

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

IN THE MATTER OF:
JEREMY D. AND NATHAN D.,
(Children under the age of 18 years)

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)
) Davidson Juvenile Nos.
) 08-09-41 and 08-36-93
)
) Appeal No.
) 01-A-01-9510-JV-00479
)
)

FILED

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Cecil W. Crowson
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APPEAL FROM THE JUVENILE COURT FOR DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

THE HONORABLE ANDREW J. SHOOKHOFF, JUDGE

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AFFIRMED AND REMANDED

WILLIAM C. KOCH, JR., JUDGE

OPINION

This appeal involves the termination of a mother's parental rights to her two youngest sons. The Tennessee Department of Human Services filed a petition in the Davidson County Juvenile Court seeking to terminate the mother's parental rights after repeated efforts to help the mother control her addiction to chemical inhalants. Following a bench trial, the juvenile court terminated the mother's parental rights and awarded the department permanent custody of the children. The mother asserts on this appeal that the juvenile court's findings of fact were inadequate, that the department did not prove that it made reasonable efforts to reunite her with her children, and that the evidence does not support the decision to terminate her parental rights. We affirm the judgment terminating the mother's parental rights.

I.

Judy D. has lived with her mother in Nashville for most of her life. Her mother introduced her to chemical inhalants while she was still a teenager, and Judy D. eventually became addicted to inhaling paint thinner, toluene, and glue. She also abused alcohol and marijuana. In September 1983, when Judy D. was sixteen and unmarried, she gave birth to Peggy D., her first child. Shortly after Peggy D. was born, the Department of Human Services received word that Judy D. was neglecting her. During their investigation, the department's case workers discovered that both Judy D. and her mother were abusing chemical inhalants and offered drug abuse treatment and counseling to Judy D.

During the ensuing years, the police were summoned to Judy D.'s home on numerous occasions in response to complaints of violence and reports that Judy D. was intoxicated and unable to care for her child. In 1986, Peggy D. was struck by an automobile and severely injured while wandering in the street. Judy D. was arrested in 1987 and again in 1989 for using chemical inhalants with her children present.

Judy D. gave birth to David D., her second child out of wedlock, in April 1987. She also completed her GED and later enrolled in vocational training. Despite her educational efforts, she had difficulty holding down a steady job. Other family members offered help but eventually became discouraged when their efforts seemed to be to no avail. Judy D. gave birth to Teresa D., her third child born out of wedlock, in February 1990. Eventually, Judy D.'s abuse of chemical inhalants led to the termination of her parental rights to Peggy D. and her voluntary surrender of her parental rights to David D. and Teresa D. The department eventually returned Teresa D. to her mother.

Judy D. gave birth to Jeremy D., her fourth child born out of wedlock, in March 1992. Three months later, the department filed a petition for temporary custody in the juvenile court alleging that Jeremy D. was dependent and neglected because his mother was continuing to use chemical inhalants. Judy D. admitted her addiction to inhalants and acknowledged that she could not attend to her children's needs. Accordingly, she agreed to the department's demand that she enter an in-patient detoxification program at a local hospital. In December 1992, the juvenile court found that Jeremy D. was dependent and neglected but permitted him to remain in Judy D.'s custody because she had agreed to seek treatment for her addiction.

In May 1993, Judy D. gave birth to Nathan D., her fifth child born out of wedlock. Regrettably, the cycle of substance abuse and child neglect continued. In April 1994, the department filed a petition in the juvenile court seeking temporary custody of Teresa D., Jeremy D., and Nathan D. The department alleged that the children were "unsupervised, dirty, disheveled, and exposed to the fumes of chemical inhalants in the household by [Judy D.] and her associates." Judy D. again conceded that she was actively inhaling paint thinner and that she could not supervise or care for her children. In May 1994, the juvenile court directed Judy D. to return Teresa D. to her foster parents and awarded the department temporary custody of Jeremy D. and Nathan D.

Once Judy D.'s three younger children were placed in its custody, the department developed a foster care plan designed to reunite Judy D. with Jeremy

D. and Nathan D. Judy D. failed to attend the hearing to approve the foster care plan and also failed to enter the detoxification program or to visit her children regularly. The department's case workers later informed Judy D. that the foster care plan required her (1) to enter an in-patient detoxification program, (2) to attend parenting classes, (3) to visit with her children twice a week, and (4) to become more involved with the planning of her program of care. Judy D. promised to stay away from her mother and her other friends because they encouraged her to use chemical inhalants and to hide her problem from the authorities.

Judy D. had done little to improve her circumstances when the juvenile court reviewed the status of the plan in June 1994. She had not entered the in-patient detoxification program; she had not enrolled in parenting classes; and she had not visited her sons regularly. However, by the time the juvenile court reviewed the status of the foster care plan in December 1994, Judy D. had completed the detoxification program and had taken a parenting class. She was also visiting her children more regularly but was still living with her mother and associating with the friends who habitually used chemical inhalants. Following the hearing, the department announced its intention to seek the termination of Judy D.'s parental rights with regard to Jeremy D. and Nathan D.

