

The Governor's Commission for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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(including county) _____

Home Phone: () - - - - - Cellular Phone: () - - - - -

INTRODUCTION

The State of Tennessee Executive Order No. 34 hereby charges the Governor's Commission for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and eight (8) copies of the form and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to debra.hayes@tncourts.gov, or via another digital storage device such as flash drive or CD.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Partner at McGee & Dennis, Attorneys at Law

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

Licensed to practice in Tennessee in 1999; BPR #019829

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Licensed in Tennessee only

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

1998-2000: Law Office of J. Gilbert Parrish, Jr.
60 Brazelton Street, Unit 9
Savannah, Tennessee 38372

2000-2001: Law Office of Carma Dennis McGee
65 Court Street, Suite 3
Savannah, Tennessee 38372

2001-Present: McGee & Dennis, Attorneys at Law
55 Court Street, Suite B
Savannah, Tennessee 38372

Profession prior to completion of legal education:

1993-1996: Teacher, Hardin County Board of Education
155 Guinn Street
Savannah, Tennessee 38372

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am currently engaged in the civil and transactional practice of law. My current fields of practice and the percentage that each constitutes my total practice are as follows: Family Law (50%); Probate and Estate Planning (15%); Mediations (25%); General Civil Suits (5%); Real Estate and Business Transactions (5%).

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

On the trial level, I have practiced in the General Sessions, Juvenile, Chancery, Probate, and Circuit Courts of the State of Tennessee. On the appellate level, I have practiced before the Tennessee Court of Appeals. During my career, I have also handled transactional matters for individuals, corporations, limited liability companies, and financial institutions.

In General Sessions Court, I have represented both plaintiffs and defendants in collection matters, forcible entry and detainer warrants, warrants to recover personal property, and breaches of contracts and leases with damages falling within the jurisdictional limits of the Court. I have also represented plaintiffs in personal injury cases with damages falling within the jurisdictions limits of said Court. During the first three years of my career, I represented various defendants on criminal charges in the General Sessions Court, both by appointment and as an attorney hired by the defendant.

In the General Sessions Courts of Hardin and McNairy counties, which also exercise domestic jurisdiction, I have represented both plaintiffs and defendants in orders of protection, divorce cases, and post-divorce cases involving child custody or contempt issues.

In Juvenile Court, I have represented both plaintiffs and defendants in parentage and custody proceedings. I have also represented parents and custodians and served as the court-appointed guardian ad litem representing the child in dependency and neglect cases. On several occasions, I have also represented custodians and prospective adoptive parents in termination of parental rights cases.

In Chancery Court, I have represented clients in a wide variety of cases. I have represented both plaintiffs and defendants in cases involving real property issues, such as boundary line disputes, existence of easements, partition suits, and petitions to stay trespass. I have represented plaintiffs in cases to enforce restrictive covenants, quiet title, and approve the sale of real property owned either by a minor or complex divisions of heirs and unknown heirs. I have also represented financial institutions in suits to set aside fraudulent conveyances and reform deeds of trust and collection suits involving the same.

Additionally, I have represented plaintiffs in Chancery Court in adoptions, custody cases, conservatorships, approval of minor's settlement funds and receipt of the same by the court, name changes, grandparent visitation cases, actions to remove the disability of a minor, filing of foreign judgments, requests to disburse portions of a minor's funds, declaratory judgment petitions, requests for appointment of successor trustees, and guardianships. I have represented both plaintiffs and defendants in divorces, suits involving breach of contracts and leases, claims under the Tennessee Consumer Protection Act, and defendants in regard to the wrongful sale of secured collateral. I have also represented birth parents in a voluntary surrender and adoption. In numerous instances, I have been appointed as guardian ad litem in proposed conservatorship cases and on behalf of minors who own property and unknown heirs. Additionally, I have served as a court-appointed guardian ad litem in adoption cases.

In the Probate Division of the Chancery Court, I have represented personal representatives of estates, heirs, and beneficiaries in the probate and administration process. I have represented personal representatives of small estates and insolvent estates. I have also represented executors of estates in will construction suits. I have represented various persons in probates instituted for limited purposes, such as litigation or muniment of title. I have represented both plaintiffs and defendants in will contest cases, actions to remove administrators, and the filing of claims against an estate and exceptions to the same. On occasion, I have also served as the court-appointed administrator of estates when conflicts among heirs existed.

In Circuit Court, I have represented plaintiffs in breach of contract and lease cases, and personal injury cases. I have also had the privilege of serving as “second chair” on a case involving spousal support against an incompetent adult, and serving as one of a group of five attorneys on personal injury cases, one products liability case, and one medical malpractice case.

I have represented clients in two appeals to the Tennessee Court of Appeals, Western Division. In both instances, the ruling of the Juvenile Court in a termination of parental rights was appealed by the parent as a matter of right. I represented prospective adoptive parents of the minor child in both cases, who were the appellees in the action.

During my career, I have handled many transactional issues involving real property. I have performed hundreds of title searches for lenders. I have served as attorney for purchasers, sellers, and lenders in real estate transactions and handled disbursement of funds for the same. I have drafted various documents in regard to the title to real property, including deeds, deeds of trust, promissory notes, sales contracts, leases, and land sale contracts. I have also represented lenders and individual secured parties in foreclosure proceedings.

I have represented clients in forming corporations and limited liability companies and drafted all necessary documents for the same, including operating agreements, bylaws, initial member actions, articles of conversion, and resolutions. I have also drafted stock purchase agreements, employment agreements, partnership agreements, buy-sell agreements, and contracts. I have assisted various churches with the procedures for incorporation.

I have also assisted clients with estate planning throughout my career. I have drafted wills, power of attorneys, and trust agreements.

During the first few years of my career, I also represented plaintiffs in workers compensation cases and social security disability cases. However, I have not engaged in either area of practice in approximately the last five (5) years.

Unless otherwise stated above, I have served as the only attorney representing my client in all listed cases and transactions. I was solely responsible for all research, drafting of pleadings and other documents, and all court appearances. In the cases in which I worked with other attorneys, I conducted a large part of the research and drafting of pleadings, discovery, and other documents.

