

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

On Briefs September 19, 2003 Session

**STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v.
BERNADETTE BERNICE CLARK, ET AL.**

**A Direct Appeal from the Juvenile Court for Gibson County
No. JC-17,585 The Honorable Robert W. Newell, Judge**

No. W2003-00911-COA-R3-PT - Filed November 3, 2003

This is a termination of parental rights case. The mother appeals from the order of the Juvenile Court of Gibson County, terminating her parental rights. Specifically, the mother asserts that the grounds cited for termination are not supported by clear and convincing evidence in the record. 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

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Jason C. Scott, Trenton, For Appellant, Bernadette Bernice Clark

Paul G. Summers, Attorney General and Reporter; Pamela A. Hayden-Wood, Nashville, For Appellee, Tennessee Department of Children's Services

OPINION

On August 3, 2001, the State of Tennessee, Department of Children's Services ("DCS," or "Appellee") filed a Petition for Temporary Custody of J.M.J. (dob 10/12/90), seeking to remove J.M.J. from her mother, Bernadette Bernice Clark ("Ms. Clark," "Mother," or "Appellant"). The Petition alleged, in pertinent part, as follows:

...[J.M.J.] is a dependent and neglected child within the meaning of the law in that on or about April 27, 2001, the child and her mother, Bernadette Clark, spent the night with Kenny Williams, her mother's boyfriend. That night, Mr. Williams sexually abused [J.M.J.] by penetrating her vagina with his penis. Her mother was passed out due

to intoxication and did not respond to the child's pleas for help. She was in bed with them. Mr. Williams has been charged with Rape of a Child and Ms. Clark has been charged with child neglect.

When the Petition was filed, J.M.J. was about to be released from Timber Springs Adolescent Center, where she had been sent for evaluation during the DCS investigation. DCS' Petition was granted and a Protective Custody Order was entered by the Juvenile Court of Gibson County on August 3, 2001. The Protective Custody Order placed J.M.J. in the temporary care and custody of Lewis Jenkins, her paternal grandfather, and set a preliminary hearing for August 6, 2001. On August 6, 2001, an Amended Protective Custody Order was entered, placing J.M.J. in the temporary custody of DCS and setting a preliminary hearing for August 13, 2001. According to an unsigned Interim Order filed by DCS on August 10, 2001, the August 6, 2001 hearing was continued until August 13, 2001 to permit service on mother, Jeff Smith was appointed guardian ad litem, and J.M.J., having refused to go to the home of her paternal grandparents, remained at Timber Springs.

DCS filed its initial Permanency Plan on August 29, 2001. The Permanency Plan indicates that, at that time, J.M.J. was out of control, heavily medicated, and required level III placement. The Permanency Plan stated that J.M.J. had moved from Timber Springs to Youth Villages Dogwood Village on August 27, 2001. According to the plan, Ms. Clark admitted to drinking every day and blamed J.M.J.'s rape on Mr. Williams. The plan allowed supervised visitation and listed the following as actions to be taken by Ms. Clark:

Ms. Bernadette Clark needs to submit to an alcohol and drug assessment at Carey Counseling Center or Pathways and follow all of its recommendations. Ms. Clark needs to write a letter to [J.M.J.] telling her that the sexual abuse was not her fault but was Ms. Clark's and Mr. Williams's. Ms. Clark needs to take part in fully whatever reunification service is implemented in [this] case. She needs to visit [J.M.J.] regularly and not have any men around [J.M.J.] when she is drinking and let no men sleep in her house with [J.M.J.] there.

The plan listed alternative goals of returning home and relative placement. The plan stated that J.M.J. would live with her aunt, Helen Clark, if her mother was unable to comply with the Permanency Plan. Bernadette Clark signed the plan. Ms. Clark also signed and received a copy of her appeal rights and the criteria and procedures for terminating parental rights.

Based on evidence adduced at the August 13, 2001 hearing, the trial court issued an Interim Order on September 5, 2001. The trial court found probable cause to believe that J.M.J. was a dependent and neglected child, placed J.M.J. in temporary DCS custody pending final appeal, and

appointed counsel for Ms. Clark.¹ On September 18, 2001, the court approved the initial Permanency Plan.

