

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 9, 2008

**STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v.  
JOHN WILLIAM COMMER WRIGHT**

**Direct Appeal from the Juvenile Court for Warren County  
No. 4209                      Larry G. Ross, Judge**

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**No. M2008-01607-COA-R3-PT - Filed February 6, 2009**

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This appeal involves the termination of parental rights. The juvenile court terminated Father's parental rights to his two children based on four statutory grounds: abandonment, noncompliance with a permanency plan, persistent conditions, and parental incompetence. The court also found that termination was in the best interest of both children. The court supported these legal conclusions with extensive factual findings. Because the trial court's decision is supported by clear and convincing evidence, we affirm.

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

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

Phillip Terry Clemons, McMinnville, TN, for Appellant, John William Commer Wright

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Preston Shipp, Assistant Attorney General, Nashville, TN, for Appellee

**OPINION**

Two children were born in Warren County, Tennessee to the marriage of Candace Diane Herring Wright and John Williams Commer Wright: D.N.W., born on July 17, 2000, and J.D.W., born October 29, 2001. The mother passed away on May 23, 2002.

On November 27, 2006, Jana Gribble, an employee of the Department of Children's Services ("DCS"), was assigned this case after she received a referral that D.N.W. and J.D.W. were being evicted from their home and that Mr. Wright was in jail. The children had been staying with Mr. Wright's girlfriend, Lori Stall. Based on the impending eviction and the fact that Mr. Wright was incarcerated for assault, Ms. Gribble filed a dependency and neglect petition on November 29, 2006.

Pursuant to a protective custody order entered on the same day, the two children were placed in the custody of DCS.

Cheryl McGuire, another DCS worker, prepared a permanency plan for Mr. Wright on December 12, 2006, and reviewed the plan with Mr. Wright at the Warren County jail. She explained his responsibilities under the permanency plan and the criteria for the termination of parental rights. The permanency plan required Mr. Wright to secure stable housing, complete anger management classes, submit to a parenting assessment, and demonstrate proper parenting techniques.

DCS case worker Jennifer Stephenson took over the case in January 2007. During the first four months that the children were in foster care—November 29, 2006 to March 28, 2007—Mr. Wright was in and out of jail for probation violations, domestic assault, and writing bad checks. Ms. Stephenson drafted a second permanency plan to address Mr. Wright's problems with drugs and alcohol. Under this second plan, Mr. Wright was required to complete drug and alcohol treatment. Ms. Stephenson also explained the requirements of the permanency plan and the criteria for termination of parental rights to Mr. Wright.

To help Mr. Wright comply with the conditions of the permanency plan, Ms. Stephenson arranged and paid for a clinical parenting assessment and an alcohol and drug assessment. She also funded anger management counseling and a psychiatric evaluation. Mr. Wright, however, missed nine out of twenty sessions at the rehabilitation center, failed several drug screens, and refused to submit to another. Accordingly, Ms. Stephenson informed Mr. Wright that he had not complied with the requirements of the permanency plan. Ms. Stephenson testified that she believed Mr. Wright's substance abuse and mental health problems had rendered him incapable of properly caring for his two children.

On December 17, 2007, DCS filed a petition to terminate the parental rights of Mr. Wright for both children. The trial took place before the Warren County Juvenile Court on May 8, June 5, and June 26, 2008. On July 14, 2008, the trial court entered a final order terminating Mr. Wright's parental rights accompanied by extensive findings of fact. To support the conclusion that Mr. Wright had abandoned the two children under Tenn. Code Ann. § 36-1-113(g)(1), the court found as follows:

10. The Juvenile Court found that the Department made reasonable efforts to prevent removal of the children or the circumstances of the children's situation prevented reasonable efforts from being made prior to the children's removal.
11. For a period of four months following removal, the Department has made reasonable efforts to assist the parent, Mr. Wright, to establish a suitable home for the children, but the parent has made no reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the children to such a degree that it appears unlikely that Mr. Wright will be able to provide a suitable home for the children at an early date.

