

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 2, 2014

**IN RE MATTHEW J.**

**Appeal from the Juvenile Court for Maury County**  
**No. 90704, 90705     George L. Lovell, Judge**

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**No. M2014-00832-COA-R3-PT- Filed December 18, 2014**

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This appeal arises from the termination of a father's parental rights. Shortly after Matthew J.'s birth, his father pled guilty to twenty counts of sexual exploitation of a minor and one count of aggravated statutory rape. The Department of Children's Services ultimately filed a petition for the termination of parental rights against Matthew's parents. His mother surrendered her parental rights, and the matter proceeded to trial against the father only. At the conclusion of the trial, the juvenile court also terminated the father's parental rights. The juvenile court concluded that grounds for termination existed because the father had been sentenced to more than ten years at a time when Matthew was under the age of eight. The trial court also concluded that it was in Matthew's best interest to terminate Father's parental rights. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal; Judgment of the Juvenile Court Affirmed**

W. NEAL MCBRAYNER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Seth M. Lasater, Columbia, Tennessee, for the appellant, Christopher W.

Robert E. Cooper, Attorney General and Reporter, Jonathan H. Wardle, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children's Services.

**OPINION**

**I. FACTUAL BACKGROUND**

Cheyenne J. ("Mother") and Christopher W. ("Father") are the parents of Matthew J.

Less than two months after Matthew's birth, Father pled guilty to twenty counts of sexual exploitation of a minor and one count of aggravated statutory rape. On July 6, 2011, he was sentenced to an effective sentence of sixteen years. At the time, Matthew was three months old.

According to the pleadings, on January 8, 2013, the Department of Children's Services ("DCS") removed Matthew and his half-sibling from Mother's care and into protective custody. By this time, Father had already begun serving his prison sentence. The Juvenile Court for Maury County subsequently granted DCS temporary custody of the children.

On November 7, 2013, DCS filed a petition to terminate the parental rights of both Mother<sup>1</sup> and Father. As to Father, the petition alleged that he had been "confined to a correctional or detention facility . . . by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court." *See* Tenn. Code Ann. § 36-1-113(g)(6) (Supp. 2013). In his answer to the petition, Father admitted that "he was in jail for all or part of the four months just before this petition was filed and that he was serving an effective sixteen year sentence for multiple counts of sexual exploitation of a minor and one count of aggravated statutory rape."

The juvenile court held a trial on the petition on April 4, 2014. At the outset of the trial, counsel for DCS pointed out that Father had admitted in his answer that he had been in jail immediately preceding the filing of the petition. Counsel for DCS asked the trial court to make a finding that a ground for termination of Father's parental rights existed and to proceed to the determination of the best interest of the child. In response to the trial court's query as to whether he would like to be heard on the issue, Father's counsel stated that "the pleadings stand for themselves." The trial court accepted this as an acquiescence to DCS's proposal. Therefore, the proof at the trial centered on the best interest of the child.

The DCS family services worker ("FSW") assigned to Matthew testified that she became the FSW for Matthew and his half-sibling at the end of March 2013. Matthew and his half-sibling were placed together with a foster family on January 26, 2014. The foster parents have five biological children, four of whom still live at home. The house is in a safe neighborhood and has five bedrooms. Matthew and his half-sibling each share a bedroom with one of the biological children.

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<sup>1</sup>On January 13, 2014, Mother surrendered her parental rights to Matthew J. and her other child, Matthew's half-sibling. The trial court entered an order of partial guardianship terminating Mother's parental rights.

The FSW further testified that the foster parents intend to adopt both Matthew and his half-sibling. Matthew has special needs, and the foster parents have been providing for his special needs while he has been in their home. The FSW expressed her opinion that the foster parents were prepared to contend with Matthew's special needs if they adopted him. The FSW remarked that, since Matthew has been in the foster home, he has been communicating better and has not been as hyperactive or manic. She also stated that, when Matthew fell down and was hurt, he went to the foster parents for comfort.

On cross-examination, the FSW admitted that she had never witnessed Matthew and Father together. She also recounted an instance in which Father had requested to see his son. On October 17, 2013, Father sent a letter in which he asked to sit down with the FSW and review the permanency plan she sent to him. In the letter Father also requested a visit with Matthew so that he could see him for the first time. After conducting a Child and Family Team Meeting, however, DCS decided that having his first meeting with Father in a prison setting would not be in Matthew's best interest. As for other attempts at contact, according to the FSW, Father had not telephoned his son since he had been in foster care. At the time of the trial, she stated that Father had sent Matthew about four letters and some birthday cards.

