

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 1, 2013

**IN RE ATIRA S. M.**

**Appeal from the Chancery Court for Rutherford County  
No. 11CV1669 Robert E. Corlew, III, Chancellor**

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**No. M2013-01307-COA-R3-PT - Filed November 20, 2013**

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Mother and step-father filed a petition to terminate the parental rights of the child's father on the ground of abandonment for failure to support and failure to visit the child pursuant to Tennessee Code Annotated § 36-1-102(1)(A) and § 36-1-113. The trial court found the petitioners proved both grounds for termination and that termination was in the child's best interest. Father appealed. We affirm.

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

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, J.J., joined.

Robert L. Sands, Murfreesboro, Tennessee, for the appellant, James C. M.<sup>1</sup>

Amy Broom Pollina and Mary Bonita Tucker, Murfreesboro, Tennessee, for the appellees, Atria L. D. and Doniva E. D., III.

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<sup>1</sup>This court has a policy of protecting the identity of children in parental termination cases by initializing the last names of the parties.

## MEMORANDUM OPINION<sup>2</sup>

James C. M. (“Father”) and Atria L. D. (“Mother”), who were not married, are the parents of one child, Atria S. M., who was born in Milwaukee, Wisconsin in October 2002. Pursuant to a court order entered on June 6, 2003, Mother was granted custody of the child, and Father was granted visitation and ordered to pay child support.

Mother married Doniva E. D., III, (“Step-Father”), on October 28, 2007 when they both resided in Wisconsin. In March 2009, Mother, Step-Father and the child moved to Tennessee. More than two years later, on November 7, 2011, Mother and Step-Father filed the underlying Petition for Adoption and Termination of Parental Rights on the ground that Father abandoned the child pursuant to Tennessee Code Annotated § 36-1-102(1)(A) and § 36-1-113 by failing to support and failing to visit the child.<sup>3</sup>

Due to Father’s indigency, the trial court appointed counsel to represent Father. After filing an answer to the petition, Father’s evidentiary deposition was taken for presentation at trial; this was necessary because Father would not be able to attend the trial in person.

The case went to trial on April 4, 2013. Mother and Step-Father testified at trial and Father’s deposition was read at trial and introduced into evidence. The evidence established that an order was entered on June 6, 2003, requiring Father to pay child support; the order also afforded Father visitation with the child. Mother testified that Father’s last bonafide visit with the child was in December 2003, although Father spoke with the child for approximately five minutes in 2009 during a brief and unscheduled encounter at a restaurant. Father did not dispute this testimony.

The evidence introduced at trial also established that Father has only seen the child a few times since her birth and has paid no child support. This is due in principal part to the fact that Father has served two lengthy periods of confinement in Wisconsin prisons since the child’s birth. He was incarcerated from December 13, 2004 until January 12, 2009, at which time he was released on probation. His second period of incarceration began on August 10, 2010, and he is currently incarcerated. Father expects to be released on January 8, 2015.

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<sup>2</sup>Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

<sup>3</sup>An amended petition was filed on April 5, 2012.

Although Father was not incarcerated from January 12, 2009 until August 10, 2010, he did not visit or attempt to visit the child during that time. Moreover, he was employed at Burger King and Metro Tax during the nineteen month period and yet it is undisputed that he paid no child support during this period. It is also undisputed that Father never paid child support, notwithstanding the 2003 court order.

The order terminating Father's parental rights was entered on April 30, 2013 from which Father filed a timely appeal.

On appeal Father contends his failures to visit and to support the child were not willful. As for visitation, he states that terms of his probation prohibited him from visiting the child; however, he admits making no efforts to remedy this restriction. As for his failure to support the child, Father contends his failure was not willful; however, the record reveals Father was gainfully employed for nineteen months, during the period he was not incarcerated, and yet he failed to provide any form of financial support for the benefit of the child.

Having examined the record before us, we find the evidence compelling and that it fully supports the trial court's findings that Father failed to have a bonafide visit with the child since 2003, he has only seen the child once since 2009, and Father failed to visit the child during the four months preceding the filing of the petition to terminate his parental rights. The record also established that Father has a history of criminal behavior that resulted in two lengthy incarcerations. The record also established the fact that although he was employed for months he failed to make any support payments and his failure to provide support was willful during that time period. We also concur with the trial court that there is clear and convincing evidence that it is in the child's best interest to terminate Father's parental rights due in part to the fact that Father has never had a relationship with the child, in fact the child does not know Father and Father will be unable to visit or support the child until 2015 when he is expected to be released from prison.

For the foregoing reasons, we affirm the termination of Father's parental rights to Atria S. M.

#### **IN CONCLUSION**

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellant, James C. M.

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FRANK G. CLEMENT, JR., JUDGE