On October 11, 2001, the foster care review board met and reviewed the Permanency Plan. The Periodic Review Summary of that date indicates that neither Ms. Clark nor Lewis Jenkins, Jr., J.M.J.'s father, participated in the review, although they were both notified. The board found that the need for foster care continued, that Ms. Clark had only completed some of the tasks required by the plan, and that her progress toward reducing the risks that necessitated foster care was "marginal." The board recommended a change in the Permanency Plan goal to relative placement only.

DCS' Quarterly Progress Report of November 8, 2001 included the change in goal to relative placement. The report indicated that J.M.J. continued to be medicated, and noted that she was living at Youth Villages. Concerning Ms. Clark, the report states that: "Mother stays with relatives as she is homeless," "Mother has not visited even though Youth Villages made arrangements for transportation and a hotel room," and "Mother needs to attend counseling, [and] get an A&D assessment...."

A hearing was held on September 18, 2001, with Ms. Clark, her attorney, and DCS in attendance. An Order was entered on December 21, 2001. The Order awarded temporary custody of J.M.J. to DCS effective August 13, 2001, permitted Ms. Clark supervised visitation, authorized DCS to modify visitation at its discretion based on progress toward reunification, approved and incorporates the Permanency Plan, and ordered that relative resources be investigated

Based upon evidence adduced at a hearing on December 18, 2001, the court entered an order on January 9, 2002, which ordered that J.M.J. remain in DCS custody and continued the case until further review on March 19, 2002.

DCS' Quarterly Progress Report of February 11, 2002 stated that J.M.J. remained at Youth Villages, was still having anger management and behavior problems, exhibited violent behavior, had been aggressive with youth and staff, and had had a serious incident report filed on February 10, 2002. The report indicated that J.M.J. needed to complete the level III program and step down to therapeutic foster care while her mother obtained the help listed in the Permanency Plan. The report describes J.M.J.'s relationship with her mother as "strained and without positive communication." The report indicated that Ms. Clark was considering termination of her parental rights but lists return to parent as the Permanency Plan goal.

The foster care review board met again to discuss the Permanency Plan on May 9, 2002. Ms. Clark was notified and attended this meeting. The board found that the need for foster care continued, that Ms. Clark had only completed some of the tasks required by the plan, and that her progress toward reducing the risks that necessitated foster care was "marginal." The board stated that Ms. Clark needed to obtain a permanent residence and to follow the Permanency Plan. The

¹ Based on an affidavit of indigency filed by Ms. Clark, the court appointed counsel for her in an order entered on September 21, 2001.

board indicated that the goal of returning J.M.J. home was not appropriate, and recommended a change of goal to relative placement.

DCS' May 9, 2002 Quarterly Progress Report added relative placement as a goal. Otherwise, the report was identical to the February 11, 2002 Quarterly Progress Report. A hearing was held on March 19, 2002. By order of June 5, 2002, the trial court ordered that J.M.J. remain in temporary custody of DCS, and ordered the J.M.J.'s therapist be present at the next hearing to report on J.M.J.'s status.

On June 14, 2002, the Permanency Plan was revised. The revised plan listed concurrent goals of adoption or relative placement. The revised plan indicated that Ms. Clark's failure to make significant progress in regaining custody of J.M.J. was the reason for the change in goal. The revised plan stated that Helen Clark, J.M.J.'s maternal aunt, was willing to provide a home and called for Helen Clark to maintain contact with J.M.J. through letters, phone calls, and visits. This revised plan was signed by J.M.J., Bernadette Clark and Helen Clark.

DCS' August 8, 2002 Quarterly Progress Report indicated that J.M.J. remained at Youth Villages, where she continued to have anger management and behavior problems, including trying to harm herself. The report stated that J.M.J. needed to complete the level III program and be stepped down, and that DCS was seeking placement with her aunt, Helen Clark.

On September 17, 2002, DCS filed its Petition to Terminate Parental Rights of Bernadette Bernice Clark and Peter Lewis Jenkins, Jr. The Petition reads, in relevant part, as follows:

2. Respondent, Peter Lewis Jenkins, Jr., has willfully abandoned this child in that Respondent has willfully failed to visit or support said child or to engage in more than token visitation or support for four (4) consecutive months immediately preceding the filing of this Petition.
3. Respondent, Bernadette Bernice Clark, has willfully abandoned this child in that Respondent has willfully failed to visit or support said child or to engage in more than token visitation or support for four (4) consecutive months immediately preceding the filing of this Petition.
4. Respondent, Bernadette Bernice Clark, has abandoned this child in that she is incarcerated at the time of the filing of this Petition or has been for all or part of the four (4) months immediately preceding the filing of this Petition and the parent has engaged in conduct prior to incarceration which exhibits a wanton disregard for the welfare of the child.

