

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 18, 2006

**STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v.
C.D.F., ET AL.**

**Appeal from the Juvenile Court for Loudon County
No. 16677J William H. Russell, Judge**

No. E2006-00668-COA-R3-PT - FILED NOVEMBER 29, 2006

The trial court terminated the parental rights of C.D.F. ("Mother") and L.D.F. ("Father") with respect to their minor children, J.E.F. (DOB: March 8, 1995) and S.M.F. (DOB: August 16, 1998) ("the children"), upon finding, by clear and convincing evidence, that grounds for terminating their parental rights exist and that termination is in the best interest of the children. Mother and Father appeal. We affirm the trial court's judgment terminating the parental rights of C.D.F. and L.D.F., but vacate a portion of the trial court's rationale for its judgment.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Mary K. Longworth, Peggy J.S. Monger, Loudon, Tennessee, for the appellant, C.D.F.

Gary Fox, Lenoir City, Tennessee, for the appellant, L.D.F.

Paul G. Summers, Attorney General and Reporter, and Lauren S. Lamberth, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee Department of Children's Services.

Brian E. Nichols, Loudon, Tennessee, for the appellee, Guardian Ad Litem for J.E.F. and S.M.F.

OPINION

I.

On the evening of January 26, 2002, J.E.F., a boy age six, and S.M.F., a girl age three, were found alone in a mobile home that they shared with their parents. Officer Lynette Ladd of the Lenoir City Police Department was dispatched to the scene. According to Officer Ladd, the back door was wide open and it was cold inside. Upon questioning J.E.F., the officer learned that the boy had eaten a few potato chips found in the microwave and had consumed pickle juice that day. Officer Ladd had food delivered to the children, noting that S.M.F. kissed her cookie before eating it. Officer Ladd described the home as filthy, with no edible food or water in the kitchen and beer cans laying all around.

Joanna Gilbert, an investigator with Child Protective Services (“CPS”), also responded to a call regarding this situation. Ms. Gilbert stated that the children were left alone in a cold, dimly lit mobile home with dirty clothes and beer cans piled up everywhere. She also related that there were dirty dishes with old, dried food in the kitchen, as well as prescription and non-prescription medication bottles within the reach of the children. J.E.F. told Ms. Gilbert that he remembered eating pizza a few days before and that he had eaten a few potato chips but did not really drink anything that day. According to Ms. Gilbert, S.M.F. was wearing a diaper that was saturated and had not been changed for some period of time. At that time, Ms. Gilbert was also concerned because S.M.F. appeared to be severely underweight.

On January 26, 2002, Mother had left the children to go drinking at Midway Tavern. In fact, prior to responding to the call about the children, Officer Ladd had been dispatched to an incident at the tavern, where she found Mother to be highly intoxicated.¹ As a result of leaving her children alone, Mother was arrested and charged with criminal child abuse and neglect. She pleaded guilty to the charge and was placed on probation for 11 months and 29 days. It was later discovered that Father was in jail in Blount County on the evening of January 26, 2002.

The Tennessee Department of Children’s Services (“DCS”) removed the children from the custody of Mother and Father on an emergency basis on January 26, 2002. Two days later, on January 28, 2002, DCS petitioned for temporary custody of the children on the ground that they were dependent and neglected. That same day, the trial court concluded that there was probable cause to believe that the children were dependent and neglected and awarded temporary custody of the children to DCS.

Approximately 14 months later, on March 10, 2003, DCS filed a petition to terminate the parental rights of Mother and Father, on multiple grounds: abandonment by failure to visit or support; failure to establish a suitable home; substantial non-compliance with the permanency plans; and failure to remedy persistent conditions. In July, 2003, after evidence came to light that the children had been sexually abused by their parents on multiple occasions, DCS petitioned for and obtained a restraining order, whereby there was no contact permitted between the parents and the children.

¹ The record contains information that Mother was intoxicated at the tavern on two consecutive evenings.

On June 7, 2004, DCS moved to amend its petition to include severe child abuse, specifically sexual abuse, as an additional ground for terminating the parental rights of Mother and Father. DCS filed a proposed amended petition to terminate parental rights on August 16, 2004, including the following additional information in support of termination:

...[O]ther conditions persist in that the children have disclosed through their counseling and statements that the mother of these children did teach the child [S.M.F.] to masturbate. Further that the [parents] and the child [J.E.F.] did frequently watch these behaviors and laughed at [S.M.F.'s] behavior. That the children have disclosed that the parents did place objects into the vagina of the child [S.M.F.] on more than one occasion and encouraged the child [J.E.F.] to do the same which conduct would be severe abuse of both children, that [Father] did physically abuse [J.E.F.] by striking him with a leather belt leaving bruises on several occasions, that [Mother] did hang the child [J.E.F.] up on a hook by his belt buckle and removed him only after he couldn't breathe, the mother of the children did leave them without anyone to care for them for long periods of time without food while she was drinking, that [Father] did force the child [J.E.F.] to strike his mother in the face to punish her and that such behaviors by the parents would in all probability cause the children to be subjected to further abuse and neglect and which, therefore, prevent the children's return to the care of [parents]; there is little likelihood that these conditions will be remedied at an early date so that these children can be returned to [parents] in the near future; the continuation of the legal parent and child relationship greatly diminishes the children's chances of early integration into a stable and permanent home.

On August 22, 2005, several days before the bench trial began, the trial court granted DCS permission to amend its petition.

