

FILED

07/17/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs April 3, 2023

**IN RE N.M.**

**Appeal from the Juvenile Court for Greene County**  
**No. 22-J-29927      Kenneth N. Bailey, Jr., Judge**

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**No. E2022-01398-COA-R3-PT**

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This appeal arises from the termination of a mother's parental rights to her minor child upon the juvenile court's finding by clear and convincing evidence of the statutory grounds of abandonment by failure to provide a suitable home, abandonment by failure to visit, abandonment by failure to support the child, abandonment by wanton disregard for the child's welfare, substantial noncompliance with the permanency plan, persistent conditions, and failure to manifest an ability and willingness to assume custody of the child.<sup>1</sup> The juvenile court further found that termination of the mother's parental rights was in the child's best interest. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court**  
**Affirmed; Case Remanded**

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and JEFFREY USMAN, JJ., joined.

Gerald T. Eidson, Rogersville, Tennessee, for the appellant, Amanda E.

Jonathan Skrmetti, Attorney General and Reporter, and Clifton Wade Barnett, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

D. Jeannine Dalton, Greeneville, Tennessee, Guardian ad Litem.

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<sup>1</sup> The parental rights of the child's father are not at issue in this appeal. We will address facts involving the father only to the extent that they are relevant to our analysis of the termination of the mother's parental rights.

## OPINION

### Background

The child, Noah M. (“the Child”), was exposed to drugs *in utero*, born premature, and suffered from tremors and shakes following his birth. At birth, the Child weighed two pounds and three ounces. The Child was hospitalized in the Neonatal Intensive Care Unit (NICU) after he was born, and his mother, Amanda E. (“Mother”), and his father, Frank M. (“Father”), had minimal contact with the Child during that time. The parents were unable to be located while the Child was hospitalized. Subsequently, Mother was found unconscious in a vehicle with Father in June 2021, and Mother was arrested for possession of a controlled substance. Mother submitted to a drug screen in June 2021 and tested positive for amphetamine, benzodiazepines, buprenorphine, MDMA, and methamphetamine.

In June 2021, DCS filed a petition in the Greene County Juvenile Court (“the Juvenile Court”), alleging the Child was dependent and neglected due to his health condition, the parents’ drug use, the parents’ minimal contact while the Child was hospitalized, the parents’ living conditions, and the Child’s positive drug screen for buprenorphine and benzodiazepines. The Juvenile Court entered an order removing the Child from the parents’ custody. At that time, the Juvenile Court found that reasonable efforts to prevent removal of the Child from the home were not necessary due to the circumstances of the Child and the family. The Juvenile Court entered an order in July 2021, stating that the parents must have two clean drug screens at least seven days apart in order to obtain supervised visitation with the Child. The court order states that the second drug screen be sent to the lab for confirmation. Per the court order, should the parents test positive again, their respective visitation would be suspended immediately until they passed two more drug screens at least seven days apart.

DCS developed a permanency plan with the family in July 2021, which the Juvenile Court approved in August 2021. The Juvenile Court found that the tasks on the permanency plan were reasonable and related to achieving permanency for the Child and to remedying the reasons the Child was in foster care. The Juvenile Court further found that the permanency plan was in the best interest of the Child. The July 2021 plan required Mother to pass two drug screens before she was able to visit the Child, comply with random drug screens, present proof of valid prescriptions, complete an alcohol and drug assessment and follow all recommendations, maintain independent safe and stable housing and present a copy of her lease to DCS, maintain a legal source of income and provide proof thereof, notify DCS of any changes to her address or telephone number, maintain contact with DCS, refrain from obtaining new criminal charges, complete a mental health intake and follow the recommendations therefrom, and participate in all scheduled visits with the Child.

On August 3, 2021, Mother tested positive for buprenorphine. She initially produced an outdated prescription. Mother later sent the DCS case manager, Sydney Barnett, a photo of a new prescription. Mother submitted to another drug screen on August 25, 2021 and tested positive for buprenorphine.

In August 2021, the Juvenile Court adjudicated the Child as dependent and neglected due to the parents' stipulation that they were unable to care for the Child at the time of the removal and for the reasons stated in the dependency and neglect petition. Due to the Child's health issues, visits with the Child were to be via video conferencing until given permission for in-person visits by the Child's pediatrician.

On September 16, 2021, Mother tested positive on a hair follicle drug screen for methamphetamine and amphetamine. The level of methamphetamine in Mother's system at the time was 11,090 pg/mg with a cut-off level to confirm at 100 pg/mg. Mother failed to appear for a drug screen in October 2021. Following a hearing in November 2021, the Juvenile Court entered an order stating that the Child's pediatrician was to determine whether in-person visitation was appropriate but that the parents had failed to comply with the requirement of producing two clean drug screens to begin visitation. The court order memorializing this hearing reflects that Mother was not present at this hearing. As such, the Juvenile Court ruled that the parents were to have no contact with the Child until they cooperate with DCS and submit to drug screens. The Juvenile Court's order reflects that Mother reported that she had completed an alcohol and drug assessment, but DCS was unable to verify her claim.

In December 2021, DCS developed a second permanency plan for the family, which was approved by the Juvenile Court in February 2022. This plan required Mother to refrain from using substances that are illegal or not prescribed to her, pass random drug screens, complete a mental health assessment and all recommendations therefrom, complete an alcohol and drug assessment and all recommendations therefrom, complete parenting education and provide proof of completion to DCS, visit the Child, complete anger management classes and follow all recommendations, establish and maintain safe and stable housing, follow all court orders, remain compliant with probation requirements, refrain from incurring new criminal charges, obtain and maintain a legal source of income, maintain reliable transportation, maintain weekly contact with DCS, and provide DCS with any changes to contact information.

Mother failed to appear for a drug screen at DCS on February 7, 2022. The Juvenile Court held a hearing on February 9, 2022, and the court order reflects that Mother failed to appear at this hearing. Mother was incarcerated on February 22, 2022 for identity theft after allegedly providing false information to law enforcement, failure to appear, and child abuse or neglect involving a child other than the Child. DCS filed a petition to terminate Mother's parental rights on April 13, 2022.

The Juvenile Court conducted a trial in August 2022, during which the following witnesses testified: (1) Makayla Lundy, DCS case manager; (2) Sydney Barnett, DCS case manager; (3) Charlena Ward, the Child's speech therapist; (4) D.L., the Child's foster mother; and (5) Mother. The Juvenile Court records, permanency plans, drug screens, criminal history records, and Ms. Ward's speech therapy records were entered as exhibits during trial. Mother and her attorney were present for the termination trial.

Makayla Lundy was the first witness at trial. She was the Child's case manager at the time of trial and had been since February 2022. Ms. Lundy testified that during the four months following the Child's removal into DCS custody, DCS provided drug screens for the parents, submitted a case service request for an alcohol and drug assessment, and requested the parents to complete a mental health intake. She testified that the parents made no efforts during that time to provide a suitable home, and she believed their contact with DCS was inconsistent during that time.

Ms. Lundy testified that Mother failed drug screens on June 29, 2021; August 3, 2021; and August 25, 2021. She further testified that Mother tested positive on a hair follicle drug screen on September 16, 2021 and failed to appear for drug screens on October 27, 2021 and February 7, 2022. Mother was notified via text message or telephone call when she was to appear for a drug screen, but she never verified that she received those messages.

Ms. Lundy testified that since the Child entered DCS custody, they had submitted a case services request for an alcohol and drug assessment, assisted the parents in attending a mental health intake, tried to help them find housing, and conducted drug screens. Ms. Lundy testified that the parents had done nothing to provide a suitable home since she became the case manager. The case service request for DCS to pay for the alcohol and drug assessment was approved, but Ms. Lundy was not sure of the approved provider. Ms. Lundy testified that despite all the services offered to the parents, they failed to take advantage of them. According to Ms. Lundy, the parents continued either failing drug screens or not showing up for requested drug screens. They obtained new criminal charges, and both are now incarcerated. Ms. Lundy stated that DCS tried to assist the parents in obtaining housing, but to her knowledge, the parents do not have housing for the Child currently. She opined that the parents had demonstrated a lack of concern for the Child.

Ms. Lundy explained that two permanency plans were developed for the family and ratified by the Juvenile Court. She stated that the parents participated in development of the first plan in June 2021 but not the subsequent revised plan. According to Ms. Lundy, the parents had not complied with DCS and had completed nothing on the permanency plans. When she met with Mother, Mother appeared to understand what she was saying and what she needed to do to complete the steps on her permanency plan. According to Ms. Lundy, the parents had not resolved their drug dependency and continued to engage in illegal activities resulting in their incarceration.

