

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 16, 2002

IN THE MATTER OF: J.E.F. and M.A.F.

**Appeal from the Juvenile Court for Dickson County
No. 03-98-005-CC A. Andrew Jackson, Judge**

No. M2001-00071-COA-R3-JV - Filed May 16, 2002

The trial court terminated the parental rights of the mother of two teenagers, on the grounds of failure to follow a permanency plan and failure to remedy the conditions that led to the children's removal from her custody. We affirm.

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

BEN H. CANTRELL, P.J., M.S., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and WILLIAM B. CAIN, JJ., joined.

Mitchell B. Dugan, Dickson, Tennessee, for the appellant, P.F.R.

Paul G. Summers, Attorney General & Reporter; Dianne Stamey Dycus, Deputy Attorney General, for the appellee, State of Tennessee.

OPINION

I.

The marriage of Pamela F. and George F. produced four children. At some point, they divorced. Mr. F. moved to Alabama, and the responsibility for the children fell primarily upon the shoulders of Ms. F. Unfortunately, she was not completely up to the task, because she had some difficulties of her own to contend with, including panic attacks and chronic drug and alcohol abuse.

The children first came into the custody of the State in December of 1994 because of sexual abuse inflicted by the oldest child upon two of the younger ones, and because Ms. F. was not able to care for them. The oldest child was sent to a halfway house, and the three younger children were placed in foster care. The Department of Children's Services worked closely with Ms. F. to achieve the goal of reuniting her with her children. Sometime in 1996, the three younger children were returned to her custody.

In March of 1998, those children again came into State custody. Ms. F. had left them unsupervised for three days without running water or food, and her whereabouts were unknown. The incident was reported to the Department of Children's Services after the children begged food from neighbors. The children again went into foster care, and the Department created a new permanency plan with the goal of reunification.

The permanency plan required Ms. F. to maintain contact with the children, pay child support, report changes in her situation to the Department, participate in counseling, obtain steady employment, maintain a home, and receive ongoing counseling for alcohol abuse. She was advised that her parental rights could be terminated if she failed to comply with the requirements of the permanency plan.

Despite her understanding of the consequences, Ms. F. did not comply with the permanency plan. Her visits to the children were sporadic. She paid no child support. She was unable to secure housing for any length of time, or to obtain regular employment. She continued to drink alcohol. In June of 2002, she was sent to jail for violation of the probation she had been granted after a conviction of theft.

On August 15, 2000, the Department filed a petition in the Juvenile Court of Dickson County, seeking to terminate Ms. F.'s parental rights. By this time, the two oldest children had reached adulthood, and their status was not at issue. The two younger children, Jenny F., who was born in 1984, and Matthew F., who was born in 1988, were in foster care, and were attending public school.

The court conducted a hearing on the petition on November 29, 2000. Ms. F. was represented by appointed counsel, while the interests of the children were represented by a guardian ad litem. The court heard testimony from two case managers from the Department of Children's Services, from Ms. F. herself, and from Jenny F. and Matthew F.

The two caseworkers testified partly from their own experience with Ms. F. and her children, and partly from records prepared by other employees of the Department. Both witnesses stated that Ms. F. had not made any significant progress on the goals set out in her permanency plan, and that if the children were returned to their mother, the neglect that they suffered was likely to recur.

Ms. F. was brought from jail for her court appearance. She testified that she was re-married, that her new husband had a full-time job, and that although he was living with his mother, they planned to get a place of their own when they could afford it. She further testified that she believed she was capable of taking care of the children, and that she planned to go to work right away after January 3, 2001, when she was scheduled to be released from jail. She admitted her failure to comply with the permanency plan, but blamed it on factors outside her control, including two house fires, the failure of the Department to offer her enough help, and her incarceration.

Bonnie F. and Matthew F. both testified that they loved their mother very much, that they hoped to be reunited with her, and that they believed that she was capable of taking care of them. The children's guardian ad litem was asked to comment, and he stated that while Ms. F. had done nothing to merit the return of the children to her, he felt that their relationship to each other was important, and that it was unlikely that they could be placed together, unless their mother could have them and could "straighten things out."

The trial court ruled that in light of the three years the children had been in foster care, and Ms. F's failure during that time to make any progress whatsoever towards making herself capable of taking care of them, it was appropriate to terminate her parental rights. The court also stated that there was no reason to believe that she would comply with the permanency plan if she was given additional time, that awarding her legal and physical custody of the children would pose a risk of substantial harm to their physical and psychological welfare, and that it was in their best interest that Ms. F's parental rights be forever terminated. This appeal followed.

II.

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645 (1972). A heightened standard of proof is required to protect those important rights. *Santosky v. Kramer*, 455 U.S. 645 (1972). Before the State may sever the relationship between parent and child it must prove the appropriate grounds by clear and convincing evidence, and must also prove that the termination is in the best interests of the child.

Tenn. Code. Ann. § 36-1-113 sets out the possible grounds for termination of parental rights, including the following:

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

It is undisputed that Ms. F. failed to comply with the permanency plan whose goal was reunification with her children. When questioned about each of the elements of the plan, such as employment, housing and counseling, she admitted that she had made no progress, and when asked if she had complied with the plan in any respect, she answered “Not completely. Not completely.”

Ms. F. did dispute the trial court’s conclusion that it is unlikely that the conditions that led to the children’s removal could be remedied at an early date. She argued that she would be getting out of jail soon, that she would try to get a job immediately afterwards, and that she and her new husband wanted to save so they could obtain adequate housing for the whole family. We note that her husband did not testify at all.

It appears to us that while Ms. F’s intentions are good, her testimony as to those intentions is insufficient to overcome the overwhelming evidence of her inability to make any progress towards establishing a safe, healthy, and supportive environment for her children. While it may be possible for an individual to experience a sudden and revolutionary improvement in her habits and condition, the courts cannot base their decisions on the mere possibility of such a change.

As for the question of the best interests of the children, the guardian ad litem’s report indicated that they both were doing well in foster care, and making good grades in school. While the best interests of the children would be served if their mother overcame her difficulties and established a stable home for both of them, such a favorable outcome seems highly unlikely. We therefore agree with the trial court that given the realities of their situation, it is in the best interest of the children to terminate their mother’s parental rights. We note that they are old enough to contact each other by letter or phone, and that in a few years they will be able to decide for themselves how much contact they wish to have with Ms. F.

III.

The judgement of the trial court is affirmed. Remand this cause to the Juvenile Court of Dickson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant.

BEN H. CANTRELL, PRESIDING JUDGE, M.S.