

**IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE**

IN THE MATTER OF:  
C.A.T., JR. AND K.P.T.  
(Children under the age of 18 years)

)  
)  
)  
) Davidson Juvenile Nos.  
) 09-45-58 and 09-45-73  
)  
) Appeal No.  
) 01-A-01-9510-JV-00474  
)  
)  
)  
)

**FILED**  
  
May 17, 1996  
  
Cecil W. Crowson  
Appellate Court Clerk

APPEAL FROM THE JUVENILE COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

THE HONORABLE ANDREW J. SHOOKHOFF, JUDGE

For the Plaintiff/Appellee:

Charles W. Burson  
Attorney General and Reporter

Michelle K. Hohnke  
Assistant Attorney General

For the Defendant/Appellant:

J. Michael O'Neil  
Charles A. Taylor, Sr.  
Nashville, Tennessee

**AFFIRMED AND REMANDED**

WILLIAM C. KOCH, JR., JUDGE

## OPINION

This appeal involves the termination of a father's parental rights regarding two children who were brought to Tennessee by their mother while their father remained in California. The Davidson County Juvenile Court removed the children from their mother's custody in response to an emergency petition filed by the Department of Human Services. Approximately one year later, the juvenile court terminated the father's parental rights because he had not satisfactorily remedied the continuing threat of harm to the children and because he had not complied with the conditions of the children's foster care plan. The father takes issue on this appeal with the evidentiary foundation of the juvenile court's decision and also asserts that the juvenile court infringed on his due process rights by requiring him to demonstrate that he was a fit parent. We have determined that the juvenile court applied the proper evidentiary standard and that the evidence supports the juvenile court's decision. Accordingly, we affirm the judgment.

### I.

C.A.T., Sr. and his wife, E.G.T., lived in California with their two sons. C.A.T., Jr. was born in 1986 with Down's Syndrome, and K.P.T. was born in 1989. In 1990, C.A.T., Sr. introduced E.G.T. to methamphetamines, and the couple soon became drug abusers. C.A.T., Sr. lost the welding job he had held for nine years, and E.G.T. began to disappear for several days at a time without telling her family where she was going. C.A.T., Sr. and E.G.T. separated toward the end of 1993, and E.G.T. kept custody of the children.

C.A.T., Sr. had few dealings with his wife and children after the separation. He lived with a nephew and then in a trailer on a friend's property. Instead of seeking work, he supported himself by holding yard sales and other similar activities. C.A.T., Sr. never came forward to take responsibility for his children during their mother's many unexplained absences.

E.G.T. moved to Nashville in December 1993 with T.P., one of the persons who had been supplying her and C.A.T., Sr. with drugs. She did not tell anyone where she was going, and she left the children with one of her mother's friends. The friend alerted the California authorities to E.G.T.'s disappearance, and in January 1994 the authorities placed the children with their maternal aunt. E.G.T. returned to California to retrieve her children in February 1994, and one month later she and the children moved back to Tennessee. C.A.T., Sr. was apparently aware of his wife's actions but did not intercede to prevent her from taking the children to live with T.P. in Nashville. The California authorities suspended their investigation of C.A.T., Sr. and E.G.T. after learning that the children were no longer in California.

The Tennessee Department of Human Services received word in late May 1994 that C.A.T., Jr. and K.P.T. were unsupervised and that their home environment was unsafe. A later inspection of the home uncovered loaded guns, large knives, and drug paraphernalia within easy reach of the children. K.P.T. told the case worker that T.P. abused both of them, but the case worker could not question C.A.T., Jr. because he was completely out of control. The department also discovered that neither child was enrolled in school. On June 1, 1994, the Davidson County Juvenile Court temporarily placed the children in the department's custody. E.G.T. did not identify C.A.T., Sr. as the children's father during this proceeding and did not inform the juvenile court that he might be available as a possible custodian for the children.

E.G.T. returned to California soon after the department took custody of the children. She and C.A.T., Sr. talked with the children by telephone in August 1994. This telephone call was C.A.T., Sr.'s first contact with his children since the separation in 1993. E.G.T. eventually returned to Nashville and told the department that C.A.T., Sr. was the children's father. The department contacted C.A.T., Sr. and eventually worked out a foster care plan with him over the telephone. The goal of the plan was to reunite C.A.T., Sr. with his children. The juvenile court approved the plan on November 18, 1994, nearly one year after C.A.T., Sr. left his wife and children.