5. This child was found to be dependent and neglected by this Court and was placed in the custody of the Department of Children's Services; the Department made reasonable efforts to prevent removal or the child's situation prevented reasonable efforts from being made prior to removal; the Department has made reasonable efforts to assist the parents, Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, to establish a suitable home for the child for a period of four (4) months following the removal, but Respondents, Peter Lewis Jenkins, Jr., and Bernadette Bernice Clark, have made no reasonable efforts to provide a suitable home and has [sic] 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.

7. The child has been removed by order of this Court for a period of six (6) months; the conditions which led to her removal still persist; other conditions persist which in all probability would cause the child to be subjected to further abuse and neglect and which, therefore, prevent the child's return to the care of Respondents, Bernadette Bernice Clark or Peter Lewis Jenkins, Jr.; there is little likelihood that these conditions will be remedied at an early date so that this child can be returned to Respondents, Bernadette Bernice Clark or Peter Lewis Jenkins, Jr., in the near future; the continuation of the legal parent and child relationship greatly diminishes the child's chances of early integration into a stable and permanent home.

8. Despite frequent explanations of the statement of responsibilities set out in periodic foster care plans (permanency plans) prepared for the benefit of the child, [J.M.J.], the Respondent, Bernadette Bernice Clark, has failed to comply in a substantial manner with those reasonable responsibilities related to remedying the conditions which necessitate foster care placement.

9. Awarding legal and physical custody of the child to Respondents would pose a risk of substantial harm to the physical or psychological welfare of the child.

V.

It is in the best interest of [J.M.J.] and the public that this proceeding be brought, that all of the parental rights, of all the Respondents to this child be forever terminated, and that the complete custody, control and guardianship of [J.M.J.] be awarded to the State of Tennessee, Department of Children's Services, with the right to

place her for adoption and to consent to such adoption in loco parentis.

On September 24, 2002, the court entered an order approving the revised permanency plan and ordering that J.M.J. remain in the temporary custody of DCS pending the final hearing.

In its Notice of Action, on October 4, 2002, DCS advised that J.M.J.'s needs had been met at level III, that she had made "tremendous improvements" and no longer needed level III services, and that she would be discharged from Youth Villages on October 11, 2002. DCS' "Staffing Summary and Placement Justification Form" of October 11, 2002 indicated that J.M.J. had been at Youth Villages for over a year, that she had made tremendous progress in every area, that she had been compliant and cooperative in school and with the staff. In addition, the form stated that J.M.J. had been receiving passes every weekend to her new home with Alecia and Eric Taylor, that the Taylors had been cooperative with DCS, and recommended that J.M.J. go to live with the Taylors. The form was signed by the staffing participants, including Bernadette Clark.

Based on evidence adduced at a September 17, 2002 hearing, the court entered an Order on October 29, 2002, setting the case for hearing on December 3, 2002. This hearing was subsequently reset to January 21, 2003.

DCS' November 14, 2002 Quarterly Progress Report indicated that J.M.J. had been placed with relatives, Alecia and Eric Taylor, where she was doing well and exhibiting no behavioral problems. The foster care review board met again to discuss J.M.J.'s case on November 14, 2002. Ms. Clark did not attend this meeting. The board found that the need for foster care continued, that J.M.J.'s placement was appropriate, that the goal of adoption was appropriate, and recommended proceeding with adoption.

The hearing on DCS' Petition to Terminate Parental Rights took place on January 21 and 28, 2003, in the Juvenile Court of Gibson County, Tennessee.