12. The reasonable efforts the Department made in the first four months include providing urine and hair follicle drug screens, assisting him in setting up an Alcohol and Drug Assessment, assisting him in setting up an initial appointment with Cheer Mental Health Center, arranging and paying for a Clinical Parenting Assessment from Compass Care and transporting Mr. Wright to the appointments.

13. The parent's lack of reasonable efforts includes repeated incarcerations, continued abuse of illicit drugs and failure to cooperate with services. Mr. Wright was incarcerated on November 22, 2006, released on December 2, 2006, incarcerated on December 7, 2006, released on January 21, 2007, incarcerated on March 21, 2007 and released March 23, 2007. Mr. Wright missed nine out of twenty possible drug treatment sessions. He tested positive for cocaine and marijuana. His probation was violated due to his admission of using these drugs and not paying his probation fees. In addition to the use of illegal drugs, he wrote bad checks. He assaulted his grown daughter during the first four months the children were in foster care and was charged with domestic assault. He disrupted group treatments and was asked to get individual drug treatment and mental health treatment from Cheer Mental Health Center.

14. Mr. Wright was advised on four separate occasions that failure to make reasonable efforts to establish a suitable home for the children in the first four months the children were in custody was grounds for termination of parental rights.

Next, the trial court made findings demonstrating that Mr. Wright had not substantially complied with the provisions of the permanency plans under Tenn. Code Ann. § 36-1-113(g)(2):

19. The December 12, 2006 permanency plan required Mr. Wright to secure stable housing, maintain utilities, clothing and furniture, be able to meet the children's medical, dental and educational needs, successfully attend and complete anger management counseling, demonstrate an ability to control his anger, complete a parenting assessment and all recommendations from that assessment and demonstrate proper parenting techniques.

20. The revised permanency plan dated February 8, 2007, require Mr. Wright to do the same things as the first, and also submit to Alcohol and Drug assessment and follow all recommendations for that assessment, submit to random drug screens, have a drug free environment, stay away from anyone associated with drugs, follow all terms of probation, refrain from further criminal activity, not associate with individuals involved in criminal activities and pay all fines and fees.

21. The revised permanency plans dated June 7, 2007 and December 6, 2007 have sole goals of adoption due to Mr. Wright's failure to comply with the previous permanency plans and his inability to parent the children due to his mental illness and drug abuse.

22. The requirements in the permanency plans are all reasonably related to remedying the conditions that necessitate foster care.

24. Mr. Wright has not successfully completed alcohol and drug treatment, continues to abuse illicit drugs, and has not successfully addressed his mental health issues that prevent him from parenting his children.

25. DCS made reasonable efforts to assist Mr. Wright in complying with the requirements in the permanency plan by providing urine and hair follicle drug screens, assisting him in setting up an alcohol and drug assessment at Bradford, assisted him in setting up Alcohol and Drug treatment with Bradford, assisting him in setting up an initial appointment with Cheer Mental Health Center, arranging Alcohol and Drug treatment, mental health counseling, psychiatric evaluation and anger management counseling at Cheer, arranging and paying for a psychological evaluation by Scott Herman, arranging and paying for a Clinical Parenting Assessment from Compass Care, paying for transporting Mr. Wright to appointments, and transporting him to visitation.

26. Mr. Wright was advised on four separate occasions that failure to substantially comply with the permanency plans was grounds for termination of parental rights.

The trial court also found that Mr. Wright's parental rights should be terminated pursuant to Tenn. Code Ann. § 36-1-113(g)(3). The court supported its decision with several findings showing that the conditions leading to the children's removal still existed six months later:

27. The children have been removed from the custody of their parent for more than six months; the conditions which led to the removal of the children from the home of Mr. Wright still exist and other conditions exist which in all probability would cause the children to be subject to further abuse and/or neglect, making it unlikely that the children could be returned to Mr. Wright in the near future; there is little likelihood that these conditions will be remedied at an early date so that the children can be returned to Mr. Wright in the near future; the continuation of the parent or guardian and child relationship greatly diminishes the child's chance of an early integration into a stable and permanent home.

