IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 19, 2013 Session

DAVID A. and KASEY H. v. WAND T.

Direct Appeal from the Chancery Court for Robertson County
No. CH12-CV-358 Laurence M. McMillan, Jr., Chancellor

No. M2013-01327-COA-R3-PT - Filed February 18, 2014

This is a termination of parental rights case. Father's parental rights were terminated on the ground of abandonment for willful failure to visit and willful failure to support. Because the trial court's order terminating Father's parental rights fails to set forth sufficient findings, we are unable to adequately address the issue of abandonment in this case. Accordingly, we vacate the judgment of the chancery court and we remand for entry of an order that sets forth sufficient findings of fact and conclusions of law regarding the termination of Father's parental rights.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded

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

Russell E. Edwards, Hendersonville, Tennessee, for the appellant, Wand T.

Joseph T. Zanger, Whitehouse, Tennessee, for the appellees, David A. and Kasey H.

OPINION

I. FACTS & PROCEDURAL HISTORY

Two daughters (T.L.T. born in 2003 and A.L.T. born in 2005) were born, in Minnesota, to Wand T. ("Father") and Deana H. ("Mother"), who never married. Father signed a Voluntary Recognition of Parentage regarding T.L.T., and he was decreed to be the father of A.L.T. by a Minnesota court. Mother and Father were granted joint legal custody of T.L.T.; Mother was granted sole physical, care, custody and control of T.L.T. subject to Father's right to reasonable parenting time.[1] According to Father, he was ordered to pay $350.00 per month in child support to Mother.

Mother and Father lived together for six years before they separated in 2007 or 2008. At their separation, Mother and the children moved into Father's parents' home until, according to Father's mother, Father secured an apartment for Mother and the children.

In July 2009, Mother gave birth to another daughter–whose father is allegedly Julian Grier–in Minnesota. Then, in 2010, Mother and the three children moved to Las Vegas, Nevada. Mother gave birth to a fourth daughter–whose father is unknown–in Nevada.

Apparently, while living in Nevada, Mother was diagnosed with cancer. She called upon her sister and brother-in-law, Kaseylynn H. and David A. (sometimes hereinafter the "adoptive parents"), who live in Tennessee, to care for her four children while she was undergoing chemotherapy treatment. The four children moved to the adoptive parents' home in Robertson County, Tennessee, on December 15, 2011. Mother also moved into the adoptive parents' home in Tennessee on January 9, 2012; unfortunately, Mother died on January 25, 2012.

Upon Mother's death, the adoptive parents filed a dependency and neglect petition in the Robertson County Juvenile Court[2] and, without a hearing, they were awarded temporary

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[1] In his appellate brief, Father states that Mother was granted physical custody of both children with Father having the right to reasonable parenting time with them. However, we find nothing in the record to confirm this assertion with regard to A.L.T.

[2] Kaseylynn H. testified regarding the juvenile proceedings and the trial court's Order for Termination of Parental Rights sets forth the procedural history of the case. The juvenile court documents are not included in the record before us.

custody of Mother's four children in February 2012.[3] Father was served with the dependency and neglect petition and he apparently secured counsel in February 2012. Father made no attempt to set aside the temporary custody order, but instead, he apparently filed two motions to set the dependency and neglect matter for a final hearing. According to Father, the dependency and neglect matter was set for a hearing in November 2012, but the matter was stayed when the adoptive parents filed a Petition for Adoption in the Robertson County Chancery Court against Father, Julian Grier and "Unknown Father," on August 9, 2012, seeking to terminate the fathers' parental rights and to adopt Mother's four children. As the sole ground for termination of Father's parental rights, the petition alleged that Father had willfully failed to support and to visit his two children during the four-month period preceding the filing of the petition. ***See*** **Tenn. Code Ann. § 36-1-102(1)(A), 36-1-113(g)(1)**.

