

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
On-Briefs February 22, 2002

IN THE MATTER OF: T. M. M.

**A Direct Appeal from the Juvenile Court for Madison County
No. 33-28, 768 The Honorable Christy R. Little, Judge**

No. W2001-01941-COA-R3-JV - Filed April 12, 2002

This is a termination of parental rights case. Tiawan Bailey (hereinafter “Mr. Bailey”) and Andrea Martin (hereinafter “Ms. Martin”) appeal from the final decree of the Juvenile Court of Madison County, Tennessee which terminated their parental rights to their minor child, T.M.M., born May 24, 1994. We affirm.

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

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Pamela Drewery-Rodgers, Selmer, For Appellant, Tiawan Bailey

Marcus M. Reaves, Jackson, For Appellant, Andrea Martin

Paul G. Summers, Attorney General and Reporter, Douglas Earl Dimond, Assistant Attorney General, For Appellee, Department of Children’s Services

OPINION

On December 20, 1994, the Tennessee Department of Human Services (hereinafter “TDHS”) petitioned the Juvenile Court of Madison County, Tennessee, for temporary custody of the minor child involved in this case, T.M.M., and two other minor children. The trial court granted the petition which provides in pertinent part:

The child, [T.M.M.] [was] diagnosed as failure to thrive and [was] discharged from Jackson Madison County General Hospital on December 14, 1994. Representatives of home health care have been following the child since discharge. His mother has been less than cooperative and is unwilling or unable to follow doctor’s order regarding medication and nourishment. Your petitioner has a history

of neglect referrals regarding Ms. Martin. Custody was placed with Diane Martin. However, Ms. Diane Martin has allowed the children to return to their mother's care.

After a hearing on May 16, 1995, T.M.M. and the other two minor children were returned to Ms. Martin's custody.

On or about June 27, 1995, the TDHS again petitioned the trial court for temporary custody of T.M.M. because T.M.M., who was about a year old, had suffered a broken arm. According to the petition, Ms. Martin indicated that her son's injury occurred on June 23, 1995, when he fell from a bunk bed. However, Ms. Martin did not seek medical attention for her son. By order entered June 27, 1995, the trial court brought T.M.M. into protective custody for foster care.

On or about April 29, 1998, the Tennessee Department of Children's Services (hereinafter "TDCS") filed a petition for review and disposition concerning the minor child, T.M.M. The petition provides in pertinent part:

I

That said child was placed in the custody and foster care of your Petitioner by Order entered the 21st day of July, 1995.

II

That pursuant to T.C.A. 37-2-401 et seq. and 42 U.S.C. 670 et seq. it is necessary for this Court to review the permanency plan for said child, to assess the compliance of all parties to the statement of responsibilities and to make the disposition it finds to be in the best interest of said child.

III

That your Petitioner avers that it is in the best interest of [T.M.M.] and the public that he remain in the temporary custody of your Petitioner for twelve (12) months or until further orders of this Court with a permanency goal of termination of parental rights and adoption. Andrea Martin, mother, 4893 Hillbrook Road, Memphis, Tennessee 38109, has very limited contact with said child and has failed to follow through with her Plan of Care.

The trial court granted this petition by order entered May 19, 1998.

On December 7, 1999, the TDCS filed a petition for termination of parental rights seeking to terminate the parental rights of both Ms. Martin and Mr. Bailey. The petition provides that although no person is named as the father on T.M.M.'s birth certificate, Ms. Martin has stated that Mr. Bailey is the biological father. The petition provides that the Putative Father Registry has been consulted and that no claim exists on the registry to the paternity of T.M.M. and that no other claim or potential claim to the paternity of T.M.M. exists.

The petition also provides that Mr. Bailey is currently incarcerated and that Ms. Martin and Mr. Bailey have "willfully abandoned said child for more than four (4) consecutive months immediately preceding the filing of this Petition in that said Andrea Martin and Tiawan Bailey have willfully failed to visit said child, and/or have willfully failed to support or make reasonable payments toward the support of said child." Furthermore, the petition provides that T.M.M. was found to be dependent and neglected and has been removed from Ms. Martin's home by order of the trial court for a period of six (6) months and the conditions which led to the child's removal still persist and there is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to Ms. Martin in the near future. The petition also avers that there has been substantial non-compliance by Ms. Martin with her statements of responsibilities in the plan for foster care and that it is in the best interest of the child and the public that all of the parental rights of Ms. Martin and Mr. Bailey be forever terminated, and that the complete custody, control and guardianship of T.M.M. be awarded to the TDCS which shall have the right to place the child for adoption.

On March 9, 2000, the trial court appointed Ms. Jeannie Todd to serve as the guardian ad litem. On April 5, 2000, Ms. Martin filed a petition for return of custody and an answer to the petition for termination of parental rights. Ms. Martin provides in the petition for return of custody that she is able to provide a stable and safe home for her minor child and that it is in the child's best interest that custody be immediately restored to her. In her answer, Ms. Martin denies the material allegations contained in the petition and prays that the petition be dismissed.

On April 11, 2000, the TDCS filed its answer to Ms. Martin's petition for return of custody denying that Ms. Martin is able to provide a stable and safe home for her minor child and requesting that Ms. Martin's petition be dismissed.

On February 8, 2001, the TDCS filed an amendment to the petition for termination of parental rights as to respondent, Tiawan Bailey, adding that Mr. Bailey "has been confined in a correctional 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 was under the age of eight (8) years of age at the time the sentence was entered by the Court." The amendment further provides that although Mr. Bailey was served with the original petition for termination of parental rights, he has not filed a responsive pleading.

After a non-jury trial, held on March 27, 2001 and April 17, 2001, the trial court filed its final decree terminating parental rights on May 15, 2001. The final decree provides in pertinent part:

[T]he Court so finds based on clear and convincing evidence:

1. That Respondent, Tiawan Bailey, is confined in a correctional facility by Order of a Court as a result of a criminal act under a sentence of ten or more years and the child was under the age of eight years at the time the sentence was entered by the Court.

2. That Respondent, Tiawan Bailey, willfully failed to visit and willfully failed to make reasonable payments toward the support of the child for four consecutive months immediately preceding his incarceration.

3. That Respondent, Tiawan Bailey, engaged in conduct prior to his incarceration which exhibits wanton disregard for the welfare of the child.

4. That persistent conditions exist in that the child has been removed from the home of Andrea Martin by order of a court since 1995 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, 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 in the near future; and

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

5. That it is, therefore, in the best interest of the said child and the public that all of the parental rights which Andrea Martin and Tiawan Bailey may have to the said child be forever terminated and that the complete custody, control, and guardianship of the said child should be now awarded to the Tennessee Department of Children's Services, with the right to place the said child for adoption and to consent to such adoption *in loco parentis*. That this decree shall have the effect of forever severing all of the rights, responsibilities, and obligations of Tiawan Bailey and Andrea Martin to the said child and of the said child to said parents arising from the parental relationship; that said parents are hereafter not entitled to notice of proceedings of the

adoption of the child by another, nor have Tiawan Bailey and Andrea Martin any right to object to such adoption or otherwise to participate in such proceedings nor hereafter, at any time, to have any relationship, legal or otherwise, with said child; and that there are no other parental or guardianship rights which must be terminated prior to making said child available for adoption; all of which is so found and hereby adjudged by the Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That grounds for termination of the parental rights of Tiawan Bailey and Andrea Martin have been established by clear and convincing evidence as set forth above.
2. That all of the parental rights of Tiawan Bailey and Andrea Martin to the said child be, and the same are hereby, forever terminated and that said termination is in the child's best interest.
3. That the complete custody, control, and guardianship of the said child be, and the same are hereby, awarded to the Tennessee Department of Children's Services, with the right to place said child for adoption and to consent to such adoption *in loco parentis*.

Ms. Martin has appealed and presents the following issue as stated in her brief:

Whether the trial court erred in terminating the parental rights of Andrea Martin.

Mr. Bailey has also appealed and presents the following issue as stated in his brief:

Did the trial court err in terminating the rights of the natural father, or in the alternative, did the State fail to establish by clear and convincing evidence sufficient grounds to permit the parental rights to be terminated.

