IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

IN THE INTEREST OF: L.J.H.

JUVENILE OFFICER,

Respondent,

v.

M.H. (Mother),

Appellant.

DOCKET NUMBER WD83213

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: May 26, 2020

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable K. Elizabeth Davis, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ahuja and Witt, JJ. CONCURRING.

ATTORNEYS

William E. Shull, Liberty, MO, Attorney for Respondent.

Bruce B. Brown, Kearney, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: L.J.H.
JUVENILE OFFICER, Respondent,
v.
M.H. (Mother), Appellant.

WD83213 **Clay County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Gary D. Witt, Judges

M.H. ("Mother") appeals from the Judgment of the Circuit Court of Clay County, Missouri, Family Court Division ("trial court"), terminating her parental rights on the statutory ground that Mother had abandoned her child and it was in the best interests of the child for Mother's parental rights to be terminated. In Mother's sole point on appeal, she asserts that the trial court erred in terminating her parental rights ("TPR") under section 211.447.5(1)(b), RSMo, because—although Child was thirteen months old at the time of the termination of parental rights hearing—section 211.447.5(1)(b) required that the child be "over one year of age *at the time of the filing of the petition*," and the uncontested evidence established that Child was *under* one year old when the petition was filed.

AFFIRMED.

Division Two holds:

1. Mother's claim, made for the first time on appeal, is that because the TPR petition was not filed within the time parameter prerequisite of section 211.447.5(1)(b) (*i.e.*, that the child be "over one year of age at the time of filing the petition"), the trial court lacked authority to terminate Mother's parental rights under section 211.447.5(1)(b). Mother attempts to couch her "statutory prerequisite to TPR suit" as being an *element* of any such TPR suit. It is not. Statutory prerequisites to suit are *not elements* of a lawsuit; they are *affirmative defenses* thereto, subject to waiver.

Mother had an opportunity to challenge the timing of the termination proceedings when the petition was filed, during the termination hearing, and after the termination hearing, but she failed to do so. There can be no appellate review of a matter that has not been presented to or expressly decided by the trial court. Consequently, Mother has not preserved this claim of error for appellate review.

2. Mother's belated *procedural* argument relating to the trial court's authority to enter judgment has no bearing on the *substantive* basis supporting the trial court's judgment: her abandonment of Child. Mother's sole point on appeal does *not* assert that there was no substantial

evidence to support the trial court's finding of abandonment or that the trial court's finding was against the weight of the evidence.

For the purposes of termination of parental rights, "abandonment" under section 211.447 is the *same* whether the child is an infant *under one year old* or a child *over one year old*. Whether the evidence supporting the trial court's finding of abandonment is reviewed in the light of Child being an "abandoned infant" (§ 211.447.2(2)) or an "abandoned child" (§ 211.447.5(1)), there was sufficient evidence in the record to support the trial court's abandonment finding.

Opinion by: Mark D. Pfeiffer, Presiding Judge May 26, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.