A trial was held on the adoptive parents' Petition for Adoption in March 2013. On April 15, 2013, the chancery court entered an Order for Termination of Parental Rights and Final Decree of Adoption, terminating Father's parental rights and declaring T.L.T. and A.L.T. to be the adopted children of Kaseylynn H. and David A.[4] Specifically, the trial court found, by clear and convincing evidence, that Father had willfully failed to financially support and to visit his two children for a period exceeding four consecutive months prior to the filing of the Petition for Adoption. It also found that termination of Father's parental rights and adoption by the adoptive parents was in the best interest of the children.[5]

On April 25, 2013, Father filed a Motion to Alter or Amend claiming that there was insufficient evidence to support the trial court's ruling and, in the alternative, moving the court to stay the adoption pending a possible appeal. The chancery court denied Father's motion, and Father timely appealed to this Court.

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[3] At some point, Mother's brother and sister-in-law, James and Jennifer H., were awarded weekend visitation with the children. In an October 15, 2012 Order, the adoptive parents were declared guardians of the two children pursuant to the Last Will and Testament of Mother.

[4] The Order stated:

> Because the adoptive Parents are the Maternal Aunt and Uncle-by-marriage of the Minor Children, the six-month waiting period; order of reference; preliminary home study; home study; Order of Guardianship or custody, supervision and preliminary and final court reports are waived pursuant to T.C.A. § 36-1-119(a)-(b).

[5] It appears that, prior to the entry of the April 15 Order, the parental rights of the fathers of Mother's youngest two children were terminated and such children were adopted by the adoptive parents.

II. ISSUE PRESENTED

Father presents the following issue for review:

1. Whether the trial court erred in terminating the parental rights of the father to his children and allowing the adoptive parents to adopt them.

For the following reasons, we vacate the judgment of the chancery court and we remand for entry of an order that sets forth sufficient findings of fact and conclusions of law regarding the termination of Father's parental rights.

III. STANDARD OF REVIEW

"A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the Due Process Clause of the federal and state constitutions." ***In re J.C.D.***, 254 S.W.3d 432, 437 (Tenn. Ct. App. 2007); ***In re Audrey S.***, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005). Although the parent's right is fundamental and superior to the claims of other persons and the government, it is not absolute. ***In re J.C.D.***, 254 S.W.3d at 437. A parent's right "continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination." ***Id.***; *see also In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004).

In Tennessee, proceedings to terminate a parent's parental rights are governed by statute. "Parties who have standing to seek the termination of a biological parent's parental rights must prove two things." ***In re Audrey S.***, 182 S.W.3d at 860; *see also In re M.J.B.*, 140 S.W.3d at 653. First, they must prove the existence of at least one of the statutory grounds for termination, which are listed in Tennessee Code Annotated section 36-1-113(g). ***Id.*** Several grounds for termination are listed in subsection (g), but the existence of any one of the grounds enumerated in the statute will support a decision to terminate parental rights. ***In re S.R.C.***, 156 S.W.3d 26, 28 (Tenn. Ct. App. 2004); ***In re J.J.C.***, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). Second, the petitioner must prove that terminating parental rights is in the child's best interest, considering, among other things, the factors listed in Tennessee Code Annotated section 36-1-113(I). ***In re Audrey S.***, 182 S.W.3d at 860. Because no civil action carries graver consequences than a petition to sever family ties forever, both of the elements for termination must be proven by clear and convincing evidence. ***Id.*** at 860-61. In sum, "[t]o terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest." ***In re F.R.R., III***, 193 S.W.3d 528, 530 (Tenn. 2006) (citing *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002)). Clear and

convincing evidence has been defined as evidence that "eliminates any serious or substantial doubt concerning the correctness of the conclusion to be drawn from the evidence." ***In re L.J.C.***, 124 S.W.3d 609, 619 (Tenn. Ct. App. 2003) (quoting *In the Matter of: C.D.B., S.S.B., & S.E.B.*, 37 S.W.3d 925, 927 (Tenn. Ct. App. 2000)). It produces a firm belief or conviction in the fact-finder's mind regarding the truth of the facts sought to be established. ***In re Audrey S.***, 182 S.W.3d at 861.

