IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-CA-00792-COA

A.B. **APPELLANT**

v.

R.V. AND M.V., LEGAL GUARDIANS AND NEXT FRIENDS OF THE MINOR CHILDREN NAMED HEREIN **APPELLEES**

DATE OF JUDGMENT:	12/16/2016
TRIAL JUDGE:	HON. SANFORD R. STECKLER
COURT FROM WHICH APPEALED:	HARRISON COUNTY CHANCERY COURT, FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT:	REED STANTON BENNETT
ATTORNEY FOR APPELLEES:	GRADY MORGAN HOLDER
NATURE OF THE CASE:	CIVIL - CUSTODY
DISPOSITION:	AFFIRMED - 10/15/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., GREENLEE AND McCARTY, JJ.

GREENLEE, J., FOR THE COURT:

¶1. This child-custody appeal arises from a decision terminating A.B.'s parental rights. This Court, having fully considered the parties' briefs, the record, and the applicable law, affirms the Harrison County Chancery Court's judgment.

FACTS AND PROCEDURAL HISTORY

¶2. There is little dispute as to the facts in this case, as sad as they are. A.B. and her partner, J.B., were married and had three children. This appeal concerns the termination of A.B.'s parental rights as to her two youngest children, Emma and Jacob, as their natural

mother.[1] Our review begins with the evidence concerning A.B.'s life.

¶3. At twelve years of age, A.B. started using illicit drugs. Throughout her adolescence and early adulthood, her substance abuse amplified and eventually included heroin, cocaine, methamphetamine, benzodiazepines, and alcohol. Due to her drug addictions and violent behavior, A.B.'s parents evicted her from their home when she was eighteen years old. Since then, A.B. married twice, experienced eight pregnancies, and was arrested four times.

¶4. A.B. had a daughter during her first marriage. But in 1999, she lost custody of the child to her parents. A year after losing custody, A.B. and her first husband, David, were involved in a serious car accident while A.B. was pregnant. It is unclear who was driving the vehicle, but both A.B. and David were severely intoxicated.[2] The accident killed David and the unborn child.

¶5. In 2005, A.B. met J.B. At that time, both A.B. and J.B. were addicted to drugs and alcohol. A short time later, the couple married and proceeded to have three children. The couple's first child reportedly died from Sudden Infant Death Syndrome (SIDS). Their second child, Emma, was born in 2008. Their third child, Jacob, was born in 2010. During each of her pregnancies, A.B. admitted to drinking excessively and breastfeeding while intoxicated.

¶6. A.B. and J.B. struggled to take care of their children. For example, A.B. frequently used drugs and alcohol around the children. On several occasions, Emma and Jacob found

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[1] Fictitious names are used to protect the minors' and parties' identities.

[2] David's blood-alcohol concentration level was 0.32%, and A.B.'s blood-alcohol concentration level was above 0.20%.

A.B. unresponsive, leaving the children unsupervised and dirty. At times, Emma would escape from the house and not be discovered until later. The guardian ad litem (GAL) testified that A.B.'s conduct would have resulted in "aggravated circumstances" had the matter been initiated in a youth court.

¶7. In 2012, A.B. was arrested for driving under the influence with Emma and Jacob in the car. A year later, the children's aunt Melissa filed a Petition to Establish General Guardianship over Emma and Jacob. Melissa also filed an ex parte petition seeking temporary relief, which was granted. At the guardianship hearing, A.B. conceded that she should no longer have custody of the children, but she lied about her drug and alcohol abuse. The court appointed Melissa as their guardian.

¶8. From October 2013 to January 2014, A.B. and J.B. attended the Homes of Grace treatment program for their addictions. While in treatment, A.B. managed to visit with Emma and Jacob on two separate occasions. But A.B.'s sobriety did not last long. In March, she and J.B. relapsed. That same month, Emma and Jacob met R.V. and M.V. Instantly, R.V. and M.V. desired to adopt Emma and Jacob, but they acquiesced to A.B.'s mother's demand to not adopt.[3]

¶9. On Easter 2014, A.B. and J.B. visited with Emma and Jacob at daycare. This was A.B.'s last visit with the children. In July 2014, A.B. and J.B. filed a Petition to Appoint a New Guardian and allow visitation. They claimed they were drug free, but they refused to submit to drug testing. The GAL reported that it would be damaging to Emma and Jacob to

[3] R.V. and M.V. are not related to Emma and Jacob.

mention A.B. and J.B. in conversation.

¶10. Several months later, A.B. and J.B. consented to drug tests. The results showed that both A.B. and J.B. tested positive for methamphetamine, cocaine, benzodiazepine, suboxone, and alcohol. After failing the drug test, A.B. was charged with shoplifting, and she admitted to failing to appear in court. A few weeks later, A.B. and J.B. were both arrested for felony possession of a controlled substance.[4]

¶11. In January 2015, A.B. enrolled in another rehabilitative treatment program. Not long after that, Melissa, A.B.'s mother, R.V., and M.V. filed a joint petition to appoint R.V. and M.V. as guardians of the children. At the August 2015 hearing, A.B. appeared pro se and claimed she was sober. She also moved ore tenus for visitation with the children. The court directed A.B. to file a written pleading, but A.B. never complied.

¶12. In June 2016, R.V. and M.V. filed an Amended Petition to Terminate A.B.'s Parental Rights. A.B. responded in opposition. After the GAL's recommendation to terminate parental rights, the chancery court found by clear and convincing evidence that A.B.'s and J.B.'s parental rights should be terminated and that future contacts between A.B. and J.B. and the children were undesirable. In December 2016, A.B. filed for a motion for reconsideration. The motion was denied in May 2017.

¶13. On appeal, A.B. now argues that the chancery court erred by terminating her parental rights and that the chancellor's "order lacks finding[s] of fact or conclusions of law that tend to establish ground[s] for termination."

[4] At the November 2016 hearing, A.B. had two outstanding warrants for her arrest.

STANDARD OF REVIEW

¶14. This Court is aware of the gravity of the outcome of this case. A.B. has lost her fundamental right to be a parent. *See In re A.M.A.*, 986 So. 2d 999, 1009 (¶22) (Miss. Ct. App. 2007). But a parent's parental rights are not absolute. *Id.* at 1009-10 (¶¶22-23). In termination-of-parental-rights cases, appellate courts apply "the manifest error/substantial credible evidence test." *S.N.C. v. J.R.D. Jr.*, 755 So. 2d 1077, 1080 (¶7) (Miss. 2000). That test requires that as long as there is credible proof to support the chancellor's findings of fact by clear and convincing evidence, the appellate court must affirm the decision. *K.D.F. v. J.L.H.*, 933 So. 2d 971, 976-77 (¶20) (Miss. 2006). The court reasoned, "[i]t is not this Court's role to substitute its judgment for the chancellor's." *Id*. at 975 (¶14).

DISCUSSION

¶15. We address whether the trial court erred by terminating A.B.'s parental rights. Our review is two-fold. First, we review the chancellor's decision that A.B. engaged in conduct that rendered her mentally, morally, or otherwise unfit to raise her children. *See* Miss. Code Ann. § 93-15-119 (Supp. 2016). If the chancellor's decision was supported by substantial credible evidence, our analysis shifts to whether the chancellor should have found that the children's reunification with A.B. was desirable "toward obtaining a satisfactory permanency outcome." Miss. Code Ann. § 93-15-121 (Supp. 2016). We review these issues within the scope of the manifest-error/substantial-credible-evidence standard of review. *S.N.C.*, 755 So. 2d at 1080.

I. The chancery court did not err by finding clear and convincing evidence that A.B. is mentally, morally, or otherwise unfit to raise

the minor children.

¶16. During the proceedings, Mississippi Code Annotated section 93-15-119 encompassed two grounds for termination of parental rights. First, the natural parent's parental rights may be terminated if the parent engaged in conduct constituting "abandonment or desertion." Miss. Code Ann. § 93-15-119(1)(a). Second, parental rights may be terminated if the chancellor finds the natural parent "mentally, morally, or otherwise unfit to raise the child." *Id.* Our analysis focuses on the latter ground.[5]

¶17. Under the applicable version of the statute, evidence is sufficient if it shows "past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare," and termination is appropriate because reunification between the parent and child is "not desirable toward obtaining a satisfactory permanency outcome." Miss. Code Ann. § 93-15-119(1)(a)-(b). In her one-page argument, A.B. claims that the chancery court's judgment lacked findings of fact and conclusions of law necessary to involuntarily terminate her parental rights. We disagree.

¶18. In *J.P. v. L.S.*, this Court reviewed a similar case in which a chancery court terminated the natural parents' rights on the unfitness ground. *J.P. v. L.S.*, 2017-CA-00572-COA, 2019 WL 350630, at *6 (¶32) (Miss. Ct. App. Jan. 29, 2019). The case describes the natural mother's consistent drug use, particularly with methamphetamine, and her struggle to care for her three children. *Id.* at *1-4 (¶¶4-24). To combat her addiction, the natural mother

[5] R.V. and M.V. also pled abandonment as a ground for termination. But the chancellor's order terminating parental rights rests solely on the "mentally, morally, and/or otherwise unfit to raise the minor children" ground.

enrolled in inpatient drug treatment, outpatient drug treatment, and a third drug-rehabilitation treatment, which helped her stay clean for several years, but she eventually reverted back to drug use. *Id*. at *5 (¶25).

¶19. This Court upheld the chancellor's conclusion that the natural mother was unfit to raise her children for multiple reasons. *Id.* at *10 (¶49). First, we noted that the children were exposed to dangerous levels of methamphetamine while under the natural mother's direct care. *Id.* at *9 (¶44). Hair-follicle tests revealed that the minor children had traces of methamphetamine in their system. *Id.* Second, we noted that the natural mother was arrested for shoplifting, admitted to a gambling addiction, and possessed a criminal record. *Id.* at *10 (¶¶47-48). The chancellor also relied on the witnesses who testified to the children being "disoriented, dirty, disheveled, and dazed" under the natural mother's care. *Id.* at (¶48). Finally, we cited the family therapist, serving as the GAL, who testified to the children's psychological and learning issues. *Id.*

¶20. Similar to *J.P.*, the instant case is replete with drug addiction, child neglect, crime, and past behavior demonstrating A.B.'s unfitness to raise her minor children. In particular, the record reflects that A.B. started using drugs at the age of twelve. For the next two decades, A.B. consistently abused substances such as heroin, methamphetamine, alcohol, benzodiazepines, and other illicit drugs. At the age of eighteen, A.B. was evicted from her parents' home because her mother was scared of her volatile behavior. Also during that time, A.B. lost custody of her oldest daughter to her parents.[6]

[6] At first, the State of Georgia and the Department of Family and Children's Services (DFCS) granted temporary custody to A.B.'s parents. Three years later, the same court

¶21. Moreover, the record shows that A.B. conceded to using drugs and alcohol during her pregnancies and while breastfeeding her children. Trial testimony recounts at least fifteen instances in which the children found their mother passed out due to drugs and alcohol. Without supervision, the children would escape and wander freely with dirty diapers.

¶22. At the time the minor children were removed from her direct care, A.B. continued to abuse alcohol, heroin, and marijuana. In 2013, the chancery court gave A.B. the opportunity to be reunited with her children if she could stay clean and sober. And although A.B. made efforts by attending a rehabilitative treatment program, such efforts fell short. A.B. was unable to stay drug and alcohol free.

¶23. The record further describes A.B.'s criminal activity. Specifically, A.B. was charged and arrested for driving under the influence (DUI) with her children in the vehicle. In addition to her DUI charge, A.B. was later cited for shoplifting, public intoxication, and arrested for felony possession of a controlled substance. We also note that A.B. had two outstanding warrants at the time of the hearing.[7]

¶24. A.B.'s brief provides us with little explanation as to why she believes the chancellor's findings of fact and conclusions of law were incorrect. Thus, we find that there was substantial credible proof supporting the chancery court's decision to terminate A.B.'s parental rights.

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awarded a consent permanency order with supervised visitation. A.B. never exercised her option to petition the court to reinstate custody.

[7] A.B. testified that she had outstanding warrants for her arrest for shoplifting in Gulfport, Mississippi, and possession of a controlled substance in St. Tammany Parish, Louisiana.

II. The chancery court did not err by finding clear and convincing evidence that reunification between A.B. and the minor children was not desirable.

¶25. Our next step is to review whether the chancellor erred in determining that the termination of A.B.'s parental rights was appropriate "because reunification between the parent and child was not desirable toward obtaining a satisfactory permanency outcome." Miss. Code Ann. § 93-15-119(1)(b). To do this, we look to Mississippi Code Annotated section 93-15-121.

¶26. At the time of the proceedings, Mississippi Code Annotated section 93-15-121(a)-(h) listed eight alternative bases for finding reunification undesirable. In his order, the chancellor found sufficient evidence to terminate A.B.'s parental rights under four bases. *See* Miss. Code Ann. § 93-15-121(c)-(f). We address each basis in turn. The statute read in pertinent part:

> The following factors if established by clear and convincing evidence may be grounds for termination of the parent's parental rights if future contacts between the parent and child are not desirable toward obtaining a satisfactory permanency outcome:
>
> . . . .
>
> (c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment as reasonably directed by the court;
>
> (d) The parent is unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;
>
> (e) The parent has failed to exercise reasonable visitation or communication with the child;

> (f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child; . . . .

Id. Again, A.B.'s brief leaves us with little argument and authority to rely upon. Considering that and the facts before the chancellor, we simply cannot find the chancellor committed manifest error.

A. A.B. suffered from habitual drug addiction and alcoholism and failed to successfully complete alcohol or drug treatment.

¶27. First, the chancellor correctly found that A.B. suffered from severe drug and alcohol addiction and did not successfully complete drug or alcohol treatment as the court directed.

¶28. In *Owens*, this Court assessed whether a natural mother's parental rights should have been terminated because of habitual drug abuse. *Owens v. Owens*, 169 So. 3d 925, 927 (¶5) (Miss. Ct. App. 2014). Much like A.B., the natural mother's argument "d[id] not point to any specific errors made by the chancellor . . . ." *Id.* at 927 (¶9). Moreover, the record showed that the natural mother was a drug addict who was unlikely to change in the foreseeable future; that she was unwilling to care for her children because of her drug addiction; that she had repeatedly failed to comply with court orders regarding drug rehabilitation; and that she did not visit with her children for at least one year. *Id.* at 927-28 (¶9). As a result, we affirmed the chancellor's decision to terminate the mother's parental rights. *Id.* at 928 (¶12).

¶29. Similarly, it is undisputed that A.B. habitually abused drugs and alcohol for over twenty years. In 2013, the court directed A.B. to complete a drug and alcohol program. A.B. did so from October 2013 to January 2014. At the end of the program, she was afforded the

opportunity for additional treatment, but she declined. Two months after leaving the program, she relapsed. Moreover, ten months transpired between A.B.'s relapse and her enrollment in Grace House rehabilitation services. Because of the delay, the chancellor expressed reservation toward A.B.'s recent attempt to rehabilitate because her enrollment materialized a short time after she was charged with felony possession of a controlled substance.

B. A.B. provided no financial support to the children since 2014.

¶30. The chancellor also found reunification undesirable under section 93-15-121(d). That basis read: "The parent is unwilling to provide reasonable necessary food, clothing, shelter, or medical care for the child . . . ." At the hearing, A.B. testified that she had not paid child support since 2014. Further, she admitted that she would be unable to care for the children for at least one more year. The chancellor and the GAL noted that it would likely take A.B. much longer than a year.

C. A.B. failed to exercise reasonable visitation or communication with her children.

¶31. A.B. lost meaningful contact with her children in June 2013 because of her substance abuse. In total, A.B. met with her children three times from 2013 to 2016. While attending her first rehabilitative treatment program, the children's aunt Melissa took the children to visitation. And on Easter 2014, A.B. visited the children in a church's daycare. After that, A.B. lost all contact with the children, who were only six and three years old at that time.

D. A.B.'s neglectful conduct caused substantial erosion of her relationship with the children.

¶32. Section 93-15-121(f) provides the chancellor's fourth basis for terminating A.B.'s parental rights. In particular, this basis supports termination if A.B.'s abusive or neglectful conduct caused substantial erosion between her relationship with the children.

¶33. In her brief, A.B. asserts that "[trial] testimony . . . tended to show that there existed a pattern of alienation of affection of the minor children from their natural parents . . . beginning in late 2013 and continuing through the time of trial." While the phrase "pattern of alienation of affection of the minor children" presents us with some confusion, we think A.B. intends to argue that she was restricted from seeing her children. In support of this argument, A.B. cites to *Doe v. Doe*, 2015-CA-00652-COA, 2017 WL 499189 (Miss. Ct. App. Feb. 7, 2017). But *Doe* is distinguishable from the instant case.

¶34. In *Doe*, this Court reversed a chancellor's decision to terminate the natural mother's parental rights. *Id.* at *7 (¶32). In particular, we determined that the chancellor erred in applying the statutory prerequisites in Mississippi Code Annotated section 93-15-103(1) (Rev. 2013). *Id.* at *5 (¶25). And although we took the natural mother's successful drug rehabilitation into account, we also specifically recognized that "[t]here was no evidence at trial that Jane[, the natural mother,] abused drugs in the presence of the child, nor had she ever harmed the child." *Id.* at (¶24).

¶35. In this case, as detailed above, the record contains ample proof that the children were exposed to drug and alcohol abuse and other dangerous conditions. Further, the statute the *Doe* court relied upon has been amended by the Mississippi Legislature, and the prerequisites are no longer applicable. *See id* at *3 (¶13).

¶36. In *G.Q.A.*, the natural parents argued that "they should not be penalized for failing to maintain a bonded relationship with [their minor child] since they have been restricted by court order . . . ." *G.Q.A. v. Harrison Cty. Dep't of Human Res.*, 771 So. 2d 331, 337 (¶28) (Miss. 2000). However, the Mississippi Supreme Court rejected their argument and stated that "[a] finding of substantial erosion of the parent/child relationship necessarily involves a consideration of the relationship as it existed when the termination proceedings were initiated." *Id.* at 338 (¶29). The supreme court further stated that "substantial erosion could be proved by showing a prolonged absence and lack of communication between the parent and child." *Id.* (citing *Ainsworth v. Natural Father*, 414 So. 2d 417, 420 (Miss. 1982)).

¶37. Here, when the termination proceedings began, A.B. had failed to communicate with her minor children for over two years. The record demonstrates that the children were ages eight and five at the time R.V. and M.V. filed their "Amended Petition to Terminate Parental Rights," so the chancellor found that what little relationship A.B. had established with her children completely eroded through her prolonged absence and failure to communicate with them. We agree. A.B.'s relationship with Emma and Jacob was nearly nonexistent at the time of the hearing. Therefore, we conclude that there is substantial credible proof supporting the chancellor's decision by clear and convincing evidence that reunification between A.B. and the minor children was not desirable toward obtaining a satisfactory permanency outcome under these four bases.

III. Best Interest of the Children

¶38. "[T]he polestar consideration in child custody cases is the best interest and welfare

of the child." *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983). "Even where one of the grounds for termination is proven by clear and convincing evidence, the trial court must still consider whether 'termination is in the best interest of the child.'" *Brown v. Panola Cty. Dep't of Human Servs.*, 90 So. 3d 662, 665 (¶11) (Miss. Ct. App. 2012) (quoting *S.R.B.R. v. Harrison Cty. Dep't of Human Servs.*, 798 So. 2d 437, 443 (¶24) (Miss. 2001)).

¶39. In his findings of fact, the chancellor noted that termination of A.B.'s parental rights was in the best interest of the minor children. We agree with the Chancellor. A.B.'s father testified that the children call the Appellees "mom and dad." At trial, the GAL corroborated that testimony. Moreover, R.V. testified that Emma asked her, "Why can't you just be my mommy?" Like the chancellor, we are circumspect to allow the natural mother to interfere with the minor children's bond with R.V. and M.V. Therefore, because the record —including the GAL's recommendation to terminate parental rights—supports this decision, we affirm the judgment terminating A.B.'s parental rights and support obligations.

CONCLUSION

¶40. We find substantial credible evidence to support the chancery court's determination that A.B. engaged in conduct that was mentally, morally, or otherwise unfit to raise the children and that it would not be in the children's best interest to be reunified with their her.

¶41. Based on the foregoing, the chancery court's judgment is affirmed.

¶42. **AFFIRMED.**

BARNES, C.J., CARLTON AND J. WILSON, P.JJ., WESTBROOKS, TINDELL, McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.