Following a plenary hearing, the trial court terminated the parental rights of Mother and Father, finding clear and convincing evidence to support the following grounds for termination: (1) severe child abuse, specifically sexual abuse, by both parents; (2) persistent unremedied conditions by both parents; (3) abandonment by Father by reason of his failure to provide a suitable home; (4) abandonment by Father by his failure to visit; (5) abandonment by Father by failure to support; and (6) substantial non-compliance with the permanency plans by Father. The trial court also found by clear and convincing evidence that termination was in the best interest of the children.

In its final judgment, entered November 23, 2005, the trial court found, in pertinent part, as follows:

These children were found to be dependent and neglected by this Court and were placed in the custody of the Department of Children's Services; the Department made reasonable efforts to prevent removal or the children's situation prevented reasonable efforts from being made prior to

removal; the Department has made reasonable efforts to assist the parents to establish a home for the children for a period of four months following removal, but neither parent made reasonable efforts to provide a home for the children for a period of four (4) months following removal, that [Father] has not made reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the children to such a degree that it appears unlikely that he will be able to provide a suitable home for the children at an early date.

That [Father] has abandoned these children in that he has willfully failed to visit for four (4) consecutive months immediately preceding the filing of the termination petition.

That [Father] has abandoned these children in that he has willfully failed to support or make reasonable payments toward the support of the children for four (4) consecutive months immediately preceding the filing of the termination petition.

The children have been removed by order of this Court for a period of six (6) months; other conditions than those that led to removal persist, specifically the sexual abuse of the children by both parents [Father] and [Mother] which in all probability would cause the children to be subjected to further abuse and which therefore prevent the children's return to the care of either of the parents. There is little likelihood that these conditions will be remedied at any early date so that these children can be returned to either parent in the near future. The continuation of the legal parent and child relationship greatly diminishes the children's chances of early integration into a stable and permanent home.

Despite frequent explanations of the statements of responsibilities set out in periodic foster care plans prepared for and signed at least as to the first plan by [Father] he has failed to comply in a substantial manner with those reasonable responsibilities related to remedying the conditions which necessitate foster care placement.

That as to the children . . . the parents . . . have committed severe child abuse as defined by TCA 37-1-102, Aggravated circumstances exist as defined in T.C.A. 36-1-102 as to [the children] and further that this Court concludes pursuant to Rules of Juvenile Procedure 28 that severe child abuse has been committed by both [Father] and [Mother].

That awarding legal and physical custody of the children to either parent would pose a risk of substantial harm to the physical and psychological welfare of the children.

That the termination of Parental Rights as to [Father] and [Mother] is in the best interest of [the children].

(Numbering in original omitted).

II.

We state what is clear: the law is well established that “parents have a fundamental right to the care, custody, and control of their children.” *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). This right, however, is not absolute and may be terminated if there is clear and convincing evidence justifying termination under the pertinent statute. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Clear and convincing evidence is evidence that “eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence.” *O’Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995), *overruled on other grounds by In re Swanson*, 2 S.W.3d 180 (Tenn. 1999).

III.

In cases involving the termination of parental rights, our *de novo* review is somewhat different from our review of a typical bench trial. The difference is addressed in our case of *In re M.J.B.*, in which we said the following:

Because of the heightened burden of proof required by Tenn. Code Ann. § 36-1-113(c)(1), we must adapt Tenn. R. App. P. 13(d)’s customary standard of review for cases of this sort. First, we must review the trial court’s specific findings of fact *de novo* in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court’s specific factual findings will be presumed to be correct unless the evidence preponderates otherwise. 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 a biological parent’s parental rights.

140 S.W.3d 643, 654 (Tenn. Ct. App. 2004) (citations omitted). As can be seen from the above, our determination regarding the issue of 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 a biological parent’s parental rights” is a question of law. Hence, we accord no deference to the trial court’s judgment as to this issue. *Brumit v. Brumit*, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997).

IV.

T.C.A. § 36-1-113(g) lists grounds upon which parental rights may be terminated, and “the existence of any one of the statutory bases will support a termination of parental rights.” *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). The issues raised in the pleadings, and the trial court’s findings, implicate the following statutory provisions:

T.C.A. § 37-1-147 (2005)

(a) The juvenile court shall be authorized to terminate the rights of a parent or guardian to a child upon the grounds and pursuant to the procedures set forth in title 36, chapter 1, part 1.

* * *

T.C.A. § 36-1-113 (2005)

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, . . . by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.

* * *

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

* * *

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian[.]

* * *

T.C.A. § 36-1-102 (2005)

As used in this part, unless the context otherwise requires:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

(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; [or]

(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody

of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date[.]

* * *

(9) "Aggravated circumstances" means abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse, as defined at § 37-1-102[.]

* * *

T.C.A. § 37-1-102 (2005)

K (b) As used in this part, unless the context otherwise requires:

* * *

(21) "Severe child abuse" means:

(A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death;

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct; [or]

(C) The commission of any act towards the child prohibited by §§ 39-13-502 – 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child. . . .

* * *

T.C.A. § 37-2-403 (2005)

(a)(1) Within thirty (30) days of the date of foster care placement, an agency shall prepare a plan for each child in its foster care. . . .

* * *

(2)(A) The permanency plan for any child in foster care shall include a statement of responsibilities between the parents, the agency and the caseworker of such agency. Such statements shall include the responsibilities of each party in specific terms and shall be reasonably related to the achievement of the goal specified [in the plan]. . . .

* * *

(C) Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights. . . .

V.