Because of this heightened burden of proof in parental termination cases, on appeal we must adapt our customary standard of review as set forth in Tennessee Rule of Appellate Procedure 13(d). ***In re Audrey S.***, 182 S.W.3d at 861. First, we review each of the trial court's specific factual findings *de novo* in accordance with Rule 13(d), presuming the finding to be correct unless the evidence preponderates against it. ***Id.*** 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 parental rights. ***Id.*** Whether a statutory ground has been proven by the requisite standard of evidence is a question of law to be reviewed *de novo* with no presumption of correctness. ***In re R.L.F.***, 278 S.W.3d 305, 312 (Tenn. Ct. App. 2008) (citing *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at *2 (Tenn. Ct. App. Jan. 31, 2008)).

IV. DISCUSSION

The first ground for termination listed in the statute, and the one most frequently relied upon, is abandonment. ***In re Audrey S.***, 182 S.W.3d at 862. For purposes of terminating parental rights, there are five alternative definitions of abandonment listed in Tennessee Code Annotated section 36-1-102(1)(A)(i)-(v). The definition relevant in this case defines "abandonment" as where:

> (I) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child[.]

Abandonment can be established by showing that a parent either willfully failed to visit or willfully failed to provide support. ***See In re Audrey S.***, 182 S.W.3d at 863 ("In the statutes governing the termination of parental rights . . . . [w]illful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent.") (citations omitted). "Failure to visit or support a child is 'willful' when a person is aware of his or her duty to visit or support, has the capacity to do so, makes no attempt to do so, and has no

justifiable excuse for not doing so." ***Id.*** at 864 (footnote and citations omitted). "Whether a parent failed to visit or support a child is a question of fact. Whether a parent's failure to visit or support constitutes willful abandonment, however, is a question of law." ***In re Mark A.L.***, No. M2013-00737-COA-R3-PT, 2013 WL 5536801, at *3 (Tenn. Ct. App. Oct. 4, 2013) (citing *In re Adoption of Angela* E., 402 S.W.3d 636, 639 (Tenn. 2013)). These failures must have occurred in the four months immediately preceding the filing of the termination petition currently before the court. **Tenn. Code Ann. 36-1-102(1)(A)(i),(ii)**; *see also In re D.L.B.*, 118 S.W.3d 360, 366 (Tenn. 2003). The termination petition in this case was filed on August 9, 2012; therefore, the relevant period is April 9 to August 9, 2012.

a. Failure to Visit

Father acknowledges that he exercised no in-person visitation with the children during the relevant four-month period. In fact, it is undisputed that Father last visited with the children in mid-2010. However, Father claims that during the relevant four-month period, he spoke with the children on the telephone "probably about three times or four."[6] He contends, for reasons discussed below, that his failures to secure in-person visitation and to exercise more-frequent phone contact cannot be classified as willful.

Father alleges five primary bases in support of his argument that his failure to visit the children was not willful: (1) the adoptive parents never offered to bring the children to Minnesota; (2) the adoptive parents never offered to meet Father halfway with the children; (3) the adoptive parents never initiated telephone contact between Father and the children; (4) the adoptive parents thwarted telephone contact between Father and the children; and (5) Father was financially unable to visit with the children in Tennessee.

"Failure to visit a child is 'willful' when a parent is aware of his or her duty to visit, has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so." ***In re Mark A.L.***, No. M2013-00737-COA-R3-PT, 2013 WL 5536801, at *6 (Tenn. Ct. App. Oct. 4, 2013) (citing *In re Adoption of Angela* E., 402 S.W.3d at 639); *see also In re Audrey S.*, 182 S.W.3d at 863 ("In the statutes governing the termination of parental rights, 'willfulness' does not require the same standard of culpability as is required by the penal code. Nor does it require malevolence or ill will. Willful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent.") (citations omitted). "'A parent who attempted to visit and maintain relations with his child, but was thwarted by the acts of others and circumstances beyond his control, did not willfully

[6]In his appellate brief, Father argues that he "was actually able to speak with the children three to four times *per month*" during the relevant period. (emphasis added). However, at trial, Father testified that he spoke with the children three to four *total* times during the four-month period.

abandon his child.'" ***Id.*** (quoting *In re Swanson*, 2 S.W.3d 180, 189 (Tenn. 1999)).