The foster care plan required C.A.T., Sr. to (1) submit to random drug testing, (2) obtain a full-time job, (3) make arrangements for stable housing, (4) pay \$25.00 per week in child support, (5) attend parenting classes, (6) participate in a Downs Syndrome support group, (7) write weekly letters to his children, and (8) find an after-school program for his children once they were returned to his care. C.A.T., Sr. made no efforts to comply with the plan until the department filed a petition to terminate his parental rights on March 10, 1995.

C.A.T., Sr. moved to Tennessee in April 1995 and found employment as a temporary worker. He rented a one-bedroom apartment on the eve of the hearing on the termination petition but took no steps to satisfy any of the foster care plan's other requirements. He did not attempt to interact with his children except for writing them one letter; he refused to submit to drug screening; he declined to pay child support; he did not attend parenting classes or a Downs Syndrome support group; and he did not make arrangements for his children's after-school care. The juvenile court conducted a hearing on June 29, 1995 and filed an order on July 6, 1995 terminating C.A.T., Sr.'s parental rights with regard to his two sons.

## II.

Parents have a fundamental right to the custody and companionship of their children. *Nash-Putnam v. McCloud*, \_\_\_ S.W.2d \_\_\_, \_\_\_ (Tenn. 1996);<sup>1</sup> *In re Adoption of Female Child (Bond v. McKenzie)*, 896 S.W.2d 546, 547 (Tenn. 1995); *Nale v. Robertson*, 871 S.W.2d 674, 678 (Tenn. 1994). Accordingly, Tenn. Const. art. I, § 8 and U.S. Const. amend. XIV afford parents faced with the possibility of losing their children with important due process rights. Specifically, these parents are entitled to a hearing on adequate notice, *Stanley v. Illinois*, 405 U.S. 645, 649, 92 S. Ct. 1208, 1211 (1972)<sup>2</sup>, and legal representation when the circumstances require it. *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 31-

---

<sup>1</sup>*Nash-Putnam v. McCloud*, App. No. 01-S-01-9504-CV-00047, slip op. at 13 (Tenn. April 22, 1996) (Opinion designated "For Publication").

<sup>2</sup>*See also* Tenn. R. Juv. P. 39(f)(1).

32, 101 S. Ct. 2153, 2162 (1981); *State ex rel. T.H. v. Min*, 802 S.W.2d 625, 626 (Tenn. Ct. App. 1990).<sup>3</sup>

The state's interest in protecting children must be tempered by a parent's constitutionally protected privacy interests in raising his or her children free from unwarranted governmental interference. Thus, a parent's rights may be terminated only when the continuation of the relationship between the parent and the child poses a substantial threat of harm to the child. *Petrosky v. Keene*, 898 S.W.2d 726, 728 (Tenn. 1995); *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). In order to warrant termination of their rights, a parent's conduct must be of the sort proscribed by Tenn. Code Ann. § 37-1-147 (1991),<sup>4</sup> *Tennessee Dep't of Human Servs. v. Riley*, 689 S.W.2d 164, 165 (Tenn. Ct. App. 1984), or must constitute a failure to comply substantially with their obligations under an approved foster care plan. Tenn. Code Ann. § 37-2-403(a)(2)(1991); *State v. Himes*, App. No. 88-54-II, slip op. at 8-9 (Tenn. Ct. App. July 22, 1988), *perm. app. denied* (Tenn. Oct. 17, 1988).

Because of the importance of the interests at stake in a termination proceeding, due process also requires the state to support its petition by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 747-48, 102 S. Ct. 1388, 1391-92 (1982); *State v. Smith*, 785 S.W.2d 336, 339 (Tenn. 1990). This heightened standard instructs the fact-finder concerning the degree of confidence that it must have in its conclusions and requires that there be no serious doubt concerning the correctness of the conclusions to be drawn from the evidence. *O'Daniel v. Messier*, 905 S.W.2d at 187-88.

Appellate courts review lower court decisions in termination cases using the standard of review in Tenn. R. App. P. 13(d). *Tennessee Dep't of Human Servs. v. Riley*, 689 S.W.2d at 170. Thus, in the absence of a transcript of the

---

<sup>3</sup>See also Tenn. R. Juv. P. 39(f)(2).