Though they appeal separately, Mother and Father raise the same two issues for our consideration: (1) whether the evidence preponderates against the trial court's termination of the parental rights of Mother and Father, and (2) whether the trial court abused its discretion in permitting DCS to amend its petition to terminate parental rights to include the additional ground of severe child abuse, specifically sexual abuse. They claim that the amendment violated their due process rights. Father also maintains that the trial court erred in finding that he failed to substantially comply with the permanency plans. We will address each of these issues in turn.

VI.

A.

In general, Mother and Father contend that the evidence preponderates against the termination of their parental rights. More specifically, Mother and Father focus on the trial court's finding of severe child abuse, specifically sexual abuse, asserting that the evidence preponderates against such a conclusion. Mother and Father also contend that there is

insufficient evidence to support the trial court's determination that termination is in the best interest of the children.

B.

The trial court found that Mother and Father committed severe child abuse, as defined in T.C.A. § 37-1-102, against J.E.F. and S.M.F. The court further found that aggravated circumstances existed under T.C.A. § 36-1-102. With respect to the sexual abuse, the court made the following findings of fact:

That the children did disclose various sexual acts that were performed on the child [S.M.F.] and the child [J.E.F.]. Both children named the parents [Father] and [Mother] as being present and participating in these acts. The child [J.E.F.] did disclose that along with both of his parents he was present and participated in digitally penetrating and putting of objects into the private parts of his sister [S.M.F.]. [S.M.F.] also disclosed her brother [J.E.F.] was a participant. The children did sexually act out on each other and other children while[] placed together. These disclosures and descriptions of the children's behaviors of a sexual nature were made to and or observed by various people including Carolyn Hacker counselor for [S.M.F.], a Department case manager for the children, a relative care giver of the children for a period when they were placed in the same home, current foster parents and other counselors.

Carolyn Hacker is the counselor who has been involved with the child [S.M.F.]. Ms[.] [H]acker has worked for the Sexual Assault Crisis Center; she is currently employed by ETSU with the Families First Program and is working toward her Doctorate Degree. She has had several years of practice with children that have been sexually abused. The witness is credible. Her expertise in this area confirms other statements of abuse the children have disclosed and as to the testimony of other witnesses. The child [S.M.F.] was not coached to make the disclosures.

(Numbering in original omitted).

T.C.A. § 36-1-113(g)(4) provides that parental rights may be terminated upon a finding that a parent has committed severe child abuse against the child who is the subject of the petition. "Severe child abuse" is defined in T.C.A. § 37-1-102(b)(21)(C) as "[t]he commission of any act towards the child prohibited by §§ 39-13-502 – 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child." The term "aggravated circumstances," as used in T.C.A. § 36-1-102(9), includes the following pertinent crimes: "aggravated child abuse and neglect, . . . especially aggravated sexual exploitation of a minor, . . . rape of a child, incest, or severe child abuse, as defined at § 37-1-102." T.C.A. § 36-1-102(9).

These provisions implicate the following criminal offense statutes:

T.C.A. § 39-15-402 (2005 Supp.)

(a) A person commits the offense of aggravated child abuse or aggravated child neglect or endangerment, who commits the offense of child abuse, as defined in § 39-15-401(a), or who commits the offense of child neglect or endangerment, as defined in § 39-15-401(b), and:

- (1) The act of abuse or neglect results in serious bodily injury to the child;
- (2) The act of neglect or endangerment results in serious bodily injury to the child;
- (3) A deadly weapon, dangerous instrumentality or controlled substance is used to accomplish the act of abuse, neglect or endangerment; or
- (4) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim.

* * *

T.C.A. § 39-17-1005 (2005 Supp.)

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:

- (1) Sexual activity²; or
- (2) Simulated sexual activity that is patently offensive.³

* * *

T.C.A. § 39-13-522 (2005 Supp.)

(a) Rape of a child is the unlawful sexual penetration⁴ of a victim by the defendant or the defendant by a victim, if such victim is less than thirteen (13) years of age.

² “Sexual activity” includes the following acts: (1) “[m]asturbation, whether done alone or with another human or an animal,” T.C.A. § 39-17-1002(8)(B) (2005 Supp.); (2) “[p]atently offensive, as determined by contemporary community standards, physical contact with or touching of a person’s clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse,” § 39-17-1002(8)(C) (2005 Supp.); and (3) “[t]he insertion of any part of a person’s body or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure by a licensed professional,” § 39-17-1002(8)(E) (2005 Supp.).

³ According to T.C.A. § 39-17-1002(4) (2005 Supp.), “patently offensive” means “that which goes substantially beyond customary limits of candor in describing or representing such matters.”

* * *

T.C.A. § 39-15-302 (2003)

- K* (a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing such person to be, without regard to legitimacy:
- (1) The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child[.]

With this background in mind, we have carefully reviewed the evidence presented at trial relating to sexual abuse. For a variety of reasons, the children have been moved to several different foster homes during their time in state custody. In June, 2002, the children went to live with Bo and Mindy Payne, who are the maternal uncle and aunt of the children. J.E.F. was under their care until late October or early November, 2002, and S.M.F. was under their care until December, 2003. According to Ms. Payne, the children exhibited a lot of behavior problems while they lived with the Paynes, who had children of their own living in the home. After visits with their parents, J.E.F. would become very nervous and S.M.F. would regress in that she would use the bathroom on herself, bite her lip, and pick her fingernails. Ms. Payne related that the children "were very scared that their dad was going to find them."

