

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 16, 2002

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES,
v. R.S.P.**

**Appeal from the Juvenile Court for Greene County
No. 14375 Thomas J. Wright, Judge**

FILED OCTOBER 31, 2002

No. E2002-00442-COA-R3-JV

This is a termination of parental rights case. The rights in question are those of R.S.P., who is, by blood relationship, the paternal grandmother¹ of C.W.P., a minor child ("the child"). As a result of a West Virginia proceeding, R.S.P. is also the adoptive mother ("the adoptive mother")² of the child. The Department of Children's Services ("DCS") sued the adoptive mother seeking to terminate her parental rights with respect to the child. Following a bench trial, the court below terminated her parental rights. The adoptive mother appeals, contending that the evidence fails to show, clearly and convincingly, that a ground for termination exists or that termination is in the "best interests," *see* Tenn. Code Ann. § 36-1-113(c)(2), of the child. We affirm.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

David L. Leonard, Greeneville, Tennessee, for the appellant, R.S.P.

Paul G. Summers, Attorney General and Reporter, and Douglas Earl Dimond, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

¹The appellant's brief and documents in the technical record refer to the adoptive mother as the "maternal" grandmother of the child, but other facts in the records indicate that she is actually the natural mother of the child's natural father, and thus the "paternal" grandmother of the child.

²In using the modifier "adoptive," we do not mean to suggest that an adoptive parent is any less a parent than a "natural" parent. Obviously, in the eyes of the law, there is no difference. We use the word "adoptive" to distinguish R.S.P. from C.W.P.'s natural mother.

I.

The child was born March 26, 1990. Neither of his parents took much interest in him, and, almost immediately, the child's paternal grandparents became the child's *de facto* custodians, providing for his day-to-day care. On May 21, 1997, a West Virginia court decreed the adoption of the child by the adoptive mother and her husband.³

Prior to going into the custody of DCS, the child experienced severe emotional and behavioral problems. In late 1999, the adoptive mother called DCS seeking help in managing the child. When DCS inspected the home of the adoptive mother, it determined that the environment presented an immediate risk of harm to the child. On December 14, 1999, DCS petitioned the Greene County Juvenile Court for a decree of temporary custody based upon an allegation of dependency and neglect. On the same day, the court granted the petition, and DCS took temporary custody of the child.

The initial goal of the temporary custody arrangement was to work with the adoptive mother so she could learn to provide a safe and stable environment for the child. DCS's ultimate goal was the reunification of the child with the adoptive mother. However, on July 26, 2001, following what DCS considered an overall failure of the adoptive mother to meet the goals established by the permanency plan, DCS filed a petition in the Juvenile Court for Greene County seeking to terminate the adoptive mother's parental rights. On January 25, 2002, the court granted the petition, and this appeal followed.

As previously indicated, the child has special needs that require special attention. When the child first came into the custody of DCS, he was emotionally and socially handicapped to a severe extent. The child has a history of antisocial behavior that includes the destruction of the adoptive mother's property and the discharge of a firearm inside the adoptive mother's mobile home. There were even allegations that the child had committed arson by burning down a barn. The child could never remain still, and would act inappropriately in public. Examples of the child's inappropriate behavior include his refusal to eat with utensils and habitually picking his nose until it would bleed profusely. In addition, the child usually appeared as though he had not recently bathed. Perhaps the most vivid example of the child's emotional problems took place during his initial consultation with the guardian ad litem ("the GAL"). In this meeting, while running around the room and jumping off chairs, the child repeatedly stated to the GAL, "I am evil." He proceeded to exclaim, "I'm going to bash your head in." In other meetings with his counselors, the child was so hyperactive that he was unable to effectively communicate. He would often act out like an animal (such as a dog) and otherwise would be nonresponsive. At the time DCS assumed temporary custody of the child, he was utterly incapable of functioning normally within civilized society.

³The parental rights of the adoptive father were terminated in another proceeding and are not at issue in the present case.

The evidence does not preponderate against the trial court's finding that the adoptive mother truly cares for the child. However, the evidence also does not preponderate against a finding that her limitations prevent her from meeting the particularly complex needs of the child. She is totally illiterate. She completed very little formal education. She married her husband when she was only 12 years old, and the marriage apparently soon deteriorated, but by that time, her foster parents counseled her that she had to remain married. Her husband was physically abusive toward her, and this abuse continued after the couple adopted the child. Her husband's physical abuse would later extend to the child as well.