Following this hearing, an "Order Terminating Parental Rights and Final Decree of Guardianship" (the "Final Order") was entered on March 7, 2003. The Final Order reads, in pertinent part, as follows:

This cause came to [be] heard January 21, 2003 and further heard on January 28, 2003, before the Honorable Robert Newell, Judge of the Juvenile Court of Gibson County, Tennessee, upon the sworn Petition To Terminate Parental Rights filed by the State of Tennessee, Department of Children's Services, with all parties properly before the Court on service of process. Present were representatives of the State of Tennessee, Department of Children's Services, Assistant General Counsel, Stephanie J. Hale, Bernadette Bernice Clark, her attorney, Jason Scott, and the Guardian ad Litem, Jeffrey A. Smith. The Court finding that Peter Lewis Jenkins, Jr. was

properly served by personal service, does now terminate parental rights by default as to him. Upon proof introduced at the hearing, statements of counsel, the stipulated report of the Guardian Ad Litem, Jeffrey A. Smith, and the entire record, the Court finds upon clear and convincing evidence that the Petition To Terminate Parental Rights filed by the State of Tennessee, Department of Children's Services, is well taken as to Respondents, Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, and should be sustained and relief granted thereunder for the causes therein stated:

1. Respondent Peter Lewis Jenkins, Jr. has willfully abandoned this child in that Peter Lewis Jenkins, Jr. has willfully failed to provide child support for the care of the child and Respondent Peter Lewis Jenkins, Jr. has willfully failed to visit or to engage in more than token visitation for four (4) consecutive months immediately preceding the filing of the Petition.

2. Respondent Bernadette Bernice Clark has willfully abandoned this child in that Bernadette Bernice Clark has willfully failed to provide child support for the care of the child and Respondent Bernadette Bernice Clark has willfully failed to visit or to engage in more than token visitation for four (4) consecutive months immediately preceding the filing of the Petition.

3. The child was found to be dependent [and] neglected by this Court and was placed in the custody of the Department of Children's Services; the Department made reasonable efforts to prevent removal or the child's situation prevented reasonable efforts from being made prior to removal; the Department has made reasonable efforts to assist the parents, Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, to establish a suitable home for the child for a period of four (4) months following removal, but Respondents, Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, have made no reasonable efforts to find a suitable home and has [sic] 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.

4. The child has been removed by order of this Court for a period of six (6) months; the conditions which led to her removal still persist; other conditions persist which in all probability would cause the child to be subjected to further abuse and neglect and which, therefore, prevent the child's return to the care of the Respondents,

Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark; there is little likelihood that these conditions will be remedied at an early date so that this child can be returned to Respondents, Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, in the near future; and the continuation of the legal parent and child relationship greatly diminishes the child's chances of early integration into a stable and permanent home.

5. Despite frequent explanations of the Statement of Responsibilities set out in the periodic foster care plans prepared for and signed by Respondent, Bernadette Bernice Clark, she has failed to comply in a substantial manner with those reasonable responsibilities related to remedying the conditions that necessitated foster care placement.

6. Respondent father, Peter Lewis Jenkins, Jr., has failed to manifest an ability and willingness to assume legal and physical custody of the child. The father has not sought a relationship with the child. Awarding legal and physical [custody] of the child to said Respondent Peter Lewis Jenkins, Jr. would pose a risk of substantial harm to the physical and psychological welfare of the child.

7. That, by clear and convincing evidence, it is in the best interest of the child, [J.M.J.], that the parental rights of Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark to the child be forever terminated and that the complete custody, control, and guardianship of the child be awarded to the State of Tennessee, Department of Children's Services, with the right to place the child for adoption and to consent to such adoption in loco parentis.

8. That the Department of Children's Services has exercised reasonable efforts to prevent removal and reunify the family.

9. That this Decree of Guardianship shall have the effect of terminating all the rights and obligations of the Respondents to the child and of the child to the Respondents arising from the parental relationship, and the Respondents are not hereafter entitled to notice of proceedings for the adoption of the child by another nor have any right to object to such adoption or otherwise to participate in such proceedings.

10. Awarding legal and physical custody to Respondents Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark would pose a risk of substantial harm to the child.

11. That the judgment by default shall enter as to the father, Peter Lewis Jenkins, Jr.

12. The Court further finds that there has been little cooperation by the parents in this cause.

13. The child has been in custody since August 13, 2001 and has continually been in the custody of the State of Tennessee, Department of Children's Services.

14. The parents have a substantial criminal record.

15. The transcript of the Findings of Fact and Conclusions of Law shall be incorporated by reference as if set forth herein verbatim.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. That this Decree of Guardianship shall have the effect of terminating all the rights and obligations of the Respondents to the child and of the child to the Respondents arising from the parental relationship, and the Respondents are not hereafter entitled to notice of proceedings for the adoption of the child by another nor have any right to object to such adoption or otherwise to participate in such proceedings.