The children eventually made several disclosures to Ms. Payne about sexual and physical abuse inflicted by their parents. J.E.F. disclosed that his mother would hit him with a belt. He further disclosed that his father would make J.E.F. touch his own penis as well as his father's penis. Ms. Payne also noticed that J.E.F. would act out sexually with their family dog. S.M.F. disclosed that J.E.F. would put his fingers and "Pokeman" toys up her bottom and that her mother and father would watch and laugh at this conduct. Disturbed by this information, Ms. Payne confronted Mother because she wanted to be told that such allegations were untrue. Instead, Mother advised Ms. Payne that if she saw J.E.F. acting out sexually again, she should "stromp his penis with a belt." Ms. Payne did not know the meaning of "stromp," but she was nevertheless perplexed by Mother's bizarre answer to solving such a problem.

Marty Sutor, an employee of DCS, served as the case manager for J.E.F. and S.M.F. from April, 2002 to January, 2004. Ms. Sutor transported the children to several visits with their parents before the restraining order went into effect. According to Ms. Sutor, the visits appeared to go well and were appropriate for the most part. She related that the children did well with the visits and that the parents hugged and kissed them. However, both before and after the visits, the children had a lot of anxiety. In fact, Ms. Sutor recalled that J.E.F. once vomited in the car upon being told that he was going to visit his mother. Also, J.E.F. told Ms. Sutor that his mother cursed him out once when she took him to the bathroom during a visit to McDonald's. Further,

⁴ "Sexual penetration" is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required." T.C.A. § 39-13-501(7) (2005 Supp.).

although J.E.F. did not exhibit any fear of his parents during visits, he would ask Ms. Suitor several times before the visits not to leave the room. Ms. Suitor noted that the parents missed some visits for reasons unknown to her and that Mother was late for visits sometimes because she would oversleep.

In April, 2002, Ms. Suitor first received information from a foster parent with whom the children were placed before the Paynes, that suggested some sexual abnormalities with the children. S.M.F. was reportedly trying to get people to place their hands between her legs, as well as acting out sexually on people's legs, while J.E.F. reportedly touched a child at school in a sexual manner. Later, Mindy Payne also made statements to Ms. Suitor suggesting that the children had been sexually abused by their parents.

Sometime between April and June, 2002, J.E.F. disclosed to Ms. Suitor several times that his father had beaten him, that his mother had beaten him with a belt until he bled, and that his mother had hung him on a laundry hook and did not remove him until he started choking. In November, 2002, J.E.F. was moved to a therapeutic foster home because he was acting out sexually on the other children, including his sister, in the Paynes' home. According to Ms. Suitor, the sexual behavior between J.E.F. and S.M.F. escalated to the point that it was uncontrollable.

Sometime around February, 2003, Ms. Suitor received information from J.E.F. about the sexual abuse that both he and his sister suffered at the hands of their parents. According to J.E.F., his mother taught S.M.F. to "scratch her butt," which he demonstrated to be masturbation. J.E.F. explained that he and his parents would stare at S.M.F. while she engaged in this behavior. Further, he related that he and his parents would place fingers and other things like "Pokemans" into S.M.F.'s vagina. In September, 2003, Ms. Suitor took S.M.F. to be evaluated by a doctor at the Child Advocacy Center in Lenoir City. The physical exam form completed by the doctor revealed "no evidence of ano-genital abnormality" in S.M.F. at that time.

The most comprehensive testimony concerning sexual abuse came from Carolyn Hacker, who counseled S.M.F. for two years beginning on May 30, 2003. Ms. Hacker is currently employed by East Tennessee State University as a counselor with the Families First Program. Prior to that, she worked as a counselor with the Sexual Assault Crisis Center, which is now known as Safe Haven. She is a licensed professional counselor in Texas, but does not need a license in Tennessee while working for a non-profit agency. Ms. Hacker has a master's degree in counseling psychology, and she is pursuing her doctorate degree in the same area from the University of Tennessee. She has been working in the field of counseling psychology with a specialty in abuse and neglect for 13 to 14 years. She has an expertise in play therapy with children. Further, she is qualified to make a diagnosis following her mental health counseling of a person. Based upon this information, and after counsel for Mother and Father had an opportunity to conduct a *voir dire* examination of the witness, the trial court found Ms. Hacker to be competent to testify as an expert.

At the initial intake of S.M.F., Ms. Hacker received some information from Marty Suitor and Mindy Payne indicating that S.M.F. had been sexually abused by her family of origin but the extent of the abuse was unknown. Specifically, the history included details that S.M.F.'s father and brother had fondled her and that her mother had masturbated her and would watch S.M.F.

masturbate. Ms. Hacker also received reports that S.M.F. would masturbate to the point that it was hard to redirect her and to the point where she would really hurt her private parts while doing so. In addition, it was reported that S.M.F. was using the bathroom on herself and would even smear feces on the bathroom walls. Ms. Hacker also noted that S.M.F. had an anxiety disorder where she would bite her lip until it bled, peel the skin on her fingers and feet, and bite herself. Apparently, these problems improved when J.E.F. was moved into a different foster home but worsened when S.M.F. would visit with her mother. Ms. Hacker noted that although she was aware of this information as background, she did not rely on the information because she is supposed to remain objective in her counseling and testing of a person.