I have never worked in a firm with more than two attorneys, including myself. Practicing in a small town generally requires knowledge in diverse aspects of the law, and I have had exposure to a wide variety of cases. I was fortunate enough to gain valuable experience in a variety of cases early in my career while working for an attorney who was engaged in civil and transactional practice. I was a sole practitioner for approximately one year and then formed the partnership of which I am currently a member. After formation of the partnership, my partner and I focused on different areas of law and he took over all of the criminal work. Our firm has never employed any attorney other than the two partners. For approximately the past four (4) years, my partner has been in the office on only a limited basis. Therefore, I have been responsible for the firm’s day-to-day operations and supervision of the firm’s two legal

secretaries. Throughout my career, I have taken my work very seriously and strived to maintain the highest standards of professionalism.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

None.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have been a Rule 31 Licensed Family Mediator since 2004. I have mediated divorce, custody, parentage, and probate cases in the Chancery, Juvenile, and General Sessions Court of my area. I have conducted approximately 270 mediations.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

I have served as the court-appointed administrator of estates when conflicts existed between the heirs. In doing so, I was responsible for the administration procedures of the estate, including the payment of claims and distribution of assets to the heirs. I have served as court-appointed guardian ad litem in conservatorship cases and in cases involving unknown heirs of beneficiaries of property. In all other instances in which I have served as guardian ad litem, I performed my duties as the attorney for my minor client.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

2004 - 2005: City Judge, City of Savannah, Tennessee

2006 – Present: Trainer in the area of Juvenile Law and Practice

Tennessee Supreme Court, Administrative Office of the Court

2007-2009: Court Improvement Program Work Group
Tennessee Supreme Court, Administrative Office of the Court

2013: National Institute of Trial Advocacy (NITA)
Completed Tennessee Court Improvement Trial Advocacy Program

13. List all prior occasions on which you have submitted an application for judgeship to the Governor’s Commission for Judicial Appointments or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

None.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

1989-1993:	<i>UNION UNIVERSITY</i> Bachelor of Arts, <i>Magna Cum Laude</i> , May, 1993 Major: Social Studies; Minor: Secondary Education Alpha Chi Honor Society	Jackson, Tennessee
1995:	<i>UNION UNIVERSITY</i> <p style="text-align: center;"><i>Graduate School of Education</i> (I was pursuing a master’s degree in educational administration while I was teaching. I stopped taking those classes when I decided to attend law school.)</p>	Jackson, Tennessee
1996-1998:	<i>THE UNIVERSITY OF MEMPHIS</i> <i>Cecil C. Humphreys School of Law</i> Juris Doctor, <i>Cum Laude</i> , December, 1998	Memphis, Tennessee

PERSONAL INFORMATION

15. State your age and date of birth.

Age 43; date of birth: January 2, 1971

16. How long have you lived continuously in the State of Tennessee?

43 years

17. How long have you lived continuously in the county where you are now living?

43 years

18. State the county in which you are registered to vote.

Hardin

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not Applicable

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

Mt. Hermon Baptist Church, Savannah, Tennessee

Rotary Club of Savannah, Tennessee: President 2005-2006

Hardin County Imagination Library Board: Chairman 2008-2009

Shiloh Golf and Country Club

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your

answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

1989-1993: Kappa Delta Sorority

- a. Membership is limited to females
- b. Membership is on a lifetime-basis. However, I do not currently participate in any alumnae activities.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Anne Schneider Chapter of Lawyers' Association for Women, 2000-Present

Tennessee Bar Association, 1999-Present

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

Hardin County Chamber of Commerce: Nominee for Hardin County Woman of the Year, 2006

30. List the citations of any legal articles or books you have published.

None.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

May 18, 2009:	Pulaski, Tennessee Seminar: Practicing in Child Welfare Cases Sessions: “Whose Responsibility is It? The Balance Between Reasonable Efforts and Parent’s Requirements” and “Writing Goals, Outcomes, and Action Steps in a Permanency Plan”
May 26, 2010:	Pickwick Dam, Tennessee Seminar: Practicing in Child Welfare Cases Sessions: “Discovery: Getting What You Need to Make Your Case” and “Required Court Findings”
April 8, 2011:	Paris, Tennessee Seminar: Practicing in Child Welfare Cases Sessions: “Court Action and Least Drastic Alternatives”, “Discovery: Getting What You Need to Make Your Case” and “Required Court Findings”
November 4, 2011:	Millington, Tennessee Seminar: Practicing in Child Welfare Cases Session: “Advocating Outside the Courtroom”
September 7, 2012:	Jackson, Tennessee Seminar: Practicing in Child Welfare Cases Session: “Using the Permanency Plan to Advocate for Your Client”

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

2005-2006: City Judge

City of Savannah, Tennessee

Appointed by the Savannah City Commission

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

See Attached "Exhibit A" and "Exhibit B." These were both written by me. I was the only attorney representing my clients in both cases.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I feel that I have the knowledge and integrity required of a member of the judiciary. I have practiced law for fifteen years, with an emphasis on civil matters such as those adjudicated in the Chancery Court. I have taken every opportunity to educate myself on the law, usually earning excess continuing education hours annually. I have been privileged to handle a wide variety of cases which have given me a diverse background in the law.

I believe that a fair and impartial judicial system is vital to our state and country. Throughout my career, I have strived to maintain the highest standards of ethics and professionalism. I have been fortunate to have the education, character, and knowledge that would allow me to serve my district well as Chancellor, and feel that it is my responsibility to attempt to do so.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

I have accepted appointments by the Court for both criminal cases and child dependency and neglect cases. Additionally, throughout my career, I have participated with West Tennessee Legal Services and accepted cases which were referred to me by the organization on a pro-bono basis. I have also represented clients who were not referred, but who had financial need, on either a pro-bono basis or at a greatly reduced rate.

I do not believe that access to our judicial system and legal representation should be only for the privileged. The outcome of issues of those who are without the ability to pay is of no less importance. Every person should be allowed to avail him or herself of the benefits of a functioning and respected legal system. Without equal justice under the law, people are more likely to attempt to circumvent the law.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*)

I am seeking appointment as sole Chancellor of the 24th Judicial District of Tennessee, which handles civil litigation. My selection will impact the Court because I have an extensive background in many of the types of cases which this Court hears. I have fifteen years of experience in the majority of the cases heard by the court: probate, real property, and domestic issues. My experience in family law, mediations, and in serving as a guardian ad litem in many child dependency and neglect cases has made me very sensitive to the issues which comprise the analysis of the best interest of a child.

The appointment of a Chancellor for our district will alleviate the current burden of having other judges preside over Chancery Court and allow cases to move more rapidly through the courts. Additionally, I will implement and encourage organized practices and procedures which will promote judicial economy.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I am a member and past president of the Rotary Club of Savannah, Tennessee. I believe that the work done by this organization is important to the community and intend to remain a member of said organization. I believe that it is important for members of the judiciary to be visible contributors to the charitable needs of the community. If appointed Chancellor, I will continue to participate in club projects to the extent that my schedule and the rules of judicial conduct allow.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

Throughout my life, I have gained experience dealing with people in a variety of areas. Immediately upon graduation from college, I began teaching at Hardin County High School. Being a young teacher at that level, I rapidly realized that maturity, poise, and professionalism are vital in any career. My teaching experience allowed me to deal with many types of adolescents. In seeing their struggles, I gained insight into the impact which a home life can have on a child's outlook and ultimately their future. Although I left my teaching career to pursue law, I continued to have concern for the welfare of children and adolescents.

