

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 7, 2015

IN RE IAN B., ET AL.

**Appeal from the Chancery Court for Rutherford County
No. 12CV582 Howard W. Wilson, Chancellor**

No. M2015-01079-COA-R3-PT – Filed May 11, 2016

Father appeals the termination of his parental rights on the grounds of abandonment. The lack of a transcript prevents us from determining whether sufficient evidence supported the termination and denies Father proper appellate consideration of his claims. We therefore vacate the judgment of the trial court and remand the case for proceedings consistent with this opinion.

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

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and BRANDON O. GIBSON, J., joined.

Daniel Lyn Graves II, Murfreesboro, Tennessee, for the appellant, Kenny B.

Steven C. Girsky, Clarksville, Tennessee, for the appellees, Corey D. and Amy D.

OPINION

On April 12, 2012, Corey D. (“Stepfather”) and Amy D. (“Mother”) filed a petition for adoption and petition for termination of parental rights in the Chancery Court for Rutherford County, Tennessee. The petition related to two children, Isaac B. and Ian B., born to Mother and Kenny B. (“Father”). Father filed a pro se response in which he objected to termination of his parental rights and Stepfather’s adoption of the children. Over two years later, Father filed a uniform civil affidavit of indigency, and the chancery court, finding him indigent, appointed Father counsel on June 18, 2014.

The chancery court held a trial on February 19, 2015. The record does not reflect whether a court reporter was present. After hearing the evidence, the chancery court found that Father had willfully failed to support or visit his children during the four months preceding the filing of the petition. The court also found termination of Father's parental rights to be in the children's best interest. The court granted the termination of Father's parental rights and Stepfather's adoption of the children.

Father appeals, arguing in effect that his failure to visit or support his children during the applicable time period was not willful. Father also argues that termination was not in the children's best interest. No transcript of the trial was filed. Father, instead, filed a seven page statement of the evidence. *See* Tenn. R. App. P. 24(c).

ANALYSIS

Both the state and the federal constitutions protect a parent's fundamental right to the care and custody of his or her own child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010). While fundamental, the parent's right is not absolute. The state may interfere with parental rights, through judicial action, in some limited circumstances. *Santosky v. Kramer*, 455 U.S. 745, 747 (1982); *In re Angela E.*, 303 S.W.3d at 250. Termination proceedings are governed by statute. Tenn. Code Ann. § 36-1-113 (Supp. 2015). Only when a statutory ground for termination exists and termination is in the best interest of the child will a court interfere with this constitutionally protected right. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

To terminate parental rights, a court must determine by clear and convincing evidence that at least one of the statutory grounds for termination exists and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c) (2014); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). This heightened burden of proof is one of the safeguards required by the fundamental rights involved, *see Santosky*, 455 U.S. at 769, and its purpose "is to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *see also In re Angela E.*, 303 S.W.3d at 250; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). "Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). The party seeking termination has the burden of proof. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005).

On appeal, we review the trial court's findings of fact in termination proceedings de novo on the record, with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Next, "[i]n light of the heightened burden of proof in [termination]

proceedings . . . [we] must then make [our] own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim.” *In re Bernard T.*, 319 S.W.3d at 596-97. We review the trial court’s conclusions of law de novo with no presumption of correctness. *In re J.C.D.*, 254 S.W.3d 432, 439 (Tenn. Ct. App. 2007); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993). We “review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, No. M2014-00453-SC-R11-PT, 2016 WL 819593, at *13 (Tenn. Jan. 29, 2016), *petition for cert. filed sub. nom. Vanessa G. v. Tenn. Dep’t of Children’s Servs.*, No. 15-1317 (filed Apr. 22, 2016).

As an initial matter, we must address the statement of the evidence and whether it provides a “record of sufficient completeness” for appellate review. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 128 (1996). In termination of parental rights cases, we have held that,

a record of the proceeding of sufficient completeness to permit proper appellate consideration of the parent’s claims must be made in order to preserve that parent’s right to an effective appeal. If the parent whose rights are to be terminated is indigent, then the trial court must ensure that such a record is created and made available to a parent who seeks to appeal.

In re Adoption of J.D.W., No. M2000-00151-COA-R3-CV, 2000 WL 1156628, at *4 (Tenn. Ct. App. Aug. 16, 2000). Although a statement of the evidence is not always insufficient to permit appellate review, “a parental rights termination case where a Statement of the Evidence would be sufficient would be extremely rare and the best way to proceed is by providing this Court with a complete transcript of all evidence.” *L.D.N. v. R.B.W.*, No. E2005-02057-COA-R3-PT, 2006 WL 369275, at *5 (Tenn. Ct. App. Feb. 17, 2006).

This case does not present one of those rare instances where the statement of the evidence is sufficient.¹ The statement of the evidence is seven pages, but only the first three pages provide an account of what transpired at trial. The statement of the evidence does not do much more than recount who testified at trial and whether they were offered as witnesses for Stepfather and Mother or for Father. The statement of the evidence includes only the most general summary of the testimony of each of the witnesses. The statement of the

¹ The chancery court’s memorandum opinion containing detailed factual finding does not change the outcome. *See In re Adoption of J.D.W.*, No. M2000-00151-COA-R3CV, 2000 WL 1156628, at *4 (Tenn. Ct. App. Aug. 16, 2000) (“While the trial court in the case before us made findings of fact and did not merely recite conclusions in statutory language, we think that distinction does not alter the effect of the lack of a complete record of the events at trial on our ability to provide the type of complete appellate review required in termination of parental rights cases.”).

evidence falls far short of what is necessary to permit a proper review of Father's claims.

CONCLUSION

Because the trial record does not constitute a record of sufficient completeness for appellate review, we vacate the order terminating Father's parental rights and granting the adoption. We remand this case to the chancery court for a new trial on this matter.²

W. NEAL MCBRAYER, JUDGE

² If a court reporter was present at the trial, the chancery court may alternatively order the preparation of a full transcript or so much of the transcript as is germane to the issues Father raises on appeal. This is within the court's power because, "[e]ven in a case such as the one before us involving a termination petition brought by private parties, the state is required to provide a record because state action is invoked by asking a court to end a parental relationship." *In re Adoption of J.D.W.*, 2000 WL 1156628, at *7 n.5. Once the transcript is prepared, the chancery court may enter a new order and memorandum opinion on the petition to terminate Father's parental rights and for the Stepfather to adopt.