



In this case, Mike Wilson and his wife, Denise Wilson, filed a petition seeking to adopt Shawn Russell Lane McDonald (Shawn) (DOB: April 27, 1993). In their petition, they alleged that the defendant Tammy McDonald, the child's biological mother, had abandoned her parental rights. Following a bench trial on June 26, 1995, the trial judge found that Ms. McDonald had abandoned all parental rights with respect to Shawn. We granted Ms. McDonald's request for an interlocutory appeal<sup>1</sup> pursuant to Rule 9, T.R.A.P., to consider her argument that her conduct was not such as to "evinced[] a settled purpose to forego all parental duties and relinquish all parental claims" as that concept is defined and explained in the case of ***Ex Parte Wolfenden*** (***Wolfenden***), 349 S.W.2d 713 (Tenn. App. 1959) and its progeny.

Our review is *de novo*; however, the record comes to us accompanied by a presumption of correctness as to the trial court's factually-driven determinations. We must honor this presumption unless the evidence preponderates against the trial court's factual findings. Rule 13(d), T.R.A.P. There is no presumption of correctness as to the lower court's conclusions of law. ***Adams v. Dean Roofing Co., Inc.***, 715 S.W.2d 341, 343 (Tenn. App. 1986).

---

<sup>1</sup>The trial court delayed further action on the adoption petition pending our review.

## I. *Facts and Procedural History*

Ms. McDonald is in the custody of the Department of Corrections. She is presently serving an eight year sentence at the Chattanooga Community Service Center<sup>2</sup> as a result of forgery convictions in the Bradley County Criminal Court. After she commenced her present term of incarceration, she gave birth to her son, Shawn. At the time of his birth, she was confined at the Tennessee Prison for Women in Davidson County. She has been in prison continuously since the birth of her child.

This is the third time that Ms. McDonald has been incarcerated. She served earlier periods of confinement from November 14, 1986, to December 9, 1987, and from September 7, 1988, to September 25, 1990. All of her convictions were for forgery or credit card fraud. At the hearing below, Ms. McDonald testified by deposition that she was due for a parole hearing in August or September, 1995.

The defendant is 32 years old. Apparently, she has never been married. She testified that she became pregnant with Shawn in August, 1992, at a time when she was on parole following her second period of incarceration. After her parole was revoked because of forgeries in the May - July, 1992 time frame, she was again imprisoned. Her present confinement apparently commenced on November 17, 1992. Shawn was born in a Nashville hospital on April 27, 1993. She allowed him to go home from the hospital with Beatrice Lindstrom, of Cleveland, a person she had only

---

<sup>2</sup>Ms. McDonald is on a work release program.

recently met at the prison. According to Ms. McDonald, Ms. Lindstrom is "a lady that came up to the jail to do church services."

Ms. Lindstrom brought Shawn to the prison on May 15, 1993. This is the only time, prior to early 1994, that Ms. McDonald visited with her son; but she was in regular phone contact with Ms. Lindstrom.

After Shawn was with Ms. Lindstrom for two months, Ms. Lindstrom decided that she could not care for him. With Ms. McDonald's knowledge and apparent consent, Shawn was delivered over to Mr. and Mrs. Alloway, also of Cleveland, the child's paternal grandparents. This arrangement was also short-lived. After only four months, the Alloways decided they could not keep the baby. At this juncture, the Wilsons entered the picture.

The Wilsons live in Etowah. They are unable to have children. When they learned that the Alloways had a boy--Shawn--for whom they could not care, they persuaded them to deliver him over to their care. Within a few days, the Wilsons petitioned for and received an order of temporary custody from the McMinn County Juvenile Court. The order was entered October 18, 1993. At that time, Ms. McDonald was unaware of the Wilsons' involvement.

Shortly after getting Shawn, the Wilsons made a decision to seek his adoption. They sent a letter to Ms. McDonald expressing their interest in adopting Shawn and asking

for her consent. Ms. McDonald received the letter on October 28, 1993, some ten days after the entry of the order of temporary custody. This is the first that she knew Shawn was with the Wilsons.

Ms. McDonald contacted the Wilsons and agreed to meet them at the prison to discuss their request. She asked that they bring Shawn with them. In early 1994, the Wilsons, along with Shawn, came to the prison and met with Ms. McDonald. She told the Wilsons that she thought Shawn was where he needed to be. She agreed to consider their request that she consent to Shawn's adoption. This visit was the last time there was contact of any kind between Ms. McDonald and the Wilsons. It was also the last time Ms. McDonald saw or talked to her son.

When the Wilsons did not hear from Ms. McDonald, they decided to file a petition to adopt Shawn. This they did on February 15, 1994, alleging that Shawn's mother had abandoned him. The defendant responded by denying abandonment and controverting the Wilsons' right to adopt Shawn. After a non-jury hearing, the trial judge found an abandonment<sup>3</sup>, which he decreed in an order entered July 20, 1995. This appeal followed.

Shawn is the second child born to Ms. McDonald in confinement. Her middle child, Daniel, was born in 1988. He lives with his father who is his legal custodian. Ms. McDonald has not seen Daniel since 1990, and does not speak with him by phone. Her oldest child, Brandon, lives in Cleveland, Tennessee,

---

<sup>3</sup>The trial judge had earlier found that the biological father had abandoned his parental rights. No appeal was taken from that determination.

with Ms. McDonald's parents who are his legal custodians. She talks to Brandon weekly; however, he has not visited his mother during her current period of incarceration.