In January 1995, the department filed a petition to terminate Judy D.'s parental rights pursuant to Tenn. Code Ann. §§ 37-1-147(d)(1) and 37-2-403(a)(2) (1991).¹ Following four days of hearings, the juvenile court filed a detailed memorandum opinion and order in July 1995 finding that Jeremy D. and Nathan D. were dependent and neglected. It also found that Judy D. had not remedied the conditions that had caused the children to be removed, that it was unlikely that Judy D. would be able to assume parenting responsibilities in the near future, and that Jeremy D.'s and Nathan D.'s interests would be served best by terminating Judy D.'s parental rights.

¹The 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.

II.

Judy D. asserts that her parental rights regarding Jeremy D. and Nathan D. should not have been terminated because the department did not prove that it had made reasonable efforts to reunite her with her children and because the juvenile court did not make specific findings of fact concerning the reasonableness of the department's efforts. While we agree that reasonable efforts to keep the family together must be made before seeking to terminate parental rights, we do not agree that the department must present proof detailing the nature and duration of these services or that the juvenile court must make specific findings concerning the adequacy of these services.

Decisions concerning parental rights must include a consideration of the department's efforts to help a parent improve his or her circumstances. Tenn. Code Ann. § 37-1-147(e)(2) specifically requires the consideration of "[w]hether the parent has failed to effect a lasting adjustment after reasonable efforts by available social agencies for such duration of time that lasting adjustment does not reasonably appear possible." This court has held that the department must make reasonable efforts to preserve a family before seeking to terminate parental rights. *State v. Amundsen*, App. No. 87-100-II, slip op. at 16 (Tenn. Ct. App. Oct. 14, 1987) (no Tenn. R. App. P. 11 application filed); *State v. Caldwell*, App. No. 82-251-II, slip op. at 12 (Tenn. Ct. App. May 18, 1983) (no Tenn. R. App. P. 11 application filed).

The record contains clear and convincing evidence that the department has made reasonable efforts to help Judy D. keep her family together. For twelve years beginning with their first intervention in 1983, the department has attempted to help Judy D. conquer her addiction to chemical inhalants and to develop adequate parenting skills. It has made out-patient and in-patient drug treatment programs available to Judy D. and has offered her enrollment in parenting classes. It has provided repeated home interventions and has made supervised visitation available to Judy D. after her children were removed from her custody. The department should not bear the responsibility for Judy D.'s inability to benefit from these programs.

In addition, Tenn. Code Ann. § 37-1-147(f) requires juvenile courts to file written findings of fact in termination cases. These findings may be incorporated into a memorandum opinion or order. While they need not incorporate the terms of the applicable statutes exactly, it is a better practice for the findings to track the applicable statutory language. A judgment in a termination case will not be set aside if it can be reasonably inferred from the opinion or order that the decision was based on the statutory requirements. The juvenile court's memorandum opinion and order tracks the applicable language of Tenn. Code Ann. § 37-1-147(d)(1). It describes Judy D.'s twelve-year pattern of inhalant abuse and the department's repeated efforts to assist her. Adopting the phraseology of Tenn. Code Ann. § 37-1-147(e)(2), the juvenile court found that Judy D. "has failed to effect a lasting adjustment after reasonable efforts by available social agencies." Thus, we find that the juvenile court has satisfied both the letter and the intention of Tenn. Code Ann. § 37-1-147(f).

III.

Parents have a fundamental right to the custody and companionship of their children. *Nash-Putnam v. McCloud*, ___ S.W.2d ___, ___ (Tenn. 1996);² *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)³, and legal representation when the circumstances require it. *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 2162 (1981); *State ex rel. T.H. v. Min*, 802 S.W.2d 625, 626 (Tenn. Ct. App. 1990).⁴

²*Nash-Putnam v. McCloud*, App. No. 01-S-01-9504-CV-00047, slip op. at 13 (Tenn. April 22, 1996) (Opinion designated "For Publication").

³See also Tenn. R. Juv. P. 39(f)(1).

⁴See also Tenn. R. Juv. P. 39(f)(2).

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), *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); *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 department 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 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).⁵ 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.

IV.

The juvenile court terminated Judy D.'s parental rights pursuant to Tenn. Code Ann. § 37-1-147(d)(1). This statute authorizes the termination of parental rights if a 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 Ann. § 37-1-147(d)(1) requires the juvenile court to find that terminating the parental rights is in the child's best interests.

