

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE INTEREST OF: J.J.B;
D.A.B. AND K.S.B.**

**v.
J.A.V.C.**

RESPONDENTS,

APPELLANT.

DOCKET NUMBER WD71911
DATE: June 29, 2010

Appeal From:

Jackson County Circuit Court
The Honorable Charles E. Atwell, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt,
Judge

Attorneys:

Jill M. Katz, Kansas City, MO, for appellant.

Michael J. Mann, Kansas City, MO, Independence, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Three Judges: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

J.J.B., born on January 28, 2004, was removed from Mother's home and was placed in foster care under the jurisdiction of the Jackson County Family Court on December 14, 2006, based on findings by the court that J.J.B. was without proper care, custody, and support pursuant to Section 211.031. Specifically, the Juvenile Officer's Petition alleged and the Court found that "[M]other exhibits a pattern of neglecting and failing to properly supervise the child. . . who is 2 years of age [and this pattern] has resulted in at least three instances in which the child has left the home and wandered the streets, alone and without adult supervision." Moreover, the court found that the "actions of the mother place the child at risk of further harm or neglect absent the intervention of this Court." J.J.B. has remained in foster care since that time.

Beginning in December of 2006 and during the course of nearly three years, Mother was offered a host of social services designed to allow Mother to regain custody and control of J.J.B. In May of 2007, J.J.B. was placed in the foster care of Adoptive Parents. On April 21, 2008, Adoptive Parents filed the instant Petition for Adoption, which alleged grounds not only to adopt J.J.B. but also alleged grounds to terminate Mother's parental rights over J.J.B.

On November 13, 2009, an evidentiary hearing was held before the Family Court Commissioner, with both Adoptive Parents and Mother presenting evidence. On November 17, 2009, the Commissioner issued its Findings and Recommendations for Decree of Adoption, which were adopted and confirmed as a final Judgment of the Circuit Court on November 23, 2009. Mother now appeals.

AFFIRMED.

Division Three holds:

In Point One, Mother argues that the trial court erred in terminating her parental rights over J.J.B. "without her consent pursuant to Section 453.040(7) because [she] had not willfully substantially and continuously neglected to provide the child with necessary care and protection in the six months prior to the filing of the Petition in that [Mother] regularly attempted and did

have regular contact with the minor child, consistently provided food and toys for the child and substantial evidence showed [Mother] provided substantial and continuous care and protection between the filing of the pleading and the trial date."

Mother's argument focuses solely on subsection 7 of the statute. Mother's argument ignores that subsection 8 of the statute provides another statutory basis that, if proven, would be sufficient to demonstrate that her consent to the adoption need not be obtained. Specifically, Section 453.040.8 provides that if Mother's parental rights are terminated pursuant to "any of the grounds set forth in section 211.447," then Mother's consent to the adoption need not be obtained. In this case, the trial court terminated Mother's parental rights over J.J.B. pursuant to Section 211.447.5(3), and because Mother does not challenge the findings of the trial court in this regard in Point One, this Point Relied On must be denied.

In Point Two, Mother argues that the trial court erred in terminating her parental rights over J.J.B. pursuant to Section 211.447.5(3) because there was insufficient evidence to support the trial court's findings and conclusions that Mother failed "to remediate the issues that brought the child to the Court's attention [and] no evidence was presented regarding the existence of 'conditions of a potentially harmful nature'" for J.J.B.

Termination of parental rights is allowed when a statutory ground for termination is supported by clear, cogent, and convincing evidence, and termination is determined to be in the best interests of the child by a preponderance of the evidence. Here, Mother's failure to meaningfully dispute the findings and conclusions by the trial court as it pertains to her permanent "mental condition" is dispositive of this Point. Because the trial court's finding of a permanent "mental condition" under Section 211.447.5(3)(c) was supported by substantial evidence, we must affirm. Point Two is denied.

In Point Three, Mother argues that the trial court "erred in terminating the parental rights of [Mother] pursuant to Section 211.447.5(6) because [Mother] did not commit a consistent pattern of specific abuse." This Point is without merit because the trial court made clear in its judgment that it was terminating Mother's parental rights pursuant to Section 211.447.5(3), not Section 211.447.5(6). Because the trial court did not invoke the legal principles of Section 211.447.5(6), it goes without saying that the Court could not have erred, as Mother alleges in Point Three, in not applying these legal principles.

Furthermore, the fact that the trial court did not err in terminating Mother's parental rights pursuant to 211.447.5(3), for the reasons explained in Point Two, is also dispositive of this issue on appeal. It is sufficient for termination of parental rights, under § 211.447.5, if one of the statutory grounds set forth in that section for termination is adequately pleaded and proved. Hence, we must affirm a judgment terminating parental rights, pursuant to § 211.447, if the record supports termination on any one of the statutory grounds set forth in § 211.447.5. Point Three is denied.

The judgment of the circuit court, which terminated Mother's parental rights over J.J.B., is hereby affirmed.

Opinion by: Gary D. Witt, Judge

June 29, 2010

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