In her dealings with the child, the adoptive mother was totally unable to appropriately discipline him in a way that would instill in him any meaningful understanding of right and wrong. It appears this resulted from the fact that the child was able to manipulate the adoptive mother into quick capitulation whenever she attempted any real discipline. There was a usual pattern. The adoptive mother would do something along the lines of sending the child to his room, and then the child would begin to cry. The adoptive mother would then relent. It appears from the record that at some point in time, the adoptive mother gave up all attempts at disciplining the child in any way that would set limits on the child's behavior; she would instead resort solely to verbal abuse without any real effort to reform the child's behavior.⁴ DCS presented expert testimony at trial that family therapy had failed to improve the adoptive mother's ability to care for or discipline the child in a constructive manner. This testimony also indicated directly and by inference that the adoptive mother's inability to discipline the child contributed to the child's extremely antisocial and violent behavior.

The initial DCS inspection and subsequent inspections of the adoptive mother's residence revealed that the home presented several potential dangers to child. She lived in a mobile home in Greeneville with the child and her husband, to whom she is still married but no longer cohabiting. Several dogs and cats also lived in the mobile home, causing it to smell very strongly of animal urine. The mobile home consisted of two small bedrooms, a living room, a kitchen, and a bathroom. One of the bedrooms was so small the bed covered almost the entire floor. In the kitchen, there was a hole in the floor, large enough that the adoptive mother had actually fallen through it at one time. The floor has since been covered by some type of board, but was never repaired. In the center of the living room there was a kerosene heater, apparently of the sort that could easily cause a fire if knocked over. Outside the mobile home, miscellaneous things were piled about, and the land immediately surrounding the mobile home was very muddy. Mud tracks covered the flooring immediately around the entrance to the mobile home. A DCS case worker testified that the conditions inside the adoptive mother's residence were unsanitary and outside were unsuited for a young child to play safely. The same case worker also testified that a visit 13 months later revealed that the residence had not become a safe environment for a child. Though the adoptive mother

⁴The record contains some evidence that the adoptive mother physically abused the child. The adoptive mother consistently denied this in her testimony. The trial court did not make a finding of physical abuse by clear and convincing evidence; accordingly, we make no such finding.

insisted to case workers in the past and testified at trial that she was in the process of moving to a new home, she presented no credible evidence at trial that this was actually the case.

Following the award of temporary custody to DCS, that agency placed the child under the supervision of the Holston United Methodist Home for Children (“Holston Home”), and more specifically, in the foster care of Al Gallagher and his wife, Tammy Gallagher. The Gallaghers also cared for four other children. Mrs. Gallagher testified that when the child first entered her home, he required more attention than any of her other foster children. He was incapable of acting appropriately, cried a lot, and that his outrageous behavior prohibited him from accompanying his foster parents outside the home. Mrs. Gallagher also testified that the child told her about abuse he endured while living with his adoptive parents. He stated that his adoptive father would physically abuse both him and his adoptive mother, and that on occasion his adoptive mother physically abused him as well, striking him with a belt. In addition, the adoptive mother would yell at the child a lot. The child also related these accusations to his GAL.

In her testimony, the adoptive mother essentially admitted most of the allegations about which Mrs. Gallagher and the GAL testified. She admitted that her husband abused both her and the child and that she had hit the child with a belt, leaving a mark on the child’s arm. She explained that the only reason she hit the child on the arm was that she was trying to whip his rear end but that the child moved while the belt was already in motion. Regardless of what one thinks of this explanation, the adoptive mother’s admissions do not paint the picture of a stable and supportive home life for the child in the adoptive mother’s home. In addition, the adoptive mother often failed to attend the family therapy sessions designed under the permanency plan to make her a more effective parent.

II.

In this non-jury case, our review is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court’s factual determinations that we must honor unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); **Wright v. City of Knoxville**, 898 S.W.2d 177, 181 (Tenn. 1995); **Union Carbide Corp. v. Huddleston**, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court’s conclusions of law, however, are afforded no such presumption. **Campbell v. Florida Steel Corp.**, 919 S.W.2d 26, 35 (Tenn. 1996); **Presley v. Bennett**, 860 S.W.2d 857, 859 (Tenn. 1993).

Our review is also affected by the well-settled constitutional principal that “parents have a fundamental right to the care, custody, and control of their children.” **In re Drinnon**, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing **Stanley v. Illinois**, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). However, this right is not absolute and may be terminated if there is clear and convincing evidence justifying termination under the pertinent statute. **Santosky v. Kramer**, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982). Clear and convincing evidence is evidence which “eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence.” **O’Daniel v. Messier**, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

III.

In a termination of parental rights case, the state must prove two related but independent elements by clear and convincing evidence: a statutory ground for termination and that termination is in the “best interests” of the child. Tenn. Code Ann. § 36-1-113(c).

The issues raised in the pleadings, and the trial court's findings, implicate the following statutory provisions:

* * *

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

* * *

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

* * *

(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.

