

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 9, 2015

IN RE JACETON B.

**Appeal from the Juvenile Court for Dickson County
No. 01-14-005-CC A. Andrew Jackson, Judge**

No. M2014-01580-COA-R3-PT – Filed March 30, 2015

Department of Children’s Services filed a petition to terminate father’s parental rights to his minor child. The trial court found the Department proved the ground for termination pursuant to Tenn. Code Ann. § 36-1-113(g)(6) because the father was sentenced to a prison term of ten or more years when the child was under eight years of age. The trial court also found that terminating the father’s parental rights was in the best interests of the child. Father appeals. The evidence clearly and convincingly supports the determination that father was sentenced to incarceration for ten or more years when the child was less than eight years old. The evidence also clearly and convincingly supports the determination that terminating father’s parental rights is in the child’s best interest because father did not have any meaningful relationship with the child and that the child had a strong relationship with his foster family, who had cared for his medical needs and wanted to adopt him. Therefore, we affirm the termination of father’s parental rights.

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

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

B. Kyle Sanders, Dickson, Tennessee, for the appellant, Mariaus K.¹

Herbert H. Slatery, III, Attorney General and Reporter, Ryan L. McGehee, Assistant Attorney General, and Leslie Curry, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

¹This court has a policy of protecting the identity of children in parental termination cases by using initials in place of the last names of the parties.

OPINION

Jaceton B. (“Jaceton”) was born in December 2012 to Kristi B. (“Mother”). No father was listed on his birth certificate. Because Jaceton tested positive for cocaine and suffered from various health problems at birth, he was immediately removed from Mother’s custody and placed in foster care. He has been living with the same foster family since that time.

Mother subsequently informed the Tennessee Department of Children’s Services (“DCS”) that Mariaus K. (“Father”), who had been in jail since Jaceton’s birth, might be Jaceton’s father. Genetic testing established Father’s paternity of Jaceton on December 31, 2013.

DCS filed a petition to terminate the parental rights of both parents on January 22, 2014. The termination hearing took place in July 2014. Father participated at trial. Mother did not because she surrendered her parental rights in June 2014.

Certified copies of Father’s felony convictions were admitted into evidence, which established that Father was convicted in May 2013 of two drug offenses for which he was sentenced to 11 years in prison. Jaceton’s birth certificate was also introduced into evidence, and it indicated that Jaceton was less than one year old at the time of Father’s sentencing. The DCS case manager assigned to Jaceton’s foster family testified that she met with Father in prison to discuss his sentence, possible placement for Jaceton, and classes Father could take while incarcerated. She also testified that Jaceton was doing very well with his foster family and had recovered from his initial medical problems. She stated that his foster parents treated him as a member of the family, took him on vacations, and wanted to adopt him.

Father testified stating that he had known Mother was pregnant, but he did not know that he was Jaceton’s father. He testified that he was denied parole in May 2014 and that his next parole hearing was scheduled for May 2016. He indicated that he was in the process of completing a rehabilitation program and GED courses while incarcerated. While he conceded that he was not currently in a position to care for Jaceton, Father stated that he expected to be released on parole in May 2016. Father understood that Jaceton had developed a bond with his foster family, but he did not want the trial court to terminate his parental rights because he wanted a “say-so with [his] child.”

The trial court found that, pursuant to Tenn. Code Ann. § 36-1-113(g)(6), there were grounds for terminating Father’s parental rights because he was sentenced to a prison term of ten or more years when the child was under eight years of age. The trial court also found that terminating Father’s parental rights was in Jaceton’s best interests because Father did not have a meaningful relationship with Jaceton and would not be in a position to care for him for at least two more years. In contrast, Jaceton’s foster parents

had taken care of Jaceton since birth and treated him as a member of the family. The trial court terminated Father's parental rights, and Father appealed. We affirm.

STANDARD OF REVIEW

Our review of the trial court's findings of fact in a termination proceeding is conducted de novo on the record with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *In re Angela E.*, 303 S.W.3d 240, 246 (Tenn. 2010). "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 (citations omitted); see also *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005).

The trial court's conclusions of law are reviewed de novo with no presumption of correctness. *Id.* at 597.

ANALYSIS

Parents have a fundamental right to the care, custody, and control of their children founded in the federal and State constitutions. *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d at 250; *In re D.A.H.*, 142 S.W.3d 267, 274 (Tenn. 2004); *Doe v. Sundquist*, 2 S.W.3d 919, 926 (Tenn. 1999). Although fundamental, this right is not absolute, and the State may terminate parental rights under certain circumstances. *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982); *In re Angela E.*, 303 S.W.3d at 250. Once parental rights are terminated, all of the parent's legal rights and obligations to the child are severed. Tenn. Code Ann. § 36-1-113(l)(1).

In Tennessee, the termination of parental rights is governed by statute. Tenn. Code Ann. § 36-1-113; *In re Angela E.*, 303 S.W.3d at 250; *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004). Termination proceedings follow a two-step process in which the petitioner must demonstrate, by clear and convincing evidence: (1) at least one statutory ground for termination; and (2) that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). So long as one statutory ground is proved by clear and convincing evidence the trial court may proceed to consider the best interests of the child and, eventually, the termination of parental rights. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

Clear and convincing evidence is required for both steps of this process in order to "minimize the possibility of erroneous decisions that result in an unwarranted termination

of or interference with these rights.” *In re Bernard T.*, 319 S.W.3d at 596; *see also In re Angela E.*, 303 S.W.3d at 250; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). “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 at 596 (internal citations omitted). Unlike the preponderance of the evidence standard, “[c]lear and convincing evidence establishes that the truth of the facts asserted is highly probable.” *In re Dakota C.R.*, 404 S.W.3d 484, 496 (Tenn. Ct. App. 2012) (internal quotation marks omitted).

I. GROUND FOR TERMINATION

The trial court found that DCS had established a ground on which to terminate Father’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(6). That section provides that grounds for termination of parental rights exist when:

[t]he parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court

Tenn. Code Ann. § 36-1-113(g)(6).

In considering a petition for termination of parental rights based on Tenn. Code Ann. § 36-1-113(g)(6), a court “need not look beyond the judgment of conviction and the sentence imposed by the criminal court in order to determine whether this ground for termination applies.” *In re Audrey S.*, 182 S.W.3d at 876. Certified copies of Father’s conviction are included in the record and indicate that Father was convicted of two crimes and sentenced to 11 years in prison in May 2013. While Father may be paroled in less than ten years, the possibility of early parole is not a sufficient basis to negate this statutorily-defined ground. *In re Dominique L.H.*, 393 S.W.3d 710, 716 (Tenn. Ct. App. 2012) (quoting *In re Adoption of C.A.M.*, No. W2008-02003-COA-R3-PT, 2009 WL 3739447, at *5 (Tenn. Ct. App. Nov. 9, 2009)). Based on his birth certificate, Jaceton was less than one year old at the time Father was sentenced. Therefore, we affirm the trial court’s finding that DCS established this ground by clear and convincing evidence.

II. BEST INTERESTS OF THE CHILD

Father argues that the trial court’s determination regarding Jaceton’s best interests is not supported by clear and convincing evidence. We disagree. The evidence supports the trial court’s best interest findings, and those findings demonstrate, by clear and convincing evidence, that terminating Father’s parental rights is in Jaceton’s best interests.

Once a ground for termination has been established, the ultimate goal of the proceeding is to ascertain and promote the child's best interests, and to achieve that end courts must consider all relevant factors. *See In re Audrey S.*, 182 S.W.3d at 877; *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The child's best interest must be viewed from the child's, rather than the parent's, perspective. *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004). Ultimately, the relevancy and weight given to each factor depends on the unique facts of each case. *In Audrey S.*, 182 S.W.3d at 878. Depending on the circumstances of the particular parent and particular child in question, the consideration of one factor may determine the outcome of the analysis. *Id.* (citing *White*, 171 S.W.3d at 194).

The General Assembly has provided a list of factors for courts to consider when determining the best interests of a child. *See* Tenn. Code Ann. § 36-1-113(i). This list is not exhaustive, and a trial court is not required to find the existence of each enumerated factor before it determines that terminating a party's parental rights is in the best interest of the child. *In re M.A.R.*, 183 S.W.3d at 667. Instead, a court is required to weigh both the factors listed in Tenn. Code Ann. § 36-1-113(i) and any other relevant factors to determine whether terminating a parent's rights is in the child's best interest. *Id.*

Other relevant factors may include the grounds for termination themselves, especially when those grounds involve a long prison sentence. *See In re Dominique L.H.*, 393 S.W.3d at 717 (citing 43 C.J.S. Infants § 22 (2012)). Incarceration creates a lengthy delay in a parent's ability to take custody of his child, and such a delay is a strong indication that termination is in the child's best interests. *See id.* at 718, 720. Father's incarceration and the attendant delay in his ability to care for Jaceton obviously affect Jaceton's best interest. As a result, it is proper to consider this factor along with other relevant factors in the context of the best interests determination. *See In re Dominique L.H.*, 393 S.W.3d 710, 717-20 (Tenn. Ct. App. 2012); *In re Darion X.Y.*, No. M2012-00352-COA-R3-PT, 2012 WL 4474123, at *4 (Tenn. Ct. App. Sept. 27, 2012).

Here, the trial court found that terminating Father's parental rights was in Jaceton's best interests based on both statutory and non-statutory factors. The trial court first found that Father did not have a meaningful relationship with Jaceton. *See* Tenn. Code Ann. § 36-1-113(i)(4). Indeed, the evidence in the record establishes that Father has been incarcerated for all of Jaceton's life. From Jaceton's perspective, Father is a complete stranger, and in such cases this factor alone may be sufficient to demonstrate that terminating a parent's rights is in the child's best interests. *See White*, 171 S.W.3d at 194-95.

The trial court also found that, as the result of his own decisions, Father was currently incarcerated and unable to care for Jaceton. The trial court further found that while Father was scheduled to have a parole hearing in May 2016, release at that time

was not certain. Father's incarceration creates a lengthy delay in his ability to take custody of and care for Jaceton. During this delay, Jaceton will be denied a sense of permanency or stability while he waits to see if Father, a man he does not know, is released from prison. Even if Father is released in May 2016, Jaceton will have doubled in age from the time of the termination hearing to the time of Father's release. Such a significant lapse in time strongly indicates that it is in Jaceton's best interest to terminate Father's parental rights. *In re Dominique L.H.*, 393 S.W.3d at 718; see *In re M.L.P.*, 228 S.W.3d 139, 148 (Tenn. Ct. App. 2007) ("The alternative [to terminating parental rights] would be to hold a child's life in limbo for an unknown number of years on the off chance that Father might be released from prison in time to care for a daughter he barely knows; we find this option unacceptable.").

The trial court also heard testimony concerning Jaceton's relationship with his foster family and found that Jaceton had been in their care almost since birth and they are the only caretakers he has ever known. The court also found that his foster parents have treated him as a member of the family and wish to adopt Jaceton. Additionally, the court found that Father has no relationship with Jaceton due to the fact Father has been incarcerated Jaceton's entire life.

The trial court's findings are supported by the record and clearly and convincingly establish that terminating Father's parental rights is in Jaceton's best interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Father.

FRANK G. CLEMENT, JR., JUDGE