From the beginning of her counseling, Ms. Hacker noted that S.M.F. appeared to be very small for her age and was physically delayed. However, she found that S.M.F.'s expressive verbal skills remained intact. Ms. Hacker also found that S.M.F. had "attachment issues" in that she had no fear of leaving her caretaker and had very inappropriate boundaries. According to Ms. Hacker, S.M.F. was always violating her space and would attempt to touch Ms. Hacker's private parts. Ms. Hacker began play therapy with S.M.F. from the outset of the counseling. Ms. Hacker allowed S.M.F. to engage in "non-directed play," meaning that S.M.F. was allowed to play in any way she wanted without being directed at all.

Approximately four months into this therapy, after S.M.F. felt comfortable with Ms. Hacker, S.M.F. started acting out sexualized play scenarios with dolls and toys. For instance, S.M.F. would stab a puppet's "private parts" over and over and say that there was nothing it could do to avoid "getting hurt." She would also have puppets engage "peeing or pooping behavior," which can be "construed as sexualized play." In the bathroom, she would play with little animals and pretend that "monsters" were hurting them "on their front bottoms and their back bottoms." Eventually, S.M.F. referred to the "monster" as her mother, who deserved a spanking for this behavior.

Ms. Hacker described how S.M.F. eventually "came out of the context of play" and said that such sexual abuse happened to her. On July 21, 2003, Ms. Hacker noted that S.M.F. specifically named her mother "Connie," her father "Papa," and her brother "[J.E.F.]" as the perpetrators of sexual abuse against her. According to Ms. Hacker, S.M.F. usually referred to her mother as "mean old Connie." S.M.F. also named herself as someone who had done inappropriate things to her. Finally, S.M.F. named an older adult male named "Monty" or "Monta." Apparently, no one is aware of who this person is. However, Ms. Hacker noted that she only mentioned him one time and was consistent in repeatedly naming her parents and brother as harming her sexually.

S.M.F. told Ms. Hacker that all of these individuals had touched her "front and back privates with their hands and fingers" and that they had "put stuff in [her] front and back private[s]." According to Ms. Hacker, S.M.F. tried to demonstrate this behavior by pulling her pants down. Upon being told this was not appropriate, S.M.F. demonstrated the behavior by inserting items into the private areas of a doll. According to Ms. Hacker, the research is clear that children simply do not engage in such sexualized play under normal circumstances.

In September, 2003, S.M.F. disclosed to Ms. Hacker that her brother “put Pokemans in her bottom.” She feared that her brother might “go to the devil” for this conduct. Further, S.M.F. stated that “nasty and yukky things” happened to her in the bathroom. More specifically, she described how “Connie and Papa put their tongue and their fingers and their privates in her mouth,” using a doll to simulate oral penetration. Ms. Hacker found it very significant that S.M.F. verbalized a bad taste associated with this behavior, stating that young children would have no knowledge of such sexual conduct unless they had experienced it.

With respect to whether a physical exam of S.M.F. would show that she had been penetrated vaginally or anally, Ms. Hacker stated that she would not expect such an exam to reveal damage unless it was done in very close proximity to the date of sexual abuse. When questioned about how children might behave around the perpetrator of sexual abuse, Ms. Hacker stated that the reaction “could be a whole shopping list.” She further explained that it would not be unusual for S.M.F. to behave normally around her parents after being sexually abused.

In her professional opinion, based upon all of the counseling over a two year period, Ms. Hacker concluded that S.M.F. was sexually abused by her mother, father, and brother. Ms. Hacker stated that S.M.F.’s revelation of sexual abuse unfolded in a textbook manner. It took her a long time, after feeling comfortable with Ms. Hacker, to be able to talk about the sexual abuse she suffered, providing more and more details over time. Ms. Hacker found S.M.F. to be very consistent and credible, stating that her play, which revealed extensive sexual abuse, could not have been coached or coerced to such magnitude. According to Ms. Hacker, the prognosis for S.M.F. depends on where she ends up in her life. Ms. Hacker stated that she would be very concerned if S.M.F. were returned to her family of origin. Ms. Hacker noted that S.M.F. appears to be happy, healthy, and well-adjusted with her current foster family.

Randy Palmer has been the foster parent for S.M.F. since December, 2003. When S.M.F. first came under her care, Ms. Palmer noted that S.M.F. was very nervous and fretful and would pick at her fingers, bite her nails, and chew on her tongue and jaw. According to Ms. Palmer, S.M.F. disclosed that her brother “put Pokeman toys, the little Pokeman toys, plus other little things up in her bottom and messed with her.” Ms. Palmer also noted that S.M.F. usually referred to her mother as “mean Connie,” to her father as “bad Poppy,” and to her brother as “bad [J.E.F.]” Furthermore, S.M.F. would pretend that her mother was in jail and would say that her father should either “go to jail or to the devil.” Ms. Palmer, who wishes to adopt S.M.F., has tried to assure her that she is now safe from being hurt in such ways. According to Ms. Palmer, S.M.F. is improving in her school work now.

Lisa Thompkins is the current foster parent for J.E.F., whom she has had in her care since August, 2003. According to Ms. Thompkins, J.E.F. was very angry when she first received him. She stated that he would bang his head into things and that he did not have any eyelashes or eyebrows because he had pulled them out. In terms of physical abuse, J.E.F. revealed to Ms. Thompkins that his father would make him sit with his pants packed with ice; that his father would grab him by his privates and lift him off the ground; and that both parents would whip him with a belt until he bled. J.E.F. further disclosed to Ms. Thompkins that his parents made him stick cards inside his sister’s vagina and that his father specifically guided his hand to make him do it. Ms. Thompkins also witnessed J.E.F. acting out sexually with the family dog. Despite all

of these issues, Ms. Thompkins stated that J.E.F. has improved a lot and that he is doing well in school. Ms. Thompkins expressed her desire to adopt J.E.F.