Pursuant to Tenn. Code Ann. § 36-1-113(c)(1)(2) (2001), termination of parental rights must be based on a finding by clear and convincing evidence that grounds for termination exist, and that such termination is in the best interest of the child. Since this case was tried by the trial court sitting without a jury, we review the case de novo upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

It is a well established premise that "[a] parent has a fundamental right to the care, custody and control of his or her child." *Department of Children's Servs. v. Wiley*, No. 03A01-9903-JV00091, 1999 WL 1068726, at *3 (Tenn. Ct. App. Nov.24, 1999)(citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). A parent's right to the care, custody, and control of his or her child is not absolute and may be terminated if justified by clear and convincing evidence under the applicable statute. *In re C.W.W.*, 37 S.W.3d 467 (Tenn. Ct. App.2000)(citing *Wiley*, 1999 WL 1068726, at *3; *Santosky v. Kramer*, 455 U.S. 745, 769 (1982)). Termination of parental rights must be based on a finding by clear and convincing evidence that the grounds for termination of rights have been established and the termination of parental rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(1) and (2) (2001). In addition, in order to terminate parental rights there must be a showing that the parent is unfit or that substantial harm to the child will result if the parental rights are not terminated. *In Re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999) (citations omitted). The Tennessee adoption statutes mandate that:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(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.

* * *

(6) 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.

Tenn. Code Ann. § 36-1-113 (2001).

Tennessee's adoption statutes define abandonment as:

(1)(A) "Abandonment" means, for purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or make reasonable payments toward the support of the child; [or]

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

* * *

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation[.]

T.C.A § 36-1-102 (2001).

In the case, *In re C.W.W., et al*, 37 S.W.3d 467 (Tenn. Ct. App. 2000), this Court "recognized that the existence of any one of the statutory bases will support a termination of parental rights." *Id.* at 473. Therefore, we must affirm the trial court's judgment terminating the parental rights of both Mr. Bailey and Ms. Martin if the record contains clear and convincing evidence to support any basis found by the trial court. *See id.* (citations omitted). Tennessee courts have commented on the standard of clear and convincing evidence stating "[i]n order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence." *See Hodges v. S. C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn. 1992); *O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

Both Ms. Martin and Mr. Bailey argue that the trial court erred in finding grounds supported by clear and convincing evidence to terminate their parental rights. In addressing both issues for review, we have summarized the testimony of each witness.

TIAWAN BAILEY

Mr. Bailey testified that he is the father of T.M.M. Mr. Bailey states that he was arrested on February 14, 1997 and prior to his arrest, he only visited T.M.M. once in 1994. Mr. Bailey attributes his lack of visitation to the fact that he and Ms. Martin were having problems because of Ms. Martin's boyfriend. Mr. Bailey testified that after he learned that T.M.M. was in foster care, he contacted the foster care mother, Ms. Shirley Long, several times to arrange visits and talk with his son on the phone. Mr. Bailey stated that T.M.M. recognizes him as his father. Upon being given the opportunity to address the trial court, Mr. Bailey testified:

All I'm saying is that I'm fine with my son with Ms. Shirley Long, and I think he's safe and all that. But I still feel when I get out, I should be able to visit my son. That's what I feel.

On cross-examination, Mr. Bailey testified that in August of 1997 he was sentenced to twelve and a half years for conspiracy to distribute crack cocaine. Mr. Bailey also stated that he has not paid any support for his son, T.M.M., other than on one occasion when he gave Ms. Martin some money to take his son shopping. Mr. Bailey provided that he never legitimated his son because "it never was brought up" and he did not think to do it himself.

Mr. Bailey further testified on cross-examination that his son wishes to live with Ms. Long, and Mr. Bailey understood that if his parental rights were terminated, then any visitation between Mr. Bailey and T.M.M. would be up to the person who eventually adopts T.M.M.

EUGENIA LONDON

Ms. London testified that she is a residential case manager for the TDCS and she is responsible for T.M.M.'s care. Ms. London also handles visitation for T.M.M. Ms. London explained that T.M.M. was removed from Ms. Martin's custody in December of 1994 because a referral came in that T.M.M. and other children were left alone in the apartment. Ms. London testified:

[W]hen the worker went in to check the home, there was no food. [T.M.M.] was in the swing with a diaper full of urine and stool. They said it was running down his leg. He was diagnosed with failure to thrive before and had been sent home with formula and all kinds of medications that he was supposed to have been giving to him. And when they asked her about that, she couldn't show them the medication, and the food that was given for her was left in her car that was somewhere because it was being worked on, so she didn't even have the food that he was supposed to have in there.

