

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CJ 0996

STATE OF LOUISIANA IN THE INTEREST OF:
B. M., O. M., A. M.

Judgment Rendered: October 31, 2008

Appealed from the
City Court of Slidell, Juvenile Division
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 06-2137

The Honorable James Lamz, Judge Presiding

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

*DM 2
By EGB*

Guidry J dissents AND ASSIGNS REASONS

GAIDRY, J.

This appeal is taken by the biological mother of three minor children from a judgment of the Slidell City Court, acting in its capacity as a juvenile court, terminating her parental rights and certifying the children as available for adoption.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

In July 2006, the Louisiana Department of Social Services/Office of Community Services (OCS) received a report alleging lack of supervision, inadequate food and shelter, and drug abuse by the parents of nine-year old O.M., seven-year old B.M., and six-year old A.M.² An OCS worker who visited the home mid-afternoon on July 25, 2006 found the house dirty, no food in the house, and a broken refrigerator. The children's mother, A.B.M., and father, J.M., were asleep and very difficult to rouse. Both parents admitted to abusing pain medication and cocaine. The three children were removed by instant order from the custody of their parents and placed in the custody of OCS the next day. The children were adjudicated children in need of care and placed by OCS in the home of their maternal grandmother, C.H.

In January 2007, due to the seriously deteriorating health of C.H., the children were moved to the home of their maternal aunt, K.H., where they resided until April 2007, when K.H. became unable to care for the children due to personal and financial problems. OCS was unable to find any other family member willing and able to care for the children, so they were placed in the home of non-related foster parents in April 2007, where they remained at the time of the termination hearing.

¹ This appeal involves only the termination of the biological mother's parental rights. Although the parental rights of the children's biological father, J.M., were also terminated, he has not appealed.

² The birthdates of the children are April 11, 1997, October 22, 1998, and June 9, 2000.

A case plan dated August 23, 2006, was developed and approved by the court with the goal of reunification of the family. The plan included the following goals for A.B.M.: completing parenting classes, providing a safe and stable home, submitting to a psychological evaluation, and completing substance abuse treatment.³ Subsequent case plans were formulated on January 18, 2007, July 26, 2007, and January 9, 2008 with essentially the same goals for A.B.M., except that the last plan added anger management classes. Periodic review hearings were held and custody was continued with OCS. In July 2007, when the children had been in OCS custody nearly one year, the goal of the case plan was changed from reunification to adoption.

The record reflects that from the time the children were removed from her care in July 2006 until April 2007, A.B.M. did little toward complying with her case plans except for visiting her children sporadically. She did not contact or visit the children from December 2006 until April 8, 2007, when A.B.M. called the children. For a period of several months, she failed to maintain contact with or notify OCS of her whereabouts. Her caseworker testified that she referred A.B.M. to a program for substance abuse treatment but that, after going to the intake appointment, A.B.M. did not return. A.B.M. claimed that her failure to return was due to transportation problems.

Eventually, in April 2007, A.B.M. entered Odyssey House, an inpatient drug treatment facility in New Orleans, where she remained at the time of the termination hearing. At the termination hearing, her therapist from Odyssey House testified that she was nearing graduation from the program and would be progressing into the "re-entry" phase, where she would set up independent housing and seek employment. He testified that A.B.M. would first look for and

³ Since the children's father, J.M., has not appealed the termination of his parental rights, the goals set for him in the case plan will not be discussed herein. It appears that J.M. and A.B.M. have not lived together since at least April 2007.

obtain employment, which generally takes from several weeks to a month. After working for a period of time to save up a little bit of money, A.B.M. would then begin to look for housing.

A.B.M. has not spoken to her children since shortly before she entered Odyssey House in April 2007.⁴ Soon after A.B.M. entered Odyssey House, the children began therapy with Lisa Tadlock, a licensed clinical social worker, and in July 2007, Ms. Tadlock recommended that A.B.M.'s visitation rights be suspended. Ms. Tadlock made this recommendation due to the fact that the children had recounted to her incidents of domestic violence and were ambivalent about their relationship with their mother. A.B.M. indicated a desire to see and talk to her children while at Odyssey House and wrote a letter to each child that the caseworker forwarded to Ms. Tadlock to be given to the children when appropriate. At one point after entering Odyssey House, A.B.M. suggested to her caseworker that the children could live there with her. Although Odyssey House has facilities for children to stay with their mothers, this suggestion was not approved. After the caseworker consulted with her colleagues, as well as a counselor at Odyssey House, the group consensus was that the environment at Odyssey House was not a safe one for the children, given the nature of the surrounding neighborhood and the high volume of traffic into and out of the facility.

On December 26, 2007, OCS filed a petition for termination of the parental rights of A.B.M. and J.M. and for certification of the children for adoption. The grounds for termination were La. Ch.C. art. 1015:

(4) Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by . . . :

⁴ A.B.M. last saw the children in December 2006. After that, she did not contact them again until April 2007, when she contacted them by phone.

...

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

...

(5) Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

After a termination hearing on March 4, 2008, the court found that A.B.M. failed to make any contributions to the support of the children for six consecutive months, failed to substantially comply with her case plan, and there was no reasonable expectation of significant improvement. The court also found that termination was in the children's best interests. In accordance with its oral reasons for judgment, the court subsequently signed a judgment terminating the parental rights of both parents and certifying each of the three minor children as eligible for adoption. A.B.M. has now appealed, arguing that the court erred in concluding that OCS met its burden of proving any statutory grounds for termination of her parental rights, as well as in finding that termination was in the children's best interest.

LAW

The permanent termination of the legal relationship existing between natural parents and children is one of the most drastic actions the State can take against its citizens. *State ex rel. A.T.*, 06-0501, p. 4 (La. 7/6/06), 936 So.2d 79, 82. As a result, the legislature has imposed strict procedural and evidentiary requirements that must be met before parental rights can be terminated. *State, in Interest of GA*, 94-2227, p. 5 (La.App. 1 Cir. 7/27/95), 664 So.2d 106, 110.

Although La. Ch.C. art. 1015 sets forth several statutory grounds for involuntary termination of parental rights, the State is only required to establish one ground. *State ex rel. SNW v. Mitchell*, 01-2128, p. 10 (La. 11/28/01), 800 So.2d 809, 816. However, the State is required to establish each element of a statutory ground for termination of parental rights by clear and convincing evidence. La. Ch.C. art. 1035(A); See *State ex rel. A.T.*, 06-0501 at p. 5, 936 So.2d at 82. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, that is, much more probable than its nonexistence. *State in Interest of BJ*, 95-1915, p. 9 (La.App. 1 Cir. 4/4/96), 672 So.2d 342, 348, writ denied, 96-1036 (La. 5/31/96), 674 So.2d 264.

Even upon finding that the State has met its burden of establishing a statutory ground for termination by clear and convincing evidence, a court still should not terminate parental rights unless it further determines that termination is in the best interests of the children. La. Ch.C. art 1039(B); *State ex rel. A.T.*, 06-0501 at p. 5, 936 So.2d at 82. The factual findings made by the court in determining whether the requirements of La. Ch.C. art. 1015 have been satisfied will not be set aside in the absence of manifest error. *State ex rel. SNW*, 01-2128 at p. 10, 800 So.2d at 816; *State in Interest of BJ*, 95-1915 at p. 9, 672 So.2d at 348. Under the manifest error standard of review, an appellate court may not reverse a factfinder's determinations unless it finds from the record that a reasonable factual basis does not exist for the findings and that the record establishes the findings are manifestly erroneous or clearly wrong. See *Stobart v. State, Through Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993); *State, In Interest of GA*, 94-2227, p. 4 (La.App. 1 Cir. 7/27/95), 664 So.2d 106, 110.

Failure to Contribute to Support of Children

The first ground for termination asserted by OCS is abandonment of the children under circumstances demonstrating an intention to permanently avoid

parental responsibility by failing to provide significant contributions to the children's care and support for any period of six consecutive months. Because they are in derogation of a parent's natural rights, the jurisprudence has long held that its abandonment statutes must be strictly construed. See *Henderson v. Spears*, 292 So.2d 801, 803 (La. App. 1 Cir. 1974); *State in Interest of a Little Boy*, 473 So.2d 858, 860 (La. App. 4th Cir. 1985). See also *Rodriguez v. Louisiana Medical Mutual Insurance Company*, 618 So.2d 390, 394 (La. 1993) (a statute in derogation of natural rights must be strictly construed and not extended beyond its obvious meaning).

The court found that the State met its burden of proving abandonment as a ground for termination by clear and convincing evidence. We agree.

It is undisputed that A.B.M. never contributed financially to the support of the three children while they were in the custody of the State. On appeal, A.B.M. argues that while she did not provide support for her children, she provided *for* the support of her children, in that if the children had been placed with one of her family members, they would have been supported financially by her family and that family would not have expected any sort of contribution from her. We reject this argument. OCS originally placed the children with two different members of A.B.M.'s family, and when the second placement failed in April 2007, OCS was unable to find another suitable relative placement. Renee Meeks, the CASA worker assigned to the case, stated "I have questioned the family repeatedly for names of relatives or family friends who could be considered as placement options. The family says no one will accept responsibility for the children." The fact that A.B.M.'s relatives contacted OCS *after* the children were moved, for the third time in their short lives, into the home of a foster family with whom they were thriving, does not relieve A.B.M. of her obligation to contribute financially to the support of the children. Likewise, A.B.M.'s suggestion that the children could have come to

live at Odyssey House with her does not relieve her of her responsibilities. Finally, while neither parent ever provided any financial support for the children while they were in the custody of the State, they used the children's SSI checks to purchase drugs. After reviewing the evidence in the record, we simply cannot say that the trial court was manifestly erroneous in finding that the State proved all of the elements of La. Ch. C. art. 1015(4)(B) by clear and convincing evidence.

Lack of Substantial Compliance with Case Plan

Although the State only has to prove one statutory ground for termination of parental rights, we will nonetheless discuss the second ground for termination alleged by the State, *i.e.*, more than one year since the children entered the State's custody, there has been a lack of substantial compliance with the case plan and no reasonable expectation of significant improvement in the near future, considering the children's age and need for a safe, stable, and permanent home. La. Ch.C. art. 1015(5).

The children were removed from the home in July 2006, and OCS filed its petition to terminate parental rights in December 2007. Thus, it is undisputed that more than one year has elapsed since the children were removed from A.B.M.'s custody pursuant to a court order.

For almost a year after the children were removed from her home, A.B.M. did almost nothing to comply with her case plan. She did visit the children sporadically during the first six months after they were removed from her home. A.B.M. then failed to contact or visit the children for the next six months. She also failed to advise OCS of her whereabouts for several months. In April 2007, almost a year after the children were removed from her custody, A.B.M. entered Odyssey House to begin drug treatment. She did not notify OCS that she had entered Odyssey House, but OCS eventually located her there through its own efforts. A.B.M. likewise did not inform the staff at Odyssey House that she had an OCS

case plan. At the time of the termination hearing, A.B.M. was still living at Odyssey House and had not completed her substance abuse treatment as the case plan required. She also had neither a job nor a place to live, and she would be required to leave Odyssey House upon graduation. A.B.M. also failed to provide any documentation until the morning of trial that she had taken parenting classes and submitted to a psychological evaluation as required by her case plan. A.B.M.'s response at the termination hearing regarding her failure to make substantial progress with her case plan was to make excuses and place blame on others.

