

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 5, 2014

IN RE KEMAURI H.

**Appeal from the Juvenile Court for Rutherford County
No. TC2338 Donna Scott Davenport, Judge**

No. M2014-01357-COA-R3-PT – Filed March 26, 2015

Mother appeals the termination of her parental rights. The trial court found that six grounds for termination of her parental rights had been established. Mother does not challenge three of the grounds for termination; thus, the trial court’s ruling regarding three of the grounds is final. Because the trial court may terminate parental rights on the basis of only one statutory ground, *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003), we need not examine the other grounds. *See In re Alexis L.*, No. M2013-01814-COA-R3-PT, 2014 WL 1778261, at *1 (Tenn. Ct. App. Apr. 30, 2014). Mother also contends the trial court erred in finding that the requirements of the permanency plan were reasonably related to remedying the conditions that necessitated the child’s removal and that termination was in the child’s best interests. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit 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.

Jerry W. Matthews, Woodbury, Tennessee, for the appellant, Lakeenta H.¹

Herbert H. Slatery, III, Attorney General and Reporter, and Kathryn A. Baker, Assistant Attorney General, 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 initializing the last names of the parties.

OPINION

Kemaury H., a two-year old child, was taken into protective custody by the Tennessee Department of Children's Services ("the Department") on November 16, 2012, after his sibling's death due to neglect and drug exposure. At the time of removal, Mother tested positive for benzodiazepines, cocaine, and marijuana, and she was temporarily staying with a friend because she did not have a home. Jason L. ("Father") was incarcerated at the time of removal.² Lacking a less restrictive alternative, the child was placed in foster care and has remained with the same foster parents for nearly the entire time he's been in the Department's custody.³

Mother was arrested for charges related to the death of the child's sibling on May 8, 2013; Mother was charged with felony murder, aggravated child abuse, and aggravated child endangerment. Prior to Mother's arrest, she entered into the first of three unsuccessful permanency plans.⁴ The goals and requirements of the permanency plans were consistent throughout the pendency of the case. The plans contained dual goals of return to parent and adoption, and the requirements included, inter alia, that Mother would complete a clinical assessment with alcohol, drug, and parenting components; follow all assessment recommendations; participate in random drug screens within 72 hours of the request; produce proof of any prescriptions; attend weekly anonymous drug/alcohol meetings; be sober and pass drug screens at visitation; obtain a safe, suitable home; demonstrate the ability to competently care for the child; provide proof of a legal means of income; attend parenting classes; and resolve legal issues. Mother was incarcerated at the time she entered into the second and third permanency plan.

The Department filed its petition to terminate the parental rights of both Mother and Father on September 27, 2013. The case went to trial on April 22, 2014. Although Mother

²Father's paternity was established after the child's removal through an Order of Parentage entered on February 5, 2013.

³The child was briefly placed with a relative of Mother; however, that placement was disrupted after one week because the relative transported the child to the Department office without using a car seat, even though the Department had provided her with one. Additionally, an adult that resided with the relative had not presented herself for fingerprinting within the allotted time.

⁴The first permanency plan was created on December 6, 2012, and ratified on January 3, 2013; the second was created on June 17, 2013, and ratified on August 16, 2013; the third was created on December 16, 2013, and ratified on January 17, 2014.

remained incarcerated at the time of trial, she attended the trial; however, she chose to take the Fifth Amendment as to all questions asked.⁵ The trial court took a negative inference from Mother's refusal to testify. Father did not attend the trial. Father's attorney informed the court that he had been unable to contact Father since November 2012.

The evidence introduced at trial established that by September 2013, Mother had completed two of the fourteen requirements of the permanency plan: the clinical assessment and the parenting classes. While Mother completed the clinical assessment, she failed to follow the recommendations of the assessment. Moreover, during the relevant four months preceding her incarceration, Mother failed to sign a release for mental health; provide proof of attendance in anonymous drug/alcohol meetings; proof of employment and income; proof of obtaining a lease; and she failed to cooperate with the Department as she was unreachable for approximately one month. The evidence also established that, since the child's removal in November 2012 to the time of Mother's incarceration in May 2013, Mother continued to abuse drugs. Significantly, Mother failed to appear for all required drug screens, as required by the permanency plan; furthermore, the majority of the drug screens for which she did appear, she tested positive. Specifically, the Department made seventeen attempts to drug screen Mother, but Mother only participated in twelve; of those twelve, seven were positive, including five returning positive for cocaine. Mother last tested positive for cocaine on the day she was incarcerated. With respect to visitation, Mother could have participated in a *minimum* of eight visits, but some visits were cancelled due to Mother's positive drug screens. The evidence established that Mother did visit the child on five occasions during the relevant four months; however, four of the five visits were token because Mother was not engaged, she acted inappropriately and failed to parent during those visits.

By order entered on June 16, 2014, the trial court terminated the parental rights of both parents. As for Mother, the court found six grounds for termination of her parental rights: abandonment by failure to visit, abandonment by failure to support, abandonment by wanton disregard, abandonment by failure to provide a suitable home, substantial non-compliance with the permanency plan, and persistence of conditions. The trial court also found that the termination of Mother's parental rights was in the best interests of the child. This appeal by Mother followed. The child's father did not appeal the termination of his parental rights.

⁵Mother responded to each question by stating, "I refuse to answer any questions on the grounds that it may incriminate me."

STANDARD OF REVIEW

To terminate parental rights, two things must be proved by clear and convincing evidence: (1) the existence of at least one of the statutory grounds 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). “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) (citing *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re Valentine*, 79 S.W.3d at 546) (other citations omitted). When a trial court has made findings of fact, we review the findings de novo with a presumption of correctness under Tenn. R. App. P. 13(d). See *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d 240, 246 (Tenn. 2010). We next review the trial court’s order de novo to determine whether the facts amount to clear and convincing evidence that one of the statutory grounds for termination exists and if so whether the termination of parental rights is in the best interests of the children. *Id.* The trial court’s conclusions of law are reviewed de novo with no presumption of correctness. *In re Bernard T.*, 319 S.W.3d at 597.

ANALYSIS

We note from the outset that Mother’s appellate brief does not comply with the requirements set forth in Tennessee Rule of Appellate Procedure 27. Specifically, Mother’s argument fails to sufficiently cite to legal authority or make appropriate references to the record; furthermore, it is difficult to discern the issues raised by Mother as her argument in support thereof does not pertain to the contended issue. See Tenn. R. App. P. 27(a)(7). “It is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Sneed v. Bd. of Prof’l Responsibility of Supreme Court*, 301 S.W.3d 603, 615 (Tenn. 2010). Nevertheless, Tennessee Rule of Appellate Procedure 2 affords this court the discretion to waive the briefing requirements to adjudicate the issues on the merits. This is especially true in cases where the interests of children are involved. *Chiozza v. Chiozza*, 315 S.W.3d 482, 489 (Tenn. Ct. App. 2009). Because of the sensitive nature of this case, and the fact that it involves a child, we will exercise our discretion to overlook the lack of briefing on the issues so that we may adjudicate it on the merits. *In re Jaden W.*, No. E2014-00388-COA-R3-PT, 2014 WL 7366683, at *5 (Tenn. Ct. App. Dec. 26, 2014).⁶

⁶We caution Mother’s attorney that suspension of the rules is not our usual course.

The foregoing considered, we interpret Mother's issues on appeal to be: (1) whether the requirements of the permanency plan were reasonable and related to remedying the conditions which necessitated the child's removal; (2) whether the trial court erred in finding the grounds of abandonment by failure to visit, substantial noncompliance with the permanency plan, and persistence of conditions; and (3) whether termination of Mother's parental rights is in the best interests of the child. We will begin our analysis with the requirements of the permanency plan.

I. PERMANENCY PLAN

The child came into the Department's custody due to Mother's drug abuse and criminally suspect behavior regarding the death of the child's sibling. At the time of removal, Mother tested positive for benzodiazepines, cocaine, and marijuana. Additionally, Mother did not have stable housing and was temporarily living with a friend.

Because of the above concerns, the Department developed a permanency plan on December 6, 2012, with the desired outcome of Mother to maintain sobriety, consistently demonstrate the ability to make good decisions, maintain stable mental health, resolve legal conflicts, demonstrate the skills needed to care for the child, and provide a safe stable home for the child to return.

Our Supreme Court has held that the permanency plan requirements must be "reasonable and related to remedying the conditions which necessitate foster care placement." *In re L.J.C.*, 124 S.W.3d 609, 621-22 (Tenn. Ct. App. 2003) (quoting *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002)). In this case, the trial court specifically found the requirements of the permanency plan to be "reasonable" and that the requirements "were related to remedying the conditions which necessitated foster care placement." We find that the evidence does not preponderate against the trial court's ruling. Accordingly, the plans satisfied the requisite criteria. *See In re Valentine*, 79 S.W. 3d at 547; *see also* Tenn. Code Ann. § 37-2-403-(a)(2)(C). We will now move to the trial court's finding of grounds for termination of Mother's parental rights.

II. GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

A finding of any one of the nine statutory grounds for termination of parental rights listed in Tenn. Code Ann. § 36-1-113(g) is sufficient to support an order terminating parental rights where termination is in the best interests of the child. *In re Audrey S.*, 182 S.W.3d at 862 (citations omitted). Here, the trial court found six grounds to terminate Mother's parental rights: abandonment by failure to visit, abandonment by failure to support, abandonment by wanton disregard, abandonment by failure to provide a suitable home, substantial non-

compliance with the permanency plan; and persistence of conditions. Mother appealed three of these grounds. She did not appeal or make any argument in her appellate brief on the grounds of abandonment by failure to support; abandonment by wanton disregard; and abandonment by failure to provide a suitable home.

“A party’s failure to argue an issue in its brief constitutes a waiver of that issue.” *In re Alexis L.*, No. M2013-01814-COA-R3-PT, 2014 WL 1778261, at *2 (Tenn. Ct. App. Apr. 30, 2014) (citing *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011)). Because Mother does not challenge the termination of her parental rights on the grounds of abandonment by failure to support, abandonment by wanton disregard, and abandonment by failure to provide a suitable home, the trial court’s findings on these grounds are final. *Id.*; *Forbess*, 370 S.W.3d at 355 (citing *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006)). Because only one statutory ground is necessary for termination, we need not examine the other grounds for termination as it would “change nothing and amount to an advisory opinion[.]” *See In re Alexis L.*, 2014 WL 1778261, at *2. Accordingly, we move directly to whether the termination of Mother’s parental rights is in the child’s best interests.

III. BEST INTERESTS OF THE CHILD

The Tennessee General Assembly has provided a list of factors for the court to consider when conducting a best interests analysis. *See* Tenn. Code Ann. § 36-1-113(i)(1)-(9). 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 interests of the child. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). 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 interests. *Id.* One such factor is incarceration of a parent because it causes a delay in a parent’s ability to take custody of her child, and such a delay is a strong indication that termination is in the child’s best interests. *See id.* at 718, 720.

The child’s best interests must be viewed from the child’s, rather than the parent’s, perspective. *Id.* at 718 (quoting *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 trial court found that the termination of Mother’s parental rights was in the best interests of the child because Mother failed to make an adjustment of circumstances, conduct or conditions to make it safe for the minor child, as evidenced by her continued use of

cocaine until the day of her incarceration; Mother never established a suitable home before she was incarcerated, and, because she was incarcerated at the time of trial, Mother still did not have a suitable home. Mother failed to maintain regular visitation or contact with the child, and when she did visit, she acted inappropriately.

Since the child was removed from Mother's custody, he has thrived under the care of his foster parents who wish to adopt him and make him a permanent part of their family. The child was delayed when he came into the care of the Department; however, the child's foster parents sought speech and play therapy for him, and his foster mother testified that he has since improved. Allowing the child to return to Mother would require the removal of the child from an environment where his conditions have improved and he is much happier and healthier. Tenn. Code Ann. § 36-1-113(i)(5).

Considering these relevant factors from the child's perspective, the evidence clearly and convincingly established it is in the child's best interests that Mother's parental rights be terminated.

IN CONCLUSION

The judgment of the trial court is affirmed. Costs of appeal are assessed to the appellant, Lakeenta H.

FRANK G. CLEMENT, JR., JUDGE