Ms. London testified that the TDCS worked with Ms. Martin after the children were removed. Ms. London stated that Ms. Martin was given a permanency plan "to know how to properly feed a child and take care of a child."

Ms. London testified that there was another order in 1995. She explained:

A. That one was where [T.M.M.] had fallen off the bed. Ms. Martin and a boyfriend had put him on a lower bunk of a bunk bed, and he had fallen off, and they didn't take him to the doctor because, I guess, they didn't think anything was wrong. The next day he went to the Kiwanis--no. That was on a weekend. On Monday he went to the Kiwanis Center for Child Development, and they couldn't touch [T.M.M.'s] arm. Because when they did, he would just scream out. They then took him to the emergency room, and he had broken his--the bone in his shoulder.

* * *

A. Okay, Mr. McCullen [Ms. Martin's boyfriend] told the worker that ah, they're also at the day care, when the worker was talking to the other two children. He overheard (sic) that [T.M.M.] was being removed from the home, and he told the worker that [Ms. Martin] didn't have anything to do with it, that he put [T.M.M.] on the upper bunk of the bunk bed and he had fallen off onto the tile floor. Because, he said because he was on the upper bunk, was because the

sheets—he didn't have any sheets on his baby bed or on the lower bunk bed.

Q. And how old was the child? When this happened?

A. Ah, he was eight months? Eight or nine months old.

Ms. London also testified that although the TDCS provided Ms. Martin with a permanency plan involving parenting and counseling, there is no record showing that she ever completed any of the tasks assigned concerning the permanency plan. Furthermore, Ms. London explained that Ms. Martin's visitation with T.M.M. was sporadic and stated that Ms. Martin had been arrested for disturbing the peace, that she had lost her job and that she had been evicted from her apartment in 1995.

Ms. London stated that Ms. Martin contacted the TDCS in March of 1996 and was allowed to visit her son every week, but the records show that Ms. Martin visited T.M.M. only three times in the entire year. According to Ms. London, in February of 1997, Ms. Martin stated to the case worker that she had not seen T.M.M. since Christmas of 1996. In fact, Ms. London explained that in June of 1997, Ms. Martin was living right around the corner from the foster mother, Ms. Long, where T.M.M. was living. Ms. London provided:

A. And the next thing we have in the record is from June of '97, where she [Ms. Martin] had moved again to Princeton Street, and the worker asked Andrea why that she hadn't been visiting with [T.M.M.], because she was just living around the corner from the foster mother. And she told her that she didn't have a ride. You know, and the worker asked her why she couldn't walk over there to see him.

Ms. London further testified that in July of 1997, Ms. Martin had her third child and had moved to Memphis, Tennessee. Ms. London said that the next time Ms. Martin contacted them was in November of 1997 when she visited with T.M.M. over Thanksgiving. Then, in February of 1998, Ms. Martin had not visited with T.M.M., but did call in April of 1998 wanting to visit. At this point, Ms. London explained that Ms. Martin had not seen her son since November of 1997. On May 30, 1998, Ms. Martin was supposed to visit with T.M.M. on Saturday, but did not show up until Sunday. At this time, Ms. Martin was visiting at the foster home. The TDCS began having Ms. Martin visit her son at the office.

According to Ms. London, in August of 1998, after Ms. Martin was ordered to keep her visits every other week to prevent termination proceedings from beginning, Ms. Martin only visited nine times from August to December of 1998 and only three times from January to May of 1999. Ms. London further testified that when Ms. Martin would visit with her son, there was no interaction between Ms. Martin and T.M.M. Ms. London provided:

A. They show, it showed that she did not have any real interaction with [T.M.M.]. She would hug and kiss him when he first came in, but then when they went to the room, it was just like [T.M.M.] was playing with a toy in the room, and Ms. Martin was doing something else.

Ms. London stated that the last time Ms. Martin visited T.M.M. was on October 19, 2000, and Ms. London did not observe that this visit was any different from past visits.

On cross-examination, Ms. London testified that there were occasions when Ms. Martin would bring the other children to visit T.M.M. She also stated that there were times when Ms. Martin could not visit because she did not have adequate transportation. However, according to Ms. London, Ms. Martin usually would just not show up for the visit.