A parent's noncompliance with his or her obligations under a foster care plan can provide independent grounds for terminating parental rights. *See* Tenn. Code Ann. § 37-2-403(a)(2). Noncompliance with a foster care plan is not, however, a prerequisite to terminating a parent's rights pursuant to Tenn. Code Ann. § 37-1-147(d)(1). Thus, a parent's efforts to meet his or her obligations under a foster care plan are not controlling in a termination proceeding brought pursuant to Tenn. Code Ann. § 37-1-147(d)(1).⁶

⁵Like Judy D., 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 Judy D. 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).

⁶The department's petition to terminate Judy D.'s parental rights was based on both Tenn. Code Ann. § 37-1-147(d)(1) and Tenn. Code Ann. § 37-2-403(a)(2). After finding that Judy D. had complied substantially with the foster care plan, the juvenile court terminated her parental
(continued...)

The record contains clear and convincing evidence to support the juvenile court's conclusion that both Jeremy D. and Nathan D. would face a substantial risk of harm if they were returned to their mother. This risk was brought about not only by the possibility of Judy D.'s continuing use of chemical inhalants but also by the "entire constellation of problems . . . reflected in [her] twelve-year pattern of inhalant abuse and child neglect."

Judy D. has a history of first denying and then concealing her substance abuse problems. She also has a thirteen-year history of failed attempts to control her substance abuse problem. She relapsed in 1983 after completing a detoxification program. She relapsed again nine years later following the completion of an in-patient program similar to the one she most recently completed. She still does not have a personal support system in place that will help her avoid relapsing. She admits that her continuing relationship with her mother makes it difficult for her to avoid using inhalants, but her economic circumstances require her to continue to live with her mother. She also continues to associate with the same "perverse circle of friends" who abuse chemical inhalants and who encourage her to do the same. Accordingly, her current environment creates a significant likelihood that she will again relapse.

Judy D. has repeatedly conceded that she is unable to supervise or care for her children when she is using intoxicants. Despite her parenting classes and counseling, she remains unable to articulate how she is presently better equipped to meet her children's needs. Nor can she explain how she intends to avoid using chemical inhalants and to cope with the added pressure if her two children are returned to her. Thus, the record contains clear and convincing evidence supporting the juvenile court's conclusion that Judy D. has not acquired sufficient skills from the programs she has attended and has not made sufficient adjustments in her life to break free from the "constellation of problems" that continue to threaten the well-being of her children.

⁶(...continued)
rights solely on the basis of Tenn. Code Ann. § 37-1-147(d)(1).

The juvenile court's findings of fact warrant concluding that Jeremy D. and Nathan D. have been removed from their mother's custody for more than one year, that the conditions that caused their removal still persist, that there is little likelihood that these conditions will be remedied at an early date, and that the continuation of Judy D.'s parental relationship with her sons will decrease their chances of early integration into a stable and permanent home. Accordingly, it is proper to determine whether terminating Judy D.'s parental rights is in her sons' best interests.

In addressing the issue of the children's best interests, Tenn. Code Ann. § 37-1-147(e)(3) permits the consideration of Judy D.'s past treatment of all her children, and Tenn. Code Ann. § 37-1-147(e)(4) permits the consideration of her history of substance abuse. Judy D.'s past use of chemical inhalants has caused her to become incoherent and has rendered her completely unable to care for her children. Her inhalant-induced condition has placed her children in physical danger and has resulted in serious physical injury to her oldest child. Her case workers have observed her when she has been so intoxicated that she was unable to recognize a connection between her own conduct and her children's welfare. Judy D.'s past substance abuse history coupled with her inability to explain what she intends to do differently in order to avoid using chemical inhalants in the future indicate that terminating her parental rights will be in her children's best interests.

Jeremy D. and Nathan D. have thrived in foster care. Their social skills have improved greatly since leaving their mother's custody, and they are just now beginning to develop in a manner appropriate to children their age. When Jeremy D. was first placed in foster care, he could not feed himself, he was still wearing diapers, and he had temper tantrums. He is now able to eat with utensils and to dress himself. He also shows less aggression and has fewer temper tantrums and nightmares. Nathan D., who was less than one year old when placed in foster care, is also developing normally.

Because foster care does not provide children with a permanent, stable environment, adoption may provide Jeremy D. and Nathan D. with their best

chance to become integrated into a stable and permanent home. The fact that younger children have a better chance to be adopted suggests that her sons' interests will be best served by terminating her parental rights now. These considerations, coupled with Judy D.'s inability to break free from the environment that has led to her substance abuse problems, support the juvenile court's decision to terminate her parental rights with regard to Jeremy D. and Nathan D.

V.

We have determined that the record contains clear and convincing evidence supporting the juvenile court's decision to terminate Judy D.'s parental rights with regard to her two youngest sons in accordance with Tenn. Code Ann. § 37-1-147(d)(1). Accordingly, we affirm the judgment terminating Judy D.'s parental rights with regard to Jeremy D. and Nathan D., and we 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:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE