

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs May 16, 2003

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES  
v. CHESTER F. COLE, ET AL.**

**Appeal from the Juvenile Court for Madison County  
No. 33-29-221 Christy R. Little, Judge**

---

**No. W2002-03045-COA-R3-JV - Filed August 26, 2003**

---

This is a termination of parental rights case. The father appeals from the order of the juvenile court terminating parental rights to his three children. Specifically, the father asserts that the Trial Court failed to find, by clear and convincing evidence, that termination of his parental rights was in the best interest of the children. Because we find clear and convincing evidence in the record to support the Trial Court's findings, we affirm.

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

HOUSTON M. GODDARD, P.J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and CHARLES D. SUSANO, JR., JJ., joined.

Michael E. Rasnake, Jackson, Tennessee, for the Appellant, Chester F. Cole

Paul G. Summers, Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee Department of Children's Services

**OPINION**

On March 21, 2000, the Department of Children's Services ("DCS," or "Appellee") filed a Petition for Temporary Custody of B. L. (dob 7/31/86),<sup>1</sup> F. C. (dob 6/4/88), C. C. (dob 2/27/92), and S. C. (dob 9/21/93). The Petition alleged that Chester Floyd Cole ("Mr. Cole," "Father" or "Appellant") had sexually abused the children's older half-sister, Dominique Lewis (dob 11/26/84), and that Dominique was pregnant with Mr. Cole's child. The Petition further alleged that Lisa Cole ("Ms. Cole," or "Mother") was unable to protect the children from Mr. Cole due to her dependency

---

<sup>1</sup>  
and S.C.

Johnny Lewis is the father of B. L. and Dominique Lewis. Chester Cole is the father of F.C., C.C.,

on alcohol. DCS' Petition was granted and the children were taken into protective custody. A *Guardian Ad Litem* was appointed and the matter was heard by the juvenile court on March 23, 2000. Following that hearing, Dominique Lewis and B. L. were placed with Tom and Quilla Lewis, the maternal grandparents. The Cole children were returned to Ms. Cole's home on a trial home visit. The trial home visit did not work, and the children returned to custody and were placed in two separate foster homes.<sup>2</sup>

On May 8, 2001 and following a jury trial, Mr. Cole was convicted of the rape of a child and sentences to twenty-five years in prison. During the trial, Mr. Cole admitted that he had sex with his step-daughter, Dominique Lewis, and that the child she gave birth to was fathered by him.

On October 19, 2001, the DCS filed a Petition to Terminate Parental Rights of Lisa Cole, Johnny Lewis, and Chester Cole. This Petition reads, in relevant part, as follows:

12. Termination of the Respondents parental rights is sought, based upon, as alternatives to one another, the following grounds, which Petitioner is prepared to prove by clear and convincing evidence:

\* \* \*

e. That Chester Cole has been sentenced to more than two years imprisonment by the Circuit Court of Madison County, Tennessee for conduct against the child, any sibling or half sibling, or any other child residing temporarily or permanently in the home of the parent of guardian, which has been found under any prior order of a court or by the court in the termination proceeding to be severe child abuse pursuant to T.C.A. 36-1-113(g)(5), namely rape of child, a half sister to the above listed children.

b. That in terms of best interest, pursuant to Tennessee Code Annotated § 36-1-113(i)(1-9) the Respondents, Lisa Ann (Ross) Lewis Cole, Johnny Allen Lewis and Chester Cole, have failed to make such an adjustment of circumstances, conduct, or conditions as to make it safe and in the children's best interest to be in either of their homes; that the Respondents have failed to effect a lasting adjustment after reasonable efforts by available social services

---

<sup>2</sup> Over the course of nearly one year, Ms. Cole was aided by DCS and evaluated by the court in an effort to reunify the children with their mother. An Order dated September 26, 2000, indicates that Ms. Cole was given "reasonable and liberal visitation," and was required to attend Alcoholics Anonymous Meetings three times per week. An Order dated December 12, 2000, indicates that a DCS inspection of Ms. Cole's home found that there was no food in the home, that Ms. Cole had relapsed into her alcoholism, and that she had lost her job. At that time, the court determined that the Cole children should remain in foster care. An Order dated April 10, 2001, indicates that the Cole children were to remain with DCS while Ms. Cole continued working toward completion of her permanency plan. An Order dated August 14, 2001, found that Ms. Cole was not complying with her permanency plan.

agencies for such duration of time, that lasting adjustment does not reasonably appear possible; that the Court must consider the effect of change of caretakers and physical environment on the children's emotional, psychological, and medical conditions.

16. That it is in the best interest of the said children and the public, that all parental rights of the Respondents to the said children be forever terminated, and that the complete custody, control, and guardianship of the said children be awarded to the State of Tennessee, Department of Children's Services, with the right to place the said children for adoption, and to consent to such adoption in loco parentis.

Mr. Cole was properly served with the State's Petition to Terminate Parental Rights. After diligent efforts to serve Mr. Lewis and Ms. Cole, they were properly served through publication. An Order was entered on January 16, 2002, appointing counsel for Mr. Cole. On May 28, 2002, this matter was heard by the Juvenile Court of Madison County, sitting without a jury. At the time of the trial, C. and S. Cole lived with Ms. Frankie Douglas. The boys had lived with her for over two years and she wanted to adopt them. The boys were doing well and continued to have contact with F. At the time of trial, F. was in ninth grade and doing well. She lived with Ms. Meredith Hill and Ms. Hill wanted to adopt her.