Tennessee Code Annotated section 36-1-102(1)(E) provides that "'wilfully failed to visit' means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation." "[T]oken visitation," is visitation "under the circumstances of the individual case [which] constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child." **Tenn. Code Ann. § 36-1-102(1)(C)**.

At the outset, we reject Father's assertion that the adoptive parents were somehow responsible for initiating in-person and telephone contact between Father and the children. The duty to visit is *Father's*. ***See generally, In re Audrey S.***, 182 S.W.3d at 864 ("Failure to visit or to support is not excused by another person's conduct unless the conduct actually prevents the person with the obligation from performing his or her duty, or amounts to a significant restraint of or interference with the parent's efforts to support or develop a relationship with the child.") (citations omitted). Furthermore, the record clearly demonstrates that Father never contacted the adoptive parents asking to visit with the children in Tennessee, asking the adoptive parents to bring the children to Minnesota to visit him, or asking the adoptive parents to exchange the children at a location between Minnesota and Tennessee. The adoptive parents had no duty to assert Father's parental rights for him, and their declination to initiate contact between Father and his children does not render Father's failure to visit non-willful.

We next address Father's arguments related to his alleged inability to finance trips to Tennessee and the adoptive parents' alleged interference with his telephone contact with the children.

At the March 2013 trial, Father was asked whether he could afford to travel to Tennessee regularly to visit with the children. He replied, "No. Not up until the last couple of months." He also testified that he "[a]bsolutely [could] not" afford to travel to Tennessee for hearings aimed at setting aside the temporary custody order. Instead, Father explained, that he, along with his counsel, "decided we were just going to try to aggressively set the petition for final hearing[.]" According to Father's trial testimony, until September 2012, he was "only working 20 hours a week, getting paid $7 an hour." From September 2012 until December 2012, Father was unemployed, and then in December 2012, he began working at his current job, earning $11 per hour plus commission. Grandmother testified that Father does not "have an automobile that he drives[.]"

The evidence concerning telephone contact is conflicting.[7] At trial, the adoptive mother, Kaseylynn H., testified that when the children first moved into her home, she encouraged their relationship with Father. However, according to her, the children did not want to talk to Father, so she "left it at that." The adoptive mother testified that since the children moved into her home in December 2011, Father had called the children one time, in April 2012, and that the children had spoken to Father on one other occasion when Father's mother, Wanda Lynn T. ("Grandmother"), telephoned the children. She could not recall when Father had spoken to the children during Grandmother's call, but she stated at the March 2013 trial that "[i]t hasn't been any time recently." The adoptive mother acknowledged that *Grandmother* telephoned the children monthly. She denied ever refusing to allow Father to speak with the children.

Similarly, the adoptive father, David A., testified that Father has called the children once since the children have been in the adoptive parents' care. The adoptive father stated that the children have not received letters, cards, presents, birthday messages, emails, or social media messages from Father. The adoptive father denied taking any action to prevent Father's contact with the children, including blocking Father's phone calls, refusing to allow Father to speak with the children, or discouraging the children from contacting Father.

Mother's brother, James H. ("Uncle), who was temporarily awarded visitation with the children also testified at trial.[8] Uncle stated that during weekend visits with the children, "[he] was called by [Grandmother]. And [he] d[id]n't remember the dates. But [he] kn[e]w that she did, you know, mention that [Father] would want to talk to them." Uncle echoed the adoptive mother's testimony that the children chose not to talk to Father. Uncle was asked whether he had a good relationship with his sister, the adoptive mother, and he answered, "Not at all[,]" and he claimed that the adoptive parents became upset when they discovered that the children were speaking to Grandmother while in his home. Uncle testified that the children never talked to Father while they were in his care.

At trial, Grandmother testified that during the relevant four-month period, Father placed "[a] couple" of phone calls to the children. Grandmother was asked how often she witnessed Father speaking to the children on the telephone during the period of April to August 2012, and she responded, "I can't give a specific number, but I think they had - - maybe a couple of times. I think they may have - - but [the adoptive father] wouldn't let

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[7]Although the operative four-month period is April 9, 2012 to August 9, 2012, we will consider conduct outside of this period to determine whether pre-period conduct affected Father's telephone contact during the relevant period.

[8]The dates of Uncle's visitation are unclear.

[Father] speak to the girls[.]"[9] She explained that she would place calls and then "put [Father] on the phone[,]" but after Father would speak with the children, "it would be a problem for a while and we couldn't talk to them for a little bit[.]"

Finally, Father testified regarding the alleged attempted telephone contacts with the children. He stated that between April and August 2012, he spoke with the children "probably about three times or four." However, he claimed, "we called more, but [the adoptive parents] didn't call back or actually answer the phone." He stated that during the four-month period, he attempted to call the children "at least three times" and that Grandmother "was doing it more on a regular basis" because he "knew [the adoptive parents] were allowing [Grandmother] to speak with [the children.]" Father indicated that he was present, at times, when Grandmother telephoned the children; however, he seemed to suggest that, other times, Grandmother may have telephoned the children in his absence.

In its Order for Termination of Parental Rights and Final Decree of Adoption, the trial court made the following findings, pertinent to abandonment, "by clear and convincing evidence":

> Defendant Wand T[.] has neither attempted to support [T.L.T.] or [A.L.T.] financially nor exercised parenting time with either child, nor made efforts through the Courts to have parenting time established during the time the children have lived in Tennessee, and specifically in the months of April, 2012; May, 2012; June, 2012; July, 2012; and August, 2012, the months immediately preceding the filing of the Petition to Terminate his Parental Rights.
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> . . . .
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> Pursuant to T.C.A. § 36-1-102(A)(1)(i), the Court finds, by clear and

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[9] Grandmother testified regarding alleged phone call attempts after the termination petition was filed; however, we find this time period irrelevant to the issue at hand.

Grandmother confusingly testified that the adoptive parents never initiated calls between the children and herself or Father. However, she also testified that after leaving a message for the children on the adoptive father's phone:

> Well, [the adoptive father] probably dialed the number and the girls would call us back and we would talk. And a lot of times the girls - - [Father] was there and we would put [Father] on the phone. He would talk to them. And then after that it would be a problem for a while and we couldn't talk to them for a little bit and then [the adoptive parents would] call - - a couple weeks they would call and let us talk to the girls again.

In any event, it appears that this testimony does not relate to the relevant four-month period.

> convincing evidence, that Defendant Wand T[.] has willfully failed to support [T.L.T.] and [A.L.T.] financially and has willfully failed to visit [T.L.T.] and [A.L.T.] for a period exceeding four consecutive months prior to the filing of the Petition for Adoption.
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> Pursuant to T.C.A. § 36-1-113(g)(1) Defendant Wand T[.] has willfully abandoned the Minor Children in this matter.[10]

In parental termination proceedings, the trial court is required to "enter an order that makes *specific* findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing." **Tenn. Code Ann. § 36-1-113(k)** (emphasis added). "Because of the gravity of their consequences, proceedings to terminate parental rights require individualized decision making." ***In re Audrey S.***, 182 S.W.3d at 862 (citing *In re Swanson*, 2 S.W.3d at 188). "Requiring trial courts to issue 'specific findings of fact and conclusions of law facilitate appellate review and promote just and speedy resolution of appeals.'" ***In re Emilie A.M.***, No. E2011-02416-COA-R3-PT, 2012 WL 4053040, at *8 (Tenn. Ct. App. Sept. 17, 2012) (quoting *In re Audrey S.*, 182 S.W.3d at 862).

In this case, regarding visitation, the juvenile court simply found that Father had failed to "exercise[] parenting time" during the four-month period and that he had "willfully failed to visit" the children during the requisite period. The trial court's Order, however, does not address the conflicting testimony regarding Father's alleged attempts to contact the children via telephone during this period and the adoptive parents' alleged efforts to impede such contact. From the Order, it is unclear whether the trial court reached its conclusion because it discredited the contact-impeding accusations against the adoptive parents, or simply due to Father's failure to secure in-person visitation, without regard for his alleged attempted visitation through other available means. It is also unclear whether the trial court discredited, or failed to consider, Father's testimony regarding his alleged inability to finance trips to visit with the children. Based upon the lack of specific findings, at this juncture, we are simply unable to determine whether the trial court properly terminated Father's parental rights for willful failure to visit. Because only one ground is required for termination, however, we must consider whether the trial court properly terminated Father's parental rights for willful failure to support.

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[10]The trial court found that termination of Father's parental rights and adoption by the adoptive parents was in the children's best interest. Specifically, the court found that the children had lived with their two other siblings in the adoptive parents' home since December 2011, that the children "have a stable home life and are thriving in the school in the care of the [adoptive parents,]" that the adoptive parents "are fit and proper persons" and "are financially able to provide" for the children, and that Father had failed to visit or support the children.

b. Failure to Support

As stated above, "abandonment" includes situations where a parent has "willfully failed to visit" or has "willfully failed to make reasonable payments toward the support of the child." **Tenn. Code Ann. § 36-1-102(1)(A)(i)**. "[W]illfully failed to support" or "willfully failed to make reasonable payments toward such child's support" is defined as "the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments[11] toward the support of the child[.]" **Tenn. Code Ann. § 36-1-102(1)(D)**. "[A] parent cannot be said to have abandoned a child when his failure to support is due to circumstances outside his control." ***In re Mark A.L.***, 2013 WL 5536801, at *4 (citing *In re Adoption of Angela E.,* 402 S.W.3d at 640). "A parent's ability to pay support is a factor in determining willfulness." ***In re M.J.M., Jr.***, No. M2004-02377-COA-R3-PT, 2005 WL 873302, at *8 (Tenn. Ct. App. Apr. 14, 2005) (citations omitted). "A parent who fails to support a child because he or she is financially unable to do so is not willfully failing to support the child." ***Id.*** at *8 n.17.

On appeal, Father concedes that he has not paid child support since February 2012–before the commencement of the four-month period; however, he contends that he sent "numerous care packages to the children," constituting in-kind support. Alternatively, he argues that his failure to support is not willful because no court order existed requiring him to pay child support, because the adoptive parents never sought child support from him, and because he lacked the financial ability to support the children.

Father testified that the adoptive parents "said they didn't need any money and that's when we started sending the [care] packages."[12] He testified that he assisted in the preparation of care packages for the children, and that he paid for "[j]ust about half" of the items in the packages, including "[s]chool supplies, clothes, toys, jackets, [and] shoes."

Grandmother also testified that she and Father, together, prepared and sent care packages to the children. Grandmother was uncertain, however, if the packages were ever received. She testified, "We sent packages every holiday, birthdays, and a few in between. . . . And once or twice I think [the children] said that they needed shoes, and we sent them shoes." Grandmother claimed that the last package was sent on January 11, 2013[13]–T.L.T.'s

[11]"Token support" under the statute "means that the support, under the circumstances of the individual case, is insignificant given the parent's means." **Tenn. Code Ann. § 36-1-102(1)(B)**.

[12]The exact dates of these packages are unclear.

[13]Although the year is not specified in Grandmother's testimony, Grandmother seems to claim that (continued...)

birthday.