The trial court made the following findings in its written order:

Based on the foregoing, the Court finds by clear and convincing evidence that grounds exist to terminate [Father's] parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(6) because he is currently confined in a correctional or detention facility by orders of the Circuit Criminal Court for Marshall County, Tennessee as a result of criminal acts under a sentence of ten (10) or more years, and the minor child, Matthew, was under eight (8) years of age at the time the sentences were entered by the Court.

Pursuant to Tenn. Code Ann. § 36-1-113(I), it is in the best interest of the minor child, Matthew, and the public that all of [Father's] parental rights to this child be terminated and the complete custody, control, and guardianship of the minor child, Matthew, be awarded to the State of Tennessee, Department of Children's Services, with the right to place him for adoption and to consent to such adoption *in loco parentis*.

The Court finds that it is in the best interest of the minor child to terminate [Father's] parental rights because there is no meaningful relationship between him and the child. Prior to his incarceration, [Father] had never visited with the child. At the time of his incarceration, the child was one (1)

year old. [Father] has been incarcerated for the entire time the child has been in the custody of Petitioner DCS. As such, the Court specifically finds that there is no relationship whatsoever between [Father] and the minor child.

The Court further finds that it is in the best interest of the minor child to terminate [Father's] parental rights because there was criminal activity in his home. Again, [Father] was convicted of twenty (20) counts of Sexual Exploitation of a Minor and one (1) count of Aggravated Statutory Rape by the Circuit Criminal Court for Marshall County, Tennessee and is currently incarcerated and serving a combined sentence of sixteen (16) years with the Tennessee Department of Corrections.

The Court also finds that it is in the best interest of the minor child to terminate [Father's] parental rights because [Father] has shown little to no interest in the welfare of the child. At the time of [Father's] incarceration, the minor child, Matthew, was one (1) year old. At no time during the first year of the minor child's life did [Father] visit the child. [Father] has been incarcerated the entire time the minor child has been in the custody of Petitioner DCS. Since the child's placement in DCS custody on January 8, 2013, [Father] has failed to engage in regular correspondence with the child. The evidence shows that [Father] has sent the child a few letters. An occasional letter every now and then is not regular correspondence with the child. There is no evidence of [Father] initiating or engaging in regular telephone contact with the child. There is no evidence of [Father] requesting scheduled dates and times for telephone contact with the child. In fact, there is no evidence [Father] ever requested any telephone contact whatsoever with the child. According to the testimony of DCS Representative [Matthew's FSW], [Father] made only one request for visitation with the child in a correspondence she received in September of 2013. At the time of [Father's] September 2013 correspondence, the child had continuously been in the custody of Petitioner DCS for approximately eight (8) months. Prior to his September 2013 correspondence; and despite having specific knowledge of the child's placement in DCS custody during the previous eight months, [Father] did not ask to visit with the child.

Based on the foregoing, the Court finds that it is in the best interest of the child to terminate [Father's] parental rights because he has shown little or no interest in the welfare of the child.

## II. ANALYSIS

### A. Standard of Review

Termination of parental rights is one of the most serious decisions courts make. As noted by the United States Supreme Court, “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *Santosky v. Kramer*, 455 U.S. 745, 787 (1982). Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “severing forever all legal rights and obligations of the parent or guardian.” Tenn. Code Ann. § 36-1-113(l)(1) (Supp. 2013).

A parent has a fundamental right, based in both the federal and State constitutions, to the care, custody, and control of his or her own 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 a Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995). While this right is fundamental, it is not absolute. The State may interfere with parental rights through judicial action in some limited circumstances. *Santosky*, 455 U.S. at 747; *In re Angela E.*, 303 S.W.3d at 250.

Our Legislature has identified those situations in which the State’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth the grounds upon which termination proceedings may be brought. Tenn. Code Ann. § 36-1-113(g). Termination proceedings are statutory, *In re Angela E.*, 303 S.W.3d at 250; *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004), and parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

To terminate parental rights, a court must determine by clear and convincing evidence that at least one of the statutory grounds for termination exists and 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). This heightened burden of proof is one of the safeguards required by the fundamental rights involved, *see Santosky*, 455 U.S. at 769, and its purpose “is to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights.” *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *see also In re Angela E.*, 303 S.W.3d at 250; *In re M.W.A., Jr.*, 980 S.W.2d at 622. “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 at 596 (citations omitted). Unlike the preponderance of the evidence standard, “[e]vidence satisfying the clear and convincing

evidence standard establishes that the truth of the facts asserted is highly probable.” *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). The party seeking termination has the burden of proof. *Id.*

Appellate courts first review the trial court’s findings of fact in termination proceedings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Next, “[i]n light of the heightened burden of proof in [termination] proceedings . . . the reviewing court must then make its 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.

