. § 36-1-113(k) (emphasis added); *see also In re T.R.*, No. E2017-02115-COA-R3-PT, 2018 WL 4441359, at *4 (Tenn. Ct. App. Sept. 17, 2018) (holding that, absent evidence that a continuance would be in the child’s best interests, delaying a case past the “statutorily preferred” six-month mark would weigh against the grant of a continuance). Here, the petition was filed on June 11, 2021, and trial occurred on December 17, 2021. Thus, the proceeding had been pending for six months. Mother’s request makes no argument as to how granting a continuance beyond the “statutorily preferred “six-month period would have been in Child’s best interests.

We also find Mother’s second basis for the continuance unavailing. Mother was well aware of the requirement in the several permanency plans that she complete a psychosexual evaluation. She willfully refused to complete it. Although Mother attempts to argue that she elected not to complete the evaluation upon the advice of previous counsel, we do not find merit in this argument as Mother may not excuse her own noncompliance with the permanency plan due to counsel’s advice. *See In re Michayla T.*, No. M2018-00367-COA-R3-PT, 2018 WL 6444134, at *6 (Tenn. Ct. App. Dec. 7, 2018) (“[A]dvice of counsel does not excuse Mother’s lack of compliance with the permanency plans.”).

As to the third factor, we conclude, based on the record, that Mother’s actions in filing her motion for continuance only a couple of weeks prior to the scheduled trial, and only arguing the motion the day of trial, do not evince diligence on her part. As noted, the matter had been pending for six months, and Mother had been aware of her requirement to complete the psychosexual evaluation for *four years*, yet chose not to do so. Mother cannot now rely on her own inaction as a basis for her motion to continue.

Concerning the fourth and final factor—whether Mother would suffer any prejudice as a result of the trial court’s denial of her motion to continue—this also does not weigh in Mother’s favor. In her brief, Mother argues that she suffered “tremendous prejudice” by the denial of her motion to continue as her parental rights were ultimately terminated. However, Mother’s argument again ignores her own inaction in failing to complete the psychosexual evaluation for years after her responsibility to do so was clearly established in multiple plans. Again, we are not convinced by Mother’s claims of prejudice induced by her own failure to comply with her responsibilities under the permanency plans.

In light of the above, we find no abuse of discretion in the trial court’s denial of Mother’s motion to continue the trial.

Severe Child Abuse

Although Mother did not challenge the trial court’s finding of severe child abuse on appeal, this Court is obligated to review any finding of a ground for termination. *In re*

Carrington H., 483 S.W.3d at 511 (holding that “appellate courts must review a trial court’s findings regarding all grounds for termination and whether termination is in a child’s best interests, even if a parent fails to challenge these findings on appeal”). As noted earlier in this Opinion, the Juvenile Court previously determined that Mother had committed severe child abuse against Child. Mother appealed the decision of the Juvenile Court to the Circuit Court, which affirmed it. Mother then appealed to this Court and, in *In re Azhianne G.*, 2021 WL 1038208, we upheld the Circuit Court’s affirmation of the Juvenile Court’s finding of severe child abuse. Accordingly, this issue is *res judicata*.³

Child’s Best Interest

As it has been determined that a ground has been established upon which to terminate Mother’s parental rights, the focus now shifts to whether it is in Child’s best interests that Mother’s rights be terminated. *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 courts to consider in determining whether termination is in the child’s best interest. The Supreme Court has previously stated:

These statutory factors are illustrative, not exclusive, and any party to the termination proceedings is free to offer proof of any other factor relevant to the best interests analysis. Facts considered in the best interests analysis must be proved by “a preponderance of the evidence, not by clear and convincing evidence.” “After making the underlying factual findings, the trial court should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest[s].” When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s rather than the parent’s perspective.” Indeed, “[a] focus on the perspective of the child is the common theme” evident in all statutory factors. “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child.”

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017) (internal citations omitted).

³ The doctrine of *res judicata* is applicable when “an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.” *In re Heaven L.F.*, 311 S.W.3d 435, 439 (Tenn. Ct. App. 2010) (quoting *Galbreath v. Harris*, 811 S.W.2d 88, 90 (Tenn. Ct. App. 1990)). This Court has previously applied this doctrine in order to “prevent a parent from re-litigating whether she committed severe child abuse in a later termination of parental rights proceeding, when such a finding had been made in a previous dependency and neglect action.” *Id.* (citing *State v. Tate*, No. 01-A-01-9409-CV-00444, 1995 WL 138858, at *5 (Tenn. Ct. App. Mar. 31, 1995)).

Making a determination as to 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 determined that it was in Child's best interests for Mother's parental rights to be terminated. Upon a review of the record, we find it replete with facts supporting the termination of Mother's parental rights. Of specific importance, we note the trauma and abuse Child has suffered at Mother's hands, which has caused the exhibition of inappropriate sexualized behaviors. Moreover, Mother triggers Child's experience of trauma, and according to Child's therapist, exposure of Child to Mother would "reasonably be expected to cause further trauma and regression of [Child] into aggressive and sexualized behaviors." Mother has failed to take advantage of available programs and services in order to make a lasting adjustment of circumstances, including her continued refusal to complete a psychosexual evaluation as required by multiple permanency plans, which, considering the nature of the grounds for termination, is extremely concerning. Ultimately, the record reflects that Mother has perpetrated abuse and neglect towards Child and has failed to provide a safe and stable environment. There is also no indication that Mother has attempted to rectify or address the circumstances leading to Child's initial removal, nor address the abuse—the latter of which the trial court found to be a "critical barrier" for Child's safe return to Mother's custody. Mother presents various arguments to counter the trial court's findings as to Child's best interest on appeal. However, we find none of them availing in light of the overwhelming facts presented in this record. Accordingly, we conclude that there was clear and convincing evidence in this record that it was in Child's best interest to terminate Mother's parental rights.

CONCLUSION

Based on the foregoing, the trial court's termination of Mother's parental rights is affirmed.

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