SHIRLEY LONG

Ms. Long is a foster parent with the TDCS and T.M.M. is one of her foster children. Ms. Long testified that T.M.M. has been with her almost all of his life. Ms. Long stated that T.M.M. is a good boy who loves to go to school and ride his bicycle. Ms. Long explained that T.M.M. has a physical condition known as “Daniel Walker” syndrome which causes his head to swell. She stated that she takes care of him when his head hurts. Ms. Long testified that she has observed T.M.M. interact with Ms. Martin during the visits and provided that Ms. Martin did not pay her son much attention. Ms. Long testified on cross examination that Ms. Martin last visited her son in Ms. Long’s home around Christmas of 2000 when she visited for about fifteen to thirty minutes.

ANDREA MARTIN

Ms. Martin testified that she is living in Memphis and is unemployed. She stated that the last time she had been employed was from June to October of 2000. Her income consists of SSI, Family First and food stamps. Ms. Martin testified that she has been studying computer data at a community college for about eight months.

Ms. Martin testified that she last saw her son in January of 2001, when she visited at Ms. Long’s house. Ms. Martin said that she failed to visit her son in the past because of transportation problems, but explained that she had just purchased a vehicle. She further testified that she attended two parenting classes after T.M.M. was removed from her home.

Ms. Martin explained that she has a good relationship with her son and that Ms. London’s observations were inaccurate. Ms. Martin testified that she has not called her son this year because she thought “it’s probably best for me not to call, under the conditions. I’m, I’m not saying that Ms. Long doesn’t want me to call her house, but I think that it would just keep down confusion if I don’t call. That’s why I haven’t called.”

Furthermore, Ms. Martin testified that she does not want her parental rights to be terminated and stated:

Of course I would like the court to return him to my house, but I know that that's not possible. But I also understand that once they terminated my rights, that's all over with, and it's up to the foster mother. But I would still like to be in my son's life, because, you know, I am his mother. I would like to be able to be around him and in his life.

On cross-examination, she could not explain why she did not visit her son more often even though she lived around the corner from Ms. Long. Ms. Martin's testimony is as follows:

Q. I just am really curious about this. Ah, under—when you lived around the corner from Ms. Long, just within walking distance, can you explain why you didn't just walk around the corner to see [T.M.M.], since he was so close by?

A. No, I can't explain.

Q. Do you see that as a sort of abandonment? Maybe you didn't mean it to be that way, but that's the effect? Do you see that?

A. Yes ma'am, I see that.

When the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses in their manner and demeanor while testifying is in a far better position than this Court to decide those issues. *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. *Id.*; *In re Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997).

After a review of the entire record, we find that all of the grounds for the trial court's decision terminating the parental rights of Ms. Martin and Mr. Bailey are supported by clear and convincing evidence. Specifically, the record indicates that Mr. Bailey has been sentenced for ten or more years by order of the court as a result of a criminal act when T.M.M. was under the age of eight (8) and that Mr. Bailey has abandoned T.M.M. by not paying child support or visiting. Furthermore, the record indicates that Ms. Martin has abandoned T.M.M. within the meaning of Tenn. Code Ann. § 36-1-113 (2001); that she has been substantially non-compliant with the completion of the permanency plan; that the conditions which led to the child's removal from Ms. Martin's care still persist and that there is little likelihood that the conditions will be remedied at an early date; that the continuation of the parent and child relationship greatly diminishes the child's chances of early

integration into a safe, stable and permanent home; and that it is in the best interest of T.M.M. to terminate the parental rights of Ms. Martin and Mr. Bailey.

The record shows that Ms. Martin was provided with a permanency plan after her son was removed from Ms. Martin's custody, but there is nothing in the record showing where Ms. Martin ever completed the tasks assigned concerning the permanency plan. In fact, Ms. Martin testified that she only attended two parenting classes years ago. The record shows that in March of 1996, Ms. Martin was allowed to visit her son every week, but she only visited him three times in the entire year. Furthermore, after attributing her lack of visitation to transportation problems, Ms. Martin could not explain why she did not visit her son more often even though she lived within walking distance from Ms. Long's home, where her son was living. The record shows that even when Ms. Martin would visit with her son, there was no real interaction between Ms. Martin and her son. Furthermore, the record shows that T.M.M. has been living with Ms. Long most of his life and is doing well, in spite of his condition.

Accordingly, the final decree of the trial court is affirmed. This case is remanded for such further proceedings as may be necessary. Costs of the appeal are assessed against the appellants and their surety.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.