

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 20, 2015 Session

IN RE ANNA D.

**Appeal from the Chancery Court for Maury County
No. A00313 Stella L. Hargrove, Judge**

No. M2014-00995-COA-R3-PT - Filed March 19, 2015

This case involves the termination of a biological father's parental rights to a young child. The trial court granted the mother and step-father's petition to terminate the father's rights and to allow the step-father to adopt the child. Father appeals. We affirm the trial court's judgment. The evidence is clear and convincing that (1) the father abandoned the child by failing to visit and failing to support her for four months preceding the filing of the petition and (2) it is in the child's best interest that the father's parental rights be terminated.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Nicholas Mark Tidwell, Brentwood, Tennessee, for the appellant, Lewis Chester D.

Stacy S. Neisler, Spring Hill, Tennessee, for the appellees, Melissa Taylor C. and Timothy Allen C.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Melissa Taylor C. ("Mother") and Lewis Chester D. ("Father") are the parents of Anna D. ("Anna" or the "Child"), who was born in late 2008. Mother and Father were not married and lived together for a period of time from shortly before Anna was born until sometime in July 2009. Father is a military veteran and has suffered from post-traumatic

stress disorder and traumatic brain injury. Father admits that he has “dealt with issues related to anger.”

Mother sought an order of protection from the general sessions court against Father in January 2010 based on Father’s allegedly abusive behavior towards Mother in 2009 and January 2010. The court granted Mother relief and ordered Father not to contact Mother for one year, from February 10, 2010, through February 10, 2011. Specifically, Father was “restrained from committing further acts of abuse, domestic abuse, stalking or sexual assaults or threats of abuse, stalking, or sexual abuse or assaults against [Mother] or [the Child].” In addition, Father was “prohibited from having any contact at all with [Mother], including but not limited to verbal, physical, and/or any type of communication (email, text, etc.).”

In February 2010, Father filed a petition in the juvenile court seeking to establish paternity/legitimation, support, and parenting responsibilities. In his petition, Father sought reasonable visitation with the Child and an order establishing Father’s support obligation in accordance with the Tennessee child support guidelines. Mother filed an answer to Father’s petition acknowledging Father’s paternity. Mother agreed that Father should be awarded “appropriate parenting time” with the Child and joined Father in asking the court to determine the amount of child support Father was obligated to pay.¹

In February 2011, Mother sought to extend the court’s restraining order for another year. The court held a hearing during which Father testified he had been diagnosed with intermittent explosive disorder and was being treated for this disorder. Mother testified that she continued to be fearful that Father would physically harm her or the Child. The court granted Mother the requested relief and extended the restraining order through February 18, 2012. With regard to Father’s contact with the Child, however, the court stated that “[a]ny future Order entered by the Juvenile Court for Maury County, Tennessee shall supercede this Order as to [Father]’s contact with [the Child].”

Mother met Timothy Allen Crabtree (“Step-Father”) in 2010, and they were married in late 2012 or early 2013. On February 26, 2013, Mother and Step-Father filed a petition seeking to terminate Father’s parental rights and have Step-Father adopt Anna.² The grounds asserted for terminating Father’s parental rights include abandonment by failure to visit and failure to provide any support for Anna in the four consecutive months immediately

¹Father later modified his petition and sought to be named the primary residential parent, but neither his initial petition nor his amended petition was ever tried or ruled upon.

²This petition was filed in the chancery court, and the proceedings Father initiated in the juvenile court were transferred to the chancery court and consolidated with the termination proceedings.

preceding the filing of the petition. Father filed an answer in which he admitted that he neither visited nor provided support for Anna in the four months preceding the petition's filing. However, Father asserted the failures were not willful. He claimed that the restraining orders Mother obtained against him prohibited Father from contacting the Child despite his desire to see her. Further, Father alleged he had contacted two different state attorneys general offices before the petition was filed in an effort to set up an account and begin making child support payments.

The court held a trial on March 31, 2014. Testimony was provided by Mother, Father, Step-Father, and several other witnesses on behalf of both Mother and Father. Mother testified that Father had not attempted to contact or visit Anna since January 2010. She acknowledged the restraining orders against Father for the two-year period from February 2010 through February 18, 2012, but she testified that she did not seek to extend the restraining order once it expired in February 2012. Mother was asked whether her intent in seeking the restraining order was to prevent Father from spending time with Anna, and Mother responded that it was not:

Q: Was it your intention in seeking the restraining order that [Father] never have a relationship with his daughter?

