

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

IN RE ADOPTION OF A.M.H.

No. W2004-01225-SC-R11-PT - Filed: February 9, 2007

FOR PUBLICATION

ORDER

The Bakers have filed a Petition to Rehear under Rule 39 of the Tennessee Rules of Appellate Procedure. While we decline to grant the petition, we take this opportunity to clarify two issues in this case: the applicability of the concurrent findings doctrine and the continued participation of the guardian ad litem and the attorney ad litem.

The first of these issues concerns the “concurrent findings doctrine.” The Bakers, relying upon Tennessee Code Annotated section 27-1-113, contend that the trial court made certain findings of fact and that we are bound by those factual determinations in which the Court of Appeals has concurred. Tennessee Code Annotated section 27-1-113 provides in pertinent part as follows:

In all cases tried on the facts in a chancery court and afterwards brought for review to the court of appeals, the court of appeals shall, to the extent that the facts are not stipulated or are not concluded by the findings of the jury, make and file written findings of fact, which thereupon shall become a part of the record. *Before any such findings [of fact] shall become final, reasonable opportunity shall be afforded the parties to examine the findings and to ask for different or additional findings. . . . To the extent that the findings of the chancery court and the court of appeals concur, they shall, if there*

be any evidence to support them, be conclusive upon any review of the facts in the supreme court; to the extent that they do not concur, they shall be open to examination in that court.

(Emphasis added).

The terms of the statute are instructive. First, the court of appeals must reduce its findings of fact to writing. The intermediate appellate court must then provide a reasonable opportunity for the parties to examine the findings and to request different or additional findings. The record does not reflect that the Court of Appeals in this case complied with the statute. We therefore conclude that Tennessee Code Annotated section 27-1-113 has no application to this case. Because the statute's requirements were not met, Rule 13(d) of the Tennessee Rules of Appellate Procedure governs the standard of review upon appeal. To the extent that this Court has interpreted Tennessee Code Annotated section 27-1-113 more broadly, those cases are overruled as inconsistent with Rule 13(d) of the Tennessee Rules of Appellate Procedure.

Furthermore, while the trial court made findings of fact in this case, many of those findings are not necessary to the determination of whether the Hes abandoned A.M.H. by failing to visit her during a four-month period. The material facts surrounding the alleged abandonment are largely undisputed. To the extent that such facts are capable of dispute, Rule 13(d) of the Tennessee Rules of Appellate Procedure governs our standard of review upon appeal. Rule 13(d) states in pertinent part, “[R]eview of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” The facts in our opinion concerning the issue of abandonment reflect the preponderance of the evidence in this case.

The Bakers also assert that we have left A.M.H. “lawyerless” by relieving the prior guardian ad litem and attorney ad litem from “any further participation in proceedings concerning A.M.H.” The Bakers misapprehend the procedural posture of this case. Upon remand, the chancery court has twelve days to transfer this case to the Juvenile Court of Shelby County. The juvenile court is vested with such authority as is necessary to “consider, prepare, and implement a plan to resolve the pending custody matter with a view towards reunification of A.M.H. with her natural parents.” We have not limited the juvenile court’s authority to consider reasonable requests for representation by a guardian ad litem or an

attorney ad litem on behalf of A.M.H. This Court, however, is not the proper forum for such requests.

Accordingly, the Bakers' Petition to Rehear is denied. Costs are taxed to the petitioners, Jerry L. Baker and Louise K. Baker, and their sureties, for which execution may issue if necessary.

PER CURIAM