

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 12, 2014

IN RE JACOB B.

**Appeal from the Chancery Court for White County
No. 2013CV60 Ronald Thurman, Judge**

No. M2014-00933-COA-R3-PT - Filed November 25, 2014

In this termination of parental rights case, Father appeals the trial court's finding that termination of his parental rights is in the child's best interests. Father was convicted of murdering the child's mother and is imprisoned on a life sentence. We have reviewed the evidence and affirm the trial court in all respects.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, and W. NEAL MCBRAYER, JJ., joined.

Jon Douglas Hatfield, Cookeville, Tennessee, for the appellant, James Anthony B.

R. Steven Randolph, Algood, Tennessee, for the appellees, Kelly and Daniel N.

OPINION

FACTUAL AND PROCEDURAL HISTORY

In this appeal we must examine whether the trial court erred in terminating the parental rights of a father who was convicted of murdering his son's mother. Jacob B. ("the child") was born in December 2002 to James B. ("Father") and Elizabeth Ann N. B. ("Mother"). After experiencing marital difficulties, Father and Mother separated in 2007. On May 5, 2007, Mother, the child, and Mother's friend were visiting the home of Mary Ann N., the child's maternal grandmother ("Grandmother"), in Putnam County, Tennessee. That evening, Father broke into Grandmother's home and shot and killed Mother and Mother's

friend in the presence of the child.

On June 27, 2007, Grandmother obtained an order of temporary guardianship over the child. On April 13, 2009, a judgment was entered convicting Father of, among other things, two counts of felony first degree murder, especially aggravated burglary, and felony reckless endangerment. Father was sentenced to two consecutive life sentences for the first degree murder convictions.

In 2013, Grandmother and Daniel N., the child's maternal uncle, and his wife, Kelly N. (collectively referred to as "Daniel and Kelly"), filed a joint petition to change custody of the child from Grandmother to Daniel and Kelly. By order entered August 20, 2013, the trial court granted the petition and transferred custody of the child to Daniel and Kelly. On October 13, 2013, Daniel and Kelly filed a petition for termination of parental rights and a petition for adoption of the child. On April 10, 2014, a trial was held on the petition to terminate Father's parental rights, at which Grandmother, Daniel N., and Father testified.¹ On April 29, 2014, the trial court entered an order terminating Father's parental rights. The court found by clear and convincing evidence that grounds existed to terminate Father's rights and held that it was in the child's best interest for his rights to be terminated. Father appeals.

STANDARD OF REVIEW

A parent has a fundamental right to the care, custody, and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996). While a parent's rights are superior to the claims of other persons and the government, they are not absolute and may be terminated upon proving the appropriate statutory grounds by clear and convincing evidence. *See In re W.B.*, M2004-00999-COA-R3-PT, 2005 WL 1021618, at *6-7 (Tenn. Ct. App. Apr. 29, 2005). To support a petition for termination, petitioners must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We review the trial court's findings of fact de novo on the record with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *In re Adoption of Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013). "We next review the trial court's order de novo to determine whether the facts amount to clear and convincing evidence that one of the statutory grounds for termination exists and if so whether the termination of parental rights in the the best interests of the children." *In re Adoption of Angela E.*, 402 S.W.3d at 639-40 (citing *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn.

¹ Kelly N. was hospitalized and was unable to testify at trial.

2013)).

ANALYSIS

Father concedes that grounds exist to terminate his parental rights. His only argument on appeal is that the trial court erred by finding clear and convincing evidence that termination of his parental rights was in the best interest of the child.

In addition to presenting clear and convincing evidence establishing at least one statutory ground warranting termination of a parent's parental rights, there must be clear and convincing evidence that terminating the parent's rights is in the child's best interests. Tenn. Code Ann. § 36-1-113(c). "The ultimate goal of every proceeding involving the care and custody of a child is to ascertain and promote the child's best interests." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). The best interest determination is guided by a consideration of the non-exhaustive list of factors set forth at Tenn. Code Ann. § 36-1-113(i):

- (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.

Every factor need not be applicable for the trial court to determine it is in the best interest of a child for a parent's rights to be terminated. *See In re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005). The best interest analysis is a fact-intensive inquiry requiring the court to consider the unique facts of the case "from the child's, rather than the parent's, perspective." *In re Giorgianna H.*, 205 S.W.3d 508, 523 (Tenn. Ct. App. 2006).

The trial court made the following findings with respect to the child's best interests:

A. [Father] has not made an adjustment of circumstances, conduct, or conditions as to make it safe and in the child's best interests to be in the home of him. Obviously, [Father] remains incarcerated and therefore unable to properly care for the minor child. [Daniel and Kelly] have provided a home for [the child] He is doing very well considering everything that has happened to him.

B. Whether the parent or guardian can maintain regular visitation? [Father] remains incarcerated with two (2) consecutive life sentences. Therefore he is unable to maintain visitation.

C. Whether a meaningful relationship has otherwise been established between the parent or guardian and the child? The Court finds that it has been seven (7) years since the murder. It has been so long in time and space as to [Father's] relationship with the child as well as the child's knowledge that his biological father murdered his mother, that the Court finds that this relationship is irretrievably broken, and [the child] has established a loving and caring relationship with [Daniel and Kelly] and has adjusted to fit in with that family and that is where he needs to be.

D. What effect the change of caretakers and physical environment is likely to

have on the child's emotional, psychological, and medical condition? The Court finds that it would be a travesty to remove the child from his present situation.

We have reviewed the record and agree with the trial court that clear and convincing evidence exists that termination of Father's parental rights is in the child's best interest. Father committed the heinous act of murdering the child's mother while the child was present. We can think of nothing more indicative of a parent's unfitness to care for his child. Furthermore, Grandmother testified that Father has not had any contact with the child in the seven years between the murder and the trial on the petition to terminate Father's rights. *See* Tenn. Code Ann. § 36-1-113(i)(3), (4). During that time, the child has received counseling and has been placed in a loving family environment with Daniel and Kelly. The child is excelling in school, and according to the testimony of Daniel N., he has adjusted beautifully to his new environment. We believe it would not be in the best interest of the child to disrupt his current arrangement in any way. *See* Tenn. Code Ann. § 36-1-113(i)(5). Therefore, we affirm the trial court in all respects.

CONCLUSION

For the forgoing reasons, we affirm the trial court's termination of Father's parental rights. Costs of the appeal are assessed against Father, for which execution may issue, if necessary.

ANDY D. BENNETT, JUDGE