Ms. Lundy testified that Mother never visited the Child after he was placed into DCS custody, nor had she inquired with Ms. Lundy as to the Child's wellbeing. She knows of no child support, gifts, food or clothing that Mother provided for the Child while he has been in DCS custody despite the parents providing Ms. Barnett with paystubs to prove they were working early in the case. She stated that the parents had been informed in August 2021 by Ms. Barnett and again by Ms. Lundy in February 2022 that their failure to visit could be a ground for termination.

According to Ms. Lundy, the Child was born prematurely and has special needs. The Child has physical therapy, occupational therapy, and speech therapy, which includes feeding therapy. He has been in the same foster home since he entered DCS custody, more than ten months before trial. The foster parents take the Child to all of his appointments. The Child has not met his developmental milestones due to being born premature, but he has made progress in some areas. She stated that he is a happy baby. The Child was a little over a year old at the time of trial but was functioning at a five- or six-month level. Ms. Lundy testified that the foster parents had been meeting the Child's emotional, physical, and developmental needs. The Child also interacts well with his foster siblings.

Additionally, Ms. Lundy testified that the parents do not have a parental attachment with the Child. The Child has developed a healthy parental attachment with the foster parents. Based on Ms. Lundy's experience as a DCS case manager, she opined that it was not feasible that the Child would form an attachment with the parents at an early date because the Child knows only the foster family.

Sydney Barnett was the next witness. She was the Child's DCS case manager from July 2021 until November 2021. She discussed with the parents about obtaining stable housing and governmental housing. The parents provided her with parenting education certificates because it was an action step on the permanency plan. However, these certificates were dated prior to the Child's birth. Ms. Barnett testified that they had asked the parents to complete parenting education again now that the Child was born. She stated that the parents had not completed services while she had the case.

Ms. Barnett testified that on August 3, 2021, Mother tested positive for buprenorphine. She initially testified that Mother had failed to provide a prescription but subsequently acknowledged her records reflected Mother later provided her with a new prescription. Therefore, Ms. Barnett acknowledged that Mother passed the August 3, 2021 drug screen. Ms. Barnett testified that she put in a case service request for Mother to have a hair follicle drug screen. According to Ms. Barnett, Mother tested positive for amphetamine and methamphetamine. She further testified that despite her request for the parents to appear for a drug screen on October 27, 2021, they failed to appear. Ms. Barnett testified that while she had the case, the parents never had two clean drug screens to permit them to visit with the Child. She testified that she knew of no conversation with the parents

that would have discouraged them from visiting the Child while he was hospitalized. She explained that she was on leave for the first month the Child was in custody and that the Child was already at his foster home and established there by the time she first visited the Child.

Ms. Barnett testified that the parents asked how the Child was doing three or four weeks after she obtained the case and asked if they could drop some clothing off to the Child at his foster home. She and her coworker determined that it would not be appropriate to give the parents the home address and telephone number of the foster parents. The parents told Ms. Barnett that they would bring clothing for the Child to her so she could take them to the Child, but she never saw clothing dropped off by the parents. Ms. Barnett further testified that to her knowledge, Mother had paid no child support while she had the case. According to Ms. Barnett, she lost contact with the parents in October and was unable to locate them.

Charlena Ward, the owner and speech therapist with Functional Feeding Solutions, testified during trial. She has a masters degree in speech therapy and had been working with the Child since he was approximately eight months old. During that time, they had been focusing on feeding development with him. The Child has had a lot of feeding and gastric issues, and she continues to work with the Child toward resolving these issues. The Child is still underweight and continues to have problems with feeding. She opined that these issues resulted from the Child's premature birth and the complications he had at birth. She testified that the foster parents had been attentive to the Child's needs, but the Child's progress had been slow.