A: No. I didn't even think it was possible at the time, no.

Q: Did you think that you would be keeping him from seeing his daughter for an extended period of time?

A: No.

On the issue of child support, Mother testified that when she was seeking the initial restraining order, Father represented to the general sessions court that he had a job lined up in Wyoming and that he would be able to make enough money there to enable him to pay child support. Mother testified as follows:

And his argument was, If I take it, . . . I am going to make \$5,000 a month, and I'll be able to pay child support, and I will be on my own, and be out of the area.

When asked whether Father provided any support for Anna after the restraining order expired in February 2012, Mother replied that he had not:

Q: And let's focus on February 2012 forward because there were no orders

restraining him in any way. Has he contacted you since February 2012?

A: No.

Q: Has he ever sent anything for Kate?

A: No.

Q: Has [Father] ever paid child support?

A: No.

Q: Was child support ever formally established?

A: No. I asked for it starting at the order of protection, and never got anything.

Q: And [Father], has he ever offered to pay support?

A: He put it in his motion that he was going to pay. And he testified that that's why he was taking the job [in Wyoming], but he never paid anything.

Father testified that he went to Wyoming for nine or ten months in 2010, where he worked in the oil industry. Father was laid off from his job at some point in 2010, and Father decided to move to Texas, where he had family. Father testified that in 2010 he was pursuing his petition in Tennessee to set visitation and child support through an attorney. Father's attorney withdrew from representing Father in the fall of 2011, however, and Father testified that he did not have the money at that time to hire another lawyer to continue pursuing his petition.

Father testified that he did not take any more steps to provide support for Anna until February 2013, when he contacted the office of the Tennessee attorney general in an effort to establish child support. Father testified that the person he spoke with in Tennessee told Father he needed to contact the Texas attorney general since Father lived in Texas. Father testified:

I did this online application with [the] Texas attorney general. Told them my situation, my incomes, where my last known contact information [was] for [Mother] and [the Child]. [I was told] okay. We will get back to you in four

weeks. That was in February -- early February [2013].

Father did not indicate that he has done anything more to establish his child support obligation or transfer money to Mother or to any account for this purpose. Father testified that, as far as he knows, his file with the Texas attorney general's office is still active.

With regard to visitation, Father testified that he did not attempt to contact Mother or see Anna because he was afraid Mother would call the police on him and have him arrested. Father testified:

[I was] kept away for two years with restraining orders. I didn't want to go to jail so I am going to obey those to the Tee. You know, so that's why there is no contact or whatever made personally. Yeah. I knew [Mother's] e-mail. I knew her phone number. But every time I - - even just driving by the house - - you know, she is going to get me arrested.

On cross-examination, Father admitted that during the fall of 2012 and the first few months of 2013, he had the ability to pay child support, and he had the means to hire counsel if he had wanted to pursue his petition for visitation.

TRIAL COURT'S RULING

Following the close of evidence, the trial court issued a ruling granting Mother and Step-Father's petition. The court addressed both the grounds for termination as well as the Child's best interest in arriving at its judgment. In addressing Father's argument that his failure to visit or support Anna was not willful, the court made the following findings of fact:

It is Father's position that he understood his duty to support and his failure to do so was not willful. He testified he contacted the Tennessee Attorney General's Office in early February of 2013, prior to being served with the Petition to Terminate and was referred to the Texas Attorney General's Office, reflecting a desire on his part to establish and provide support. Counsel maintains this was a proactive step on Respondent's part, expressing a willingness to support and solidifying he was not willfully failing to support his child. Respondent offered no documentary proof of his alleged attempt to contact the child support office of either state office. The Court has problems with the credibility of Father's testimony on this issue.

The Court understands his defense to otherwise be: (1) He has a mental illness resulting from a traumatic brain injury; (2) Mother never asked him for

support; (3) after his previous lawyer withdrew from representation, he did not know how to go about pursuing visitation and child support, (4) if and when he did pay child support, he wanted a good record of same; and (5) he assumed he would be under an extended restraining order, which actually expired in February of 2012, and was not extended by Mother.

The trial court concluded that Mother and Step-Father carried their burden of proving by clear and convincing evidence that Father abandoned Anna by failing to visit or support her within four months of their filing of the petition. In reaching this conclusion, the court wrote:

The Court finds Respondent to be of more than sufficient intelligence, maturity, and “know how,” to enable him to follow up and pursue his right to see his child and to pursue his responsibility to establish child support on her behalf. He did neither.

Respondent admits that he was aware of his right and duty to visit and to support his child. The Court finds he had the capacity to do so, made no realistic attempt to do so, and has no justifiable excuse for not doing so for more than four months preceding the filing of the Petition.

The trial court then turned to a consideration of the Child’s best interest to determine whether Father’s rights to Anna should be terminated. The court considered the relevant factors set out in Tenn. Code Ann. § 36-1-113(i) and concluded that it is in Anna’s best interest that Father’s rights be terminated.

Father appeals the trial court’s decision terminating his parental rights to Anna. He argues the trial court erred in finding the evidence was clear and convincing that (1) he abandoned the Child and (2) it is in Anna’s best interest that his parental rights be terminated.

ANALYSIS

The termination of a parent’s rights is one of the most serious decisions courts make. As the United States Supreme Court has said, “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *Santosky v. Kramer*, 455 U.S. 745, 787 (1982). Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, and of “severing forever all legal rights and obligations of the parent or guardian.” Tenn. Code Ann. § 36-1-113(l)(1).

A parent has a fundamental right, based in both the federal and state constitutions, to

the care, custody, and control 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, 174-75 (Tenn. 1996); *In re Adoption of a Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995). While this right is fundamental, it is not absolute. The State may interfere with parental rights in certain circumstances. *In re Angela E.*, 303 S.W.3d at 250.

Our legislature has listed the grounds upon which termination proceedings may be brought. Tenn. Code Ann. § 36-1-113(g). Termination proceedings are statutory, *In re Angela E.*, 303 S.W.3d at 250; *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004), and a parent's rights may be terminated only where a statutory basis exists. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In the Matter of M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

To terminate parental rights, a court must determine by clear and convincing evidence the existence of at least one of the statutory grounds for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citations omitted). Unlike the preponderance of the evidence standard, "[e]vidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable." *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005).

Appellate courts review the trial court's findings of fact in termination proceedings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. "In light of the heightened burden of proof in [termination] proceedings . . . the reviewing court must then make its 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. Proof of only one statutory ground is necessary to support a court's termination of a parent's rights. *In re Adoption of Angela E.*, 402 S.W.3d 636, 641 (Tenn. 2013); *In re Valentine*, 79 S.W.3d at 546.

Once a ground for termination is established by clear and convincing evidence, the trial court or the reviewing court conducts a best interests analysis. *In re Angela E.*, 303 S.W.3d at 251 (citing *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005)). "The best interests analysis is separate from and subsequent to the determination that there is clear and

convincing evidence of grounds for termination.” *Id.* at 254. The existence of a ground for termination “does not inexorably lead to the conclusion that termination of a parent’s rights is in the best interest of the child.” *In re C.B.W.*, No. M2005-01817-COA-R3-PT, 2006 WL 1749534, at *6 (Tenn. Ct. App. June 26, 2006).

A. Grounds for Termination of Father’s Rights

A parent’s rights may be terminated upon proof by clear and convincing evidence that the parent “abandoned” the child. Tenn. Code Ann. §§ 36-1-113(c)(1), (g)(1). “Abandonment,” for purposes of terminating a parent’s rights, is defined to include the following:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of a parent . . . , that the parent . . . 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.

Tenn. Code Ann. § 36-1-102(1)(A)(i). A court must find that the abandonment was “willful” for it to be actionable. Willful, in this context, means that “a parent who failed to visit or support had the capacity to do so, made no attempt to do so, and had no justifiable excuse for not doing so.” *In re Adoption of Angela E.*, 402 S.W.3d at 640 (citing *In re Audrey S.*, 182 S.W.3d 838, 864 (Tenn. Ct. App. 2005)); see *In re Audrey S.*, 182 S.W.3d at 863-64 (an individual acts willfully if he or she knows what he is doing and has the intention to do what he or she is doing). “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 Adoption of Angela E.*, 402 S.W.3d at 640 (citing *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007)). A parent will not be found to have abandoned his child if his failure to support or to visit the child is not within his control. *Id.*

The trial court found that Father abandoned Anna by willfully failing to visit and willfully failing to make reasonable payments toward the support of the Child for four consecutive months immediately preceding the filing of the termination petition on February 26, 2013. Father concedes that he did not visit or support Anna within the four months preceding the petition’s filing, but he contends that his failure to visit or provide support was not willful.

