

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 1, 2006

**IN RE GIORGIANNA H., STUART H., SABRINA H., SAVANNAH H., VICTORIA H.,
BENJAMIN H., & SARAHANNA H.**

**Appeal from the Circuit Court for Perry County
No. 3358 Robert E. Lee Davies, Judge**

No. M2005-01697-COA-R3-PT - Filed March 21, 2006

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