Father’s issues on appeal are “[w]hether the trial court erred in its dual finding that the termination of Appellant’s parental rights: (1) was warranted under the grounds set forth in Tenn. Code Ann. § 36-1-113; and (2) was in the best interest of the minor child, both by clear and convincing evidence.”

## **B. Ground for Termination**

At trial, the parties agreed that a ground for termination of parental rights existed. In its written order, the trial court cited to Tennessee Code Annotated section 36-1-113(g)(6), which states that a ground for termination of parental rights is met if:

The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court[.]

As stated above, immediately before the first witness was called, Father’s attorney essentially stipulated that this ground had been met and agreed to proceed solely on whether it was in the best interest of the child to terminate Father’s parental rights. Rule 36(a) of the Tennessee Rules of Appellate Procedure states, “Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.” In addition, this Court has stated, ““A party who invites or waives error, or who fails to take reasonable steps to cure an error, is not entitled to relief on appeal. Failure to object [to] evidence in a timely and specific fashion precludes taking issue on appeal with the admission of the evidence.”” *Ottinger v. Stooksbury*, 206 S.W.3d 73, 78 (Tenn. Ct. App. 2006) (quoting *Grandstaff v. Hawks*, 36 S.W.3d 482, 488 (Tenn. Ct. App. 2000) (citations omitted)).

After agreeing that the facts of Father's convictions and sentences met the language of Tennessee Code Annotated section 36-1-116(g)(6) and that the proof should center solely on the best interest of the child, Father cannot now complain that the trial court erred in concluding that at least one ground for termination of parental rights existed.

Furthermore, even if we addressed this issue on the merits, copies of the judgments from July 6, 2011, indicating Father was convicted of twenty counts of sexual exploitation of a minor and one count of aggravated statutory rape and sentenced to an effective sentence of sixteen years, are included in the record on appeal. In addition, Father's answer to the petition for termination of parental rights indicates Matthew's date of birth. Therefore, at the time Father was sentenced, the record shows Matthew was three months old. Given the clear and convincing evidence of the existence of at least one ground, Tennessee Code Annotated section 36-1-116(g)(6), to support termination of Father's parental rights, we find Father's first issue without merit.

### **C. Best Interest**

Father also argues that the trial court's conclusion that the termination of Father's parental rights was in Matthew's best interest was not supported by the testimony in the record. Father claims that the sole witness presented by DCS presented no proof of the child's best interest. In addition, Father claims that the nine statutory factors utilized in determining best interest were not addressed by the witness and that she "actively thwarted" three of the factors.

The termination of parental rights must be based upon the existence of at least one statutory ground *and* proof that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c) (emphasis added). The focus of the best interest analysis is on what is best for the child, not what is best for the parent. *In re Marr*, 194 S.W.3d 490, 499 (Tenn. Ct. App. 2005); *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004). Courts consider the following non-exclusive list of factors in making a best interest determination:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other

contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(I). Not every factor enumerated in the statute applies to every case because the facts of each case can vary widely. *In re William T.H.*, No. M2013-00448-COA-R3-PT, 2014 WL 644730, at \*4 (Tenn. Ct. App. Feb. 18, 2014).

In the case at hand, the trial court concluded that it was in the child's best interest to terminate Father's parental rights for multiple reasons. The trial court first found significant the nature of Father's relationship with Matthew. The trial court stated, "there is no relationship whatsoever between [Father] and [Matthew]." Father had been incarcerated for the entire time that Matthew was in the custody of DCS, and Father had never met his son.

Additionally, the trial court considered the criminal activity in Father's home. The trial court noted that Father had pled guilty to twenty counts of sexual exploitation of a minor and one count of aggravated statutory rape.

Finally, the trial court found that Father had shown little to no interest in Matthew. Father did not visit Matthew before Father was incarcerated. Once incarcerated, Father sent very few letters and birthday cards. Also, Father did not attempt to schedule telephone calls or request telephone contact at all. The testimony of Matthew's FSW was that Father finally requested a visit with Matthew only after the child had been in DCS custody for several months.

As noted above, the list of statutory factors to consider in a best interest analysis is not exhaustive, and we do not need to "find the existence of each enumerated factor before [we] may conclude that [termination] is in the best interest of a child." *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The trial court based its decision on factors (3), (4) and (7) of Tennessee Code Annotated section 36-1-113(I). After a review of the record on appeal, we find that there was adequate evidence to support the trial court's factual findings and that the evidence was clear and convincing that termination of Father's parental rights is in the child's best interest.

### III. CONCLUSION

The Juvenile Court's judgment terminating Father's parental rights to Aaron E. is affirmed. Costs of this appeal shall be taxed to the appellant, Christopher W., for which execution may issue, if necessary.

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W. NEAL MCBRAYER, JUDGE