

FILED

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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs December 2, 2019

IN RE KYLER C. ET AL.

Appeal from the Juvenile Court for Grundy County  
No. 6590 William Riley Anderson III, Judge

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No. M2019-00041-COA-R3-PT

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Mother and Father appeal the termination of their parental rights. Based on a prior finding that they had committed severe child abuse against one of their children, the juvenile court concluded that there was a statutory ground to terminate Mother's and Father's parental rights to the abused child, his siblings, and a half-sibling. The court also concluded that termination of parental rights was in the best interest of all the children. Although we agree that there was clear and convincing evidence of a ground to terminate parental rights, we are unable to review the court's best interest determination due to a lack of factual findings. So we vacate the judgment terminating Mother's and Father's parental rights.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Matthew S. Bailey, Spencer, Tennessee, for the appellant, Amanda L.

Sarah Bible Willis, Jasper, Tennessee, for the appellant, Nikolas L.

Alice W. Wyatt, Dunlap, Tennessee, for the appellees, Linda T. and Ricky T.

## OPINION

### I.

#### A.

In January 2017, Nikolas entered the world six weeks premature, with methamphetamine and amphetamine in his system, and suffering from withdrawal symptoms. A few days after his birth and while he was still in the neonatal intensive care unit, the Tennessee Department of Children's Services ("DCS") petitioned for protective custody and a finding of dependency and neglect. DCS also accused Nikolas's parents, Amanda L. ("Mother") and Nikolas L. ("Father"), of severe child abuse.

Following a preliminary hearing, the juvenile court awarded temporary custody to Linda T. and Ricky T. (together, "Guardians"). Based on a prior ruling of the same juvenile court, Guardians already had temporary custody of Nikolas's siblings, Ella and Charlie. Guardians also had custody of a half-sibling, Kyler, Mother's son by another father.

Guardians were not related to Mother and Father. They had only met them the previous summer when Mother and Father moved into a rental house next door with Kyler, Ella, Charlie, and another child. According to Ms. T., the family arrived with little of anything; "Everything they had was in the back end of their Bronco-type vehicle."

Believing that the family had lost all their belongings in a fire, Guardians stepped in to help. Ms. T. did laundry for them. She prepared meals for them and brought paper plates and cups for their use. Guardians also provided air mattresses and sheets for their new neighbors to sleep on and later purchased "the kids several outfits, underwear, pajamas, things like that to help out."

The family lived in the rental house for a few months. Then suddenly they were gone, without a word to Guardians. Shortly thereafter, Guardians learned that DCS had removed the children from Mother and Father. In the dependency and neglect petition, DCS alleged that the three younger children, Kyler, Ella, and Charlie, were "spending the night in a home that was [e]nvironmentally unsafe due to filth, garbage, dog feces, a large amount of fleas, no safe food, no beds to sleep on and exposed hazards of broken furniture and sharp objects."<sup>1</sup>

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<sup>1</sup> DCS made the fourth child the subject of a separate dependency and neglect proceeding because he no longer resided with Mother and Father.

Guardians intervened in the dependency and neglect proceeding involving Kyler, Ella, and Charlie “to offer the children a permanent, loving, stable family as an alternative to foster care.” Guardians stated that they were “ready to make the children part of their family and household for as long as needed” and would adopt the children if they became available for adoption. And because Mother was still pregnant with Nikolas, Guardians offered to take that child into their home if necessary.

On October 6, 2016, after Mother and Father waived the preliminary hearing, the juvenile court granted Guardians temporary custody of Kyler, Ella, and Charlie. The next month, Mother and Father also waived the adjudicatory hearing, admitting the allegations in DCS’s petition. The court found the children to be dependent and neglected. Guardians retained temporary custody and supervised Mother’s and Father’s weekly visitation when they exercised it.

The dependency and neglect petition involving Nikolas changed matters. On January 19, 2017, after Mother and Father again waived the preliminary hearing, the juvenile court suspended all visitation and contact between the children and Mother and Father pending further order of the court.

After later waiving the adjudicatory hearing, the court found Nikolas dependent and neglected. The court also found that Nikolas was the victim of severe abuse and that Mother and Father were the perpetrators of that abuse. The court’s order noted that there was to be no contact between the child and the parents.

In April 2017, the juvenile court conducted a review hearing in Nikolas’s case. As the court had previously done in the case of Kyler, Ella, and Charlie, the court relieved DCS of any further involvement and awarded custody to Guardians.

## B.

On July 26, 2017, Guardians petitioned the juvenile court to terminate the parental rights of Mother and Father to Ella, Charlie, and Nikolas and to terminate the parental rights of Mother and another man to Kyler.<sup>2</sup> As to Mother and Father, Guardians alleged two statutory grounds for termination, but they only pursued one ground, that Mother and Father had been found to have committed severe child abuse by a prior order of the court.

At trial, among others, Mother and Father testified. They admitted prior illegal drug use, starting in September 2013 after the loss of a newborn child. By March 2016, the use became “regular.” And they acknowledged that their drug use had an adverse

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<sup>2</sup> Kyler’s father is not participating in this appeal, so we confine our analysis to Mother and Father.

impact on their children. But both also claimed to be in recovery after completing rehabilitation programs in 2017.

Father and Mother maintained that they had taken other steps to turn their lives around. Father was employed, while Mother stayed at home with a child that had been born to the couple several months before the trial. Mother and Father rented a home, which they shared with their newest child, Mother's mother, and the child who had lived with Mother and Father when they rented the house next door to Guardians. DCS had returned this child to Mother and Father in March 2018.

The child who had been returned was now in high school. And he testified on behalf of Mother and Father. Mother was the child's biological mother, and Father was the child's step-father. The child acknowledged making the call to DCS that instigated the dependency and neglect proceedings involving Kyler, Ella, and Charlie. When asked why he made the call, he said, "Because we were in a place where the children weren't being properly taken care of . . . , and we needed something where my parents could get back up on their feet without having the burden of all of us financially." But the child contended that things had changed. The home where they lived was clean, and there was no longer any drug use. The child believed that it would be the in best interest of Kyler, Ella, Charlie, and Nikolas to be returned to Mother and Father.

After taking the matter under advisement, the juvenile court entered a judgment terminating Mother's parental rights to Kyler, Ella, Charlie, and Nikolas and Father's parental rights to Ella, Charlie, and Nikolas. The court concluded that there was clear and convincing evidence that Mother and Father had been found to have committed severe child abuse as defined in Tennessee Code Annotated § 37-1-102. And the victim of the abuse was a subject of the petition and either a sibling or a half-sibling of the other children named in the petition.

The court also concluded that the termination of Mother's and Father's parental rights were in the best interest of the children. But the court offered no analysis of statutory or other factors that might have influenced its best interest determination.

## II.

A parent has a fundamental right, based in both the federal and State constitutions, to the care and custody of his or her own child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995). But parental rights are not absolute. *In re Angela E.*, 303 S.W.3d at 250. Our Legislature has identified those situations in which the State's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting

forth the grounds upon which termination proceedings may be brought. *See* Tenn. Code Ann. § 36-1-113(g) (2017).

Tennessee Code Annotated § 36-1-113 sets forth both the grounds and procedures for terminating parental rights. *In re Kaliyah S.*, 455 S.W.3d 533, 546 (Tenn. 2015). First, parties seeking termination of parental rights must prove the existence of at least one of the statutory grounds for termination listed in Tennessee Code Annotated § 36-1-113(g). Tenn. Code Ann. § 36-1-113(c)(1). If one or more statutory grounds for termination are shown, they then must prove that terminating parental rights is in the child’s best interest. *Id.* § 36-1-113(c)(2).

Because of the constitutional dimension of the rights at stake in a termination proceeding, parties seeking to terminate parental rights must prove both the grounds and the child’s best interest by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citing Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808-09 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002)). This heightened burden of proof serves “to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights.” *Id.* “Clear and convincing evidence” leaves “no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). 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 Bernard T.*, 319 S.W.3d at 596.

