

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 26, 2004

IN RE: C.LaC. AND D.L.

Appeal from the Juvenile Court for White County
No. D20072 Sammie E. Benningfield, Jr., Judge

No. M2003-02164-COA-R3-PT - **Filed March 17, 2004**

WILLIAM B. CAIN, J., concurring.

I concur in the judgment that clear and convincing evidence establishes abundant grounds for the termination of the parental rights of the mother in this case and further establishes that it is in the best interests of the children to terminate her parental rights.

I continue, however, to adhere to my view that a preponderance of the evidence standard on the one hand and a clear and convincing evidence standard on the other are completely incompatible with each other both at the trial level and at the appellate level. My views are exhaustively set forth in *Estate of Acuff v. O'Linger*, 56 S.W.3d 527 (Tenn.Ct.App. 2001) perm.app.denied (Oct. 1, 2001) and in *In re Z.J.S. and M.J.P.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854 (Tenn.Ct.App. June 3, 2003) (no ruling of an app. filed) (Cain, Judge, concurring) and in *State v. R.S. and K.S.*, No. M2002-00919-COA-R3-CV, 2003 WL 22098035 (Tenn.Ct.App. Sept.11,2003) (Cain, Judge, concurring), along with *In re: K.N.R., et al.*, No. M2003-01301-COA-R3-PT (Tenn.Ct.App. 2004); *see also Colorado v. New Mexico*, 467 U.S. 310, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984); *Taylor v. Commissioner of Mental Health*, 481 At.2d 139, 153-54 (Me. 1984); *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 737 P.2d 595, 604 (Or. 1987); *Beeler v. American Trust Co.*, 147 P.2d 583 (Ca. 1944), (Traynor, Justice, dissenting).

In any event, the evidence in this case is overwhelming and the clear and convincing evidence standard set forth in *Estate of Acuff v. O'Linger* is clearly met. I concur in the judgment.

WILLIAM B. CAIN, JUDGE