Although the court recognized that A.B.M. was beginning to make progress in her life, the court felt that it was "too little, too late." The court noted, in particular, that she had disappeared for months without communicating with OCS, failed to provide OCS with documentation of her accomplishments, was still living at Odyssey House, and did not have a job. Further, the court was of the opinion that she was still incapable of taking care of herself and ran a high risk of relapse. Therefore, the court concluded A.B.M. failed to substantially comply with her case plan. The court further concluded there was no reasonable expectation of significant improvement in the near future, considering the children's ages and their need for a safe, stable, and permanent home. Considering the evidence contained in the record, we simply cannot say that the trial court committed manifest error or was clearly wrong in reaching such conclusions.

Best Interests of the Children

A.B.M. also challenges the court's conclusion that termination was in the children's best interests, alleging that the conclusion was not supported by the evidence. However, the OCS worker assigned to the case, the CASA worker assigned to the case, and the children's therapist all recommended termination as being in the children's best interests. The children were relatively young and had

been in the custody of the State for approximately two years at the time of the termination hearing. They had been moved three times in that two-year period. The children's therapist, Lisa Tadlock, testified that the children knew more about substance abuse and domestic violence than children that age should. The children were making progress with their foster family and in school. The children suffered nightmares after discussing the possibility of living with A.B.M. Furthermore, A.B.M. was still, at the time of the termination hearing, incapable of caring for the children. She had not yet completed drug treatment and had no job and no place to live. Given all of this evidence, and considering the children's ages and need for a safe and stable home, we cannot say that the trial court erred in concluding that termination was in the best interests of B.M., O.M., and A.M.

DECREE

The judgment terminating A.B.M.'s parental rights to B.M., O.M., and A.M. and certifying the children for adoption is affirmed. Costs of this appeal are assessed to A.B.M.

AFFIRMED.

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STATE OF LOUISIANA IN THE INTEREST OF:
B.M., O.M., A.M.

Guidry, J., dissents and assigns reasons.

 **Guidry, J., dissenting.**

I respectfully disagree with the majority's determination that the state established a statutory ground for termination of A.B.M.'s parental rights by clear and convincing evidence.

Failure to Contribute to Support of Children

The first ground for termination asserted by OCS is abandonment of the children under La. Ch.C. art. 1015(4)(b), which provides, in pertinent part, as follows:

The grounds for termination of parental rights are:

(4) Abandonment of the child by **placing him** in the physical custody of a nonparent, or the department, or by **otherwise leaving him** under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

(Emphasis added.)

In order to establish abandonment under this provision, OCS must establish each of its elements by clear and convincing evidence. La. Ch.C. art. 1035A. Further, due the fact that they are in derogation of a parent's natural rights, the jurisprudence of this state has long held that its abandonment statutes must be strictly construed. See Henderson v. Spears, 292 So.2d 801, 803 (La. App. 1st Cir. 1974); State in Interest of a Little Boy, 473 So.2d 858, 860 (La. App. 4th Cir. 1985). See also Rodriguez v. Louisiana Medical Mutual Insurance Company, 618 So.2d 390, 394 (La. 1993) (a statute in derogation of natural rights must be strictly construed and not extended beyond its obvious meaning).

An examination of the plain language of La. Ch.C. art. 1015(4), in light of the requirement that it be strictly construed, leads me to conclude that all of the essential elements of this provision have not been established. La. Ch.C. art. 1015(4) provides that abandonment is the **placing** of a child in the physical custody of a nonparent or the department (OCS) or otherwise **leaving** the child under one of the three enumerated circumstances demonstrating an intent to permanently avoid parental responsibility, one of which is the failure to make significant support contributions for six months. Thus, under the language of this provision, the parent's act of placing the child in the physical custody of another or otherwise leaving the child is as much an essential element of abandonment as is the parent's intent to permanently avoid parental responsibility.

Therefore, a showing that a parent made no significant support contributions for six consecutive months is insufficient in itself to prove abandonment of the children under La. Ch.C. art. 1015(4)(b). In order to establish abandonment, it must also be shown that the parent placed the child in the physical custody of a nonparent or otherwise left him. Accordingly, abandonment may not be used as a ground for termination in situations such as the present one where the child is

involuntarily removed from the parent's physical custody by court order, since in that instance the parent has neither placed the child with another nor otherwise left the child as required by La. Ch.C. art. 1015(4).

