



Tennessee Supreme Court
DISCRETIONARY APPEALS
Grants & Denials List
December 14, 2020 - December 18, 2020

GRANTS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
<u>Jackson</u> IN RE TREYLYNN T. ET AL. W2019-01585-SC-R11-JV	Henderson County Circuit Court Roy B. Morgan, Jr. 19028-1	Armstrong, Kenny W.: Affirm Stafford, J. Steven: Dissent	Granted and Remanded: Application of Angel T. (Mother) Order filed 12-16-20 (See Attached Order)

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

12/16/2020

Clerk of the
Appellate Courts

IN RE TREYLYNN T., ET AL.

**Circuit Court for Henderson County
No. 19028-1**

No. W2019-01585-SC-R11-JV

ORDER

The application for permission to appeal of Angel T. (“Mother”) is before the Court in this dependency and neglect case. Fortrell C. (“Father”) is not a party to the appeal. Mother and Father are the parents of the two children at issue: Treylynn T. (d.o.b. August 19, 2014) and Amelia C. (d.o.b. September 11, 2017).

The Department of Children’s Services (“DCS”) received a referral of possible child abuse committed against Amelia on November 14, 2017. Following resolution of criminal charges against Mother and Father, the Juvenile Court for Henderson County adjudicated the children dependent and neglected. Mother appealed to the Circuit Court for Henderson County; Father did not. On de novo review, the Circuit Court adjudicated the children dependent and neglected, finding Mother perpetrated severe child abuse against Amelia by knowingly failing to protect her from Father’s commission of aggravated child abuse as prohibited by Tennessee Code Annotated section 39-15-402. *See* Tenn. Code Ann. § 37-1-102(b)(27)(C) (defining severe child abuse as the “commission of any act towards the child prohibited by [certain statutes, including those governing sexual offenses and aggravated child abuse] or the knowing failure to protect the child from the commission of any such act towards the child”).¹ The Circuit Court’s order expressly relied on Father’s “admission of guilt by pleading guilty to aggravated child abuse under T.C.A. § 39-15-402” and “finding of guilt of the Mother, based upon her best interest plea to child endangerment under T.C.A. § 39-15-401.” The Court of Appeals affirmed the Circuit Court’s judgment.

¹ Effective July 1, 2018, section 37-1-102(b) was amended, causing the definition of severe child abuse to be renumbered from subsection (22) to (27).

On December 3, 2020, this Court entered an order directing DCS to show cause as to why we should not grant the application of Mother, summarily reverse the judgment of the Circuit Court, and remand for entry of an order restoring custody of the children to her in light of certain errors. The show cause order noted that the judgment in Father's criminal case contains a clerical error in that Father's nolo contendere plea was actually to the offense of attempted aggravated child abuse.² Acknowledging that attempted aggravated child abuse is not one of the offenses enumerated in the statutory definition of severe child abuse, Tenn. Code Ann. § 37-1-102(b)(27)(C), on which the Circuit Court relied, DCS responds that it can offer no reason for this Court not to reverse the Circuit Court's finding that Mother perpetrated severe child abuse by knowingly failing to protect Amelia from Father's commission of aggravated child abuse.

DCS argues, however, that reversal of the finding that Mother perpetrated severe child abuse does not compel reversal of the Circuit Court's adjudicatory ruling because clear and convincing evidence shows that Amelia was dependent and neglected under Tennessee Code Annotated section 37-1-102(b)(13)(G) ("suffering from abuse or neglect") and that Treylynn was dependent and neglected under section 37-1-102(b)(13)(F) ("in such condition of want or suffering or is under such improper guardianship or control as to endanger the morals or health of such child or others"), two grounds alleged in the petition. Nevertheless, DCS submits that it would be appropriate for this Court to remand the case to the Circuit Court to determine, based on current circumstances, whether the children are dependent and neglected and whether (or under what circumstances) custody of the children should be returned to Mother. *See* Tenn. R. App. P. 36(a).

We agree with DCS that the finding that Mother perpetrated severe child abuse must be reversed. Because we also agree that a remand for a new hearing before the Circuit Court is appropriate under the unique circumstances of this case, we need not reach the issue of the propriety of the adjudicatory ruling, separate from the dispositional ruling as to Mother. *Cf. State, Dep't of Children's Servs. v. Huffines-Dalton*, No. M2008-01267-COA-R3-JV, 2009 WL 1684679, at *7 (Tenn. Ct. App. June 15, 2009) (noting that an appropriate consideration during the dispositional phase would be that the children were found to be dependent and neglected due to the conduct of only one parent).

Accordingly, we grant Mother's application, reverse the Court of Appeals' decision, and vacate the Circuit Court's decision. We remand the case to the Circuit Court for an adjudicatory hearing based on the current circumstances and, if necessary, a dispositional hearing. The Circuit Court shall expedite consideration and resolution of

² In addition, we took judicial notice that no records currently exist for Mother's criminal case, which would indicate that, upon her completion of diversion, the case was dismissed and the records expunged. *See* Tenn. Code Ann. §§ 40-35-313(a)(2), 40-35-313(b).

this matter. If the Circuit Court determines that custody should be restored to Mother, it shall remand the case to the Juvenile Court to determine and monitor an expeditious schedule for transferring physical custody of the children to her in a manner least disruptive to their welfare.

PER CURIAM