## II. *The Law*

When an adoption petition alleges that a biological parent has abandoned his or her child, the test of abandonment<sup>4</sup> is whether "any conduct on the part of the parent . . . evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child" sought to be adopted. *Wolfenden*, 349 S.W.2d 713, 714 (Tenn. App. 1959). See also *Adoption of Bowling v. Bowling*, 631 S.W.2d 386, 389 (Tenn. 1982); *Koivu v. Irwin*, 721 S.W.2d 803, 807 (Tenn. App. 1986); *Fancher v. Mann*, 432 S.W.2d 63, 66 (Tenn. App. 1968). "To [show abandonment] we do not necessarily look to the protestations of affections and intentions expressed by the natural parent but must look at the past course of conduct." *Fancher*, 432 S.W.2d at 65. See also *Koivu*, 721 S.W.2d at 807. In order to warrant the forfeiture of parental rights and obligations, a court must find "a conscious disregard or indifference to the parental obligations." *Id.*

An abandonment must be shown by clear and convincing evidence. *Id.*; *Fancher*, 432 S.W.2d at 66; *O'Daniel v. Messier*, 905 S.W.2d 182, 187 (Tenn. App. 1995). The concept of clear and convincing evidence is examined in the *O'Daniel* case:

---

<sup>4</sup>This case was decided before the effective date of the new adoption code. See Chapter 532, Public Acts of 1995. "Abandonment" is now defined at T.C.A. § 36-1-102(1)(A).

Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. [citation omitted] It should produce in the fact-finder's mind a firm belief or conviction with regard to the truth of the allegations sought to be established. [citation omitted].

*Id.* at 188. There are a number of matters considered by courts in deciding whether an abandonment has occurred:

. . . the courts consider the following matters when determining whether an abandonment has occurred: (1) the parent's ability to support the child; (2) the amount of support the parent has provided to the child; (3) the extent and nature of the contact between the parent and the child; (4) the frequency of gifts on special occasions; (5) whether the parent voluntarily relinquished custody of the child; (6) the length of time the child has been separated from the parent; and (7) the home environment and conduct of the parent prior to the removal of the child. (citation omitted). No single factor is controlling. Abandonment inquiries are heavily fact-oriented, so the courts may consider any fact that assists in deciding whether the parent's conduct demonstrates a conscious or willful disregard of all of his or her parental duties. (citation omitted).

*Id.* at 187. In evaluating a parent's conduct to determine whether he or she has abandoned parental rights, it is important to remember that the concept of abandonment is akin to consent to adoption:

. . . consent of a parent to the adoption of his [or her] child could be inferred from the parent's actual abandonment of the child even though the statute expressly require[s] the parent's written consent.

*Adoption of Bowling*, 631 S.W.2d at 389. See also *Wolfenden*, 349 S.W.2d at 714 (“ . . . consent would be inferred from an actual abandonment, . . .”).

### III. Analysis

The defendant has been in the custody of the state continuously since Shawn was born. Without question, her incarceration limited her ability to exercise her parental rights and responsibilities. For example, she has not contributed financially to the support of her child; but the evidence reflects that she is only paid two dollars a day in her work release program. She has been in that program since December 19, 1994. There is no evidence in the record to indicate that she had access to any income in prison prior to that date. We do not agree with the appellees that her failure to contribute financially to Shawn’s care can be interpreted as an act of abandonment under the circumstances of this case. Cf. *O’Daniel*, 905 S.W.2d at 188. (“ . . . we have held that a parent’s failure to support a child will not amount to abandonment when the ‘parent is financially unable to render financial support,’” quoting from *Pierce v. Bechtold*, 448 S.W.2d 425, 429 (Tenn. App. 1969)).

The defendant, because of her confinement, was unable to keep her child with her or visit him at the Wilsons’; however, this does not mean that she was totally without the ability to exercise her parental rights and responsibilities. What has she done since the Wilsons’ visit to the prison in early 1994 to

demonstrate that she is the mother of Shawn? The answer is "nothing." During the some 19 months from January, 1994<sup>5</sup>, to the date of the hearing, June 26, 1995, Ms. McDonald did not call the Wilsons; she did not write them; she did not attempt to have them bring Shawn to the prison for a visit; and she did not send her son cards or presents on his birthday, or at Christmas and other special times. She did nothing to indicate that she was the mother of this young boy.

In defending her inaction, the defendant claims that she did not know how to get in touch with the Wilsons. We find this hard to believe. She admitted that she received a letter from them in October, 1993. She acknowledged that she had reached them in response to that letter. She admitted that she had had contact with Ms. Lindstrom, who turned Shawn over to the Alloways, who in turn had delivered the child to the Wilsons. She knew where the Alloways lived. Her parents lived in the same county. Yet, she made no effort to utilize the contacts she had with others to reach the Wilsons so she could find out how her son was progressing, physically, emotionally, spiritually, and otherwise.

For 19 months, she acted as if she did not have a son named Shawn while others saw to his housing, nourishment, and general care. She showed no interest in him. During this same time, she spoke to her oldest child on a weekly basis. She

---

<sup>5</sup>The petition for adoption was filed February 15, 1994. It is reasonable to assume that the meeting at the prison occurred before the petition was filed.

apparently made a conscious decision to ignore Shawn as she has ignored her middle child since 1990.

There is clear and convincing evidence in the record before us that Ms. McDonald, during these 19 months, exhibited a conscious disregard or indifference to her parental obligations. We believe her conduct shows, clearly and convincingly, that she formed an intent "to forego all parental duties and relinquish all parental claims to" Shawn.

The evidence does not preponderate against the trial court's judgment. It is, accordingly, affirmed. Costs on appeal are taxed to the appellant. This case is remanded for further proceedings in accordance with this opinion.

---

Charles D. Susano, Jr., J.

CONCUR:

---

Houston M. Goddard, P. J.

---

Herschel P. Franks, J.