<sup>4</sup>The termination statutes applicable to this case are the ones that were in existence prior to the 1995 enactment of the comprehensive amendments to the statutes governing the termination of parental rights. See Act of May 26, 1995, ch. 532, 1995 Tenn. Pub. Acts \_\_\_\_\_. These provisions became effective on January 1, 1996, after the proceedings in this case.

proceedings or a statement of the evidence, we must presume that the admissible facts support the juvenile court's decision. *See State v. Harris*, App. No. 01-A-01-9203-CV-00109, slip op. at 5 (Tenn. Ct. App. Oct. 7, 1992), *perm. app. denied* (Tenn. Dec. 21, 1992); *see also Cooper v. Rosson*, 509 S.W.2d 836, 837 (Tenn. 1974) (evidence conclusively presumed to support the judgment in the absence of a transcript); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 653 (Tenn. Ct. App. 1988) (an appellate court presumes that sufficient evidence existed to support the judgment in the absence of a transcript).<sup>5</sup> Thus, in the absence of a transcript or a statement of the evidence we must presume that the proof provided clear and convincing evidence to substantiate the juvenile court's decision.

### III.

The juvenile court relied upon both Tenn. Code Ann. § 37-1-147 and Tenn. Code Ann. § 37-2-403(a)(2) (1991) to terminate C.A.T., Sr.'s parental rights. Accordingly, we will take up each statutory ground in turn.

#### A.

Tenn. Code Ann. § 37-1-147(d)(1) permits the termination of parental rights if the child has been removed from a parent's care for over one year and (A) if the conditions leading to the child's removal continue to pose a substantial risk of further harm or neglect, (B) if little likelihood exists that these conditions will be remedied at an early date so that the parent and the child can be reunited in the near future, and (C) if the continuation of the relationship between the parent and the child greatly diminishes the child's chances of early integration into a stable and permanent home. Even when all these conditions are satisfied, Tenn. Code

---

<sup>5</sup>Like C.A.T., Sr., many of the parents seeking appellate review of decisions in termination of parental rights cases lack the financial resources to pay for a verbatim transcript of the juvenile court proceedings. Likewise, a statement of the evidence is rarely provided in cases of this sort. The absence of some evidentiary record hampers our ability to determine whether the record contains clear and convincing evidence to support the juvenile court's decision. We need not decide whether the absence of a transcript, statement of the evidence, or other record of the juvenile court proceeding is of constitutional significance because C.A.T., Sr. has not raised this as an issue on this appeal. *See State v. Ogle*, 617 S.W.2d 652, 653 (Tenn. Ct. App. 1980) (this court ordered the State to provide a transcript to an indigent parent).

Ann. § 37-1-147(d)(1) requires the juvenile court to find that terminating the parental rights is in the child's best interests.

Tenn. Code Ann. § 37-1-147(f) requires juvenile courts to file written findings of fact to substantiate their decisions in termination cases. These findings may be incorporated into a memorandum opinion or order and need not track the words of the statute exactly. While it is better practice to couch findings of fact and conclusions of law in the terms used in the statute, an order will be deemed to comply with Tenn. Code Ann. § 37-1-147(f) if it can be reasonably inferred that the decision was based on the statutory requirements. Although portions of the juvenile court's order in this case did not track the language of Tenn. Code Ann. § 37-1-147(d)(1), the court's adherence to the requirements of the statute can easily be inferred from its detailed memorandum opinion.

C.A.T., Sr. has not adequately addressed the conditions that threatened his children with harm. His abuse of methamphetamines has cost him his marriage and his job. He has refused to submit to drug testing, and thus the issue of his own drug abuse remains unresolved. He has also failed to protect his children from abuse by T.P., his wife's boyfriend, whom he knows to be violent and involved in the sale of illegal drugs. In addition, C.A.T., Sr. has made little effort to interact with his children since his separation from E.G.T. in 1993. He never sought custody during E.G.T.'s unexplained disappearances. Between the time of the separation and the juvenile court hearing, he contacted the children only once by letter and twice by phone. He has chosen to remain largely oblivious to the poor treatment his children were receiving.

C.A.T., Sr.'s efforts to alter his lifestyle after moving to Tennessee do not go far enough towards changing the conditions posing a threat of harm to his children. The facts that he found some temporary employment and that he rented an apartment on the eve of the hearing are significant. But even taking these efforts into consideration, the record does not demonstrate that he will be able to assume the responsibility of caring for his children in the near future. His skills as a parent remain questionable, particularly with regard to the poor socialization

of his children. He has not availed himself of the assistance made available to him through various social service agencies that will assist him in addressing the special needs of his children. These facts suggest that he has not made a commitment to attending to the well-being of his children. Thus, there is clear and convincing evidence supporting the termination of C.A.T., Sr.'s parental rights under Tenn. Code Ann. §37-1-147(d)(1)(A) and (B).