Brian Pope served as the in-home counselor for J.E.F. through Camelot Care in Oak Ridge. Mr. Pope began counseling the boy around September or October, 2002. J.E.F. was referred for counseling because it was obvious that he needed therapeutic care. For example, Mr. Pope explained that J.E.F. would use self-harmful behaviors like pulling out his hair and eyebrows and banging his head against objects. Mr. Pope stated that J.E.F. seemed reluctant to talk about abuse issues because he still felt responsible for some of the things that happened to him. Eventually, however, J.E.F. disclosed that his father coerced him to insert "Pokeman" cards into his sister's vagina. J.E.F. also told Mr. Pope that his father was emotionally abusive in that he would threaten to leave him when he was acting badly.

Daniel Luke is employed as a counselor with the Alternative Counseling Center in Knoxville. He formerly worked for Youth Villages and DCS. He began counseling J.E.F. in September, 2004, and he continues to counsel him to this day. According to Mr. Luke, J.E.F. disclosed the following sexual and physical abuse by his parents. Father would whip him with a belt on his "privates" while his pants were down; Mother would whip him with a belt until he bled; and Father would make him insert playing cards into the private area of his sister while his mother watched.

Without question, the evidence detailed above is more than sufficient to prove, in a clear and convincing manner, that Mother and Father committed severe child abuse, specifically sexual abuse of both J.E.F. and S.M.F. Both children made independent disclosures of sexual abuse by their parents to numerous caretakers or counselors after gaining their trust. In making these disclosures, J.E.F. and S.M.F., who have been separated since November, 2002, corroborated each other's statements of sexual abuse. Indeed, the testimony of Mindy Payne, Brian Pope, Marty Suitor, Carolyn Hacker, Randy Palmer, Lisa Thompkins, and Daniel Luke revealed horrifying instances of extreme sexual abuse that these children suffered at the hands of their parents. Many of these witnesses also noted that the children acted out in a sexual manner, as well as exhibited self-harming or nervous habits, all of which may be linked to the abuse and neglect they endured.

When Mother testified at the hearing, she denied any type of abuse by her or her husband and stated that she was devastated when she heard the allegations of sexual abuse. Notably, Father, who now lives in Indiana, did not even attend the trial, although his counsel was present. Both of the briefs filed by the parents appear to question whether the children were actually abused in any way. The trial court specifically noted that it found Ms. Hacker, S.M.F.'s counselor who was tendered as an expert, to be a credible witness. The trial court also concluded that S.M.F. was not coached or coerced to make the disclosures of sexual abuse. Both Mother and Father point out that their visits with the children went well and that the September, 2003 physical exam report of S.M.F. revealed "no evidence of ano-genital abnormality." However, Ms. Hacker testified that it would not be unusual for a child to behave normally around a perpetrator of sexual abuse and that only a physical examination in very close proximity to the date of sexual abuse would be likely to reveal vaginal or anal damage. Again, the trial court found Ms. Hacker to be credible.

We find no error in the trial court's determination that the severe child abuse, specifically sexual abuse, visited upon J.E.F. and S.M.F. by Mother and Father justified the termination of their parental rights. *See* T.C.A. §§ 36-1-113(g)(4), 37-1-102(b)(21)(C), and 36-1-102(9). In light of the evidence of vaginal, anal, and oral penetration, as well as masturbation, the proof indicated that the children had been subjected to aggravated child abuse and neglect, T.C.A. § 39-15-402, especially aggravated sexual exploitation of a minor, T.C.A. § 39-17-1005, rape of a child, T.C.A. § 39-13-522, and incest, T.C.A. § 39-15-302, all of which qualify as aggravated circumstances, by their parents. Given the clear and convincing proof of severe child abuse, specifically sexual abuse, under T.C.A. § 37-1-102(b)(21)(C), the argument of both parents that the proof failed to meet other possible definitions of severe child abuse need not be considered. As previously noted, the existence of any *one* statutory ground under T.C.A. § 36-1-113(g) will support a termination of parental rights. *In re D.L.B.*, 118 S.W.3d at 367.

C.

Next, we examine the issue of the best interest of the children. The factors a trial court must consider when deciding whether the termination of parental rights is in the best interest of a child are set forth in T.C.A. § 36-1-113(i) (2005):

- (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 or controlled

substances 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.

This list is “not exhaustive,” and there is no requirement that every factor must appear “before a court can find that termination is in a child’s best interest.” *Dep’t of Children’s Servs. v. T.S.W.*, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. M.S., filed May 10, 2002).

In its final judgment, the trial court stated that termination of the parental rights of Mother and Father was in the best interest of both J.E.F. and S.M.F. In considering the best interest of the children in this case, the trial court relied upon the extensive proof detailed above dealing with sexual abuse. Many of the same witnesses also provided details of the cruel physical abuse that J.E.F. endured. For instance, it was revealed that both parents whipped J.E.F. with a belt until he bled; that Father whipped J.E.F. with a belt on his bare genitals; that Father grabbed J.E.F. by the genitals to lift him off the ground; that Father would make J.E.F. sit with ice in his pants; and that Mother hung J.E.F. on a laundry hook until he choked. The evidence is clear that J.E.F. and S.M.F. were victims of ongoing sexual abuse and that J.E.F. was the victim of ongoing brutality and physical abuse while in the care of Mother and Father. *See* T.C.A. § 36-1-113(i)(6).

