

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 6, 2007

IN RE: B.J.L. and K.M.L.

**Appeal from the Juvenile Court for Bledsoe County
No. 43009 Howard Upchurch, Judge**

No. E2007-00596-COA-R3-PT - FILED SEPTEMBER 21, 2007

This is an appeal from an order terminating the parental rights of N.L. (“Mother”) to her two children, K.M.L. and B.J.L., ages 5 and 6, respectively. Following the trial, the Juvenile Court held that: (1) there was clear and convincing evidence that grounds existed to terminate Mother’s parental rights pursuant to Tenn. Code Ann. §§ 36-1-113(g)(1) - (g)(3); (2) there was clear and convincing evidence that termination of Mother’s parental rights was in the children’s best interest; and (3) the Department of Children’s Services (“DCS”) had made reasonable efforts to assist Mother to reunite with her children. Mother appeals challenging most of these rulings. After a careful review of the record, we affirm the Juvenile Court’s judgment in all respects.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Keith H. Grant, Dunlap, Tennessee, for the Appellant, N.L.

Robert E. Cooper, Jr., Attorney General and Reporter, and Elizabeth C. Driver, Senior Counsel, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children's Services.

OPINION

Background

DCS obtained temporary custody of K.M.L. and B.J.L. in April of 2004 after the two children were found playing in a road and almost were struck by a dump truck. The children were unsupervised as Mother was at home asleep on the couch. Over two years later, in June of 2006, DCS filed a petition to terminate Mother's parental rights.¹ In the petition, DCS claimed Mother had abandoned the children by her willful failure to provide a suitable home for the children for a period of at least four months following their removal from her custody. DCS also alleged that Mother had failed to substantially comply with the statement of responsibilities contained within a permanency plan. DCS further claimed that: (1) the children had been removed from Mother's care for a period of at least six months; (2) that the conditions which led to the children's removal still persisted or other conditions existed which would prevent their safe return to Mother's care; (3) there was little likelihood that these conditions would be remedied in the near future; and (4) continuation of the parent/child relationship would greatly diminish the children's chances of early integration into a safe, stable, and permanent home. DCS maintained that termination of Mother's parental rights was in the children's best interest.

The trial was in October of 2006, with Mother being the first witness. Mother lives in a single-wide trailer and has been living there for approximately six weeks. Mother is living with Merlin Raymond ("Raymond"). Prior to moving into the trailer, Mother lived in Michigan with some friends for one month and, before that, Mother spent three weeks in Louisiana. Mother testified that Raymond is planning on moving to Mississippi in the near future, but there is no specific date set for that to happen. Raymond is the biological father of B.J.L. The father of K.M.L. lives in Michigan. Mother has lived with Raymond off and on for the past ten years.

Mother has two other children, a son who is eight years old and a daughter who is eleven years old. Mother's parental rights to these children were terminated in 1999 and these children currently live with their adoptive parents. Mother acknowledged that her two older children were taken into custody by the State of Michigan because she neglected them. According to Mother, the State of Michigan terminated her parental rights because she "didn't stop contact with [Raymond]," who is a convicted child molester. Mother first learned of Raymond's criminal past from a social worker who told her that Raymond had been convicted of molesting his disabled ten-year old sister. Mother did not end her relationship with Raymond after she learned of his conviction for child molestation. Mother stated that Raymond's conviction caused her some concern even though she did not believe he actually was guilty of that crime.²

¹ DCS also sought to terminate the parental rights of the biological and legal fathers of the two children. The parental rights of the fathers were terminated by the Juvenile Court and these judgments are not at issue in this appeal.

² The judgment terminating Mother's parental rights to her two oldest children, K.L. and T.R., was affirmed by the Michigan Court of Appeals in *Family Independence Agency v. Lewis*, No. 221875, 2000 WL 33417474 (Mich. Ct. App. 2000). A reading of that opinion reveals that Mother's oldest daughter, K.L., also was sexually molested by Raymond. According to the Michigan Court of Appeals:

After B.J.L. was born, the Michigan social services agency began another investigation of Mother because that agency wanted to ensure that Mother was not continuing to live with Raymond. When Mother was asked if she and Raymond abruptly moved back to Tennessee in order to elude the Michigan social services agency, Mother responded “Yes.” Even though Mother continues to live with Raymond, she claims they are no longer a “couple” and have not been romantically involved in over four years. Mother obtained an order of protection from Raymond in February of 2002. She stayed away from Raymond for approximately six months, but then they began living together again.

There have been allegations that Raymond sexually molesting B.J.L. This child, who is currently six years old, has claimed that Raymond touched his private parts. When asked about these allegations, Mother claimed that B.J.L. “made up” stories since he has been in DCS custody and Mother could not say whether or not any molestation took place. Mother admitted that one of Raymond’s daughters told her that Raymond had sexually molested her. Notwithstanding the foregoing, prior to the children being taken into DCS custody, Raymond and B.J.L. shared a bedroom. Mother acknowledged that it was not appropriate for Raymond to be sleeping in the same bedroom as B.J.L. Mother also acknowledged that DCS has tried to help her regain custody of the children.

Mother claimed Raymond never cursed at her in front of the children and she had no explanation for how the children knew words like “bitch” and “slut” and “MF” when they came into DCS custody.³

Mother married Billy Joe Swafford (“Swafford”) in April of 2005 and lived with him for about one year. Mother obtained an order of protection against Swafford in October of 2005 because he lost his temper and punched a hole in the bathroom door. While Mother was living with Swafford, Raymond moved in with them. Another man, Benny Curtis (“Curtis”), also was living in the same trailer with Mother, Swafford, and Raymond. After Raymond and Swafford moved out of the trailer, Mother began a sexual relationship with Curtis. Mother eventually swore out a warrant for Curtis’ arrest after he pulled her hair and shoved her. Curtis

[U]nder § 19b(3)(b)(ii), the [Family Independence Agency] must show that a parent “had the opportunity to prevent” physical injury or physical or sexual abuse and failed to do so. Furthermore, there must be a “reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” These showings have been made in the present case, given the evidence that respondent was aware of Merlin Raymond’s sexual abuse of his biological daughter, respondent believed that Raymond had sexually abused [K.L.], and respondent openly defied the provision of the parent/agency agreement that required her not to cohabit with Raymond or to allow her children to have contact with him. *See In re Sours*, 459 Mich. 624; 593 N.W.2d 520 (1999). Accordingly, the family court did not clearly err in finding that this statutory ground was established by clear and convincing evidence. MCR 5.974(I).

Id. at *1.

³ The children were two and four years old when they came into DCS custody and were using the above language.

moved out of the trailer soon thereafter. Mother did not show up for the court hearing on the assault charges she filed against Curtis. Soon after Curtis moved out, Mother moved to an apartment and began a relationship with Carl Creason and the two of them began living together. Mother acknowledged that Creason had a reputation for cooking meth and she admitted that he had burns on parts of his body. Mother claimed the burns were from a house fire that did not involve the cooking of meth. Mother quit seeing Creason after he “back handed” her and left a mark on her lip.⁴ Mother and Swafford eventually divorced.

Mother smoked marijuana a couple of times while she was living with Curtis. Mother gave Curtis money and he purchased the marijuana. According to Mother, the last time she smoked marijuana was approximately four months before the trial. The following discussion took place when Mother was questioned about her drug use:

Q. [W]ho were your friends that you lived with in Michigan?

A. Tonia and Danny Gardner.

Q. Did you smoke marijuana with the Gardners?

A. No.

Q. Do you remember telling me you smoked marijuana with the Gardners?

A. No.

Q. Are you lying to me now or did you lie to me in my office?

A. I lied to you in your office.

Mother was admitted to a hospital in May of 2006 for a mental evaluation. Mother denied telling a doctor at the hospital at that time that she smoked marijuana daily and used meth on a weekly basis.

Mother has received SSI benefits since 1993 for a learning disability. Mother was first evaluated for mental health issues in 2004. Mother had just been released from a mental health facility when the children were taken from her custody initially. Mother has been hospitalized for a nervous breakdown. Mother stated she was diagnosed with bipolar disorder and severe panic attack disorder. Mother was prescribed various medications to assist with these

⁴ At this point in the proceedings, the Juvenile Court Judge made the following remarks on the record:

I think it’s appropriate to note on the record that this Court serves as General Sessions judge of Bledsoe County which has criminal misdemeanor jurisdiction, jurisdiction for preliminary hearings on felony cases and that Mr. Swafford, Mr. Creason, and Mr. Curtis appear on a regular basis to this Court for criminal docket.

disorders, but she had not taken any medication for the three months before trial because she no longer has insurance.

The trailer Mother currently lives in has electricity and water. The electricity for her trailer is “illegally” hooked up to the trailer next door and Mother acknowledged that this may not be safe. Friends of Mother own the trailer and she is staying there as long as they allow her to remain. These friends could ask her to leave at any time. Mother has lived in fourteen different places since B.J.L. was born in October of 2000. When asked if living in so many different places demonstrated to DCS that she could provide stable housing for the children, Mother responded “No”.

The next witness was Geraldine Ziegele (“Ziegele”), a licensed professional counselor who works at the Cumberland Mountain Mental Health Center. Ziegele initially began providing counseling services to Mother in August of 2004, although Mother had been receiving counseling from at least one other counselor before beginning her sessions with Ziegele. Mother attended counseling every two weeks. Mother also was seeing a psychiatrist at the Health Center so she could obtain necessary medications. Ziegele described Mother as generally being compliant with taking her medication, but added that she would be concerned if Mother quit taking her medication against medical advice. Ziegele stated that Mother was diagnosed by three different psychiatrists as having bipolar disorder and borderline personality disorder. One of Mother’s problems was anger control and Ziegele described Mother as being “explosive” at times. Another problem was Mother’s codependency and her consistently getting into abusive relationships. Ziegele thought Mother was making some progress, at least until Mother abruptly ended the counseling in May of 2006. Mother told Ziegele on at least two occasions that she believed it would be in the children’s best interests if they were put up for adoption. Ziegele did not believe that Mother ever got to the point where she was able to manage her mental illness effectively. Ziegele stated that Mother was not at the point where she was capable of maintaining a non-abusive, stable relationship that would not put the children at risk when Mother quit counseling. In short, Mother was not able to properly and safely parent her children. Mother never told Ziegele that Raymond had been convicted of sexually molesting his 10-year old disabled sister.

Nacole Harris (“Harris”) is employed as a child protective services case manager with DCS. Harris testified that the children first came into DCS custody in 2004 when they were found unsupervised playing in the middle of a road. Apparently, K.M.L. almost was struck by a dump truck while playing in the road. Mother and Raymond were asleep on a couch when this happened.

Harris testified that in February of 2005, allegations were made that Raymond had sexually abused B.J.L. prior to DCS obtaining temporary custody of the children. B.J.L. disclosed when he was interviewed that Raymond had grabbed his private parts when he was taking a bath and had done the same thing to K.M.L. Harris stated that the “[a]llegations of sex abuse towards [B.J.L.] by Raymond were indicated.” Raymond appealed that determination, which was upheld by DCS.

Misty D'Amico ("D'Amico") is a foster care case manager with DCS. D'Amico testified that the children initially came into DCS custody following a finding by the Juvenile Court that it was not reasonable to allow the children to stay in Mother's custody. Both Mother and Raymond agreed with the initial adjudication of dependency and neglect. D'Amico developed a permanency plan for Mother to establish "a pathway to permanence for the children ... with the parents." Mother was asked to agree with and complete certain tasks and goals to help ensure the children could safely be returned to her care. The first permanency plan was developed in April of 2004. The plan was explained to and signed by Mother, and submitted to and approved by the Juvenile Court. Among other things, the permanency plan required Mother to:

[V]isit with the children and notify DCS if [she] could not keep the scheduled visits 24 hours in advance. [Mother] agreed to continue with counseling, her case management, and take all prescribed medications. She agreed to have a psychological assessment and follow all recommendations. And then she agreed to complete parenting classes and follow all recommendations.

D'Amico gave Mother the necessary information so she could complete the classes and assessments. Mother did complete the parenting classes and the psychological examination. Unfortunately, Mother attempted suicide in September 2004 and there were significant concerns about her mental stability. By April of 2006, Mother had quit counseling. D'Amico stated that during a home visit in May of 2006, Mother was acting so strangely that D'Amico took her to the emergency room. At the hospital, Mother stated that she smoked marijuana and used meth on a weekly basis.

When asked if there were new risks posed to the children which arose after DCS initially obtained temporary custody of the children, D'Amico explained:

[T]here was an allegation of sexual abuse [by] Mr. Raymond on [B.J.L. and Mr. Raymond] ... was later indicated as a sexual perpetrator on [B.J.L.] There was [Mother's and Mr. Raymond's] relationship that ... [was] unstable; [Mother] and Mr. Raymond constantly separating and moving back in with each other. I think that on four different occasions they lived together.

And that is besides the fact that she had two live-in boyfriends and also had her short-lived marriage to Mr. Swafford; her mental instability; also, the succession of men in her life, which she later ... reported that they were all abusive, physically abusive.

She filed an order of protection against Mr. Billy Joe Swafford. She swore an arrest warrant against ... Benny Curtis.... And she stated that Mr. Carl Creason physically assaulted her, causing her to leave the area and seek shelter in Louisiana.

A second permanency plan was developed in April of 2005 which contained many of the same requirements as the first plan, including a requirement that Mother be able to provide a safe and stable home for the children. The new plan was explained to Mother and she agreed to its terms. In this plan, Mother agreed, among numerous other things, to continue therapy and take her medication. D'Amico testified that at times DCS transported the children to Mother's home so she could have supervised visits with the children. Throughout the entire time the children were in DCS custody, D'Amico met with Mother to go over her progress toward completing the plans. D'Amico discussed Raymond's child molestation conviction with Mother, as well as the other allegations of sexual abuse. According to D'Amico:

A. She stated that she trusted Mr. Raymond and that she didn't think he did that to [B.J.L.]

Q. And how long did she maintain that position?

A. Until she stated at the beginning of 2006, I believe it was in February, that she had seen the real side of [Raymond] and that he had touched [B.J.L.] on three different times, and that she did not believe that [B.J.L.] was making that up.

Mother also told D'Amico that she walked in on Raymond while he was molesting his oldest daughter.

According to D'Amico, by May of 2006, Mother had quit attending counseling and had missed four to six consecutively planned visits with the children. From March of 2006 until the date of trial, Mother missed 13 out of 31 planned visits with the children.

Following the trial, the Juvenile Court entered an order terminating Mother's parental rights. In this order, the Juvenile Court stated that Mother's credibility was a "particular issue" in this case and cited several portions of Mother's testimony which the Juvenile Court concluded was untruthful. The Juvenile Court also stated:

Despite [Mother's] assertions that she would change her life around and, if her children were returned to her, she would protect them from individuals who pose a danger to her children and who had committed sexual assaults in the past, the Court does not find her to be credible and does not place any weight on her statements.

Since the children have been in DCS custody [Mother] has continued to drift from relationship to relationship to a number of men that the Court recognizes from its General Sessions dockets as drunks, deadbeats, druggies and divorcees. The evidence shows that some of these men were physically abusive to [Mother] and that, if her children were with her, they would be subjected to dangerous, abusive and harmful circumstances[.]

The children were originally placed into custody after they were almost hit by a dump truck when left unsupervised by [Mother] and her paramour. It was discovered that [Mother] had substantial mental health issues and a permanency plan ... was developed to address those and other issues which impacted the safety of the children. At the time of trial, [Mother] still had not adequately addressed her mental health problems. [Mother's] counselor testified that she quit mental health treatment, and by [Mother's] own testimony, she stopped taking prescribed medication. She did not substantially comply with these important requirements of the permanency plan.

Additionally, there are other conditions contemplated by T.C.A. § 36-1-113(g)(3)(A) including proof that [Mother] tested positive for marijuana in April 2006 and she admitted to case manager D'Amico in May 2006 that she had recently smoked marijuana. [Mother] did not maintain ... stable housing and had just returned from Louisiana and Michigan a few weeks before trial and was again living with Merlin Raymond. [Mother] continued to engage in a relationship with Mr. Raymond and the proof clearly showed that she knew of his history as a convicted sexual perpetrator, yet she allowed contact between him and the children including allowing him to sleep in the same room with [B.J.L.]

The Court finds that DCS provided reasonable efforts to assist [Mother] to complete her tasks on the permanency plan. [Mother] testified that DCS could not have done anything more to help her.

After considering all the evidence and testimony, argument by counsel and briefs submitted, the Court finds that DCS went far beyond what is required to provide assistance to rehabilitate [Mother] and try to place her in a situation and condition where she could recover her children and the relationship could be re-established.

Based on these findings of fact the Court conclude[s] that DCS presented clear and convincing proof of grounds for termination of [Mother's] parental rights pursuant to T.C.A. 36-1-113(g)(1) and 36-1-102(1)(A)(ii) for abandonment; T.C.A. 36-1-113(g)(3) in that the minor children have been removed for 6 months and conditions which led to removal persist and *other* conditions which would cause the minor children to be subjected to further abuse and neglect and which prevent their safe return to the

parent; and for T.C.A. [36-1-113](g)(2) substantial non-compliance with the permanency plan requirements. (emphasis in the original)

The Juvenile Court then considered each of the various factors to be utilized when undertaking a best interest analysis. After reviewing the pertinent factors, the Juvenile Court concluded that there was clear and convincing evidence that termination of Mother's parental rights was in the children's best interest.

Mother appeals raising the following issues, which we quote:

1. Whether the Department of Children's Services provided reasonable efforts to assist [Mother] in completing her tasks on the permanency plan.

2. Whether clear and convincing evidence was presented showing that [Mother] abandoned her minor children.

3. Whether clear and convincing evidence was presented showing that persistent conditions existed which could cause the children to be subjected to further abuse or neglect, or which prevent their safe return to [Mother].

4. Whether clear and convincing evidence was presented showing that there was substantial noncompliance with the permanency plan on [Mother's] part.

Discussion

Our Supreme Court recently reiterated the standard of review for cases involving termination of parental rights. According to the Supreme Court:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Dep't of Children's Servs. v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights. Specifically, we observed:

It 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)). “However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute.” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)....

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 WL 1660838, at *6 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*.

Termination of parental rights may be based upon a number of different statutory grounds set forth in Tenn. Code Ann. § 36-1-113(g). In the present case, the statutory provisions upon which the Juvenile Court terminated Mother's parental rights are Tenn. Code Ann. §§ 36-1-113(g)(1) - (g)(3), which provide that parental rights can be terminated for:

- (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) 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:

(A) 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;

(B) 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

(C) 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.

Tenn. Code Ann. §§ 36-1-113(g)(1) - (g)(3) (Supp. 2006).

There are several definitions of abandonment contained within Tenn. Code Ann. § 36-1-102. The definition of abandonment at issue in this case is:

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[.]

Tenn. Code Ann. § 36-6-102(1)(A)(ii) (2005).

Mother's first issue is her claim that DCS failed to make reasonable efforts on her behalf. In *Dep't of Children's Servs. v. B.B.M.*, No. E2004-00491-COA-R3-PT, 2004 WL 2607769 (Tenn. Ct. App. Nov. 17, 2004), *no appl. perm. appeal filed*, we stated:

The Department must establish by clear and convincing evidence that it made reasonable efforts to reunite the children with the parent. *In re Valentine*, 79 S.W.3d at 546; *In re C.M.M. & S.D.M.*, No. M2003-01122-COA-R3-PT, 2004 WL at *11, (Tenn. Ct. App. March 9, 2004); Tenn. Code Ann. § 36-1-113(c). This burden requires that the Department present sufficient evidence to enable us to conclude, without serious or substantial doubt, that the efforts were reasonable under the circumstances. *In re Valentine*, 79 S.W.3d at 546; *Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997); *In re C.D.B.*, 37 S.W.3d 925, 927 (Tenn. Ct. App. 2000).

B.B.M., 2004 WL 2607769, at *6 (quoting *In re C. LaC. and D.L.*, No. M2003-02164-COA-R3-PT, 2004 WL 533937, at * 5 (Tenn. Ct. App. Mar. 17, 2004)).

The testimony showed that DCS created two different permanency plans to assist Mother once the children were in DCS custody. The requirements of those plans were explained to Mother, she agreed to comply with the plans, and DCS obtained the Juvenile Court's approval of those plans. Over the course of the next two years, DCS repeatedly discussed Mother's progress with her and emphasized those areas where progress was lacking. DCS assisted Mother in obtaining counseling and parenting classes. When necessary, DCS transported the children to visitation with Mother and DCS supervised those visits. DCS discussed with Mother, apparently to no avail, the importance of her staying out of abusive relationships and not having convicted pedophiles living with her. The record fully supports the Juvenile Court's conclusion that there is clear and convincing evidence that DCS made reasonable efforts to reunite Mother with the children.

The next issue is whether Mother abandoned the children as that term is defined in Tenn. Code Ann. § 36-6-102(1)(A)(ii). There is no doubt that the children initially were found by the Juvenile Court to be dependent and neglected. Mother admitted to such a finding. The children unquestionably were placed in DCS custody. We already have found that DCS made reasonable efforts on Mother's behalf ever since the children went into DCS custody. Notwithstanding these reasonable efforts, Mother continued to live off and on with a convicted child molester. Even if Raymond was out of the picture, so to speak, Mother still has not demonstrated that she is even remotely capable of taking care of these children and providing a safe and stable home. Mother continues to make choices that put her children at risk of domestic violence and sexual abuse. This can be described as nothing less than demonstrating "a lack of concern for the child[ren] to such a degree that it appears unlikely that [Mother] ... will be able to provide a suitable home for the child[ren] at an early date[.]" See Tenn. Code Ann. § 36-6-102(1)(A)(ii). We affirm the Juvenile Court's judgment that DCS has established clearly and convincingly that Mother abandoned the children as that term is defined in the relevant statute.

The third issue is whether the Juvenile Court properly determined that Mother failed to substantially comply with the provisions of her most recent permanency plan. See Tenn. Code Ann. § 36-1-113(g)(2). While Mother did complete some of the plan's requirements, she did not complete the most important requirements. Mother has not followed through on what needed to be done to address her mental health issues, including taking her

medication. Mother abruptly quit counseling. Mother failed to demonstrate that she was able to provide proper housing for the children on a long term basis, given that she moved numerous times over the course of a couple of years. Mother failed to demonstrate that she could provide a safe home for the children by her continuously living with abusive men and even with a convicted pedophile. Mother continued to live with Raymond at various points in time even though there was a significant possibility that he had sexually abused B.J.L. In short, there was clear and convincing evidence that Mother failed to substantially comply with the statements of responsibilities contained in her most recent permanency plan.

Mother's final issue is her claim that the Juvenile Court erred when it determined that grounds also existed to terminate her parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3). There is no doubt that the children have been removed from Mother's care for at least six months. The lack of proper *and safe* housing unquestionably can be deemed "other conditions" which would subject the children to neglect and prevent their safe return to Mother's care. Likewise, Mother's inability to effectively address her mental health issues would subject the children to potential harm. Given that Mother has been unable to remedy these problems for several years, it is unlikely that these conditions would or could be remedied at any point in the near future. Continuing the parent/child relationship would greatly diminish the children's chances of integrating into a safe, stable and permanent home. We conclude that there was clear and convincing evidence presented to the Juvenile Court that grounds existed to terminate Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3), and we affirm the Juvenile Court on this issue.

Mother does not appeal the Juvenile Court's determination that there was clear and convincing evidence that termination of Mother's parental rights was in the children's best interest. Out of an abundance of caution, we will address this unraised issue. Tenn. Code Ann. § 36-1-113(i) (Supp. 2006) sets forth a list of non-exclusive factors to consider when making this determination. These factors are:

- (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.

Tenn. Code Ann. § 36-1-113(i) (Supp. 2006).

The evidence in this case clearly demonstrates that Mother has failed to make any sort of lasting adjustment of circumstance which would enable the children to be returned safely to her care. We also find factor number six to have particular relevance in this case given Raymond's criminal history and the numerous other sexual abuse allegations made against Raymond. We have no confidence whatsoever in Mother's ability to keep Raymond away from her children. After reviewing all of the pertinent factors, we affirm the Juvenile Court's judgment that clear and convincing evidence was presented that termination of Mother's parental rights was in the best interest of the children.

Conclusion

The judgment of the Juvenile Court is affirmed and this cause is remanded to the Juvenile Court for collection of the costs below. Costs on appeal are taxed to the Appellant, N.L. and her surety, if any.

D. MICHAEL SWINEY, JUDGE