When I began my legal career, service to others was important to me. Those who have been afforded opportunities have a responsibility to serve others. Almost immediately, I joined service organizations. I also began serving as a court-appointed guardian ad litem in many child dependency and neglect cases. This gave me an understanding of the needs of children who are

involved in, or are the subject of, litigation. I have also served as a court-appointed guardian ad litem in several conservatorships. These areas have given me an awareness of the plight of people who are not able to speak for themselves. My years of family mediation have given me insight into the complexity of domestic law and the trauma that people endure as a result of divorce and custody issues. My mediation skills have given me the ability to diffuse situations and seek alternative resolutions to conflicts.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes. The role of a judge is to uphold the law regardless of personal feelings about the law. My most significant example of having fulfilled this responsibility involves a private adoption case in which I represented the adoptive parents. My representation began months prior to the child's birth. Immediately upon birth, physical custody of the child was placed with my clients and all normal surrender procedures were followed. After one week, I was notified that the biological parents wished to revoke their consent.

I did not believe that return to the natural parents was in the child's best interest. I knew that the living conditions to which the child would return were not optimal. However, I had no legal basis for my clients to file for emergency custody of the child. I immediately contacted the Chancellor's office and scheduled the revocation of surrender hearing. My obligation as an officer of the Court required that I abide by state law in regard to the revocation. No laws existed to allow my clients to retain physical or legal custody of the child. Therefore, within hours of being notified of the desire to revoke the consent, I supervised the return of the child to the biological parents.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Honorable Daniel L. Smith
Hardin County General Sessions Judge
Hardin County Courthouse
465 Main Street
Savannah, TN 38372

B. Attorney J. Gilbert Parrish, Jr.
60 Brazelton Street, Unit #9
Savannah, TN 38372

C. Attorney W. Lee Lackey
125 Pickwick Street
Savannah, TN 38372

D. Rev. Artie Rivers
Mt. Hermon Baptist Church
1495 Rich Road
Savannah, TN 38372
(731)925-4669

E. Ms. Elizabeth Stovall

Champaign, IL 61822

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Chancellor of the Court of the 24th Judicial District of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: January 14, 2014.


Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COMMISSION FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Commission for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Commission for Judicial Appointments and to the Office of the Governor.

Carma Dennis McGee

Type or Print Name

Carma Dennis McGee

Signature

01/14/2014

Date

019829

BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Not Applicable

**IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON**

IN RE: Trevor M.K.W., A Minor Child

No. W2013-00299-COA-R3-PT
McNairy Co. Juvenile Court No. 10-JV-14

**ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF
THE McNAIRY COUNTY JUVENILE COURT**

**BRIEF OF THE APPELLEES
JASON DARRYL YOUNG and wife, FELECIA LYNN YOUNG**

CARMA DENNIS McGEE BPR No. 19829
McGee & Dennis
55 Court Street, Suite B
Savannah, TN 38372
(731) 925-1025

FILED UNDER SEAL PURSUANT TO TENN. CT. APP. R. 14

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ISSUES PRESENTED FOR REVIEW

- I. Whether the juvenile court properly concluded that clear and convincing evidence supports the grounds for termination of Mr. Wells' parental rights to his child.
- II. Whether the juvenile court properly concluded that clear and convincing evidence supports the grounds for termination of Mr. Wells' parental rights to his child based upon the child's best interest.

STATEMENT OF THE CASE

This matter involves the termination of Timothy L. Wells' (Mr. Wells) parental rights to his child, Trevor Michael-Kirk Wells (d.o.b. 9/17/2008) (Trevor). The child was placed in the custody of Jason Darryl Young (Mr. Young) and wife, Felecia Lynn Young (Mrs. Young) due to dependency and neglect on March 13, 2010. (Vol. 4, p. 3; Vol. 2, p. 99).¹ An order finding the child dependent and neglected was entered on July 15, 2010 after a hearing held on May 11, 2010, before the Honorable Van McMahan, McNairy County Juvenile Judge. (Vol. 4, p. 1). Mr. Wells did not appeal that Order. Mr. and Mrs. Young filed the Petition for Termination of Parental Rights on June 21, 2012. (Vol. 1, p. 25).

Trial on the termination of Mr. Wells' parental rights was held on October 23, 2012, in the Juvenile Court of McNairy County, Tennessee, the Honorable Van McMahan presiding (Vol. 3, p. 1). Mr. Wells was represented by his counsel. Both were present at the hearing. (Vol. 3, p. 4). A final Order terminating Mr. Wells' parental rights was entered on November 26, 2012. (Vol. 1, p. 10). Mr. Wells timely filed a Notice of Appeal on December 27, 2012. (Vol. 1, p. 1). An Amended Order of Termination of Parental Rights was filed on April 29, 2013. (Vol. 5, p. 1).

¹The record on appeal consists of two volumes of technical record, one volume of transcript, one volume of sixteen (16) exhibits, and one volume of supplemental record. References to the record will be indicated by volume and page number; references to the exhibits will be indicated by volume and page number.

STATEMENT OF THE FACTS

The Department of Children's Services' ("DCS") involvement with this family began in March, 2010. DCS received a report regarding the child, Trevor Michael-Kirk Wells (Trevor). The report indicated that the child's mother, Farrah Frazier (Ms. Frazier), was abusing prescription medications and illegal drugs and was unable to provide for the child's care. (Vol. 4, pp. 4-5).

On March 12, 2010, DCS Investigator Inman, along with law enforcement, made contact with the mother. Ms. Frazier indicated that she had been taking pain medication as a result of some domestic violence incidents with the child's father, Mr. Wells.² (Vol. 4, p. 5). Mr. Wells was incarcerated, having been arrested for assault on March 9, 2010, and Ms. Frazier stated to DCS that he was physically abusive toward her. (Vol. 4, p. 5). Mr. Wells admits that he and Ms. Frazier had an altercation prior to the child being removed from their care. (Vol. 3, p. 116; and Vol. 4, p. 37).

Ms. Frazier signed an immediate protection agreement whereby Trevor would be placed in the care of Mr. and Mrs. Young. Temporary custody of the child was placed with Mr. and Mrs. Young in March, 2010, and he has remained in their custody since that time. (Vol. 3, p. 72).

A Preliminary Hearing as to Mr. Wells and Adjudicatory and Dispositional Hearing as to Mr. Wells was held on May 11, 2010. (Vol. 4, p. 1). The child was found to be dependent and neglected, based upon the stipulation by Mr. Wells that the child was dependent and neglected and the stipulation that he was incarcerated at the time the Petition was filed in the instant matter and that he remained incarcerated as of the hearing date and was in no position to care for his child. (Vol. 4, p. 5). Mr. Wells was ordered at that time to cooperate with DCS Family Support Services (FSS) and all service providers referred to him by DCS, maintain regular contact with the DCS/FSS case

²Mr. Wells had been found to be the legal father of the child by Order of the Juvenile Court of McNairy County, Tennessee, after a petition filed by the State of Tennessee, ex. rel. Farrah Frazier.

manager, and allow the case manager to conduct random unannounced home visits. (Vol. 2, p. 7). Mr. Wells did not appeal that Order.

During the year 2010, Mr. Wells was required to complete anger management for the domestic assault charge that he received against Ms. Frazier and as a part of the dependency and neglect proceeding. (Vol. 3, p. 117). Mr. Wells testified that he did not complete those classes, and that he had been in anger management counseling off and on since 1997. (Vol. 3, pp. 117-119). Mr. Wells has continued to incur charges of simple assault, domestic assault, and aggravated assault since 2010, in spite of said counseling. (Vol. 3, p. 119).