We are also mindful of the conditions under which these children were originally rescued. The children were found alone in a cold and filthy mobile home while Mother was out drinking. S.M.F. was wearing a soiled diaper, and neither child had eaten much of anything that day. Clearly, these children were victims of neglect. *See id.* The degree of neglect to S.M.F. was even more severe as detailed by several witnesses. Joanna Gilbert, the CPS investigator, who initially responded to the children being left alone, noted that S.M.F. appeared to be severely underweight. DCS case managers, Marty Foxx and Marty Sutor, both noted that S.M.F. was very ill when she first came into state custody to the point that she had to be hospitalized and placed on a ventilator on two occasions in the first month.

Randy Palmer, the current foster parent for S.M.F., testified that she was in very poor health when she first came under her care in December, 2003. According to Ms. Palmer, S.M.F. has problems with allergies, asthma, lack of nutrition, low energy, and bad reflux, and as a result, she sees a pulmonologist, endocrinologist, allergist, gastrologist, and ENT doctor. Ms. Palmer explained that S.M.F. underwent surgery in February, 2004 to have a G-tube inserted into her stomach, whereby she receives continuous formula feedings for eight to nine hours per night. The operative report, which was introduced into evidence, reveals that S.M.F. suffered from fetal

alcohol syndrome with failure to thrive. Ms. Palmer stated that S.M.F.'s health has improved dramatically since receiving proper nutrition and care. Carolyn Hacker, the counselor for S.M.F., was also very concerned that the child was so small and underweight. In fact, Ms. Hacker described how S.M.F. weighed a mere 22 pounds and wore 18 month size clothing when she was five years old. Ms. Hacker also noted that S.M.F.'s physical characteristics were consistent with fetal alcohol syndrome. Interestingly, Mother testified that S.M.F.'s small size was due to her genes. There is overwhelming evidence that S.M.F. suffered severe neglect at the hands of her parents. *See id.*

Finally, J.E.F. has been in the care of Ms. Thompkins since August, 2003, and S.M.F. has been in the care of Ms. Palmer since December, 2003. Both of these foster parents testified that the children are improving under their care and that they wish to adopt the children. A change in caretakers at this time, *i.e.*, returning the child to the care of Mother or Father, would likely have a profoundly negative emotional, psychological, and medical impact on the children. *See T.C.A. § 36-1-113(i)(5).*

We conclude that the evidence does not preponderate against the trial court's finding, made by clear and convincing evidence, that the termination of the parental rights of Mother and Father is in the best interest of the children.

VII.

Mother and Father next maintain that the trial court abused its discretion in permitting DCS to amend its petition to terminate parental rights to include the additional ground of severe child abuse, specifically sexual abuse, and that their due process rights were violated as a result. Both parents argue that the delay in making allegations of sexual abuse as a ground for termination prevented them from adequately preparing for trial and resulted in undue prejudice. More specifically, the briefs of Mother and Father state the following on this issue:

Admittedly, there was notice to [Mother and Father] of the proposed amendment, eventually. However, the notice came so late in the proceedings that [Mother and Father] did not have a meaningful opportunity to meet the allegations and prepare to defend against them because after the passage of so much time, [Mother and Father] could not effectively do any meaningful investigation or send the children to an expert for an independent examination near the alleged events and determination as to the validity of the allegations after the lapse of so much time. The delay left [Mother and Father] no significant opportunity to determine whether there was potential coaching or leading and no opportunity to determine who might have harmed the children because so much time had elapsed, and no one knows what transpired with the children in the interim.

In July, 2003, after evidence came to light that the children had been sexually abused by their parents on multiple occasions, DCS petitioned for and obtained a restraining order, whereby there was no contact permitted between the parents and the children. Then, on June 7, 2004,

DCS moved to amend the petition to include severe child abuse, specifically sexual abuse, as an additional ground for terminating the parental rights of Mother and Father. The proposed amended petition to terminate parental rights, filed by DCS on August 16, 2004, included specific details regarding the children's disclosures of sexual abuse by their parents. The trial court granted DCS permission to amend the petition as proposed several days before the bench trial began on August 26, 2005.

In addressing the parents' due process claims, we note that due process requires only "such procedural protections as the particular situation demands." *Wilson v. Wilson*, 984 S.W.2d 898, 902 (Tenn. 1998) (citation omitted). A trial court is required to consider three factors in assessing what protections are required in a particular situation: (1) the private interest at stake; (2) the risk of erroneous deprivation due to the procedures used and the probable value, if any, of additional procedural safeguards; and (3) the government's interest. *Keisling v. Keisling*, 92 S.W.3d 374, 377 (Tenn. 2002).

Moreover, Rule 15.01 of the Tennessee Rules of Civil Procedure permits a party to amend a pleading by leave of court, and such "leave shall be freely given when justice so requires." A trial court may exercise its sound discretion in granting or denying a motion to amend. *Merriman v. Smith*, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979). An abuse of discretion occurs when a trial court "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999) (citation omitted).

In reviewing the evidence adduced at trial, we note that Marty Suitor was the first DCS case worker to receive concrete information of sexual abuse when J.E.F. disclosed it to her around February, 2003. At the initial intake of S.M.F. in late May, 2003, Ms. Hacker received some information from Marty Suitor and Mindy Payne indicating that S.M.F. had been sexually abused by her family of origin but the extent was unknown. The extent became more clear over the course of the next few months when S.M.F. disclosed that she had been sexually abused by her parents and brother on multiple occasions.