2. That all parental rights of Peter Lewis Jenkins, Jr. and Bernadette Bernice Clark, to the child, [J.M.J.], are hereby forever terminated; that the complete custody, control, and guardianship of said child is hereby awarded to the State of Tennessee, Department of Children's Services, with the right to place the child for adoption and consent to such adoption in loco parentis.

Ms. Clark filed a Notice of Appeal on April 7, 2003.² She raises the following issue for review, as stated in her brief: Whether the trial court erred in finding that the State had met its burden of proof by clear and convincing evidence to terminate the parental rights of the mother?

² The father, Peter Lewis Jenkins, Jr., has not appealed and therefore the order of the juvenile court is final as to termination of his parental rights.

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)(Supp. 2003) 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
- (2) That termination of the parent's or guardian's rights is in the best interest of the child.

The trial court terminated Ms. Clark's parental rights on the following grounds, which are found in T.C.A. § 36-1-113(g)(5)(Supp. 2003), to wit:

- (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 safe 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 safely 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 safe, stable and permanent home.

T.C.A. §36-1-102(1)(A)(Supp. 2003) defines "Abandonment" as follows:

- (1)(A) "Abandonment" means, for purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, that:

(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 have willfully failed to 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...that the juvenile court found...that the department...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...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 no 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;

T.C.A. § 36-1-113 (c) allows for termination of parental rights if any one of the grounds outlined in T.C.A. § 36-1-113(g) are found by clear and convincing evidence, and termination is in the best interest of the child. We have reviewed the entire record in this case, and we find that the record is replete with evidence to support the trial court's finding that termination of Ms. Clark's parental rights is warranted on any and all of the grounds listed in the Final Order. We further find, in accordance with the trial court, that termination of Ms. Clark's parental rights is in the best interest of this child.

Abandonment Grounds

Pursuant to T.C.A. §36-1-102(1)(A)(i) abandonment occurs when a parent has willfully failed to visit or support the child 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. In the instant case, J.M.J. was removed from her mother's custody on August 13, 2001. DCS filed its Petition to Termination Parental Rights on September 17, 2001. Clarissa Pipkin, home county case manager for DCS, testified as follows concerning Ms. Clark's visitation "immediately preceding" the filing of the Petition to Terminate Parental Rights:

Q. So from August 29, '01 until June 14, '02 you [Ms. Pipkin] don't have a record of any visits during that period of time?

A. Not visits with mom and child. I have visits between mom and me but that is it as far as the child.

Q. So it is your understanding for 10 months she [Ms. Clark] didn't see her [J.M.J.] at all?

A. Out of the time frame that I have that would be correct. I am trying to count the months. I have the months listed here. I don't have them listed 1 through 12.

Q. From August '01 until June 2002, you don't show any visits?

A. No.

Although there is some evidence that Ms. Clark has visited approximately six (6) times *since* the filing of the Petition to Terminate, the statutory language of T.C.A. §36-1-102(1)(A)(i), see *supra*, clearly indicates that visitation, for purposes of determining whether a parent has abandoned the child, is measured for the period of four (4) months *immediately preceding* the filing of the Petition to Terminate. The only evidence adduced at the hearing in this case indicates that Ms. Clark failed to visit with J.M.J. for some ten (10) months prior to the September 17, 2001 filing. Grounds of abandonment are, therefore, met by clear and convincing evidence.

Compliance with the Permanency Plan

Under the Permanency Plan, Ms. Clark was required to submit to an alcohol and drug assessment, to write letters to J.M.J. telling her that the sexual abuse was not J.M.J.'s fault, and to take part fully in whatever reunification services were implemented in the case. There is dispute in the record as to whether Ms. Clark complied with the A&D assessment. Ms. Pipkin testified that referrals were made for Ms. Clark and that Ms. Clark was aware of these referrals and of her obligation to follow through. Witnesses for DCS testified that Ms. Clark never completed the required assessment; however, Ms. Clark testified that she did complete the assessment but was unaware that she was to provide documentation of that completion to DCS. No documentation was provided at the hearing.

