

FILED

03/20/2020

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 1, 2019

**IN RE H.S.**

**Appeal from the Juvenile Court for Williamson County  
No. 35799 Sharon Guffee, Judge**

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**No. M2019-00808-COA-R3-PT**

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ANDY D. BENNETT, J., concurring in part and dissenting in part.

I fully concur in the majority opinion's determination by clear and convincing evidence that the grounds of abandonment by failure to provide a suitable home and persistent conditions exist. I also agree that there is clear and convincing evidence supporting a finding that termination of Mother's parental rights is in the best interest of the child. Therefore, I agree with the ultimate result reached by the majority. However, I do disagree with the treatment of the ground found in Tenn. Code Ann. § 36-1-113(g)(14).<sup>1</sup> The majority opinion follows *In re Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280 (Tenn. Ct. App. June 20, 2018), which engages in a complicated use of statutory construction and grammar rules to essentially conclude that "and" actually means "or" in the language "ability and willingness." I prefer the interpretation found in *In re Ayden S.*, No. M2017-01185-COA-R3-PT, 2018 WL 2447044 (Tenn. Ct. App. May 31, 2018). I believe the General Assembly purposefully chose the word "and" in order to differentiate this ground from other grounds. Interpreting "and" as "or," in my opinion, makes Tenn. Code Ann. § 36-1-113(g)(14) a weaker version of other grounds. I do not believe such an interpretation is consistent with the legislative intent. Therefore, I dissent from the majority opinion's interpretation of Tenn. Code Ann. § 36-1-113(g)(14).

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ANDY D. BENNETT, JUDGE

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<sup>1</sup> Under Tenn. Code Ann. § 36-1-113(g)(14), a parent's rights may be terminated if he or she

has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.