

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 11, 2004 Session

IN RE: R.C.P.

Appeal from the Juvenile Court for Coffee County
No.313-02J Timothy R. Brock, Judge

No. M2003-01143-COA-R3-PT - **Filed July 13, 2004**

WILLIAM B. CAIN, J., concurring.

I concur in the judgment that clear and convincing evidence establishes abundant grounds for the termination of the parental rights of the mother in this case and further establishes that it is in the best interests of the child to terminate her parental rights.

I continue, however, to adhere to my view that a preponderance of the evidence standard on the one hand and a clear and convincing evidence standard on the other are completely incompatible with each other both at the trial level and at the appellate level. My views are exhaustively set forth in *Estate of Acuff v. O'Linger*, 56 S.W.3d 527 (Tenn.Ct.App. 2001) perm.app.denied (Oct. 1, 2001) and in *In re Z.J.S. and M.J.P.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854 (Tenn.Ct.App. June 3, 2003) (Cain, Judge, concurring) and in *State v. R.S. and K.S.*, No. M2002-00919-COA-R3-CV, 2003 WL 22098035 (Tenn.Ct.App. Sept.11,2003) (Cain, Judge, concurring), along with *In re: K.N.R., et al.*, No. M2003-01301-COA-R3-PT (Tenn.Ct.App. 2004); *see also Colorado v. New Mexico*, 467 U.S. 310, 104 S.Ct. 2433, 81 L.Ed.2d 247 (1984); *Taylor v. Commissioner of Mental Health*, 481 At.2d 139, 153-54 (Me. 1984); *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 737 P.2d 595, 604 (Or. 1987); *Beeler v. American Trust Co.*, 147 P.2d 583 (Ca. 1944), (Traynor, Justice, dissenting).

In any event, the evidence in this case is overwhelming and the clear and convincing evidence standard set forth in *Estate of Acuff v. O'Linger* is clearly met. I concur in the judgment.

WILLIAM B. CAIN, JUDGE