The conclusion that the abandonment provision is not applicable in cases such as the present one is buttressed by an examination of La. Ch.C. art. 1015(6), which provides for termination of parental rights under certain circumstances when a parent has been convicted and sentenced to a period of incarceration. The language of the latter provision specifically indicates it is applicable to situations where a child is in state custody either due "to a court order or placement by the parent." If the Legislature had similarly intended that the abandonment provision should apply in cases when a child is involuntarily removed from a parent's physical custody by court order, as well as in cases of voluntary placement by the parent, it could have included similar language in La. Ch.C. art. 1015(4) so indicating.

In the instant case, A.B.M. did not voluntarily place her children in the physical custody of a non-parent or the department or otherwise leave them under circumstances indicating a permanent intent to avoid parental responsibility. Rather, the three children were involuntarily removed from A.B.M.'s physical custody pursuant to a court order. Under these circumstances, the evidence presented by OCS was insufficient to establish an essential element of La. Ch.C. art. 1015(4). Accordingly, I would find that the juvenile court erred in terminating A.B.M.'s parental rights on the ground of abandonment.

Lack of Substantial Compliance with Case Plan

The second basis for termination asserted by OCS is lack of substantial compliance with the case plan under La. Ch.C. art. 1015(5), which provides:

Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

In the instant case, the children were placed in foster care in July 2006 and OCS filed its petition to terminate parental rights in December 2007. Thus, it is undisputed that more than one year has elapsed since they were removed from A.B.M.'s custody pursuant to a court order. OCS contends it also met its burden of proving the additional elements that A.B.M. failed to substantially comply with her case plan and that there is no reasonable expectation of significant improvement in her condition and/or conduct in the near future.

OCS alleges A.B.M. failed to complete several core requirements of her case plan. Specifically, OCS points out that, at the time of the termination hearing, A.B.M. was still living at Odyssey House and had not totally completed her substance abuse treatment as the plan required. She also had neither a job nor a permanent place to live. OCS asserts A.B.M. also failed to advise OCS of her whereabouts for several months and failed to provide any documentation until the morning of trial that she had taken parenting classes and submitted to a psychological evaluation. According to OCS, these facts demonstrate A.B.M.'s failure to substantially comply with her case plan.

In its oral reasons for judgment, the juvenile court recognized that A.B.M. was making progress in her life. Nevertheless, the court felt that what she had accomplished was "too little, too late." The court noted, in particular, that she had disappeared for months without communicating with OCS, failed to provide OCS with documentation of her accomplishments, was still living at Odyssey House,

and did not have a job. Further, the court was of the opinion that she was incapable of taking care of herself and ran a high risk of relapse. Therefore, the court concluded A.B.M. failed to substantially comply with her case plan. The court further concluded there was no reasonable expectation of significant improvement in her progress.

An examination of the record reveals that, at the time of the termination hearing, A.B.M. did not have permanent housing, since she was still residing at Odyssey House, and did not have a job. Nor had she totally completed substance abuse treatment as her case plan required. Yet, at that time, A.B.M. had successfully undergone substance abuse treatment for over ten months. Further, the testimony of Anthony Lowery, one of her therapist at Odyssey House, indicated she was close to graduating from the treatment program. As to the requirements that A.B.M. take parenting classes and submit to a psychological evaluation, I agree that documentation should have been provided to OCS earlier than the morning of trial. Nevertheless, given the drastic nature of these proceedings, I have reservations in equating late documentation to total noncompliance with these requirements.