28. The conditions that led to the removal of the children from the home of Mr. Wright were Mr. Wright's incarceration, the children being left with inappropriate care givers, their having no home to live in and suitable relatives identified to care for them.

29. The conditions that prevent the children's return to the parent's home are Mr. Wright's continuing to have alcohol, drug, and mental health issues without successfully completing treatment, his lack of progress in his current treatment and his incompetence to parent his children. Mr. Wright appears to be unable to put his own needs aside to focus on the needs of his children. When he visits the children, he does not remain focused on the children and spends the majority of the visit trying to speak to the person supervising the visit rather than being attentive to his children. He must repeatedly be refocused on the children, but does not seem to be able to maintain that focus for more than ten minutes at a time. Mr. Wright tested positive

for cocaine on December 6, 2007 on a hair follicle drug screen arranged by DCS and was discharged from the McMinnville Pain Clinic on April 9, 2008 due to testing positive for cocaine on March 12, 2008. Mr. Wright had a drug problem when the children were removed and even after treatment, he continues to test positive for drugs.

Finally, the trial court found that Mr. Wright was incompetent to provide care for his two children. Accordingly, the court found that his parental rights should be terminated pursuant to Tenn. Code Ann. § 36-1-113(g)(8). Again, the court supported its conclusion with specific factual findings:

32. Mr. Wright is incompetent to adequately provide for the further care and supervision of the children because his mental condition is presently so impaired and is so likely to remain so that it would be unlikely that he will be able to assume or resume the care of and responsibility for the children in the near future.

33. The psychological evaluation by Scott Herman indicates mental illness that prevents Mr. Wright from being able to competently parent these children. Mr. Wright's mental health diagnosis heightens the court's concern for the children's safety.

Relatedly, the court found that Ms. Stephenson's testimony was very credible. Mr. Wright's testimony, on the other hand, was not credible at all.

After finding these four statutory grounds for termination of parental rights, the trial court found that termination was in the best interest of both children. Again, the trial court made factual findings that support its conclusion:

1. Mr. Wright has not made an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to be in the home of the parent.
2. Mr. Wright has failed to effect a lasting adjustment after reasonable efforts by social agencies for such duration of time that lasting adjustment does not reasonably appear possible.
3. Mr. Wright's use of alcohol or controlled substances renders him consistently unable to care for the children in a safe and stable manner.
4. Mr. Wright's mental and/or emotional status would be detrimental to the children and prevent him from effectively providing safe and stable care and supervision for the children.
5. The children need to be released from the stigma of being foster children.
6. The passage of time is different for children than it is for adults. These children have been in limbo for a year and a half. At their age they need a permanent home. Terminating parental rights so the children can be adopted is in the children's best interest.

Mr. Wright appeals and raises two issues, as stated in his brief, for review:

- 1) Whether clear and convincing evidence supports the trial court's decision to terminate Mr. Wright's parental rights on any of several statutory grounds.
- 2) Whether clear and convincing evidence supports the trial court's determination that termination of the parental rights was in the best interest of the children.

#### Standard of Review

Under both the United States and Tennessee Constitutions, parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Swanson*, 2 S.W.2d 3d 180, 187 (Tenn. 1999). This right, however, is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutory ground for termination exists. Tenn. Code Ann. § 36-1-113(c)(1). The petitioner, DCS, must prove by clear and convincing evidence that the statutory ground exists. *Id.* Although the trial court found four distinct grounds for termination, a single ground is sufficient. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to showing a statutory ground, the petitioner must also prove by clear and convincing evidence that termination is in the best interest of the child. A court may terminate a person's parental rights only after finding that both prongs—statutory ground and best interest of the child—have been proven. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). When issuing its final order in a termination case, the trial court must make written findings of fact and conclusions of law. Tenn. Code Ann. § 36-1-113(k).