Even if we allow that Ms. Clark completed her A&D assessment, we cannot overlook the fact that, by Ms. Clark's own admission, she failed to comply with perhaps the simplest task in the Permanency Plan—writing a letter to J.M.J.:

Q. Have you [Ms. Clark] talked with [J.M.J.]—the permanency plan says you are supposed to write a letter to [J.M.J.] talking about the sexual abuse?

A. Right.

Q. Have you done that?

A. No. I wrote a letter but I never mailed it off but I did go down there and talk to her.

Additionally, there is substantial evidence that, despite DCS' attempts to work with Ms. Clark on the process of reunification, those efforts were stymied due to Ms. Clark's failure to participate in any meaningful way.

Consequently, we find that there is clear and convincing evidence to support the trial court's finding that Ms. Clark has been in substantial noncompliance with the requirements of the Permanency Plan.

Conditions That Led to J.M.J.'s Removal

J.M.J. was removed from Ms. Clark's home on August 13, 2001 because of the sexual abuse perpetrated upon her by her mother's boyfriend while her mother was passed out from drinking. Concerning Ms. Clark's sobriety, Ms. Pipkin testified that she had seen Ms. Clark some two or three months prior to the hearing and, at that time, Ms. Clark appeared to be under the influence. Although Ms. Clark testified that she had not consumed any alcohol for five or six months prior to the hearing, when she was questioned about Ms. Pipkin's observation, Ms. Clark testified as follows:

Q. Ms. Pipkin testified that you had been drinking about—she saw you about 2 months ago and you appeared to be under the influence. That is not correct?

A. Just one beer.

By her own testimony, Ms. Clark has not completely stopped drinking.

Concerning her present living conditions, Ms. Clark testified, in pertinent part, as follows:

Q. Ms. Clark, where are you currently residing?

A. I live in a trailer park in Humboldt.

Q. In Humbolt?

A. Yeah.

Q. Who are you residing with?

A. A friend, guy man.

Q. I'm sorry.

A. My boyfriend.

Q. A boyfriend of yours?

A. Yes.

* * *

Q. How long have you been dating him?

A. About 6 months now.

Q. You have been residing in that same trailer for 6 months?

A. Yes.

The circumstances that existed at the time of J.M.J.'s removal from her mother's home have obviously not been remedied as Ms. Clark is still residing with a boyfriend. Although the current boyfriend is not Kenny Williams and, although there is no testimony that the current boyfriend will abuse J.M.J., the circumstances are, nonetheless, too similar to risk placing this child back with her mother. This is particularly true since the evidence indicates that Ms. Clark is still drinking to some extent. In addition, there is nothing in this record to indicate that these circumstances will be remedied at any time in the foreseeable future. Consequently, there is clear and convincing evidence in the record to support the trial court's finding that the circumstances that led to J.M.J.'s removal on August 13, 2001 have not and will not be remedied.

Best Interest of J.M.J.

Having found that all of the grounds for termination listed in the Final Order are well supported by clear and convincing evidence in this record, we now turn to the question of whether the evidence clearly and convincingly evinces termination to be in J.M.J.'s best interest.

The uncontested testimony is that J.M.J. is a special needs child. She has been diagnosed with major depressive disorder, opposition defiance disorder, and a learning disorder. She is

currently taking Clonidine for mood stabilization, Risperdal for psychosis, Topamax, an anti-convulsant, for mood disorder, Paxil, an anti-depressant, and DDADP for bed wetting. At the time of the hearing, J.M.J. was twelve (12) years old. Testimony in record indicates that J.M.J.'s condition is exacerbated by instability.

The fact that Ms. Clark is currently living with a boyfriend, the fact that she is, by her own admission, currently unemployed, and the fact that she is still drinking to some extent, do not bode well for a stable environment for J.M.J. At the time of the hearing, J.M.J. had been placed with relatives, Alecia and Eric Taylor, where she was doing well and exhibiting no behavioral problems. We find that the continuation of the parent and child relationship in this case would greatly diminish J.M.J.'s chances of early integration into a safe, stable and permanent home.

For the foregoing reasons, we find that there is clear and convincing evidence in the record to support the termination grounds cited by the trial court. Furthermore, the record adequately establishes that termination of parental rights is in the best interest of this child. We, therefore, affirm the Final Order of the juvenile court, terminating the parental rights of Bernadette Bernice Clark. Costs of this appeal are assessed to the Appellant, Bernadette Bernice Clark, and her surety.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.