

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 6, 2007 Session

IN THE MATTER OF M.O.

**Appeal from the Circuit Court for Grundy County
No. 6962 Buddy D. Perry, Judge**

No. M2007-00347-COA-R3-PT - Filed September 28, 2007

The trial court denied Petitioner's request to reinstate his parental rights. The trial court had previously ordered that his parental rights be terminated due to severe child abuse. The judgment of the trial court was affirmed on appeal. We affirm the trial court's finding that Petitioner has stated no legal basis for his petition.

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

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., and DAVID H. WELLES JJ., joined.

T. Lance Carter, Fayetteville, Tennessee, for the appellant, L. O. R.

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

OPINION

Petitioner appeals the trial court's refusal to grant his request to reinstate his parental rights to his daughter ("M.O.").

Previously, on September 9, 2004, the trial court terminated Petitioner's parental rights to his daughter finding that he had either sexually abused his daughter or failed to protect her from known sexual abuse under Tenn. Code Ann. § 37-1-102(b)(21)(B) and Tenn. Code Ann. § 36-1-113. Petitioner's right were "forever terminated." On February 25, 2005 the Court of Appeals affirmed the termination order. *In Re M.O.*, 173 S.W.3d 13 (Tenn. Ct. App. 2005). In that opinion the Court of Appeals found groundless the argument raised by M.O.'s father that the department failed to exercise reasonable efforts to reunite them. The court also found that the evidence supported the finding that Petitioner had engaged in sex acts with M.O. when she was 9 years old and had failed

to protect her from the sexual conduct of his brothers. *Id.* at 21. The Tennessee Supreme Court denied Petitioner's request to appeal the Court of Appeals' decision.

Months after the appeal was concluded, Petitioner filed the petition to reinstate his parental rights currently at issue with the trial court on December 27, 2005. He filed the petition in the original termination case. On February 7, 2007, the trial court granted the Department of Children's Services' motion to dismiss the Petitioner's request "with prejudice pursuant to Tenn. Code Ann. § 36-1-113(q)."

Petitioner bases his request to have his parental rights reinstated arguing that he was not responsible for the child's sexual abuse, that the Department has not made reasonable efforts to reunite them, and that he has now established a suitable home for the child. The arguments about abuse and reasonable efforts were ruled upon by the trial court and affirmed on appeal. Therefore, they are *res judicata* and not subject to further court review. Additionally,

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

Tenn. Code Ann. § 36-1-113(q).

The petition to reinstate parental rights fails for any number of reasons. First, the Court of Appeals affirmed termination of Petitioner's rights on February 25, 2005. In addition to the generally applicable principles of *res judicata*, the express terms of Tenn. Code Ann. § 36-1-113(q) deprive the trial court of authority to overturn or reverse the appellate court's decision, *i.e.*, reinstate Petitioner's rights. Second, Petitioner's stated authority for his petition to reinstate rights is not applicable and provides no avenue for the relief he seeks under the circumstances of this case.

Petitioner argues that Tenn. Code Ann. § 36-1-118(a) authorized the trial court to reinstate his parental rights. That statute provides as follows:

If at any time between the surrender of a child directly to prospective adoptive parents and the filing of an adoption petition or at any time between the filing of an adoption petition and the issuance of the final order of the adoption, it is made known to the court on the basis of clear and convincing evidence that circumstances are such that the child should not be adopted, the court may dismiss the adoption proceedings or, if no adoption proceedings have been commenced, the court may order the surrender or parental consent to prospective adoptive parents to be revoked and may

modify or dismiss any order of guardianship previously entered, and may order the reinstatement of parental rights, all in consideration of the best interests of the child.

From the language of the above-quoted provision, as well as the subject matter of the statute of which it is a part, it is clear that it applies to an adoption proceeding where the parent has consented to a termination of rights or voluntarily surrendered those rights. This statutory provision does not apply to the situation before us because Petitioner's parental rights were involuntarily terminated after notice, trial, and judicial findings that grounds had been proved by clear and convincing evidence.

Finally, it is unreasonable to believe that, after a finding of severe child abuse as described in *In Re M.O., supra*, simply moving into another home would in any way entitle Petitioner to reinstatement of his parental rights, even if he had attempted another procedural route.¹ We note that where a child has been removed from a parent's home pursuant to a finding of severe abuse, the child cannot be returned to that parent's custody unless and until (1) the court receives and considers certain reports and (2) the court finds clear and convincing evidence that the child will be provided a safe home free from further abuse. Tenn. Code Ann. §§ 37-1-130(c) and (d).

For the foregoing reasons, the trial court's dismissal is affirmed. Costs of this appeal are taxed to Petitioner, for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE

¹We are unwilling to hold that there are no circumstances in which a parent whose rights have been terminated by court order may have his or her legal relationship with a child reinstated. However, Tennessee Code Annotated § 36-1-113(q) limits the bases for any such attempt. The State has suggested that the only proper method available would be a petition for adoption, with all its attendant protections for the child's well being, since a party whose parental rights have been terminated is a legal stranger to the child. We do not disagree that such a proceeding would be the most likely available means by which to seek to establish a legal parent/child relationship where none exists, including after a termination order.