

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
December 6, 2001 Session

IN RE: D.L.K., a Child Under 18 Years of Age

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES v.
GLENDA ANN KINNIE**

**An Appeal from the Juvenile Court for Madison County
No. 33-28-684 Christy R. Little, Judge**

No. W2001-01724-COA-R3-JV - Filed January 4, 2002

This is a termination of parental rights case. The child was born with crack cocaine in his system and was admitted into the neonatal intensive care unit at birth. His mother did not visit him, and has no personal relationship with him. The State filed a petition for termination of the mother's parental rights based on abandonment and the fact that the child had been removed from his mother's custody for at least six months prior to the petition and the statutory preconditions had been met. The trial court granted the State's petition, finding that clear and convincing evidence supported the allegations, and that terminating the mother's parental rights was in the best interest of the child. We affirm.

Tenn. R. Civ. P. 3 Appeal as of Right; Judgment of the Juvenile Court is Affirmed

HOLLY K. LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Pamela Drewery-Rodgers, Selmer, Tennessee, for the appellant, Glenda Ann Kinnie.

Paul G. Summers, Attorney General and Reporter, and Pamela A. Hayden-Wood, Nashville, Tennessee, for the appellee, State of Tennessee Department of Children's Services.

OPINION

This is a termination of parental rights case. D.L.K. ("child") was born prematurely on August 22, 1997, with crack cocaine in his system and having special medical needs. At birth, he was immediately admitted into the neonatal intensive care unit. His mother, defendant Glenda Ann Kinnie ("Mother"), abandoned the child in the hospital. The petitioner State of Tennessee Department of Children's Services ("State") was awarded temporary custody on October 14, 1997,

which was continued by order dated October 31, 1997, following a preliminary hearing. State custody was again continued by order dated January 9, 1998,¹ after Mother failed to appear at a November 25, 1997 hearing to respond to the State's petition. In 1998, the child was placed in foster care. At the time of the hearing, the child had been in the custody of the same foster parent for two years.

On November 22, 1999, the State filed a petition for termination of Mother's parental rights.² The State's petition alleged that at least two grounds for termination existed. First, the petition alleged that the Mother had abandoned the child as that term is defined in Tennessee Code Annotated § 36-1-102(1)(A). *See* Tenn. Code Ann. § 36-1-113(g)(1)(1996). The petition further alleged that the child had been removed from Mother's custody for dependency and neglect over six months prior to the filing of the petition, that the conditions leading to the child's removal have not been remedied nor would they be remedied at an early date, and that continuation of the parent-child relationship greatly diminished the child's chances of integration into a safe, stable, and permanent home. *See* Tenn. Code. Ann. § 36-1-113(g)(3)(A). The petition alleged further that terminating Mother's parental rights would be in the child's best interest. *See* Tenn. Code Ann. § 36-1-113(c)(2).

The hearing was held on October 24, 2000. The child's Department of Children's Services ("DCS") case worker, Emma Wade ("Wade"), was questioned by the attorney for the state, Barbara MacIntosh. Wade testified that, in addition to the child at issue, Mother has nine other children, all of whom were removed from Mother because of neglect. The children were left unsupervised in a home with no food and no utilities. Mother admitted to Wade that she had a problem with crack cocaine. She said that she had gone through recovery programs in the past but had suffered relapses. Wade testified that, on February 11, 1999, after having never visited the child, Mother wrote DCS a letter, requesting a visit with the child. It was decided that a visit would not be in the child's best interest because termination proceedings had begun. In October of 1999, Wade received a letter from Mother saying that Mother was in jail because of her drug addiction, that she now had found God in her life and that she wanted to see her child. Again, Mother was not allowed a visit with the child.

The child's foster mother, Brenda Jordan, testified that, over the two years that D.L.K. had spent in her care, she took him to receive speech and physical therapy because of his special needs. She also helped him with his therapy at home. Jordan testified that, if Mother's parental rights were terminated, she intended to adopt the child.

Mother testified on her own behalf. She admitted that she was addicted to cocaine when the child was born, and that she had never visited her child or established a relationship with him.

¹ The date on the January 9 order was 1997, but the record reflects that the order was actually signed in 1998.

² The petition also sought the termination of the parental rights of Edmond Mitchell ("Father"), the child's biological father. On January 25, 2000, Father's parental rights were terminated by default. Father did not appeal that order, so it is not an issue in this appeal.

Mother acknowledged that her other children were not in her care, said that she visited all but one, and said that the rest of the children “pretty much know that I’m their mom. . . .” She said that she had tried to stop using drugs but had relapsed in July 1999. At that time, Mother was put in jail because her drug use was a violation of her probation. Mother was released in April 2000. She claimed that, at the time of the hearing, she was working at a laundry and had been off drugs for three months. Mother testified that she attended “AA” meetings, and that it helped with her recovery. She stated that, if her rights were terminated, she hoped that her sister, Brenda Kinnie, would get custody of the child.