In any event, even when OCS has met its onerous evidentiary burden of proving a parent failed to substantially comply with the case plan, his parental rights cannot be terminated unless OCS has also established the additional element that “there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.” See La. Ch.C. art. 1015(5). Moreover, this essential element must be established by clear and convincing evidence. See La. Ch.C. art. 1035A; State ex rel. B.J., 00-1434, p. 14 (La. App. 1st Cir. 7/27/00), 767 So.2d 869, 876-77. Under La. Ch.C. art. 1015(5), a reasonable expectation of

significant improvement in the near future exists if the parent has cooperated with state officials and has shown improvement, even though all of the problems have not been eliminated.¹ See State in Interest of S.M., 98-0922, p. 10 (La. 10/20/98), 719 So.2d 445, 450; State in Interest of L.L.Z. v. M.Y.S., 620 So.2d 1309, 1317 (La. 1993).

From my careful examination of the record herein, I find that it does not support the juvenile court's conclusion that there was no reasonable expectation of significant improvement in A.B.M.'s condition in the near future. Mr. Lowery, who worked with A.B.M. throughout her time at Odyssey House, testified that, although she was initially withdrawn, she has since become very cooperative with the program and has made "tremendous progress." He saw her as being "a much better person" than she was when she first entered treatment and described her as being one of Odyssey House's "better clients." Additionally, he noted that she worked well with the children's program there.

Furthermore, his testimony indicated A.B.M. was expected to complete her substance abuse treatment shortly after the termination hearing. In fact, Mr. Lowry testified she should have progressed to the re-entry phase of the program the week before the hearing, but he decided to delay it until after her court date in order to provide her with group support. He explained that a client usually entered the re-

¹ Louisiana Children's Code article 1036D provides that:

Under Article 1015(5), lack of any reasonable expectation of significant improvement in the parent's conduct in the near future may be evidenced by one or more of the following:

(1) Any physical or mental illness, mental deficiency, substance abuse, or chemical dependency that renders the parent unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm, based upon expert opinion or based upon an established pattern of behavior.

(2) A pattern of repeated incarceration of the parent that has rendered the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time.

(3) Any other condition or conduct that reasonably indicates that the parent is unable or unwilling to provide an adequate permanent home for the child, based upon expert opinion or based upon an established pattern of behavior.

entry phrase about three weeks before graduating. Mr. Lowery described the “re-entry” phrase as the period when clients begin setting up housing for themselves and looking for a job. He indicated clients typically are able to obtain housing and a job within thirty days.

The oral reasons for judgment indicate the juvenile court was concerned that A.B.M. had a high risk of relapse once she left Odyssey House. However, while relapse is always a risk following substance abuse treatment, there was no expert testimony or evidence of any kind that A.B.M. bore any risk of relapse outside of the norm. The testimony of Mr. Lowery indicates she has done well in her extensive substance abuse treatment. During the period of over ten months that she has been at Odyssey House, she submitted to random, monthly drug tests, all of which were negative. Finally, the juvenile court itself observed at the termination hearing that A.B.M. seemed to “have more resolve” than she had ever had in her life.

Given these circumstances, I would conclude that the evidence presented was insufficient to prove by clear and convincing evidence that there was no reasonable expectation of significant improvement in A.B.M.’s condition in the near future, considering her children’s ages and need for a safe, stable, and permanent home. To the contrary, the evidence indicates that, at the time of the termination hearing, she was on the verge of completing her substance abuse treatment and beginning a search for housing and employment, which would enable her to contribute to her children’s support. Moreover, there appears to be a reasonable expectation of significant improvement in A.B.M.’s condition, given the “tremendous progress” she has made during her treatment, as well as the resolve that the juvenile court itself recognized in her. Accordingly, I would find that the juvenile court was manifestly erroneous in finding there was no reasonable

expectation of significant improvement in A.B.M.'s condition in the near future. Because OCS failed to prove this essential element by clear and convincing evidence, I would find that the juvenile court erred in terminating A.B.M.'s parental rights under La. Ch.C. art. 1015(5).

Therefore, because I would find that the juvenile court erred in finding OCS established any statutory ground for termination of A.B.M.'s parental rights by clear and convincing evidence, I respectfully dissent from the majority's opinion.