By Order dated May 6, 2002, the parental rights of Mr. Lewis and Ms. Cole were terminated. Following the May 28, 2002 hearing, and Order was entered on June 25, 2002, which terminated the parental rights of Mr. Cole. This June 25, 2002 Order reads, in relevant part, as follows:

This cause came on to be heard on the 28<sup>th</sup> day of May 2002, before the Honorable Christy R. Little, judge of the Juvenile Court of Madison County, Tennessee, upon the sworn petition for Termination of Parental Rights, filed by the State of Tennessee, Department of Children's Services, with Chester F. Cole properly served; with the respondents, Lisa Ann (Ross) Lewis Cole and Johnny Allen Lewis, failing to appear previously after being served by publication and their parental rights being terminated previously by order entered by this Court on May 6, 2002; proof introduced at the hearing and the entire record, from all of which the Court finds:

1. That the evidence is clear and convincing, pursuant to T.C.A. 36-1-113(g)(5), that the respondent Chester F. Cole, has been convicted of rape of a child by a jury of his peers in the Circuit Court

of Madison County, Tennessee. Further he was convicted<sup>3</sup> to twenty-five (25) years incarceration. Further that the child he was found to have raped was Dominique Lewis, half sibling of the above listed children. Rape of a child is defined at T.C.A. 39-13-522 is included as severe child abuse as defined at T.C.A. 37-1-103(b)(21).

2. That it is, therefore, in the best interest of said children and the public that all of the parental rights which respondent, Chester F. Cole, may have to said children, be forever terminated and that the complete custody and control, and full guardianship of said children, should now be awarded to the Tennessee Department of Children's Services, with the right to place the child[ren] for adoption and consent to such adoption in loco parentis.

3. That this Order shall have the effect of forever severing all rights, responsibilities, and obligations of Chester F. Cole to the said children, and of the said children to said parent, arising from the parental relationship; that said parent is hereinafter not entitled to notice of proceedings of the adoption or otherwise to participate in such proceedings nor hereinafter, at any time, to have any relationship, legal or otherwise, with said children; all of which is found and hereby adjudged by the Court.

4. That the petition filed by the State of Tennessee, Department of Children's Services, is well taken and should be sustained and relief granted thereunder for the causes as therein stated.

5. That it is in the best interest of said children and the public that the State of Tennessee, Department of Children's Services, should be awarded full guardianship of said minor child[ren], pursuant to Tennessee Code Annotated Section 36-1-102(24)(D)(1).

6. That both foster parents testified that they were interested in adopting the children in the future.

7. That there was no less drastic alternative to removal; it is contrary to the children's interest to remain in the care, custody, or control of their previous custodian. That the Tennessee Department of Children's Services has made all reasonable efforts to find permanency for these children, including but not limited to,

---

3

We assume the Court meant "sentenced."

attempting in the past to work with the mother to reunify the children and trying to find permanent placements for these children, and it is in the best interests of the above listed children and the public as follows, and

IT IS THEREFORE ADJUDGED, AND DECREED:

1. That the evidence is clear and convincing, pursuant to T.C.A. 36-1-113(g)(5), that the respondent Chester F. Cole, has been convicted of rape of a child by a jury of his peers in the Circuit Court of Madison County. Further he was convicted<sup>4</sup> to twenty-five (25) years incarceration. Further that the child that he was found to have raped was Dominique Lewis, a half sibling of the above listed children. Rape of a child as defined at T.C.A. 39-13-522 is included as severe child abuse as defined at T.C.A. 37-1-103(b)(21).

2. That all of the parental rights of Chester F. Cole to the said children be, and the same are hereby, forever terminated and that said termination is in the children's best interest.

3. That the State of Tennessee, Department of Children's Services, be and is hereby awarded full guardianship of [F. M. L.] (Cole), [S. T. C.], and [C. D. C.], as defined by T.C.A. § 36-1-102(24), with the authority to place the children for adoption and to consent to their adoption in loco parentis.

Mr. Cole appeals from this Order and raises one issue for our review as stated in his brief: Whether the Honorable Juvenile Court erred in terminating the parental rights of Chester F. Cole when there was no finding as to the best interests of the children as required by Tenn. Code Ann. § 36-1-113(c).

Since this case was tried by a Trial Court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the Trial Court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. *See* Tenn. R. App. P. 13(d).

T.C.A. § 36-1-113(c) (2001) governs termination of parental rights and requires that such termination must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

---

4

We again assume the Court meant "sentenced."

(2) That termination of the parent's or guardian's rights is in the best interests of the child

The Trial Court terminated Mr. Cole's parental rights on grounds found in T.C.A. § 36-1-113(g)(5), which states that:

The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, which has been found under any prior order of a court or which is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102(b)(21)...

Mr. Cole's conviction for rape of the child, Dominique Lewis, as well as his own admission that he fathered the child she bore, provides more than clear and convincing evidence to terminate his parental rights on the above statutory ground. However, Mr. Cole does not challenge the statutory ground on which termination of his parental rights was based. Mr. Cole's appeal rests on his assertion that in determining the best interest of the children, the Trial Court did not find the evidence warranting termination to be clear and convincing.

In T.C.A. § 36-1-113(i), the legislature gives the trial court guidance in making the best interest of the child determination. This statute reads, in relevant part, as follows:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional

or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Notwithstanding the fact that the Trial Court did not employ the words "clear and convincing," upon our *de novo* review, we find the evidence is clear and convincing that termination of Mr. Cole's parental rights are in the children's best interest.

For the foregoing reasons, we affirm the judgment of the Trial Court, terminating the parental rights of Chester F. Cole to F. C., C. C., and S. C. Costs of this appeal are assessed to the Appellant, Chester F. Cole, and his surety.

---

HOUSTON M. GODDARD, PRESIDING JUDGE