A review hearing was held on November 9, 2010, and an Order on Review Visitation and Custody was entered on January 31, 2011. (Vol. 4, p. 9). Mr. Wells' visitation had been supervised by the Carl Perkins Center and by Mrs. Young's mother-in-law. (Vol. 3, pp. 75; 89-90). In said Order, the Court ordered that temporary custody would remain with Mr. and Mrs. Young, and that the Court would consider allowing a local minister, Rev. Watson of the First United Methodist Church in Adamsville, to supervise additional visits between Mr. Wells and the child if that was a feasible option. (Vol. 4, p. 11). The Order further stated that child support should be set at minimum wage for the father, Mr. Wells (Vol. 4, p. 11).

Mr. Luke DeLavernne, director of The Carl Perkins Center, testified that the center had provided supervision for Mr. Wells' visitation with his son, but that the center had refused to supervise any further visits between Mr. Wells and the child beginning in April, 2011, because Mr. Wells had been indicated by the Child Protective Investigative Team (CPIT) as a perpetrator against a minor in another case. (Vol. 3, pp. 45-50).

A review hearing was held on June 13, 2011, and an Order on Review Visitation and Custody was entered on July 25, 2011. (Vol. 4, p. 13). The Court ordered that temporary custody would

remain with Mr. and Mrs. Young, and that Mr. Wells would pay regular child support to the custodians in the sum of \$308.00 per month. (Vol. 4, p. 15). At that time, there was no one available to supervise visits between Mr. Wells and the child. The Court ordered that the matter would be reset for a hearing on the issue of a supervisor for said visitation.

A review hearing on the issue of Mr. Wells' visitation was held on July 25, 2011, and an Order on Review Visitation and Custody was entered on August 5, 2011. (Vol. 4, p. 17). At said hearing, DCS Investigator Stewart testified that the father's visitation had been suspended due to a DCS indication against Mr. Wells for alleged child sexual abuse. The Carl Perkins Center could not provide supervised visits for parents indicated for sexual abuse. (Vol. 4, p. 18). The Court ordered that Mr. Wells' visits would remain suspended pending further orders of the Court. (Vol. 4, p. 19). The supervision which had previously been done by Mrs. Young's mother-in-law was no longer an option due to Mr. Wells having reported her to the police for contacting him. Mrs. Young's mother-in-law was no longer willing to provide supervision for the visitation. (Vol. 3, pp. 89-90).

The Clerk of the Juvenile Court of McNairy County testified that Mr. Wells made child support payments for Trevor through the Clerk's Office. (Vol. 3, pp. 18-22). Records of the McNairy County Juvenile Court show that the father paid child support from June 24, 2011, until November 21, 2011. (Vol. 4, p. 23). Ms. Young testified that she received no child support from Mr. Wells after November 22, 2011. (Vol. 3, p. 78). Mr. and Mrs. Young stated that neither of them had received any child support from Mr. Wells since November 22, 2011, and that Mr. Wells had contributed in no way to the support of Trevor since that time. (Vol. 3, pp. 78, 96). Mr. Wells has never sent any gifts to the child or purchased anything for the child since that time. (Vol. 3, p. 78). Mr. Wells admitted that he paid no child support for the benefit of the minor child after November 21, 2011. (Vol. 3, pp. 105-106).

Mr. Wells was found guilty of domestic violence by the General Sessions Court of McNairy County, Tennessee on May 6, 2010, for an offense occurring on March 9, 2010, and received a sentence of ninety (90) days incarceration, no contact with the victim, and active probation. (Vol. 4, p. 37). The victim of said assault was Ms. Frazier. (Vol. 3, p. 42; (Vol. 4, p. 37). Mr. Wells continued to incur criminal charges after the child was placed in the custody of Mr. and Mrs. Young. Mr. Wells was charged with violation of probation on April 13, 2010. (Vol. 4, p. 36). Mr. Wells was charged with aggravated assault and pled guilty to a charge of simple assault in the General Sessions Court of McNairy County, Tennessee on April 11, 2011, and received a sentence of twenty (20) days incarceration, no contact with the victim, and active probation. (Vol. 3, pp. 28-31, 115; Vol. 4, p. 27). Mr. Wells pled guilty to a charge of simple assault in the General Sessions Court of McNairy County, Tennessee on September 1, 2011, and received a \$250.00 fine; a sentence of sixteen (16) days incarceration and active probation; and sixty-eight (68) hours of domestic abuse counseling. (Vol. 3, pp. 31-34; Vol. 4, p. 29). Mr. Wells pled guilty to a charge of disorderly conduct in the General Sessions Court of McNairy County, Tennessee on January 19, 2012, for an offense occurring on January 5, 2012, and received a sentence of fourteen (14) days incarceration; active probation; alcohol and drug evaluation and counseling (Vol. 3, pp. 34-36; Vol. 4, p. 30). Mr. Wells was indicted by the Grand Jury of McNairy County, Tennessee, on October 8, 2012, for six counts of aggravated assault, two counts of inhaling toxic fumes, and felony failure to appear, all of which occurred in 2012. (Vol. 3, pp. 36-39; Vol. 4, p. 31-35).³

Mr. Wells also continued to have several periods of incarceration after the child was placed in the custody of Mr. and Mrs. Young. (Vol. 4, pp. 38-40). In the calendar year 2012 alone, Mr. Wells stated that he was arrested on January 5, 2012, and incarcerated for a period of fourteen (14)

³Those charges had not been adjudicated as of the hearing date, October 23, 2012.

days on charges of disorderly conduct and unlawful possession of an inhalant. (Trans 110-111). On January 26, 2012, he was arrested and incarcerated for a period of three (3) days on charges of public intoxication and unlawful possession of an inhalant. (Vol. 3, pp. 110-111). On February 2, 2012, he was arrested and incarcerated for a period of one (1) day on charges of felony failure to appear. (Vol. 3, p. 112). On April 5, 2012, he was arrested and incarcerated for a period of two (2) days on charges for which was currently on bond as of the hearing date. (Vol. 3, p. 113). Mr. Wells was not incarcerated at the time of the filing of the petition to terminate his parental rights on June 21, 2012. (Vol. 3, pp. 109-110 and Vol. 1, p. 12).

One of the requirements of DCS in regard to Mr. Wells was that he resolve all pending criminal charges. He admitted that he had not done that. Mr. Wells was incarcerated on the date of the termination hearing, which was October 23, 2012. (Vol. 3, p. 102, 122).

Mr. Wells admitted that he had not seen Trevor since March, 2011. (Vol. 3, p. 107). Mrs. Young testified that Mr. Wells had not contacted her to try to see Trevor since that time. (Vol. 3, p. 76). Mrs. Young also testified that she had never refused to allow Mr. Wells to exercise visitation. (Vol. 3, pp. 83-84). This was not disputed by Mr. Wells. Mr. Young also testified that Mr. Wells had not contacted, or attempted to contact, Trevor in any way since July, 2011. (Vol. 3, p. 96).

