

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 6, 2005 Session

IN RE AUDREY S. & VICTORIA L.

**Appeal from the Juvenile Court for Davidson County
No. 9519-20684 & 9919-45809 Betty Adams Green, Judge**

No. M2004-02758-COA-R3-PT - Filed August 25, 2005

WILLIAM B. CAIN, J., concurring.

I adhere to my longstanding view that a “preponderance of the evidence” standard and a “clear and convincing evidence” standard are incompatible with each other and cannot be reconciled either in the trial court or in appellate courts. The effort to make these standards compatible, as asserted in *Ray v. Ray*, 83 S.W.2d 726 (Tenn.Ct.App.2001), and its progeny are in my view incorrect for reasons stated at length in *Estate of Acuff v. O’Linger*, 56 S.W.3d 527 (Tenn.Ct.App.2001) and *In re Z.J.S. and M.J.P.*, No. M2002-02235-COA-R3-JV, filed June 3, 2003 (Tenn.Ct.App.2003-Cain, concurring).

Regardless of this disagreement, the exhaustive and scholarly opinion authored by Judge Koch for the majority discloses a case that would withstand scrutiny under any definition of clear, cogent and convincing evidence. I therefore concur in the judgment.

WILLIAM B. CAIN, JUDGE