

SUPREME COURT OF TENNESSEE

In re Mattie L.

No. W2018-02287-SC-R11-PT · No. W2018-02287-SC-R11-PT · Decided February 5, 2021

SUMMARY

The Tennessee Supreme Court reviewed a parental-rights termination judgment based on alleged abandonment by failure to support and visit. The Court held that the missing witness rule may apply in a non-jury trial but operates only as a permissive inference, and that the trial court misapplied it. The Court also held that the doctrine of unclean hands did not apply to the father and that the evidence of abandonment was not clear and convincing, reversing the termination judgment and dismissing the petition.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee; Jeffrey S. Bivins, C.J.; Cornelia A. Clark; Holly Kirby; Roger A. Page
JURISDICTION	Tennessee
DECIDED	February 5, 2021
DOCKET	W2018-02287-SC-R11-PT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mother and stepfather appealed by permission from the Tennessee Court of Appeals after that court reversed the Shelby County Chancery Court's termination of Father's parental rights. The Tennessee Supreme Court affirmed the Court of Appeals in part, reversed it on the applicability of the missing witness rule in a non-jury trial, reversed the trial court's judgment, and dismissed the termination petition.
STANDARD OF REVIEW	Under Tennessee Rule of Appellate Procedure 13(d), factual findings in parental-termination proceedings are reviewed de novo with a presumption of correctness unless the evidence preponderates otherwise. Whether the facts constitute clear and convincing evidence supporting termination is reviewed de novo with no presumption of correctness because it is a conclusion of law.
PRECEDENTIAL VALUE	published
PARTIES	Michael G., Rebecca G. v. Christian L.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the missing witness rule may apply in a non-jury trial.
2. Whether the trial court properly applied the missing witness rule by presuming that Father's entire testimony would have been unfavorable.
3. Whether the doctrine of unclean hands applied to Father when he was defending against a statutory parental-termination petition and seeking no equitable relief.
4. Whether Mother's and stepfather's evidence clearly and convincingly established abandonment by Father's willful failure to support or make reasonable or consistent support payments.
5. Whether Mother's and stepfather's evidence clearly and convincingly established abandonment by Father's willful failure to visit.

HOLDINGS

1. The missing witness rule may apply in both jury and non-jury trials because the trier of fact, whether a jury or judge, may draw a permissible inference from a party's failure to testify.
2. The missing witness rule creates only a permissive inference, not a presumption, and cannot replace substantive evidence or relieve a claimant of the burden to establish a prima facie case.
3. The doctrine of unclean hands did not apply to Father because he was defending against a petition for statutory relief, seeking no equitable remedy, and the alleged misrepresentations were collateral to the abandonment issue.
4. Mother and stepfather failed to prove by clear and convincing evidence that Father willfully failed to support the child or make reasonable or consistent support payments during the relevant four-month period.
5. Mother and stepfather failed to prove by clear and convincing evidence that Father willfully failed to visit the child.

KEY QUOTATIONS

"We hold that the missing witness rule may apply in both jury and non-jury trials." (6)

"The missing witness rule carries no more legal force than the commonsense inference it permits the trier of fact to apply in weighing the evidence." (7)

"The doctrine applies only to parties who seek an equitable remedy from a court." (8)

“Thus, Mother and Stepfather failed to meet their burden of proving willful failure to visit by clear and convincing evidence.” (16)

FACTUAL BACKGROUND

Father's parental rights were challenged after Mother and stepfather alleged that he had abandoned the child by willfully failing to support and visit her during the four months preceding the petition. Father paid no support during the relevant period, but the evidence showed little or no regular income, recent treatment for alcohol addiction, and no clear proof that he was able to work and pay support. Although Father did not exercise visitation, Mother's emails and testimony showed that she conditioned visitation on payment of \$1,000, withheld the child's location, failed to respond to Father's communications, and refused to permit visitation, including during Father's court-ordered Christmas period.

PROCEDURAL HISTORY

Mother and stepfather petitioned the Shelby County Chancery Court to terminate Father's parental rights based on abandonment and to permit stepfather to adopt the child. The trial court terminated Father's parental rights, applying the missing witness rule and the doctrine of unclean hands. The Court of Appeals reversed, concluding that the missing witness rule did not apply in a bench trial, that unclean hands was improperly applied, and that abandonment had not been proven by clear and convincing evidence. The Tennessee Supreme Court granted permission to appeal and affirmed the Court of Appeals except as to its categorical rejection of the missing witness rule in non-jury trials.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Tennessee Supreme Court reversed the trial court's judgment and dismissed the petition to terminate Father's parental rights. The Court affirmed the Court of Appeals' judgment except for its holding that the missing witness rule could not apply in a non-jury trial.

CASES CITED

- In re Gabriella D., 531 S.W.3d 662 (Tenn. 2017)
- In re Carrington H., 483 S.W.3d 507 (Tenn. 2016)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- In re Keri C., 384 S.W.3d 731 (Tenn. Ct. App. 2012)
- In re Audrey S., 182 S.W.3d 838 (Tenn. Ct. App. 2005)
- In re M.W.A., Jr., 980 S.W.2d 620 (Tenn. Ct. App. 1998)
- In re Swanson, 2 S.W.3d 180 (Tenn. 1999)
- State v. Francis, 669 S.W.2d 85 (Tenn. 1984)
- Delk v. State, 590 S.W.2d 435 (Tenn. 1979)

- *Runnells v. Rogers*, 596 S.W.2d 87 (Tenn. 1980)
- *W. Union Tel. Co. v. Lamb*, 203 S.W. 752 (Tenn. 1918)
- *In re Estate of Hamilton*, No. M2009-01882-COA-R3-CV, 2011 WL 532296 (Tenn. Ct. App. Feb. 14, 2011)
- *Beacon4, LLC v. I & L Investments, LLC*, 514 S.W.3d 153 (Tenn. Ct. App. 2016)
- *Nelson v. Justice*, No. E2017-00895-COA-R3-CV, 2019 WL 337040 (Tenn. Ct. App. Jan. 25, 2019)
- *McReynolds v. Cherokee Ins. Co.*, 815 S.W.2d 208 (Tenn. Ct. App. 1991)
- *In re Estate of Price*, 273 S.W.3d 113 (Tenn. Ct. App. 2008)
- *Arnett v. Fuston*, 378 S.W.2d 425 (Tenn. 1963)
- *C.F. Simmons Med. Co. v. Mansfield Drug Co.*, 23 S.W. 165 (Tenn. 1893)
- *Thomas v. Hedges*, 183 S.W.2d 14 (Tenn. Ct. App. 1944)
- *Fuller v. Cmty. Nat'l Bank*, No. E2018-02023-COA-R3-CV, 2020 WL 1485696 (Tenn. Ct. App. Mar. 27, 2020)
- *Hogue v. Kroger Co.*, 373 S.W.2d 714 (Tenn. 1962)
- *Chappell v. Dawson*, 308 S.W.2d 420 (Tenn. 1957)
- *In re Estate of Boote*, 265 S.W.3d 402 (Tenn. Ct. App. 2007)
- *In re Adoption of Angela E.*, 402 S.W.3d 636 (Tenn. 2013)
- *In re Addalyne S.*, 556 S.W.3d 774 (Tenn. Ct. App. 2018)
- *In re Francis R.*, No. M2018-00613-COA-R3-PT, 2018 WL 5307887 (Tenn. Ct. App. Oct. 25, 2018)
- *In re Preston L.*, No. M2016-02338-COA-R3-PT, 2017 WL 4315356 (Tenn. Ct. App. Sept. 27, 2017)
- *In re Laura F.*, No. M2017-01767-COA-R3-PT, 2019 WL 1896560 (Tenn. Ct. App. Apr. 29, 2019)
- *In re Maddox G.*, No. W2018-01115-COA-R3-PT, 2019 WL 927062 (Tenn. Ct. App. Feb. 25, 2019)