Tenn. Code Ann. § 36-1-113(c), (g) (2001).

IV.

A.

DCS's initial petition for temporary custody of the child asserted that child was dependent and neglected within the meaning of the law. Tenn. Code Ann. § 37-1-102(b)(12) (2001) defines the term, "dependent and neglected child," in pertinent part, as follows:

"Dependent and neglected child" means a child:

* * *

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

* * *

Clear and convincing evidence demonstrated that the child was "dependent and neglected." The evidence, at the initial hearing, clearly and convincingly, demonstrated that the adoptive mother was utterly unable to instill any sense of morality in the child. Furthermore, the child's violent propensities indicated clearly and convincingly that the child could endanger the health of others. There was a clear factual predicate for the court to sustain DCS's petition for temporary custody. Since the child has been removed from the home of the adoptive mother for more than six months, we now move to determine whether the other requirements for termination set forth in Tenn. Code App. § 36-1-113(g)(3)(A) have been satisfied.

B.

The adoptive mother has not changed her pattern of behavior or her living conditions since the child was taken into the custody of DCS in 1999. Several witnesses testified at trial that attempts to instill better parenting techniques in the adoptive mother had failed. From her testimony and the testimony of other witnesses at trial, it appears that her educational, intellectual and emotional limitations will prevent her from ever being an effective parent to the child. Her living conditions in the mobile home remain unchanged despite the adoptive mother's assertions that she is about to move. Furthermore, the trial court noted that despite the adoptive mother's assertions that the adoptive father no longer resides with her, she remains married to him, and she acknowledges that

he still makes regular trips to Tennessee during which time she still sees him. These facts indicate to this court that the adoptive mother still cannot offer the child proper moral guidance, safe living conditions or guarantee safety from a past abuser. As such, a return to her residence in the immediate future would likely result in the child once again becoming a dependent and neglected child. The State's evidence shows in a clear and convincing manner that the elements of Tenn. Code Ann. § 36-1-113(g)(3)(A)(i) & (ii) are made out in this case.

C.

The testimony from the child's counselors, foster parent, and the GAL all indicate unequivocally that the child's ability to behave appropriately and socialize have soared since he entered the custody of DCS. As a dependent and neglected child, it is clear that reintroduction to the adoptive mother's home will not likely result in the child's integration into a stable home. One of child's counselors at Holston Home testified that the child's behavior has improved to the point that he has become adoptable. Given this fact, the only possibility for the child to enter into a stable permanent home is that he be adopted.⁵ Otherwise, the only permanent home he could ever be in would be that of the adoptive mother's, and as discussed above, the likelihood of that home being safe and stable does not appear to be an option. Therefore, without termination of the adoptive mother's parental rights, the child's chances for integration into a safe, stable and permanent home are greatly lessened.

V.

The facts in this case dictate in a clear and convincing manner that termination of the adoptive mother's parental rights is in the "best interests" of the child. *See Nash-Putnam v. McCloud*, 921 S.W.2d 170, 175 (Tenn. 1996) (stating that the burden of proof for a determination of best interests of the child is clear and convincing evidence). The trial record abounds with examples of the adoptive mother's inability to effectively provide for the physical and emotional well-being of the child.

The statutory scheme setting forth grounds for termination also provides factors to consider when determining whether termination is in the "best interests" of the child. In the present case, the trial court specifically cited the applicable parts of this section in making its determination that termination was in child's best interest. Those are as follows:

In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

⁵Child's placement with the Gallaghers is only a temporary therapeutic foster care relationship.

(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;

* * *

(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;

* * *

(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;

* * *

Tenn. Code Ann. § 36-1-113(i) (2001).

The trial court found all the five above-quoted factors present. Even with the assistance of family therapy, the adoptive mother was unable to adapt her home and her lifestyle to meet the child's needs. A change in caretakers so as to place the child back with the adoptive mother would have a negative effect on the child. Though sporadic, the continuing presence of the adoptive father, an undisputed abuser of the child, poses a continued serious threat to the health and welfare of the child. Finally, and most importantly, the trial court found that the adoptive mother's intellectual, educational and emotional limitations formed the basis for all of her problems as a mother, and that in light of these shortcomings, it would be in the child's best interests to terminate her parental rights. The evidence does not preponderate against the trial court's determination that the evidence shows, clearly and convincingly, that it is in the child's "best interests" to terminate adoptive mother's parental rights.

VI.

We affirm the judgment of the trial court terminating the parental rights of the adoptive mother. The costs of this appeal are taxed to the appellant. This case is remanded to the Juvenile Court for Greene County for such further proceedings, if any, as may be necessary, and for collection of costs assessed below, all pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE