

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-01083-COA

**IN THE MATTER OF THE ADOPTION OF
Z.M.J.: S.J.**

APPELLANT

v.

C.J. AND K.J.

APPELLEES

DATE OF JUDGMENT:	02/04/2019
TRIAL JUDGE:	HON. ROBERT GEORGE CLARK III
COURT FROM WHICH APPEALED:	MADISON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	J. M. RITCHEY
ATTORNEY FOR APPELLEES:	TAMETRICE EDRICKA HODGES
NATURE OF THE CASE:	CIVIL - CUSTODY
DISPOSITION:	AFFIRMED - 12/15/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

McDONALD, J., FOR THE COURT:

¶1. This appeal arises from the termination of parental rights (TPR) decision involving one minor child, Ashley.¹ The Madison County Chancery Court terminated the parental rights for both Sally Doe (natural mother) and Steven Johnson (putative father) on the grounds of abandonment. The chancery court also ordered Ashley to remain in the custody of Constance White (potential adoptive mother) and Keith White (potential adoptive father). Sally now appeals the chancellor's TPR decision on the grounds that she did not abandon nor

¹ To protect the interests of the child, and for the ease of reference, the Court of Appeals has replaced the names of the parties and witnesses involved in this case with fictitious names.

desert Ashley. In addition, Sally argues that the chancellor failed to consider the reunification between her and Ashley. Finding that there was clear and convincing evidence to support the chancery court's ruling, we affirm.

Statement of Facts and Procedural History

A. Background Information Regarding Sally and Steven

¶2. Ashley was born in January 2015. At the time that Ashley was conceived, Sally, her mother, was separated from her husband, Randy Doe, who had run off with another woman in 2013. While they were married, Randy was the sole provider for their household. After Randy left, Sally, who was unemployed, became the sole means of support for herself and her children.² In 2014, Sally met Steven, a convicted felon, who had been released on parole. They became intimate, and Ashley was conceived. In 2015, Steven's parole was revoked, and he was incarcerated at the time of Ashley's birth.

B. History of Ashley's Care

¶3. In August 2014, Sally and Constance attended a mutual friend's wedding.³ Constance approached an obviously pregnant Sally and asked, "[W]ill you let me have your baby?" Sally told her no. But Constance was aware that Sally and a person named Molly Smith had an agreement whereby Sally had given one of her children to Molly to raise. Constance also

² Altogether, Sally had twelve children. At the time of the trial on this matter, two were emancipated, two were not living in her home (Ashley and one other child were living with different families), and eight were living with Sally.

³ Constance stated that she and Sally are cousins. But Sally stated that she was not sure if Constance is actually her cousin because she met Constance for the first time at the wedding.

told Sally that she was unable to bear children. Sally stated that she told Constance, “What we can do is: You can help me with my baby. You know, I got all the other children. Help me raise—you know, help me financial[ly] with that baby.” Sally also testified that she told Constance, “[Y]ou can help me with this baby but don’t take this baby away from the brothers and sisters. [D]on’t take the baby away from the family.” According to Sally, both she and Constance agreed that Constance would help support and care for Ashley.

¶4. On January 20, 2015, Sally called Constance to notify her of Ashley’s birth, and Constance visited Ashley in the hospital. Constance and Keith brought Ashley to their home to live with them on February 12, 2015. According to Constance, from February 12, 2015, through about July 2015, Sally kept Ashley at her home from about 6:30 a.m. until around 4:00 p.m. each weekday because Constance and Keith were both at work. Sally was not paid to keep Ashley during the day. Constance stated that this arrangement was also done in an effort to allow Ashley the opportunity to spend time with her other siblings. Either Constance or Keith would drop Ashley off at Sally’s home in the mornings, and one of them would pick Ashley up after work.

¶5. The parties disagree about the events after June 2015. According to Sally, in June 2015, after her brother died, Constance called and told her that she would keep Ashley while Sally and her family were making funeral arrangements and grieving their loss. Sally agreed. After her brother’s funeral service, Sally claimed that she and Constance resumed their prior arrangement with Sally keeping Ashley during the day. According to Sally, this arrangement continued for the next two years until Constance enrolled Ashley in a daycare center in

March 2017.⁴ After Ashley was enrolled in daycare, Sally claimed that whenever she would call to arrange a visit with Ashley, Constance always seemed to have other plans. Sally asserted that she last saw Ashley on Christmas in 2017. But she admitted that she deliberately failed to visit Ashley from December 2017 to June 2018 because she was frustrated with what she claimed were Constance's attempts to keep Ashley away from her. But Sally asserted that she never went a full year without seeing Ashley. According to Sally, she had constant contact with Ashley until 2018.⁵

¶6. In direct opposition to Sally's testimony, Constance and Keith claimed that after Ashley was five-and-a-half months old, Sally never visited Ashley or called about her again. According to Constance, around August 2015, she and Keith hired an off-site private babysitter, whom they paid \$50 per week to watch Ashley from the age of five-and-a-half months to two years old. Ashley was then enrolled in a daycare center in March 2017. Constance testified she tried to contact Sally to see Ashley, but Sally frequently called her from different numbers; therefore, Constance did not have a reliable number at which Sally could be reached. Constance and Keith continued to care for and support Ashley, including providing food, shelter, child care, and medical care, while Sally never provided any financial assistance for Ashley—not even nominal assistance like birthday or Christmas presents.

¶7. On May 7, 2018, when Ashley was nearly three-and-a-half years old, Constance and

⁴ Sally presented no testimony to support her claim that she continued to keep Ashley in her home on a daily basis until 2017.

⁵ It is unclear whether Sally last saw Ashley in December 2017 or January 2018.

Keith filed a petition for the adoption of Ashley in the Madison County Chancery Court. On June 1, 2018, Constance and Keith filed a petition to terminate Sally's parental rights or, in the alternative, for sole physical and legal custody on the following grounds: (1) that Sally abandoned Ashley; (2) that Sally and Ashley's relationship had substantially eroded; and (3) that it would be in the best interest of Ashley that Sally's parental rights be terminated so that Ashley could be formally adopted by Constance and Keith.⁶ On June 21, 2018, the chancery court appointed a guardian ad litem (GAL) to protect Ashley's interests.

¶8. In August 2018, Sally and her daughter Maureen visited Ashley for the first time at the daycare center and tried to take her away. But the daycare director called Constance and law enforcement, so Sally was not able to take the child.⁷ Within the next couple of days, law enforcement had to be called again when Constance brought Ashley to the daycare center and Sally and her sister came and blocked Constance's car. Although Constance was inside, she was frightened.

¶9. Constance and Keith then filed a petition for a temporary restraining order on August 15, 2018, claiming that Sally tried to take Ashley away from her daycare center. On the same day, Sally filed a motion for the temporary, legal, and physical custody of Ashley, as well as her answer to Constance and Keith's motion to terminate her parental rights. Sally argued

⁶ On September 10, 2018, Constance and Keith filed an amended petition that combined their petition for adoption and their petition to terminate parental rights or, in the alternative, for sole physical and legal custody.

⁷ The GAL reported the following regarding her interview with the daycare center's director, who said, "According to [Mrs. Handy], before the child was enrolled in July 2017, [Constance] advised that [Sally] was permitted to come to the school and visit the child, but she never did."

that on June 1, 2018, Constance “kidnaped and inveigled” Ashley. Further, Sally alleged that since that date, Constance had secreted the child from her and refused to allow her to have any access to Ashley. In her answer, Sally asserted insufficiency of process, insufficiency of service of process, lack of jurisdiction, failure to join a necessary party under Mississippi Rule of Civil Procedure 9, separation of siblings, lack of standing, and kidnapping.

C. Court Proceedings

¶10. Pursuant to the statute,⁸ the chancery court judge appointed a GAL to investigate and make a recommendation about what would be in the best interest of the child. In September 2018, after interviewing Constance, Keith, and Sally, the GAL submitted a preliminary report to the chancery court recommending that the court move forward with the termination of Sally’s parental rights.⁹

¶11. The court met with the parties and their attorneys on September 27, 2018, to deal with the temporary custody motion. Sally did not agree to temporary custody but she did agree and acknowledge that Ashley had been in the care and custody of Constance and Keith since she was three weeks old. However, the court entered what it entitled an “agreed order” awarding temporary custody to Constance and Keith.¹⁰

⁸ Miss. Code Ann. § 93-15-107(1)(d) (Supp. 2016).

⁹ The preliminary report is not in the record, but during the trial, the GAL testified that she submitted the report to the chancery court in September 2018 and recommended that the court terminate Sally’s parental rights. The GAL’s supplemental report, dated January 28, 2019, is in the record. In the supplemental report, the GAL documented her interviews with the daycare center and contacts with the natural father, Steven.

¹⁰ The chancellor’s signature is the only one on the agreed order.

¶12. On September 17, 2018, Constance and Keith filed a motion to add a defendant, alleging that Steven was Ashley’s biological father and therefore a necessary party to the action. After a hearing on the motion to add a defendant, on October 12, 2018, the court found that Sally had identified Steven as Ashley’s natural father, making him an indispensable, necessary party to the action. Therefore, Steven was officially added to the action as a defendant. Steven was served a Rule 81 summons on December 8, 2018, notifying him of the trial date. M.R.C.P. 81. Although Steven did not answer the complaint, he made an appearance at trial and testified that although he was released from prison in 2016, he had never provided support for or attempted to see Ashley. At the time of the testimony, he had only seen Ashley once in four years. Furthermore, it was established that he had not been cooperative or spoken to the GAL in this matter.¹¹

¶13. Trial took place on January 28, 2019. During the trial, several witnesses were called for both sides to testify as to the care and support of Ashley.

¶14. Constance and Keith called two witnesses to testify on their behalf including their pastor who stated that Ashley would be with Constance and Keith “all the time, weekly, daily . . . ; they are together as a unit.” Their pastor, Matthew, testified that they were always at church together, and that he christened Ashley. Accordingly, “they are a normal family.” Constance’s coworker, Joanne also testified that Constance’s office was full of pictures of Ashley. Further, the co-worker said that Ashley lived at Constance and Keith’s house, and that she occasionally babysat Ashley for them. Constance and Keith also entered into

¹¹ The chancery court terminated Steven’s parental rights, but he did not appeal the decision.

evidence an album of photographs of Ashley, photographs of Ashley with their family, and records of Ashley's doctor's visits.

¶15. Sally called two witnesses to testify on her behalf. Maureen Jones, Sally's eighteen-year-old daughter who lived with her, testified that Constance stopped bringing Ashley to Sally's home, and it was hard to get in touch with Constance. She stated that Constance would not answer her phone and that when she did answer, she was always too busy to arrange a visit or had other plans for Ashley. Maureen recalled Ashley's visit with Sally at Christmas time in 2017, but she could not recall how many other times Sally had visited with Ashley during 2017. Maureen and Sally both testified that they went to see Ashley at the daycare center in 2018. But according to Maureen, Ashley did not recognize Sally as her mother:

Q. Did your mother see the baby that day when y'all went to the -- did she see [Ashley] when y'all went to the day care center in Gluckstadt the time you were with your mother?

A. Yes.

Q. And how -- did [Ashley] recognize your mother?

A. Yes. [Ashley] is friendly so she don't be -- she just friendly so she will be friendly with anybody.

Q. So [Ashley] is friendly. But I am asking you, did she recognize your mother --

A. Yes.

Q. -- as being her mother?

A. I don't know about her being the mother. But I know she just knew her from coming around and but I don't know if she know that, that's

her momma.

Even Sally admitted that when she interacted with Ashley, Ashley did not recognize her as her mother.

¶16. Sally's friend, Ed Smith, testified that during the years 2017 and 2018, he would visit Sally at her home about two or three times per week. During this time, he said he had seen Ashley at Sally's home seven or eight different times. He also stated that Sally interacted well with Ashley and that Sally often said that Constance was helping her raise Ashley. But he was unable to give specific dates for any of the times he claimed to have seen Ashley at Sally's home, nor was he able to state how old Ashley was when he saw her.

¶17. Consistent with her report, the GAL then testified and recommended that it would be in the best interests of the child to terminate Sally's parental rights on the ground of abandonment. Specifically, the GAL stated that Sally never provided financial support for Ashley, failed to exercise reasonable visitation or communication, and as a result of neglectful conduct, there was a substantial erosion of Sally's and Ashley's relationship. The GAL also testified that the termination of Sally's parental rights was appropriate in order for the child to have a stable, satisfactory, and permanent outcome.

D. Chancery Court's Ruling

¶18. At the conclusion of the trial, the chancery court rendered a bench opinion terminating Sally's parental rights based upon witness testimony and the GAL's recommendations. The court ordered that Ashley remain in the custody and control of Constance and Keith. A written order terminating parental rights was subsequently entered on February 4, 2019.

¶19. On February 8, 2019, Sally filed a motion for a new trial or reconsideration for specific findings of fact and conclusions of law. She argued that the court failed to specify the facts and/or conduct that led to the determination that she abandoned or deserted Ashley. She also argued that the court failed to consider the reunification between Ashley and herself.

¶20. The chancery court issued its order denying Sally a new trial or reconsideration on May 28, 2019. The court stated that there was clear and convincing evidence that Sally and Steven failed to see or visit with Ashley for an extended period of time after Ashley was six months of age. There was no contact between Sally and Ashley other than one possible occasion before Ashley turned one year old. Additionally, Sally failed to make any effort to see Ashley prior to the lawsuit. Therefore, she had abandoned and deserted Ashley. Further, the court also stated that Sally did not provide any food, clothing, shelter, or medical care for Ashley and that there was no relationship between her and Ashley. Therefore, there was no possibility of reunification.

¶21. On June 27, 2019, Sally appealed,¹² raising the following issues: (1) whether there was clear and convincing evidence that she abandoned Ashley; (2) whether there was clear and convincing evidence that she deserted Ashley; (3) whether there was clear and convincing evidence that reunification between her and Ashley would not be desirable toward obtaining a satisfactory permanency outcome; and (4) whether the chancellor terminated her parental rights on account of her indigence and inability to support Ashley in the same or similar financial fashion as provided by Constance and Keith. We find that the chancery court did

¹² Sally is appealing from both the chancery court's order terminating parental rights and the order denying a new trial or reconsideration.

not err in terminating Sally’s parental rights because there was clear and convincing evidence to support his findings.

Standard of Review

¶22. “In cases where parental rights have been terminated, our scope of review is limited.” *Little v. Norman*, 119 So. 3d 382, 385 (¶12) (Miss. Ct. App. 2013) (quoting *In re Adoption of M.C.*, 92 So. 3d 1283, 1286-87 (¶18) (Miss. Ct. App. 2012)). “[T]he [C]ourt asks not how we would have decided the case ab initio but whether there is credible proof to support the chancellor’s findings of fact by clear and convincing evidence.” *Id.* “We review the chancellor’s factual findings under the manifest error/substantial credible evidence test.” *Id.* “This Court will not overturn a chancellor’s findings of fact when supported by substantial evidence unless an erroneous legal standard is applied or is manifestly wrong.” *Id.*

¶23. We recognize that Sally has lost her fundamental right to be a parent to Ashley. In *Troxel v. Granville*, 530 U.S. 57 (2000), the United States Supreme Court stated that “the liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65.

¶24. “[I]n Mississippi, as in other jurisdictions, there exists a strong presumption in favor of preserving parental rights.” *J.P. v. L.S.*, 290 So. 3d 345, 356 (¶37) (Miss. Ct. App. 2019). (quoting *In re A.M.A.*, 986 So. 2d 999, 1009 (¶22) (Miss. Ct. App. 2007)). “Only where that presumption is overcome by clear and convincing evidence is termination appropriate.” *Id.*

¶25. In determining whether the chancery court erred in terminating Sally’s parental rights,

our review is two-fold. *A.B. v. R.V.*, No. 2017-CA-00792-COA, 2019 WL 5168558, at *2 (¶15) (Miss. Ct. App. Oct. 25, 2019). We review the chancellor’s decision that Sally engaged in conduct that constituted abandonment or desertion of the Ashley. *Id.* 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 [Sally’s] reunification with [Ashley] was desirable ‘toward obtaining a satisfactory permanency outcome.’” *Id.*; see Miss. Code Ann. § 93-15-121 (Supp. 2016).

¶26. “Before a state may sever completely and irrevocably the rights of parents in their natural child, due process requires that the state support its allegations by at least clear and convincing evidence.” *M.H. v. D.A.*, 17 So. 3d 610, 616 (¶19) (Miss. Ct. App. 2009) (quoting *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982)). “The chancellor must find grounds for termination by clear and convincing evidence in order to terminate the parental rights of a parent regarding the child.” *Id.* (quoting *A.C.W. v. J.C.W.*, 937 So. 2d 1042, 1045 (¶12) (Miss. Ct. App. 2007)). We define clear and convincing evidence as:

[the] weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.

Moore v. Bailey, 46 So. 3d 375, 384 (¶35) (Miss. Ct. App. 2010) (quoting *Johnson v. Bay City S. Mortg. Co.*, 928 So. 2d 888, 892 (¶14) (Miss. Ct. App. 2005)).

Discussion

I. Whether the chancellor erred in terminating Sally’s parental rights.

¶27. Mississippi Code Annotated section 93-15-119(1)(a)(i)-(ii) provides that a court may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence

[t]hat the parent has engaged in conduct constituting *abandonment or desertion* of the child, as defined in Section 93-15-103, or is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and that termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome.

(Emphasis added). In this case, the chancellor analyzed the facts and determined that Sally abandoned and/or deserted Ashley.

A. Applicable Law: Abandonment and/or Desertion

¶28. Mississippi Code Annotated section 93-15-103(a) (Supp. 2016) defines abandonment as “any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities abandonment may be established by showing that . . . (ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year.” Miss. Code Ann. § 93-15-103(a)(ii).

¶29. Courts have refined the definition. “Abandonment is defined as ‘any conduct by a parent which evinces a settled purpose to forego all duties and relinquish all parental claims to the child.’” *M.H.*, 17 So. 3d at 616 (¶19) (quoting *S.N.C. v. J.R.D. Jr.*, 755 So. 2d 1077, 1081 (¶11) (Miss. 2000)). “The test is an objective one: whether under the totality of the

circumstances, be they single or multiple, the natural parent has manifested his severance of all ties with the child.” *Id.* (quoting *Ethredge v. Yawn*, 605 So. 2d 761, 764 (Miss.1992)). “If a petitioner successfully demonstrates by clear and convincing evidence that the objecting natural parent has abandoned their child, then the court will consider the best interest of the child.” *Id.* (citing *J.C.N.F. v. Stone Cnty. Dep’t of Human Servs.*, 996 So. 2d 762, 766 (¶12) (Miss. 2008)).

¶30. Mississippi Code Annotated section 93-15-103(d)(i)-(ii) defines desertion as “any conduct by the parent over an extended period of time that demonstrates a willful neglect or refusal to provide for the support and maintenance of the child; or [t]hat the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood.”

B. The GAL’s Recommendations

¶31. Under Mississippi Code Annotated section 93-15-107(1)(d), in cases of involuntary termination of parental rights, a GAL shall be appointed to protect the best interest of the child, except that the court, in its discretion, may waive this requirement when a parent executes a written voluntary release to terminate parental rights. In order to ensure the child’s best interests, the court must “(1) select a competent person to serve as the GAL, (2) [choose] someone with no adverse interest to the minor, and (3) adequately instruct this person on the proper performance of his or her duties.” *Farthing v. McGee*, 158 So. 3d 1223, 1226 (¶16) (Miss. Ct. App. 2015) (citing *In re R.D.*, 658 So. 2d 1378, 1383 (Miss.1993), *overruled on other grounds by In re J.T.*, 188 So. 3d 1192, 1201-02 (¶¶49, 51)).

¶32. On January 28, 2019, the GAL in this case prepared a a fifteen-page supplemental report, which was entered into evidence and considered by the court. She recommended that Sally's parental rights be terminated and Ashley remain in Constance's and Keith's custody.

Consistent with her report, the GAL testified to the following:

THE COURT: Okay. Guardian ad litem at this time You may proceed.

. . . .

GAL: Your Honor, termination of parental cases are not always the easiest cases because they are emotional and it involves serious matters with the child. And if I may move to my conclusion.

THE COURT: You may.

GAL: Sally admit[ted] that she gave the child to [Constance] to raise. And in that particular statement, that, from my understanding, fits into what this statute [abandonment] has defined. That is a single incident which shows her relinquishing her parental rights to the minor child. She has testified that the child's financial support was up to [Constance and Keith]. She has not provided any financial support.

She testified or she stated to me during my investigation, [Sally stated] that after the six months of her keeping the child, the child has not had one overnight stay in her home. And certainly parenting a child consists of more than just keeping the child from seven to four and turning the child over every night to someone else to raise financially and give the child all of the things that a child needs. She testified that the child is on the petitioners' medical insurance.

Additionally, the GAL testified to the following regarding Sally's attempt to take Ashley away from her daycare:

When I asked [Sally] about the incident that occurred in or around June of 2018 when the sheriff and the law enforcement came into the picture, she stated that she just wanted her baby back or to see her baby. And I asked later specifically, if she would have gotten her child, would she have kept the child? She advised that after seeing the child, she would have returned the child to

[Constance and Keith]. [T]hat is clear evidence that an individual is relinquishing the parental rights to the child.

¶33. It was the GAL's opinion that significant time had passed and that Sally's actions over an extended period of time was enough to relinquish all of her parental claims and responsibilities to the child because she ultimately gave her child to Constance and Keith. The chancellor accepted the GAL's recommendations and found that Sally had made no contact with Ashley for a period of one year, which satisfied the statutory requirement under section 93-15-103(a)(ii) to terminate her parental rights.

C. Our Conclusion

¶34. We find that the chancellor did not err in terminating Sally's parental rights. Sally admitted that Constance and Keith have always provided for Ashley while Sally never provided Ashley with even minimal financial or emotional support. Sally never made a full commitment to the responsibilities of parenthood. Sally told the GAL she kept Ashley for about six months, and after that time, Constance and Keith solely cared for Ashley, which contradicts Sally's testimony that she kept Ashley in a daycare-like situation until March 2017. Even if true, Sally admitted that she deliberately stopped seeing Ashley after December 2017. Moreover, she never visited Ashley at the daycare center until after the termination proceedings began. Furthermore, neither of Sally's witnesses could provide specific dates or times when Ashley visited. Sally herself testified only that she wanted the child to know her as her mother, not that she wanted to provide the care that a mother would. Sally also said she never wanted to take the child from Constance and Keith.

¶35. Additionally, while Sally provided no evidence that she provided for Ashley,

Constance and Keith entered evidence at trial to support their position that they have been the sole caretakers for Ashley including Ashley's medical records and daycare records. Constance and Keith paid \$83 per week for Ashley's daycare. Constance had Ashley added to her medical insurance coverage with BlueCross BlueShield. Constance and Keith took Ashley to the doctor for her immunization shots. From November 2016 to May 2017, Ashley had chronic ear infections, and Constance and Keith frequently took Ashley to the doctor and paid the doctor's bills. When Ashley was two-and-a-half years old, on May 12, 2017, she required a bilateral tube-insertion surgery and follow-up care, which Constance and Keith provided. There is nothing in the record to demonstrate such parental care by Sally. Sally had clearly shown conduct to forego all duties and relinquish all parental claims to the child. Therefore, relying on the GAL's report and the witnesses' testimony, the chancellor properly found that Sally had abandoned and deserted Ashley.

II. Whether the chancellor erred by finding that there was clear and convincing evidence that reunification between Sally and Ashley would not be desirable toward obtaining a satisfactory permanency outcome.

¶36. Sally contends before this Court, and contended before the chancery court in her motion for new trial or reconsideration, that not only did the chancery court err by finding that there was clear and convincing evidence to terminate her parental rights, but the court also erred by not considering reunification between her and Ashley. We disagree.

¶37. Mississippi Code Annotated section 93-15-121 (Supp. 2016) provides that "if

established by clear and convincing evidence, any [of the eight alternative bases¹³] may be grounds for termination of the parent’s parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome.” Of the eight alternative bases for finding reunification undesirable, the chancery court found three bases for finding reunification between Sally and Ashley undesirable:

(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; and

(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.

Miss. Code Ann. § 93-15-121(d)-(f).

A. Sally never provided financial support for Ashley.

¶38. Sally stated that she was unemployed and had eight minor children living in her household. After her husband left her, Sally remained unemployed but made money occasionally by cleaning and doing hair. Constance and Keith testified that Sally never provided or offered any financial support for Ashley, which Sally does not dispute. In fact, Sally testified that she never provided any financial resources for Ashley because Constance “never wanted anything from me because she knew my financial situation. She didn’t want anything from me.” Although that may have been the agreement, that did not mean that Sally

¹³ All eight bases are not needed to determine if reunification is undesirable. *A.B.*, 2019 WL 5168558, at *5 (¶31).

could not provide anything to Ashley. Offers of support, or even nominal support, such as birthday or Christmas cards or presents, reflect a parent's love and concern for her child. Constance testified that Sally never provided anything of this sort to Ashley.

¶39. In *J.P.*, 290 So. 3d at 364 (¶64), based on the natural parent's lack of financial support, reunification was not desirable. We found that there was "substantial credible proof supporting the chancery court's finding that by clear and convincing evidence that J.P. was unable to provide for his children with any stability, be it financial or otherwise." *Id.* at (¶63). Specifically, we found "[t]here is ample evidence that from the time the first child was born in March 2010, J.P.'s work history was unstable, unsteady, and that he had trouble keeping a job." *Id.* In this case, even though Sally had limited income, the fact remains that Sally did not provide even nominal financial support for Ashley.

¶40. In addition, Sally erroneously argues that the chancellor terminated her parental rights because Constance and Keith were in a better financial situation. But the Mississippi Supreme Court and this Court have "never allowed termination of parental rights only because others may be better parents." *In re Adoption of H.H.O.W.*, 109 So. 3d 1102, 1105 (¶6) (Miss. Ct. App. 2013) (quoting *M.L.B. v. S.L.J.*, 806 So. 2d 1023, 1029 (¶11) (Miss. 2000)). "Termination of parental rights must be based on abandonment, desertion, or unfitness of the parent." *Id.* In this case, the chancellor did not rely on Sally's ability to support Ashley but instead relied upon statutes and caselaw regarding whether Sally had abandoned or deserted Ashley in determining whether her parental rights should have been terminated. The chancellor terminated Sally's parental rights because she abandoned and

deserted Ashley.

B. Sally failed to exercise reasonable visitation or communication with her child.

¶41. In *A.B.*, 2019 WL 5168558, at *5 (¶31), the record showed that A.B. “lost meaningful contact” with her children in June 2013. A.B. met with her children only three times from 2013 to 2016. *Id.* “After that, A.B. lost all contact with the children, who were only six and three years old at that time.” *Id.* In this case, the chancellor found that Sally failed to reasonably communicate with Ashley. As previously mentioned, there was a clear dispute as to when Sally last saw or communicated with Ashley. According to Constance, Sally lost meaningful contact with Ashley after her brother’s funeral when Ashley was about six months old. Constance and Keith testified that they paid another sitter to provide daycare for Ashley from June 2015 to March 2017. Sally admitted that Ashley was enrolled in daycare in March 2017, so the schedule changed. Even Sally testified that after seeing Ashley in December 2017, she had no contact with after her. Furthermore, Sally admitted that she deliberately failed to see Ashley because she was upset with Constance. When she was cross-examined, Sally conceded that she had only seen Ashley once a year, contradicting her previous testimony.

¶42. The chancery court judge stated that he was tasked with considering the credibility of the witnesses, some favorable to Sally and some favorable to Keith and Constance. The chancellor found that when the termination proceedings began in this case in May 2018, “[Sally] had been totally absent and without contact with Ashley for over 75% of her life,” and Sally “had abdicated her parental responsibilities, while others stepped in and provided

for [Ashley].” We find nothing in the record to conclude that the chancellor’s findings were in error. Because of the GAL’s recommendations and only vague testimony by Sally’s witnesses, we find that the chancellor properly found the proof to be clear and convincing that Sally failed to exercise reasonable visitation or communication with her child.

C. Sally’s neglectful conduct has caused a substantial erosion of the relationship between the parent and the child.

¶43. According to the GAL, Sally told her that when she went to Ashley’s school, Ashley did not recognize that she was her mother. The GAL stated that it is “clear that there is a substantial erosion of the relationship. And from my personal observation of seeing the child with [Constance and Keith and] referring to them as mom and dad, that’s also evidence that there is a substantial erosion of the child’s parental rights relationship with their natural parents.” Considering this statement, and the proof presented, the chancellor found that substantial erosion of the relationship between Sally and Ashley.

¶44. In *A.B.*, we found that there was 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. *Id.* at *6 (¶37). In that case, when the termination-of-parental-rights proceedings began, A.B. had failed to communicate with her minor children for over two years. *Id.* “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.” *Id.* On appeal, we agreed with chancellor and found that A.B.’s relationship with her children was nearly

nonexistent at the time of the hearing. *Id.*

¶45. Like in *A.B.*, we find here there is substantial proof that Sally’s lack of communication and absence from Ashley’s life eroded her relationship with Ashley. This court has stated that “the paramount concern in determining the proper disposition [of a TPR case] continues to be the best interest of the child, not reunification of the family.” *J.P.*, 290 So. 3d at 372 (¶89) (quoting *In re K.D.G. II*, 68 So. 3d 748, 753 (¶28) (Miss. Ct. App. 2011)). At the time of the hearing, Ashley had been in the primary care of Constance and Keith for almost four years. Based on the record, there may have been a relationship between Sally and Ashley in 2015, but since then, there had been a clear lack of communication for several years prior to the hearing on the matter. “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.” *In re K.D.G. II*, 68 So. 3d at 752-53 (¶22) (quoting *G.Q.A. v. Harrison Cnty. Dep’t of Human Res.*, 771 So. 2d 331, 338 (¶29) (Miss. 2000)). Significantly, Sally’s older daughter, Maureen, stated that when they saw Ashley at the daycare center in August 2018, when the child was three-and-a-half years old, Ashley did not know Sally as her mother. If Sally had an ongoing relationship with Ashley, Ashley would have recognized Sally as her mother. Based on Sally’s own testimony that she never provided even nominal financial support for Ashley and that the fact that there existed a lack of communication with Ashley for an extended period of time, we find that there was clear and convincing evidence that supported the chancellor’s decision that reunification between Sally and Ashley was not desirable toward obtaining a satisfactory permanency outcome.

III. Best Interest of the Child

¶46. “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.’” *A.B.*, 2019 WL 5168558, at *7 (¶38) (quoting *Brown v. Panola Cnty. Dep’t of Human Servs.*, 90 So. 3d 662, 665 (¶11) (Miss. Ct. App. 2012)). The chancellor presumably accepted the GAL’s recommendations that it would be in the best interest of the child to terminate Sally’s parental rights due to abandonment and/or desertion. The Mississippi Supreme Court has stated that “the sole reason for the appointment a guardian ad litem is to ensure that the best interest of a minor child is fully sought out and protected.” *M.J.S.H.S. v. Yalobusha Cnty. Dep’t of Human Servs. ex rel. McDaniel*, 782 So. 2d 737, 741 (¶17) (Miss. 2001) (citing Miss. Code Ann. § 93-15-107 (Rev. 1994)). Further, the chancellor found that reunification between Sally and Ashley would not be suitable. “This Court will not substitute its judgment for that of the chancellor even if this Court disagrees with the lower court on the finding of fact and might arrive at a different conclusion.” *Mayton v. Oliver*, 247 So. 3d 312, 322 (¶34) (Miss. Ct. App. 2017) (quoting *Sanderson v. Sanderson*, 170 So. 3d 430, 434 (¶13) (Miss. 2014)). “This Court cannot substitute its judgment of credibility for that of the trial court, and where the record contains substantial evidence to support the trial court’s decision, this Court lacks authority to reverse that decision.” *Barnett ex rel. Gordon v. Lauderdale Cnty. Bd. of Sup’rs*, 880 So. 2d 1085, 1089 (¶10) (Miss. Ct. App. 2004). Therefore, although while we may have come to a different conclusion, we cannot say that the chancellor manifestly erred in his decision.

Conclusion

¶47. Finding that there was substantial, credible, clear, and convincing evidence to support the chancery court's determination in terminating Sally's parental rights and that reunification would not be suitable, we affirm the chancery court's ruling.

¶48. **AFFIRMED.**

**BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, LAWRENCE
AND McCARTY, JJ., CONCUR. WESTBROOKS, J., NOT PARTICIPATING.**