The heightened burden of proof required by Tenn. Code Ann. § 36-1-113(c)(1) requires us to adapt Tenn. R. App. P. 13(d)'s customary standard of review for cases of this sort. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). First, we must review the trial court's specific findings of fact *de novo* in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court's specific factual findings will be presumed to be correct unless the evidence preponderates otherwise. Second, we must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights. *Jones v. Garrett*, 92 S.W.3d at 838; *In re Valentine*, 79 S.W.3d at 548-49. The meaning of “clear and convincing evidence” is well established; the evidence must eliminate any “serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re Valentine*, 79 S.W.3d at 546 (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)).

#### Law and Analysis

##### A. Statutory Grounds for Termination of Parental Rights

###### 1. Abandonment

Termination of parental rights on the ground of abandonment is authorized by Tenn. Code Ann. § 36-1-113(g)(1). In this case, the trial court found abandonment under the following definition:

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 or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency 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 or agency 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[.]

Tenn. Code Ann. § 36-1-102(1)(A)(ii).

The trial court found that, despite the reasonable efforts of DCS, Mr. Wright failed to make reasonable efforts to establish a suitable home for his children. Specifically, Mr. Wright was incarcerated for much of the children's first four months in foster care. Mr. Wright was also a regular abuser of both drugs and alcohol at this time. Mr. Wright did, in fact, find a proper home in January 2008. This, however, was after the termination petition had been filed.

During this time period, the DCS made regular and reasonable efforts to assist Mr. Wright, Ms. Stephenson, and other DCS workers, assisted Mr. Wright in finding a drug and alcohol treatment program, and in finding parenting classes. Mr. Wright, however, consistently rebuffed the efforts of DCS by not attending treatment and continuing to use illegal drugs.

Accordingly, we find that clear and convincing evidence supports the trial court's finding that Mr. Wright's parental rights should be terminated pursuant to Tenn. Code Ann. § 36-1-113(g)(1).

## 2. Substantial Noncompliance with the Permanency Plan

We next examine the trial court's conclusion that Mr. Wright did not substantially comply with the permanency plans prepared by DCS. Parental rights may be terminated under the statute for this reason:

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.

Tenn. Code Ann. § 36-1-113(g)(2). The phrase “substantial noncompliance” is further explained by statute:

Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights, and notwithstanding the failure of the parent to sign or to agree to such statement if the court finds the parent was informed of its contents, and that the requirements of the statement are reasonable and are related to remedying the conditions that necessitate foster care placement.

Tenn. Code Ann. § 37-2-403(a)(2)(C). When making a determination under Tenn. Code Ann. § 36-1-113(g)(2), the trial court must also make a finding that the requirements of the permanency plan are “reasonable and are related to remedying the conditions that necessitate foster care placement.” Tenn. Code Ann. § 37-2-403(a)(2)(C); see *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002).

In the present case, the relevant part of the permanency plan was the requirement that Mr. Wright undergo treatment for drug abuse. The trial court found, and we agree, that this requirement was both “reasonable and ... related to remedying the conditions that necessitate foster care placement.” Tenn. Code Ann. § 37-2-403(a)(2)(C). Mr. Wright’s drug abuse led to incarceration, and according to Ms. Stephenson, hindered his ability to care for his two children. Accordingly, we agree with the trial court’s finding that the terms of the permanency plan were reasonable.

Next, the trial court found that Mr. Wright did not comply with the permanency plan. In January 2007, Mr. Wright tested positive for cocaine and benzodiazepine, and in January 2008, Mr. Wright again tested positive for cocaine. In the intervening months, Mr. Wright missed nine out of twenty rehabilitation therapy sessions at Bradford Health Services. During this time, he often refused to submit to drug screens, and when he consented, he failed. In short, by failing to complete substance abuse treatment or otherwise deal with his drug abuse, Mr. Wright failed to comply with the single most important requirement of the permanency plan. Accordingly, we find that the trial court properly terminated his parental rights on this basis.

### 3. Failure to Remedy Persistent Conditions

The trial court also terminated Mr. Wright’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3). The statute provides for termination when:

(3) 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:



- (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
- (B) 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
- (C) 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[.]

Tenn. Code Ann. § 36-1-113(g)(3). In order to terminate parental rights on this ground, DCS must present clear and convincing evidence showing that each of these factors exists. *In re Valentine*, 79 S.W.3d at 550. Additionally, this ground for termination applies “where the prior court order removing the child from the parent’s home was based on a judicial finding of dependency, neglect, or abuse.” *In re Audrey S.*, 182 S.W.3d 838, 874 (Tenn. Ct. App. 2005).

The prerequisite for considering the factors—removal for a period of six months and a finding of dependency and neglect—is not disputed. Mr. Wright, in his brief, does not specifically address the trial court’s findings on this ground for termination. Accordingly, we are left to assume that he wishes to challenge the sufficiency of the evidence on this issue.

Turning to the first factor, the original conditions leading to the children’s removal from the home were Mr. Wright’s incarceration and his inability to provide a suitable home. By the time of trial, Mr. Wright was on probation and had secured stable housing. The statute, however, does not limit the trial court’s examination strictly to those conditions that led to removal. The trial court may also consider “other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect....” Tenn. Code Ann. § 36-1-113(g)(3)(A). For Mr. Wright and the two children, the condition is Mr. Wright’s drug abuse. Additionally, DCS presented evidence showing that Mr. Wright likely suffers from an anti-social personality disorder that severely limits his ability to effectively parent his children. Accordingly, we find that the evidence supports the trial court’s findings regarding this factor.

We also find no evidence indicating that these conditions will be remedied at an early date. John Crody, the mental health counselor who worked with Mr. Wright, testified that Mr. Wright’s anti-social behavior is difficult to treat and a substantial barrier to learning parenting skills. Because Mr. Wright has refused to complete alcohol and drug treatment, the chances that the conditions will be remedied are even slimmer. Therefore, we find that the trial court’s findings on this factor are also supported by the evidence.

Finally, the third factor requires us to examine whether “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.” Tenn. Code Ann. § 36-1-113(g)(3)(C). Although the trial court’s

findings on this factor lacks specificity, we find ample evidence in the record to support its ultimate decision. Gretchen Angus, a guidance counselor for the children, testified that the children had shown significant improvement since being placed with their foster parents. Furthermore, Ms. Angus expressed concern that the children would be at-risk if returned to the care of Mr. Wright. In light of the children's improvement and Mr. Wright's recurring issues, we find that the evidence clearly supports the trial court's finding on this factor.

Because clear and convincing evidence supports the trial court's findings on all three statutory factors, we affirm the trial court's decision to terminate Mr. Wright's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

#### 4. Parental Incompetence

Finally, we address the trial court's finding that Mr. Wright's parental rights should be terminated because of his incompetence to provide adequate care and supervision for his children. Under the statute, the court may terminate parental rights on this ground if it determines based on clear and convincing evidence that:

The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future[.]

Tenn. Code Ann. § 36-1-113(g)(8)(B)(i). Under this statutory ground, the party seeking termination does not need to prove willfulness or that reasonable efforts were made. Tenn. Code Ann. § 36-1-113(g)(8)(C); *In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at \*6 n.20 (Tenn. Ct. App. Mar. 9, 2004).

Upon examining the record, we find that the evidence established that Mr. Wright exhibited depression, neurotic behavior, poor interpersonal skills, a history of anti-social attitudes and behaviors, and little potential for personal change. The anti-social personality disorder affected Mr. Wright's ability to process events and caused him to feel little remorse, empathy, or regret. The disorder manifested itself in criminal conduct and made him more prone to violence in highly stressful situations. After examining Mr. Wright, Mr. Crody testified that Mr. Wright scored low on each of the five main constructs—child development, empathy, corporal punishment, power and independence, and role reversal—during the clinical parenting assessment. These deficiencies, Mr. Crody testified, indicated that Mr. Wright could not presently provide adequate care for his children. Jeffrey Herman, another psychological counselor for Mr. Wright, agreed with Mr. Crody and testified that Mr. Wright was unlikely to ever modify his behavior.

On appeal, Mr. Wright first argues that the proposed treatment for his illness—behavior modification therapy—was not offered by DCS. However, as mentioned above, DCS is not required

to make reasonable efforts to cure parental incompetence when seeking termination under this particular statutory ground. *In re C.M.M.*, 2004 WL 438326, at \*6 n.20. Accordingly, DCS's failure to provide this therapy does not weigh against the trial court's finding of incompetence. Mr. Wright also argues that the psychological test administered by Mr. Crody was flawed. Mr. Wright, however, presents no evidence in his brief and points to no evidence in the record to support his assertion. Accordingly, we find that the evidence supports the trial court's conclusion that the termination of parental rights is warranted under Tenn. Code Ann. § 36-1-113(g)(8).

## B. Best Interest of the Child

After finding grounds for termination, the trial court must then find by clear and convincing evidence that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(2). When making this determination, the trial court must consider a non-exclusive set of factors:

- (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.

Tenn. Code Ann. § 36-1-113(I).

While the trial court must find a statutory ground for terminating a parent's parental rights, such a finding, standing alone, is insufficient. In the second phase, the focus of the trial court shifts from the parent to the child. *White v. Moody*, 171 S.W.3d 187, 193 (Tenn. Ct. App. 2004) ("Tennessee's termination of parental rights statutes recognize the possibility that terminating an unfit parent's parental rights is not always in the child's best interest."). Ascertaining a child's best interest is a "fact-intensive inquiry, requiring the courts to weigh the evidence regarding the statutory factors, as well as any other relevant factors, to determine whether irrevocably severing the relationship between the parent and the child is in the child's best interest[]." *Id.* at 193-94.

Although the evidence relevant to grounds naturally overlaps with the evidence relevant to best interest, courts must recognize the difference between the two stages. One important distinction is that grounds are generally established on the basis of the parent's past actions. *In re D.P.M., S.H., & Y.M.P.*, No. M2005-02183-COA-R3-PT, 2006 WL 2589938, at \*12 (Tenn. Ct. App. Sept. 8, 2006). Best interest, by its nature, must focus on the current situation and, to some extent, is based on a prediction of future events. *Id.*

In this case, the trial court's factual findings support its conclusion that termination is in the best interest of both children. The trial court found that Mr. Wright had not made an adjustment of circumstance, conduct, or conditions as to make it safe and in the children's best interest to be returned to him. Tenn. Code Ann. § 36-1-113(i)(1). Specifically, the trial court focused on Mr. Wright's continued abuse of drugs and alcohol to conclude that the home environment was not safe for the children. *See* Tenn. Code Ann. § 36-1-113(i)(7).

Furthermore, the trial court found that both children needed a permanent home after spending a year and a half in foster care. The children had demonstrated great improvement since being placed in foster care. The DCS case worker, Ms. Stephenson, testified that the children would be at risk for more physical and emotional neglect and might lose ground in their emotional development if returned to Mr. Wright. Again, the trial court found Ms. Stephenson's testimony to be highly credible, and we find nothing in the record to counter that finding.

Accordingly, we affirm the trial court's finding that clear and convincing evidence exists showing that the termination of Mr. Wright's parental rights is in the best interest of both D.N.W. and J.D.W.

The decision of the trial court is affirmed. The costs of this appeal are taxed to Appellant, John Williams Commer Wright, and his surety, for which execution may issue if necessary.

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J. STEVEN STAFFORD, J.