The adoptive parents, however, testified that between April and August 2012, they received no support–money, food, clothing, medical support, etc.–from Father, and they seemed to indicate that packages were, likewise, not received outside of the relevant four-month window. Uncle testified that the only package he received from Father arrived around Christmas 2012 (after the termination petition was filed), containing "All kinds of stuff. Whether it be clothes, toys, jackets - - things of that nature."

Regarding his ability to support, Father testified at trial that until September 2012, he was "only working 20 hours a week, getting paid $7 an hour[,]" equating to $560.00 per month. From September 2012 until December 2012, Father was unemployed, and then in December 2012, he began working at his current job, earning $11 per hour plus commission. Grandmother testified that Father resides with her and that although he does not pay rent, he gives her "occasional money to sort of help out . . . [w]henever he could give[,]" that he is "paying off money for the Court[,]" that he pays for his own food and clothing, and that he is paying child support for another child.

First, we reject Father's argument that his failure to support was excused in the absence of a court order compelling that support payments be made. "'[T]he obligation to pay support exists even in the absence of a court order to do so.'" ***In re Michaela V.***, No. E2013-00500-COA-R3-PT, 2013 WL 6096367, at *8 (Tenn. Ct. App. Nov. 19, 2013) (quoting *State, Dep't of Children's Servs. v. Culbertson*, 152 S.W.3d 513, 523-24 (Tenn. Ct. App. 2004)). "Tennessee Code Annotated § 36-1-102(1)(H) explicitly states . . . that '[e]very parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children.'" ***Id.*** (quoting Tenn. Code Ann. 36-1-102(1)(H)).[14] In fact, the record indicates that Father was aware of his duty to support as he made timely payments until February 2012, shortly after Mother's death. Moreover, based upon the above-cited duty to support, we similarly reject Father's argument that the adoptive parents' failure to request child support relieved him of the obligation to support his children.

In its Order for Termination of Parental Rights and Final Decree of Adoption, the trial court, regarding support, found that Father had not "attempted to support" the children and that he had "willfully failed" to support the children. The Order, however, contains no

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[13](...continued)
the last package was sent in 2013.

[14]This statute bears an effective date of May 26, 2010.

findings regarding Father's ability to provide support, nor does it resolve the conflicting testimony regarding Father's alleged in-kind support. From the record before us, we cannot discern whether the trial court considered Father's ability to provide support. Similarly, we are unable to ascertain whether the trial court discredited the testimony of Father and Grandmother regarding in-kind support, whether it found the alleged in-kind support was not provided during the relevant period, or whether it found the in-kind support statutorily insufficient. Although we could review the record, ourselves, to determine where the preponderance of the evidence lies with regard to Father's ability to pay, the conflicts regarding in-kind support would remain. Based upon the lack of specific findings, we are unable to determine whether the trial court properly terminated Father's parental rights for willful failure to support.

We hesitate to prolong the litigation of a matter involving children. However, this Court is simply not in a position to adequately address the issue of abandonment in this case. As previously stated by this Court,

> we think the issue of fact should be resolved in the first instance by the trial court because it is sharply drawn, the answer largely depending upon the credibility of the witnesses, about which the trial judge would know more then [sic] he would, since he saw and heard the witnesses on the witness stand.

In re Whittenburg, 1994 WL 398828, at * (Tenn. Ct. App. July 29, 1994) (quoting *Ex parte Wolfenden*, 349 S.W.2d 713, 714 (Tenn. Ct. App. 1960) *superseded by statute on other grounds as stated in In re Swanson*, 2 S.W.3d 180). Accordingly, the judgment of the juvenile court is vacated and the case is remanded for entry of an order that sets forth sufficient findings of fact and conclusions of law regarding the termination of Father's parental rights.

V. CONCLUSION

For the aforementioned reasons, we vacate the judgment of the chancery court and we remand for entry of an order that sets forth sufficient findings of fact and conclusions of law regarding the termination of Father's parental rights. Costs of this appeal are taxed to Appellees, David A. and Kasey H., for which execution may issue if necessary.

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ALAN E. HIGHERS, P.J., W.S.