After gathering this information, DCS secured a restraining order in July, 2003. From that point on, both Mother and Father had formal notice of the allegations of sexual abuse. However, neither parent sought permission of the court to have the children examined by an expert at that time. DCS moved to amend the petition in June, 2004, and then filed a proposed amendment including sexual abuse as an additional ground for termination in August, 2004. Again, neither parent attempted to have the children evaluated before the trial. It is clear that Mother and Father had notice of the allegations of sexual abuse over two years before the matter went to trial, and yet they did nothing to investigate the matter. Further, we are compelled to note that Father's argument particularly lacks merit in light of the fact that he did not even appear at trial in his own defense.

Under these circumstances, we cannot conclude that the trial court abused its discretion in granting DCS permission to amend its petition to include allegations of sexual abuse. Moreover, DCS had a significant interest in ensuring that the children were not subjected to further

instances of horrible sexual abuse by their parents. Finding no error, we affirm this aspect of the trial court's decision.

VIII.

In addition to finding severe child abuse, specifically sexual abuse, by both parents, the trial court also made a finding that persistent unremedied conditions by both parents warranted termination. DCS states in its brief that it will not pursue "persistence of conditions" as a ground for termination against Mother because she substantially complied with the requirements of the permanency plans and because she made commendable efforts to improve her life. Therefore, we reverse so much of the trial court's rationale for its judgment as is based upon a finding against Mother of persistent unremedied conditions. Accordingly, we need not address Mother's arguments on this issue.

The trial court also terminated Father's parental rights on the grounds of abandonment for failure to provide a suitable home, abandonment for failure to visit, abandonment for failure to support, and substantial non-compliance with the permanency plans. DCS states in its brief that it will not pursue abandonment for failure to support as a ground for termination against Father because the trial court failed to make specific findings of fact that Father willfully failed to support the children. Therefore, we reverse so much of the trial court's reasoning as is predicated upon a finding against Father of abandonment for failure to support.

We note that Father has not raised any issues regarding the trial court's findings with respect to persistent unremedied conditions, abandonment for failure to provide a suitable home, and abandonment for failure to visit. Despite this – and in the interest of justice – we have reviewed the record pertaining to these unchallenged other grounds for terminating Father's parental rights with respect to the children. We conclude from this review that the evidence does not preponderate against the facts that support these additional grounds for termination.

With regard to the finding of Father's substantial non-compliance with the permanency plans, Father's nearly fifty page brief contains one short paragraph on this issue, to wit:

The Trial Court also stated that [Father] failed to substantially comply with the parenting plan although he noted compliance of a number of the requirements of the plan. [Father] submits the Court is in error. According to Ms. Foxx, the DCS counselor who set the goals of the initial parenting plan, [Father] did satisfy the goals and guidelines of the plan.

(Citation to record omitted). The permanency plans developed by DCS for Father, dated February and June, 2002 required him to: (1) obtain and follow the recommendations of an alcohol and drug assessment; (2) resolve all pending legal issues; (3) maintain a safe and sanitary home environment; (4) complete and follow the directions of parenting classes so that children could be adequately supervised at all times; (5) maintain adequate transportation; (6) maintain an adequate supply of food in household; (7) maintain stable housing for at least six consecutive months; (8) complete anger management classes; and (9) pay child support. A revised

permanency plan in January, 2004 indicated that Father must make contact with DCS in order to develop a new plan.

The trial court acknowledged that Father completed a substance abuse treatment program and a parenting workshop and that Father enrolled in an anger management class. However, there is evidence that Father failed to maintain contact with DCS. Indeed, Father moved to Indiana without informing anyone at DCS. He has not attended any of the court proceedings addressing the termination of his parental rights, including the trial of this matter. Further, there is no evidence that Father maintained a safe and sanitary home environment for his children with adequate supervision, adequate transportation, and adequate food, and Father's complete absence and apparent lack of concern makes these requirements difficult to meet.

While Father was able to complete some of the requirements under the plan, it is clear that these efforts are not enough to constitute *substantial* compliance with the permanency plans, as required by the law. Accordingly, the evidence does not preponderate against the trial court's finding that Father failed to substantially comply with the permanency plans.

Finally, Father argues that "DCS . . . had an obligation to make reasonable efforts to reunify parent and child; DCS did not make these efforts." Incidentally, Mother makes the same argument but more strenuously. In response, we are compelled to note that T.C.A. § 37-1-166(g)(4)(A) (2005) provides that DCS will be excused from making reasonable efforts to assist a parent when a court has determined that the parent has subjected the child to "aggravated circumstances," which have been defined to include severe child abuse. *See* T.C.A. § 36-1-102(9). As discussed in detail above, the trial court found by clear and convincing evidence that both Father and Mother committed severe child abuse, specifically sexual abuse, against their children. Therefore, DCS was under no obligation to assist the parents in reuniting with the children.

IX.

The judgment of the trial court terminating the parental rights of Mother and Father to J.E.F. and S.M.F. is affirmed. We vacate a portion of the trial court's rationale for its judgment as detailed in this opinion, but such vacation has no effect on the trial court's judgment terminating the aforesaid parties' parental rights. This matter is remanded to the trial court for enforcement of its judgment and for collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed against the appellants, C.D.F. and L.D.F.

CHARLES D. SUSANO, JR., JUDGE