The Child's foster mother, D.L. ("Foster Mother"), testified at trial. She testified that the Child has had a lot of struggles but is resilient. He is involved in occupational therapy, speech therapy, and physical therapy. She stated they attend each week two occupational therapy appointments, one physical therapy appointment, and a feeding therapy appointment. In addition to those, she stated they attend several other doctor's appointments with various health care providers. Foster Mother testified she was pleased because they had just received a referral to Cincinnati Children's Hospital from his pediatrician. She stated she had called the hospital in Cincinnati begging the provider to see him because no one had been able to figure out what was going on with the Child. The Child is still underweight, not eating solid food at fifteen months old, and cannot sit up yet. The Child takes four different reflux medications multiple times a day and has to have albuterol breathing treatments quite often. Foster Mother stated that health care providers have informed them the Child has chronic lung disease due to his premature birth and being on the ventilator.

Foster Mother testified her family intends to adopt the Child if he becomes available for adoption. She states the Child adores his foster siblings, and they adore him. She further testified she and her husband have a good relationship with the Child, and the Child

seeks comfort from her. Foster Mother testified the Child has two words, “mama” and “dada.” On cross examination, Foster Mother testified she had told DCS that she had been open to the parents communicating directly with her while the Child had been in DCS custody.

Mother testified on her own behalf during trial. She was incarcerated at the time of trial on a failure to appear charge. She also had pending charges of identity theft and child abuse or neglect involving a different child. When the Child first entered foster care, Mother was living at the paternal grandmother’s home. She testified that she visited the Child ten to fifteen times while he was in the NICU after his birth. She explained that they stayed there for the first week and would sleep in the car. She testified that the parents went back and forth often to visit the Child while he was hospitalized. She stated that the hospital records should reflect that she saw the Child after May 19, 2021, but she does not recall the exact dates.

According to Mother, when the parents were arrested in June 2021, they had just come from the hospital. Mother testified they were arrested for possession of drugs at that time because she had a prescription for Klonopin and Suboxone but the medications were not in the right containers. Mother testified she was instructed by the initial DCS child protective services case manager to not go back to the hospital. At the time, they told the case manager they could not pass drug screens. Mother testified that in those initial drug tests, they “failed for quite a bit.”

Mother testified she has two other children in foster care in another county with whom she has contact with via video visitation. She also stated she would drive to Nashville to visit with them in person once a month. According to Mother, she had frequent contact with and submitted to drug screens for the other case manager out of Jefferson County. Mother testified she had been incarcerated for six and a half months and had last seen her other children the week before she was arrested.

Mother testified she communicated with Ms. Barnett mostly with text messages. She stated that she did not receive replies from her “multiple times,” that those messages were on her phone, and that she did not have her phone with her. She acknowledged she had not visited the Child since he was hospitalized, but she had been given a video of him. According to Mother, the parents had inquired with both the Juvenile Court and DCS about visiting the Child. She stated the Child’s pediatrician had to be consulted regarding visitation, but she never heard anything. According to Mother, she had requested to visit with the Child constantly. Additionally, she testified she paid child support for her other two children but not for Noah because she did not have the money. Mother testified she had “clothes and stuff” for the Child but that she did not bring them to DCS to be given to him.

According to Mother, she passed two drug screens in August 2021 because she had valid prescriptions for buprenorphine. Mother stated she did not recall being asked to take a drug screen in October 2021 and that whenever DCS notified her to take a drug screen, she had appeared every time to take the drug screen. Mother testified that to remedy her drug problem before her incarceration, she started “IOPE” and began going to Catalyst Health Solutions, a recovery program where she was given a prescription for Suboxone. Mother stated she provided information regarding the program to DCS.

Mother initially testified she was not present at the November 2021 hearing due to illness. She later acknowledged missing a court hearing in February 2022 but denied missing the November 2021 court date. Mother explained she was sick at both times but missed only one court hearing.

When she became incarcerated in February 2022, she was residing at the paternal grandmother’s home, the home she resided in when the Child was removed from her custody. Mother was charged with failure to appear because she did not show up for a court hearing. She also was charged with identity theft and child abuse or neglect in February 2022. She testified she stayed with her ex-boyfriend for a couple of days. She stated her ex-boyfriend was supposed to take his child to daycare but instead her ex-boyfriend told her that someone was picking up the child. That individual did not pick the child up. Mother testified that the child was crying in the yard trying to find her father. According to Mother, the ex-boyfriend did not want to take responsibility for the incident so she was criminally charged for it. She stated that those charges were still pending.