Because C.A.T., Sr. will not be able to care for his children in the near future and because foster care does not provide a stable environment for extended periods of time, adoption may be the children's only chance to become part of a stable family. Thus, continuing the parental relationship between C.A.T., Sr. and his children will prevent the children from being integrated into a stable and permanent home. The fact that younger children stand a better chance of adoption suggests that C.A.T., Sr.'s parental rights should be terminated now. Thus, clear and convincing evidence also supports termination under Tenn. Code Ann. §37-1-147(d)(1)(C).

The children were ill-behaved when they were first placed in foster care. Both children performed poorly in school, and they fought with each other, destroyed toys and household items, and often used profane language. C.A.T., Jr. also displayed inappropriate sexual behavior and attempted to escape from his foster home. After more than a year in foster care, the children's emotional stability has increased. They are progressing well in school, and their behavior and self-control have significantly improved. C.A.T., Jr.'s special needs, caused by his Downs Syndrome, are being addressed, and he is now better able to function as a member of the community. The improvement in the children's behavior while in foster care demonstrates that terminating C.A.T., Sr.'s parental rights is in the best interests of his children.

C.A.T., Sr. has been either unwilling or unable to care for his children in the past, and the record supports the juvenile court's conclusions that he has not placed his children's welfare ahead of his own, that he is not presently able to



assume these responsibilities, and that he will not be able to assume these responsibilities any time in the near future. Accordingly, we find that there is clear and convincing evidence supporting the juvenile court's conclusion that terminating C.A.T., Sr.'s parental rights with regard to C.A.T., Jr. and K.P.T. is in the children's best interests.

## **B.**

Tenn. Code Ann. § 37-2-403(a)(2) also empowers a juvenile court to terminate parental rights for "substantial noncompliance" with the statement of responsibilities in a foster care plan. In order to rely on this statute to terminate parental rights, the department must demonstrate that the foster care plan was reasonable and that the plan was designed to remedy the problems that had caused the children to be removed from the home in the first place. The department must also demonstrate that the parent was aware of the plan's requirements and either that the parent agreed to the plan or that the plan was approved by a court. Proceeding under this section does not infringe upon a parent's constitutional rights because the department must substantiate its case by clear and convincing evidence.

The department and C.A.T., Sr. developed a foster care plan over the telephone in October 1994 while C.A.T., Sr. was still in California. The department contacted C.A.T., Sr. in November 1994 once the plan was in place to make sure that he was aware of its requirements. C.A.T., Sr. acknowledged that he understood the plan's requirements and that he must comply with the plan in order to receive custody of his children.

Each of the plan's eight elements were designed to improve C.A.T., Sr.'s parenting skills and his relationship with his sons. They were directed toward the problems that had required the department to place the children in foster care in 1994. While C.A.T., Sr. had made some effort to comply with parts of the plan on the eve of the termination hearing, his efforts were too little and too late. By the time of the June 1995 hearing, C.A.T., Sr. had not agreed to submit to random

drug testing; he had not supported his children financially; he had not enrolled in parenting classes or in a Downs Syndrome support group; he had not maintained regular contact with this children; and he had not made arrangements for their after-school care. C.A.T., Sr.'s conduct provides clear and convincing evidence that he did not comply substantially with his children's foster care plan and that his children's interests would be served best by terminating his parental rights.

#### IV.

We find that the juvenile court proceedings satisfied the state and federal constitutional fair hearing requirements and complied with the state statutes designed to protect C.A.T., Sr.'s rights with regard to his children. The record contains clear and convincing evidence supporting the juvenile court's decision to terminate C.A.T., Sr.'s parental rights in accordance with Tenn. Code Ann. §§ 37-1-147(d)(1) and 37-2-403(a)(2). Accordingly, we affirm the judgment and remand the case to the juvenile court for whatever other proceedings may be required. The costs of this appeal are taxed to the Tennessee Department of Human Services.

---

WILLIAM C. KOCH, JR., JUDGE

CONCUR:

---

HENRY F. TODD, P.J., M.S.

---

SAMUEL L. LEWIS, JUDGE