On November 17, 2000, the trial court entered an order granting the State’s petition. The trial court found that the evidence was clear and convincing that Mother had abandoned the child within the meaning of Tennessee Code Annotated § 36-1-102(1)(A).³ The trial court held that Mother had abandoned her child by willfully failing to visit or make support payments on behalf of the child for at least four consecutive months immediately preceding the filing of the State’s petition. Tenn. Code Ann. § 36-1-102(1)(A)(i). The trial court also found that Mother had abandoned her child because the child was dependent and neglected and was removed from Mother’s care and placed into State custody on January 9, 1998; that the State had made reasonable efforts to assist Mother for a period of four months following the child’s removal, but that Mother had made no effort to provide a home for the child and had demonstrated such a lack of concern for the child that it was unlikely that she would provide a suitable home for the child at an early date. Tenn. Code Ann. § 36-1-102(1)(A)(ii). The trial court also found clear and convincing evidence that the third ground for termination had been satisfied, inasmuch as the child had been removed from Mother’s custody for at least six months under the conditions enumerated under Tenn. Code Ann. § 36-1-113(g)(3)(A)(i)-(iii).

³ Under that statute, “abandonment” means, among other things:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made not reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date

Tenn. Code Ann. § 36-1-102(1)(A)(i)-(ii) (1996).

Finally, the trial court held that it was in the best interest of the child that Mother's parental rights be terminated. Consequently, the trial court terminated Mother's parental rights in the child, D.L.K. From this order, Mother now appeals.

We review the trial court's termination of parental rights *de novo* on the record with a presumption of correctness of the trial court's findings of fact unless the preponderance of the evidence is otherwise. Tenn. R. Civ. P. 13(d). We review the trial court's conclusions of law *de novo*, affording those conclusions no presumption of correctness. *In re S.M.C.*, No. 01A01-9807-JV-00358, 1999 WL 378742, at *2 (Tenn. Ct. App. June 11, 1999).

It is well established that a parent has a fundamental right to the care, custody, and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651(1972). Those parental rights may be terminated, however, if clear and convincing evidence shows that the statutory grounds for termination have been established, and if the best interests of the child would be served by such termination. Tenn. Code Ann. § 36-1-113(c). Tennessee Code Annotated § 36-1-113(g) sets forth the grounds for termination. They include the following:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(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 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 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 stable and permanent home.

Tenn. Code Ann. § 36-1-113(g). This Court has recognized that the existence of any one of these bases will support a termination of parental rights. *In re M.C.G.*, No. 01A01-9809-JV-00461, 1999 WL 332729, at *5 (Tenn. Ct. App. May 26, 1999). In addition, the best interests of the child must

be considered in light of, among other things, the factors listed in Tennessee Code Annotated § 36-1-113(h). *See* Tenn. Code Ann. § 36-1-113(c)(2).

Thus, if the court finds by clear and convincing evidence that any one of the statutory grounds for termination exists, and that such termination would be in the child's best interest, then the parental rights should be terminated. Under the "clear and convincing" standard, the evidence must eliminate "any serious or substantial doubt concerning the correctness of the conclusion to be drawn from the evidence." *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995).

On appeal, Mother does not challenge the trial court's findings of fact. She concedes that she has not seen the child, attributing it to her drug abuse. She claims, however, that she made an attempt to rehabilitate and visit, and that, at the time of the hearing, wished to keep her parental rights. Under these circumstances, she asserts, the State has not carried its burden,

We disagree. Notwithstanding Mother's eleventh hour conversion, the evidence is overwhelming that Mother abandoned this child, as the term is defined in the statute. Pursuant to Tennessee Code Annotated § 36-1-102(1)(A)(i), it is undisputed that "[f]or a period of four (4) consecutive months immediately preceding the filing" of the petition to terminate Mother's parental rights, Mother willfully failed to visit or pay support on the child's behalf. In addition, subsection (ii) has been satisfied because the child was dependent and neglected in January 1998, when he was removed from Mother's custody and placed in the State's custody; and for at least four months after the child's removal the State made reasonable efforts to assist Mother, who at that time showed no interest in establishing a relationship with her child. Under these circumstances, we find clear and convincing evidence of grounds for termination.

In addition, the evidence is overwhelming that terminating Mother's parental rights was in the best interest of the child. The child is now over four years old, and, except for two letters to D.L.K.'s case worker in 1999, when the child was eighteen months to two years old, Mother has made virtually no attempt to establish a relationship with him. Mother is an admitted crack cocaine addict who has nine other children for whom she has been unable to provide care. The record reflects that the child has bonded with his foster parent, and that his foster parent wants to adopt him into her home. Under these circumstances, we find that the best interest of the child is clearly served by terminating Mother's parental rights. Accordingly, we affirm the trial court's order terminating Mother's parental rights.

The decision of the trial is affirmed. Costs are taxed to Appellant, Glenda Ann Kinnie, and her surety, for which execution may issue if necessary.

HOLLY K. LILLARD, JUDGE