On appeal, we review the trial court’s findings of fact “de novo on the record, with a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise.” *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); Tenn. R. App. P. 13(d). We then “make [our] own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim.” *In re Bernard T.*, 319 S.W.3d at 596-97. A “trial court’s ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law.” *In re Carrington H.*, 483 S.W.3d 507, 524 (Tenn. 2016). We review the trial court’s conclusions of law de novo with no presumption of correctness. *In re J.C.D.*, 254 S.W.3d 432, 439 (Tenn. Ct. App. 2007).

#### A.

Parental rights may be terminated if the parent “has been found to have committed severe child abuse as defined in [Tennessee Code Annotated] § 37-1-102, under any prior order of a court . . . against the child who is the subject of the petition or against any sibling or half-sibling of such child.” Tenn. Code Ann. § 36-1-113(g)(4). Mother and Father concede on appeal that they were found to have committed severe child abuse

against Nikolas and, on that basis, there was a ground for terminating their parental rights. Still we “must review the trial court’s findings as to each ground for termination . . . regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 525-26.

Here, Guardians entered into evidence the adjudicatory hearing order finding Nikolas dependent and neglected. Based on the allegations of DCS’s petition, which Mother and Father admitted, as well as medical records, the juvenile court specifically found that Mother and Father were perpetrators of severe child abuse as defined in Tennessee Code Annotated § 37-1-102.<sup>3</sup> The order included findings that Nikolas was born with methamphetamine and amphetamine in his system and that he had suffered from withdrawal symptoms.

Based on the prior order, we conclude that clear and convincing evidence supports the juvenile court’s finding that there was a ground for terminating Mother’s and Father’s parental rights. Mother and Father acknowledge that they did not appeal the adjudicatory hearing order. As a consequence, the finding of severe child abuse is *res judicata*. *See In re Heaven L.F.*, 311 S.W.3d 435, 439-40 (Tenn. Ct. App. 2010) (“[T]he issue of whether [m]other committed severe child abuse is *res judicata* and the trial court properly found by clear and convincing evidence that Mother’s parental rights should be terminated [on this ground].”).

## B.

Having determined that a statutory ground for termination was proven by clear and convincing evidence, we must determine whether termination of Mother’s and Father’s parental rights is in the children’s best interest. Because “[n]ot all parental misconduct is irredeemable[,]” our parental termination “statutes recognize the possibility that terminating an unfit parent’s parental rights is not always in the child’s best interests.” *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). Tennessee Code Annotated § 36-1-113(i) includes a list of nine, non-exclusive best interest factors. In reaching a decision, “the court must consider all of the statutory factors, as well as any other relevant proof any party offers.” *In re Gabriella D.*, 531 S.W.3d 662, 682 (Tenn. 2017).

Although “[f]acts relevant to a child’s best interests need only be established by a preponderance of the evidence, . . . the combined weight of the proven facts [must] amount[] to clear and convincing evidence that termination is in the child’s best interests.” *In re Carrington H.*, 483 S.W.3d at 535. As part of this process, the trial court

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<sup>3</sup> At the time, Tennessee Code Annotated § 37-1-102 defined “severe child abuse” to include “[t]he knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death.” Tenn. Code Ann. § 37-1-102(b)(22)(A)(i) (Supp. 2017).

must make specific findings of fact and conclusions of law. *See* Tenn. Code Ann. § 36-1-113(k). Factual findings are necessary to “facilitate appellate review” and to safeguard the important rights at stake in a termination proceeding. *In re Angela E.*, 303 S.W.3d at 251. If the requisite findings are not made, we must remand the case to the trial court with directions to make appropriate findings. *Id.* at 255; *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 (Tenn. Ct. App. 2007).

We must remand this case. The juvenile court’s judgment makes no findings of fact to support its conclusions regarding the best interest of each child. And it offers no indication that the statutory best interest factors were considered other than citing the subsection that lists the factors for consideration.

### III.

We are unable to review the best interest determination for each child because of a lack of specific findings of fact. So we vacate the judgment terminating Mother’s and Father’s parental rights. The case is remanded for specific findings of fact and conclusions of law as to each child as required by Tennessee Code Annotated § 36-1-113(k).

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W. NEAL MCBRAYER, JUDGE