Turning first to Father’s failure to visit Anna, Father relies on the restraining orders Mother had against him from 2010 through February 18, 2012, and on Mother’s testimony, to show his failure to visit was not willful. Father testified that he wanted to see the Child,

but he was afraid Mother would call the police and have him arrested if he contacted her in an effort to visit Anna. Mother testified at the hearing that she would not have answered her phone if Father had telephoned her, and she would have called the police if Father had shown up at her house.

After Mother obtained the initial restraining order against Father in 2010, Father filed a petition asking the juvenile court to set a visitation schedule and determine his child support obligation. Mother responded to this petition in June 2010, several months after she obtained the restraining order, and she acknowledged Father's right to see Anna. In her answer to the petition, Mother stated, "[Father] should be afforded appropriate parenting time with his daughter." Moreover, the judge who extended Mother's restraining order in February 2011 recognized Father's interest in maintaining a relationship with Anna when it decreed, "Any future Order entered by the Juvenile Court for Maury County, Tennessee shall supercede this Order only as to [Father's] contact with [the Child]." Thus, contrary to Father's argument, neither Mother nor anyone else has interfered with Father's right to see his daughter.³ *Cf. In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006) (explaining that abandonment has not been found where parent's visitation efforts have been thwarted). We conclude that the evidence is clear and convincing that Father abandoned Anna by willfully failing to visit her in the four consecutive months immediately preceding the filing of the petition to terminate Father's parental rights.

We find Father's argument regarding his failure to provide child support lacking as well. Father acknowledged that he was aware of his obligation to provide child support to Mother for the care of the Child, and he testified that he had sufficient funds in the four months prior to the date when the termination petition was filed from which to provide this support.⁴ Father relies on his testimony regarding phone calls he made to the Tennessee and Texas offices of the attorney general in early February, prior to the date when the petition to terminate was filed, to establish that his failure to provide support for Anna was not willful. As the trial court noted, however, Father offered no documentary proof of his alleged attempts to contact the child support official of either state office, and he failed to testify

³Father's complaint that he lacked legal counsel after his attorney withdrew from representing him in October 2011 does not excuse Father from pursuing his right to obtain visitation. Legal representation is not a prerequisite to obtaining the sort of relief Father was seeking from the court. Moreover, Father testified he had sufficient funds to retain an attorney in the four months preceding the filing of the petition for termination.

⁴In addition, during the hearing in 2010 on Mother's request for a restraining order, Father testified that the job he was seeking in Wyoming would pay enough to allow him to make child support payments, and in the petition he filed later in 2010, Father asked the juvenile court to determine the amount of child support he owed.

about any follow-up conversations with either office.

The trial court did not find Father's testimony on this issue to be credible. A trial court's determinations regarding witness credibility are entitled to great weight on appeal and are not to be disturbed "absent clear and convincing evidence to the contrary." *In re Adoption of A.M.H.*, 215 S.W.3d at 809; *Jones v. Garrett*, 92 S.W.3d at 838. Father knew he was responsible for contributing to the Child's support, yet he provided no support for Anna whatsoever since at least 2010. Father knew Mother's mailing address. If Father were worried about creating a record of payments, he could have sent Mother checks and noted on the checks that the money was for Anna's support. It was not necessary that Father know the exact amount he was responsible for paying before sending some amount of support to Mother. We conclude the evidence clearly and convincingly establishes that Father abandoned Anna by willfully failing to provide for her support in the four consecutive months immediately preceding the filing of the petition for termination.

B. Best Interest Analysis

After concluding that grounds for terminating Father's parental rights were proven by clear and convincing evidence, we turn now to consider whether it is in Anna's best interest that Father's parental rights be terminated. The focus of this inquiry is what is best for Anna, not what is best for Father. *In re Dominique L.H.*, 393 S.W.3d 710, 718 (Tenn. Ct. App. 2012); *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004). Statutory factors are set out for the best interest analysis that the court "shall consider," but the court's analysis is not limited to the factors enumerated in the statute. Tenn. Code Ann. § 36-1-113(i); *In re Angela E.*, 303 S.W.3d at 251; *In re Audrey S.*, 182 S.W.3d at 878. It is not necessary that each factor be applicable for a trial court to determine that it is in the best interest of a child for a parent's rights to be terminated; and the relevance and weight to be given each factor depends on the unique facts of each case. In some cases, one factor alone may be sufficient to determine the outcome. *In re Audrey S.*, 182 S.W.3d at 878; *see In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005) (noting courts are not required to find existence of every factor to conclude terminating parental rights is in child's best interest).

The statutory factors a court is to consider in conducting a best interest analysis include the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment

after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i).

The trial court here considered each statutory factor other than factors 2 and 6, which the parties agree are not relevant to the facts of this case. Concluding it is in Anna's best interest that Father's rights be terminated, the court wrote:

Each of the factors weighs strongly against Respondent. Respondent has not maintained regular visitation or other contact with the child; no relationship has been established between Respondent and [the Child] since

she was seven (7) months old -- Mother testified that while Father was in [the Child's] young life, he had no patience and was quick to get angry with her. She testified that [the Child] does not know Father.

Respondent has never paid child support for the child. His alleged unilateral attempts to set up child support through the Tennessee and Texas Attorney's General Offices are totally unpersuasive of his desire to support [the Child].

Respondent has refused to even attempt to make an adjustment of circumstances, conduct or conditions as to make it safe and in the child's best interest to be in his home. Respondent is remarried and confirmed that his stepson is on probation for sexually molesting his two sisters. The Court questions the stability of his marriage of less than one year.

Respondent has never demonstrated that he wanted to provide a physical environment that is healthy and safe for the child. Indeed, it is difficult for the Court to tell where Respondent is coming from. The Court has great respect for our veterans and great empathy for their war injuries, both mental and physical. Observing Respondent's demeanor in Court, the Court regrettably finds that Respondent expects the world to cater to him, take into consideration his mental illness, bend the rules and treat him special. The Court cannot do this.

Then, focusing on Step-Father's desire to adopt Anna, the trial court wrote:

Mother testified that [Step-Father] and she formed a romantic relationship in early 2011 and married in 2012. She described Mr. Crabtree as a patient, affectionate father to [the Child]. [The Child] calls him "dad." [The Child] is happy, healthy and well-adjusted. [Step-Father] is the primary financial provider for the family and provides health insurance for the children. [The Child] is no longer in a home with rage, yelling and screaming.

.....

Based upon the testimony of Petitioners, the Court finds that it is in the best interest of [the Child] that her step-father be allowed to adopt her. The Court finds [Step-Father] to be a caring and loving father to [the Child], and finds that Petitioners will continue to establish a nurturing and stable environment for her. She is thriving in school and in their home. The Court

will approve the adoption at the appropriate time.

On appeal, Father contends he is a changed man and that he has gotten his anger issues under control. Father asserts he has not been given a chance to be a father to his daughter and that he longs for such an opportunity. We disagree with Father's characterization of the situation, and the evidence does not preponderate against the trial court's implicit finding that Father is not a changed man. Father left Tennessee in 2010, when Anna was just one year old. Father filed a petition to determine his visitation and child support obligations in February 2010, and he filed papers in an effort to modify that petition the following year, but Father then let his case languish in juvenile court. By the time the petition for termination was filed in February 2013, Anna was over four years old and had no memory of Father. As far as Anna knows, Step-Father is the only "dad" she has.

Despite Father's protestations to the contrary, evidence was introduced indicating that Father continues to display anger, aggression, and violent behavior. Father admitted to physical altercations with his wife in the month prior to the trial, and he admitted to discharging a firearm into the ground when the noise of neighboring dogs interfered with his opportunity to watch a movie. The evidence does not preponderate against the trial court's findings regarding Anna's best interest, and we conclude that it is in Anna's best interest that Father's parental rights be terminated.

CONCLUSION

The trial court's judgment is affirmed. Costs of this appeal are assessed against the appellant, Lewis Chester D., for which execution shall issue, if necessary.

ANDY D. BENNETT, JUDGE