Mrs. Young also testified that Mr. Wells had sent the child mail one time, that being a birthday card in July, 2011. (Vol. 3, p. 76). She further stated that she was still living at the same address that the card was mailed to in 2011. (Vol. 3, p. 76). Mr. and Mrs. Young both stated that Mr. Wells had not called to inquire about or check on Trevor since July, 2011. (Vol. 3; pp. 77, 96). Mrs. Young stated that Mr. Wells had never sent mail to check on Trevor or request information about Trevor. (Vol. 3, p. 77). During 2011, Mrs. Young applied for a restraining order against Mr. Wells, in part because she believed him to be following her. That order did not apply to Trevor or keep Mr.

Wells from exercising visitation with Trevor. (Vol. 3, pp. 92-94). Mrs. Young had never been the contact person to arrange Mr. Wells' visits with Trevor. (Vol. 3, p. 108).

Mr. and Mrs. Young both testified that Trevor is well-adjusted in their home and that he never references Mr. Wells in any way, never asks about him, and does not have a relationship with Mr. Wells. (Vol. 3, pp. 78, 80, 97). The records from Mr. Wells' sessions with Wolf Counseling from April, 2010, state that the father was not concerned about the well being of Trevor, and only had concern about Ms. Frazier. (Vol. 3, pp. 123-124; Vol. 4, p. 42). Further, in May, 2010, the counselor was of the opinion that it was not therapeutically beneficial for Trevor to have any type of visitation with Mr. Wells. (Vol. 3, p. 125; Vol. 4, p. 48). She stated in October, 2010, that since their last meeting in May, 2010, there was no improvement in his emotional stability or level of function due to his inability to function, lack of anger control, unstable and volatile interpersonal relationships, lack of parenting skills, and severe emotional disturbance. She also stated that it was evident that Mr. Wells would not be a suitable placement for Trevor. There was further no way that the counselor would ever recommend that Mr. Wells have unsupervised visits with Trevor, and stated that the child would not be safe if left alone with Mr. Wells. (Vol. 3, p. 125-126; Vol. 4, p. 61).

ARGUMENT

Both the United States Constitution and the Tennessee Constitution recognize a parent's fundamental right to the care, custody, and control of his or her child. *In re M.A.R.*, 183 S.W.3d 652, 659 (Tenn Ct. App. 2005) (citing *inter alia Santosky v. Kramer*, 455 U.S. 745, 753 (1982)). However, said right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying said termination under the applicable statute. *Id.* At 659 (citing *inter alia In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988)).

Termination proceedings in Tennessee are governed by statute. *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005). Parties with standing to terminate parental rights must prove at least one statutory ground for termination and that the termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c). Only one statutory ground for termination must be found by the court to support a termination of parental rights, which is sufficient to establish substantial harm to the child. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539,546 (Tenn. 2002). Tenn. Code Ann. § 36-1-113 (c)(1) requires that grounds for termination be proven by clear and convincing evidence.

On appeal, the trial court's specific findings of fact are reviewed *de novo* upon the record with a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Because of the heightened standard of proof in termination cases, the appellate court "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." *In re M.J.B.*, 140 S.W.3d 643, 654 (Tenn Ct. App. 2004) (citing *inter alia, Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn 2002)). In weighing the preponderance of the evidence, great weight is afforded to the trial court's determinations of witness

credibility, which shall not be reversed absent clear and convincing evidence to the contrary. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007).

In the instant case, the trial court found that there was clear and convincing proof of both grounds alleged for termination of Mr. Wells' parental rights: abandonment and persistence of conditions. (Vol. 1, p. 11).

I. CLEAR AND CONVINCING EVIDENCE SUPPORTS THE GROUNDS FOR TERMINATION OF MR. WELLS' PARENTAL RIGHTS TO HIS CHILD.

A. TERMINATION BASED UPON ABANDONMENT.

Under Tenn. Code Ann. § 36-1-113 (g)(1), the Court may terminate the parental rights when a parent has abandoned their child. Under Tennessee law, abandonment is defined in relevant part, as follows:

(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;

Tenn. Code Ann. § 36-1-102 (1)(A).

This court has explained the meaning of "willful" in § 36-1-102 (1)(A)(i), noting that "[c]onduct is 'willful' if it is the product of free will rather than coercion. Thus, a person acts 'willfully' if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing." *In re S.M.*, 149 S.W.3d 632,642 (Tenn. Ct. App. 2004).

Failure to support a child is 'willful' when a person is aware of his or her duty to support, has the capacity to provide the support, makes no attempt to provide the support, and has no justifiable excuse for not providing the support.

* * *

The willfulness of particular conduct depends upon the actor's intent. Intent is seldom capable of direct proof, and triers-of-fact lack the ability to peer into a person's mind to assess intentions or motivations. Accordingly, triers-of-fact must infer intent from the circumstantial evidence, including a person's actions or conduct.

Id. At 642-43

1. Abandonment by Willful Failure to Visit

The Juvenile Court found by clear and convincing evidence that Mr. Wells had abandoned Trevor as defined in Tenn. Code Ann. § 36-1-102, in that for a period of four consecutive months immediately preceding the filing of this petition to terminate the parental rights of the Respondent Timothy L. Wells, he had willfully failed to visit said child. (Order p. 2).

Mr. Wells admitted that he had not seen Trevor since March, 2011. (Vol. 3, p. 107). He has not contacted the custodians to try to see Trevor since that time, or inquire as to his welfare (Vol. 3, pp. 76, 77). This was not disputed by Mr. Wells. The only form of contact that Mr. Wells had with Trevor since March, 2011, was sending him a birthday card in July, 2011. (Vol. 3, p. 76). During this time, Mr. Wells had knowledge of the whereabouts of the child, his address being the same as that he used to send the card. (Vol. 3 76).

Mr. Wells argues that he was prohibited from visiting Trevor due to the restraining order which was in place to restrict Mr. Wells' access to Mrs. Young. The Court found that the restraining order that Mrs. Young had against Mr. Wells was not sufficient to prohibit Mr. Wells from exercising visitation with Trevor. (Vol. 1, p. 13). That restraining order did not apply to Trevor or keep Mr. Wells from exercising visitation with Trevor. (Vol. 3, pp. 92-94). The inability to contact Mrs. Young further did not restrict visitation with Trevor because Mrs. Young had never been the contact person to arrange Mr. Wells' visits with Trevor. (Vol. 3, p. 108).

Mr. Wells can blame no one but himself for his failure to visit Trevor. His actions in following Mrs. Young caused her to apply for a restraining order against him. (Vol. 3, pp. 92-94).

His actions in being indicated for abuse of another child led to visitation at the Carl Perkins Center no longer being feasible, and further led to the court suspending his visitation because there was no one to supervise said visits. (Vol. 4, p. 18). The supervision which had previously been done by Mrs. Young's mother-in-law was no longer feasible due to Mr. Wells having reported her to the police for contacting him. (Vol. 3, pp. 89-90). Mr. Wells did not file any pleadings with the court to attempt to reinstate his visitation, or appeal the suspension of his visitation.

In *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009), the Court, which ultimately upheld the termination of the father's parental rights, stated that a "parent's failure to visit may be excused by the acts of another only if those acts actually prevent the parent from visiting the child or constitute a significant restraint or interference with the parent's attempts to visit the child" (citing *In re Audrey S.*, 182 S.W.3d at 864 (Tenn. Ct. App. 2005)). In the instant case, no one has committed acts which prevented Mr. Wells from visiting the child. In *In re M.L.P.*, the court found that a father's abandonment was willful when he had made no attempt to contact or visit the child for more than one year prior to the filing of the petition to terminate his rights. *Id.* at 393. Similarly, Mr. Wells made no attempt to see Trevor for more than one year prior to the filing of this petition. Since March, 2001, the only effort made by Mr. Wells to maintain any relationship with Trevor was one birthday card sent in July, 2011. (Vol. 3, p. 76).

2. Abandonment by Willful Failure to Support or Make Reasonable Payment Toward the Support of the Child

The Juvenile Court found by clear and convincing evidence that Mr. Wells had abandoned Trevor as defined in Tenn. Code Ann. § 36-1-102, in that for a period of four consecutive months immediately preceding the filing of this petition to terminate the parental rights of the Respondent

Timothy L. Wells, he had willfully failed to support or make reasonable payment toward the support of the child. (Vol. 1, p. 11). Mr. and Mrs. Young contend that the decision of the trial court should be upheld.

Mr. Wells stated that he ceased paying child support on November 21, 2011, in part because he was not getting visitation with Trevor. (Vol. 3, pp. 105-106). The Court held in *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005) that visitation and support are separate issues. The suspension of Mr. Well's visitation by the Juvenile Court in July, 2011, did not relieve Mr. Wells of the duty of supporting Trevor.

Tenn. Code Ann. § 36-1-102(1)(H) states: "Every parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children" Tenn. Code Ann. § 36-1-102(1)(H).

Mr. Wells was aware of his duty to support Trevor. He acknowledged his duty to support Trevor in February, 2010, when he took steps to have himself declared the legal father of the child and placed his name on Trevor's birth certificate as the father. (Vol. 3, p. 103-104). Further, Mr. Wells was ordered to pay support by the Juvenile Court by order entered January 31, 2011. (Vol. 4, pp. 11, 15). He paid support for approximately four months, from June, 2011, until November, 2011. Therefore, he was aware of his obligation.

The trial court found that Mr. Wells also had the ability to support Trevor. This was not disputed by Mr. Wells. During the four (4) month period preceding the filing of the petition to terminate parental rights, Mr. Wells was incarcerated only two (2) days. He offered no reason for being unable to support the child, only that it was his voluntary decision to cease support payments. (Vol. 3, pp. 105-106).

The evidence of abandonment must show an actual desertion, accompanied with an intention to entirely sever, so far as it is possible to do so, the parental relationship and throw off all obligations growing out of the same. *In re Gordon*, 980 S.W.2d 372 (Tenn. Ct. App. 1998). Mr. Wells clearly exhibited the intention to “throw off” all obligations for Trevor when he chose to cease child support payments.

B. TERMINATION BASED UPON PERSISTENCE OF CONDITIONS.

Pursuant to Tenn. Code Ann. § 36-1-113(g)(3), termination of the parental right is appropriate when:

- 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 the 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)(3) provides that a court may terminate parental rights by finding either that the persistence of conditions which led to the child’s removal, or the persistence of conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect. *In re S.Y.*, 121 S.W.3d 358,369 (Tenn. Ct. App. 2003).

The trial court terminated Mr. Well’s parental rights based upon persistence of conditions, finding:

“Since May, 2010, the conditions of the Respondent Timothy L. Wells is still in existence as they were at the time of the removal of the child from him. Mr. Wells has been arrested and incarcerated five times since January, 2012. He was

incarcerated at the time of the adjudicatory and dispositional hearing in May, 2010, and is incarcerated on the date of this hearing. There is little likelihood that these conditions will be remedied in the near future. He has been charged with eight (8) counts of assault since 2010, and has admitted that he has had an ongoing anger problem since 1997. He has had numerous incarcerations in McNairy County, Tennessee, and has further undergone counseling. The Court finds that, despite this, he continues to incur criminal charges and be incarcerated and there is no reasonable expectation that this will change in the near future. The Court further finds that the tremendous weight should be given to the reports of Mr. Wells' counselor which were admitted into evidence stating that he would never be able to have unsupervised visitation with the subject minor child. It is important that the Counselor noted that Mr. Wells was more concerned with revenge against the mother of the subject child than with the child's well-being."

(Vol. 1, p. 13).

The Court found that Trevor had been removed from the home of Mr. Wells by court order for a period of more than six (6) months and 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 either of the parents, still persist. The Court also found that there was little likelihood that these conditions will be remedied at an early date. (Vol. 1, p. 11). Mr. and Mrs. Young contend that the decision of the Juvenile Court should be upheld.

Trevor was placed in the custody of Mr. and Mrs. Young in March, 2010. He has been in their custody continuously since that time. (Vol. 3, p. 72). The termination hearing for Mr. Wells was held on October 23, 2012. (Vol. 3, p. 1). Therefore, Trevor has been removed from Mr. Wells' home for more than six months.

The conditions which led to the removal of Trevor from Mr. Wells' custody were Mr. Wells' repeated criminal charges and incarceration and anger management problems.

Mr. Wells was incarcerated for domestic violence against Ms. Frazier at the time of the Adjudicatory and Dispositional Hearing in May, 2010, serving a sentence of ninety (90) days

incarceration, and active probation. (Vol. 3, p. 42; Vol. 4, p. 37). Mr. Wells was charged with aggravated assault and pled guilty to a charge of simple assault in the General Sessions Court of McNairy County, Tennessee on April 11, 2011, and received a sentence of twenty (20) days incarceration. (Vol. 3, pp. 28-31; Vol. 4, p. 27). Mr. Wells pled guilty to a charge of simple assault in the General Sessions Court of McNairy County, Tennessee on September 1, 2011. (Vol. 3, pp. 31-34; Vol. 4, p. 29). Mr. Wells pled guilty to a charge of disorderly conduct in the General Sessions Court of McNairy County, Tennessee on January 19, 2012, for an offense occurring on January 5, 2012, and received a sentence of fourteen (14) days incarceration; active probation; and alcohol and drug evaluation and counseling (Vol. 3, pp. 34-36; Vol. 4, p. 30). Mr. Wells was indicted by the Grand Jury of McNairy County, Tennessee, on October 8, 2012, for six counts of aggravated assault, two counts of inhaling toxic fumes, and felony failure to appear, all of which occurred in 2012. (Vol. 3, pp. 36-39; Vol. 4, pp. 31-35).⁴

Prior to the filing of the petition to terminate parental rights, and in the calendar year 2012 alone, Mr. Wells stated that he was arrested on January 5, 2012, as previously referenced (Vol. 3, pp. 110-111); arrested on January 26, 2012, and incarcerated for a period of three (3) days (Vol. 3, pp. 110-111); arrested on February 2, 2012, and incarcerated for a period of one (1) day (Vol. 3, p. 112); and arrested on April 5, 2012, and incarcerated for a period of two (2) days. (Vol. 3, p. 113). Mr. Wells was incarcerated again on the date of the termination hearing, which was October 23, 2012. (Vol. 3, pp. 102, 122).

During the year 2010, Mr. Wells was required to complete anger management for the domestic assault charge that he received against Ms. Frazier and as a part of the dependency and neglect proceeding. (Vol. 3, p. 117). Mr. Wells testified that he did not complete those classes, and

⁴Those charges had not been adjudicated as of the hearing date, October 23, 2012.

that he had been in anger management counseling off and on since 1997. (Vol. 3, pp. 117-119). Mr. Wells has continued to incur charges of simple assault, domestic assault, and aggravated assault since 2010, in spite of said counseling. (Vol. 3, p. 119).

These facts show that Mr. Wells' anger management counseling has not been effective, and that his anger problems persist. Mr. Wells' anger management problems further continue to make it impossible for Trevor to spend unsupervised time in his presence, the child's safety being at risk. (Vol. 3, pp. 125-126; Vol. 4, p. 61).

Mr. Wells further testified that he was ordered at one time to complete an alcohol and drug evaluation and counseling, but that he did not complete that, and did not need the counseling. (Vol. 3, pp. 120-121). This is another condition which prevents Trevor's safe return to the care of Mr. Wells.

II. CLEAR AND CONVINCING EVIDENCE SUPPORTS THE GROUNDS FOR TERMINATION OF MR. WELLS' PARENTAL RIGHTS TO HIS CHILD BASED UPON THE CHILD'S BEST INTEREST.

In order to terminate parental rights, the Court must find by clear and convincing evidence both that (1) statutory grounds exist for the termination and that (2) termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(2). In determining best interest, the court will consider various factors, including, but not limited to:

- (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 interests 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 service 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 that 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 or controlled substance analogues 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).

This Court has held that the list of enumerated factors is not exhaustive, and that a finding of the existence of each enumerated factor is not necessary to conclude that termination is in the child's best interest. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The relevancy and weight given to each factor depends upon the unique facts of each case. *In re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005).

In the instant case, the trial court found by clear and convincing evidence that the termination of the paternal rights of Mr. Wells was in the best interest of the minor child. (Vol. 1, pp. 11-12).

In fact, the court stated that, if necessary, the court would have found evidence beyond a reasonable doubt that the termination of the paternal rights of Mr. Wells was in the best interest of the minor child. (Vol. 3, p. 146). The court further stated that the evidence in this was “overwhelming” as to the termination being in the child’s best interest. (Vol. 3, p. 146).

Mr. Wells asserts that the trial court did not review the applicable factors to the facts presented by the parties at trial, and therefore did not properly apply the facts of the case to the factors necessary for determination of best interest of the child. However, the court stated that “The following evidence, along with the exhibits admitted into evidence in court, supports the findings and cumulatively constitutes clear and convincing evidence of grounds for termination and determination of the child’s best interest:” (Vol. 1, p. 12). The court went on to list the specific factual reasons for the court’s ruling. (Vol. 1, pp. 12-13).

Mr. Wells has continued to incur criminal charges and spend significant periods of time incarcerated. (Vol. 4, pp. 38-40). Additionally, he has not completed anger management classes or alcohol and drug treatment. (Vol. 3, pp. 117, 120-121). The counselor’s findings state that the father was not concerned about the well being of Trevor; and that it was not therapeutically beneficial for Trevor to have any type of visitation with Mr. Wells. (Vol. 3, p. 125; Vol. 4, pp. 42, 48). She also stated that it was evident that Mr. Wells would not be a suitable placement for Trevor, and that she would never recommend that Mr. Wells have unsupervised visits with Trevor, and stated that the child would not be safe if left alone with Mr. Wells. (Vol. 3, pp. 125-126; Vol. 4, p. 61). Therefore, Mr. Wells has not made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interests to be in the home of the parent or guardian, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(1).

Mr. Wells was required to complete anger management for the domestic assault charge that he received against Ms. Frazier and as a part of the dependency and neglect proceeding. (Vol. 3, p. 117). Mr. Wells testified that he did not complete those classes, and that he had been in anger management counseling off and on since 1997. (Vol. 3, pp. 117-119). Mr. Wells has continued to incur charges of simple assault, domestic assault, and aggravated assault since 2010, in spite of said counseling. (Vol. 3, p. 119). Therefore, Mr. Wells has failed to effect a lasting adjustment after reasonable efforts by available social service agencies for such duration of time that lasting adjustment does not reasonably appear possible, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(2).

Mr. Wells has not seen Trevor since March, 2011. At that time, he was receiving supervised visitation, which was being supervised by the Carl Perkins Center. His actions in being indicated as a perpetrator in another child abuse case led to the center no longer being able to supervise visitation. (Vol. 4, p. 18). No family members were available to supervise the visits due to Mr. Wells' previous actions. (Vol. 3, pp. 89-90). Mr. Wells has sent the child one item of mail since that time, that being in July, 2011. (Vol. 3, p. 76). However, there has been no other contact with the child. Therefore, Mr. Wells has not maintained regular visitation or other contact with the child, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(3).

Mr. and Mrs. Young both testified that Trevor is well-adjusted in their home and that he never references Mr. Wells in any way, never asks about him, and does not have a relationship with Mr. Wells. (Vol. 3, pp. 78, 80, 97). The records from Mr. Wells' sessions with Wolf Counseling from April, 2010, state that the father was not concerned about the well being of Trevor. (Vol. 3, pp. 123-124; Vol. 4, p. 42). Therefore, no meaningful relationship has otherwise been established between the Mr. Wells and Trevor, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(4).

The court stated that Trevor is in the only home that he has ever known, with the only parents that he has ever known, and has bonded with them. (Vol. 3, pp. 146-147). Further, the counseling records indicate that Trevor would not be safe if left alone with Mr. Wells. (Vol. 3, pp. 125-126; Vol. 4, p. 61). Therefore, the change of caretakers and physical environment would have a negative and dangerous effect on Trevor's emotional, psychological and medical condition, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(5).

Mr. Wells has an extensive history of anger management problems and arrests for assault. One of those arrests were for assault against Trevor's mother, Ms. Frazier. (Vol. 3, p. 42; Vol. 4, p. 37). Therefore, Mr. Wells has shown brutality, physical, sexual, emotional or psychological abuse, or neglect another adult in the family or household, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(6).

Mr. Wells was incarcerated once again as of the date of the hearing on the termination of his parental rights. Therefore, he does not have a safe and/or stable home, nor a home free from criminal activity. He also has multiple charges for inhaling toxic fumes, and has not completed alcohol and drug counseling. He has also obviously used alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(7).

The records from Mr. Wells' sessions with Wolfe Counseling from April, 2010, state that the father was not concerned about the well being of Trevor (Vol. 3, pp. 123-124; Vol. 4, p. 42); and that it was not therapeutically beneficial for Trevor to have any type of visitation with Mr. Wells. (Vol. 3, p. 125; Vol. 4, p. 48). Further, the counselor noted no improvement in Mr. Wells' emotional stability or level of function due to his inability to function, lack of anger control, unstable and volatile interpersonal relationships, lack of parenting skills, and severe emotional disturbance. She

also stated that it was evident that Mr. Wells would not be a suitable placement for Trevor; stated that she would never recommend that Mr. Wells have unsupervised visits with Trevor; and stated that the child would not be safe if left alone with Mr. Wells. (Vol. 3, pp. 125-126; Vol. 4, p. 61). Therefore, Mr. Wells' 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, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(8).

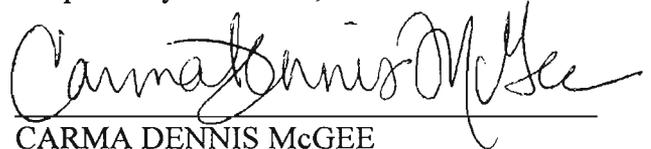
Mr. Wells admitted that he paid no child support for the benefit of the minor child after November 21, 2011. (Vol. 3, pp. 105-106). Records of the McNairy County Juvenile Court (Vol. 4, p. 23) show that Mr. Wells paid child support from June 24, 2011, until November 21, 2011. Therefore, Mr. Wells was able to pay support, but has not paid child support consistent with the child support guidelines promulgated by the department pursuant to §36-5-101, when considered pursuant to Tenn. Code Ann. § 36-1-113(i)(9).

Therefore, the Juvenile Court properly concluded that termination of Mr. Wells' parental rights was in Trevor's best interest.

CONCLUSION

Based upon the foregoing, this Court should affirm the McNairy County Juvenile Court's decision to terminate Mr. Wells' parental rights.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and exact copy of the foregoing has been forwarded by First Class U. S. Mail, postage prepaid, to each of the following:

Mr. Ross Mitchell
Attorney for Timothy L. Wells
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Guardian ad Litem
Deusner & Kennedy
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Ms. Lisa Miller
Attorney for Farah Frazier
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Selmer, TN 38375

This 3rd day of July, 2013.


CARMA DENNIS MCGEE

COPY

IN THE CIRCUIT COURT OF HARDIN COUNTY, TENNESSEE

JAMES MARTIN and wife, LORETTA MARTIN,
Plaintiffs/Appellees,

v.

No. 4302

KIMBERLY MURPHY,
Defendant/Appellant
and
MITZI FRANKS,
and ANY OTHER OCCUPANTS,
Defendants.

PRE-TRIAL BRIEF OF PLAINTIFF/APPELLEE

STATEMENT OF FACTS

The plaintiffs, James Martin and wife, Loretta Martin, are the owners of a home located at 320 Vista River, Morris, Chapel, Tennessee, which was leased to Defendant Murphy by written lease on January 24, 2009. Said lease was to be twelve (12) months in duration, and was obligated Defendant Murphy to pay the sum of \$1,553.85 each month in rental payments.

In said lease, Defendant Murphy was required to make rental payments no later than the 1st day of each month (Preface of agreement), be responsible for payment of all utilities (Section 7), was prohibited from subleasing the property without the plaintiffs' written consent (Section 8), was required to be solely liable for all maintenance to the property (Section 10), was required to notify plaintiffs of any absence from the property to exceed a seven-day period (Section 16), and was prohibited from having pets on the property (Section 24).

The occurrence of any of these events were a breach of the lease on the part of Defendant Murphy (Section 19), and entitled the plaintiffs to terminate the lease. The lease further stated that, should the lease be terminated due to violations by Defendant Murphy, she would be liable for rental payments for the remainder of the twelve (12) month rental period (Section 18, Section 22). The lease further stated that Defendant Murphy would be responsible for all repairs and maintenance to the subject property and would reimburse the Plaintiffs for any necessary repairs which they chose to make either during the term of the lease or after the termination of the lease (Section 10). The lease further stated that Defendant Murphy would be liable for any attorney fees and court costs incurred due to her failure to pay rent when due (Section 5).

On or about May 1, 2009, the plaintiffs discovered that Defendant Murphy was not occupying the residence and had sublet the property to Defendant Franks. Plaintiff further discovered, upon visiting the property, that a roof leak had not been repaired and had caused approximately \$11,759.31 worth of damage to the property.

On May 26, 2009, Plaintiffs filed a Detainer Warrant against both Defendant Murphy and Defendant Franks, requesting legal possession of the property, in addition to \$1,553.85 in past due rent and \$12,430.80 in rent for the balance of the lease, in addition to compensation for damages to the property caused by Defendant Murphy's failure to perform repairs to the property, court costs, and attorney fees.

The plaintiffs were given voluntary possession of the property by the Defendants on or about May 30, 2009.

The plaintiffs were given legal possession of the property on June 11, 2009, by Default Judgment from the General Sessions Court of Hardin County, Tennessee, with the issues of rental payments and property damage reserved. By hearing on July 30, 2009, said Court awarded a judgment against Defendant Murphy for damages to the subject rental property in the amount of \$11,759.31, compensation for rent due under the parties' lease agreement in the amount of \$7,769.25, that being for the months of May through September, 2009, attorney fees in the amount of \$750.00 and court costs in pursuing this matter, for a total judgment of \$20,278.56. Defendant Murphy has now appealed.

ISSUES TO BE DECIDED

The issues to be decided by this Court are:

1. Have Defendant Murphy's actions breached the lease agreement between the parties?
2. Are the plaintiffs entitled to possession of the subject property?
3. Are the plaintiffs entitled to damages for both past and future rental payments?
4. Are the plaintiffs entitled to damages for the damage to the subject property caused by the defendants' actions and failure to make necessary repairs to the property?
5. Are the plaintiffs entitled to payment of their attorney fees and court costs by the defendant?

POINTS OF LAW

1. **T. C. A. §29-18-104** defines "unlawful detainer"
2. **T. C. A. §29-18-12** authorizes the judge to award a judgment to the plaintiff for rent, interest, and damages.
3. Generally, damages to which one party to a contract is entitled because of breach thereof by the other party are such as arise naturally from the breach itself, or such as may reasonably be supposed to have been within the contemplation of the parties as a probable result of the breach thereof, or such as were reasonably foreseeable and within the contemplation of the parties when they entered into the contract. Baker v. Riverside Church of God, 61 Tenn. App. 270, 453 S.W.2d 801 (1970).

CONCLUSION

The Plaintiffs respectfully submit that the facts in this matter show that they are entitled to a judgment for possession of the subject property, in addition to a judgment for \$20,278.56 for past rent, future rent, property damages, and attorney fees, in addition to court costs.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that she has this date mailed a true and exact copy of the foregoing Pre-Trial Brief to Defendant Kimberly Murphy and Defendant Mitzi Franks, via First Class U. S. Mail, with postage prepaid, at their last known addresses, on this the 17th day of September, 2009.



CARMA DENNIS MCGEE