Mother stated she had a place to live, a job, and the means to care for the Child from July 1 through November 1, 2021 but admitted she was not in a position to take custody of the Child at that time. She stated, however, that she felt like if DCS was assisting her during that time, her chances of getting custody of the Child would have greatly improved. She denied Ms. Barnett provided her with information regarding housing. Mother then explained Ms. Barnett told her there was paperwork she could get for the Housing Authority but did not identify the individual with whom she needed to speak. She acknowledged she did not make DCS aware of the last time she changed her telephone number in November 2021, stating that she could not get in touch with Ms. Barnett.

Mother testified that she is a good mom but is an addict. She stated she never had a chance to get the help she needed or to go to rehab. According to Mother, she is willing to do “whatever [she has] to do” and it would “devastate” her if she was not able to be part of the Child’s life. She denied ever being offered the ability through the courts to go to an alcohol or drug program. Mother denied that she currently had untreated addiction issues after being in jail for almost seven months but acknowledged she had no treatment while in jail.



In September 2022, the Juvenile Court entered an order terminating Mother's parental rights. In its order, the Juvenile Court found as follows in pertinent part:

The Court finds as to ground 1 failure to provide a suitable home that DCS has proven this ground by clear and convincing evidence. DCS cannot take the parent by the hand and take them to the apartment complexes and assist them with filling out the application and drive them from complex to complex to fill out the applications. DCS can provide the information to the parents and encourage them to complete the task. [Mother] stated she needed help, but she failed to express that adequately. The foster parents had to reach out to Cincinnati Children's Hospital to find a pediatric specialist for this child and have fought and advocated for this child to obtain the appropriate referrals to make sure the child's medical needs are being met. The mother is not able to do that for this child if she cannot fill out an application for housing without assistance. DCS attempted to place the child with a relative. The paternal grandmother has a health condition which causes her to shake and has difficulties navigating the stairs in her two-story home. DCS expressed concerns that she would not be able to properly care for this child with his level of needs due to her health and the child would have had a room on the second floor of her home with stairs she was not able to safely navigate. The parents were not able to obtain suitable housing for themselves during the first four months of the case. The mother reported that the parents resided in the home of the paternal grandmother. The mother obtained additional charges while she was in a different home with her ex-boyfriend in February 2022 which resulted in her current incarceration. Therefore, the Court finds by clear and convincing evidence that the parents made no efforts to provide a suitable home for the minor child during the four months after the child came into DCS custody despite DCS making reasonable efforts to assist them. The parents both had court appointed attorneys and could have reached out to the attorneys and asked for assistance. The Court finds that DCS has met its burden of proof as to ground 1 failure to provide suitable housing.

The Court finds as to ground 2 abandonment by incarcerated parent and wanton disregard that DCS has proven this ground by clear and convincing evidence. The Court finds that the parents are incarcerated. . . . The parents had little to no contact with DCS or their respective attorneys and failed to present themselves for random drug screens which was part of the problem with facilitating visitation. There was no contact or communication between the parents and their attorneys or the parents and DCS. Both parents were incarcerated during various times throughout the course of this case. Both of the parents received additional drug related charges on June 18, 2021 which was two weeks prior to the child being

placed in foster care. The child was still in the hospital and the parents were found in a vehicle in the parking lot of a fast food restaurant passed out and intoxicated on drugs. Since that time . . . the mother has received additional charges for identity theft, child abuse and neglect on another child and failure to appear in Greene County. During the time prior to incarceration neither parent visited the child. The last time that the parents visited this child was in May 2021 shortly after his birth. The Court finds that DCS has met its burden of proof by clear and convincing evidence as to the ground abandonment by incarcerated parent and wanton disregard for the welfare of the child. The Court finds that this child's life continues every day, and this child cannot wait for the parents to get out of jail and prison.

The Court finds as to ground 3 substantial noncompliance with the permanency plan that DCS has proven this ground by clear and convincing evidence. The Court finds that several plans were established in this case for the child. DCS and the parents and the attorneys established steps for the parents to accomplish to be reunited with the child. From the start of this case, it was DCS and this Court's goal to reunify the child with the parents. The parents were required to complete an alcohol and drug assessment which was ordered. All case managers and the Guardian ad Litem and this Court are familiar with alcohol and drug treatment programs available here locally. If the parents had requested help from any of the participants in this case, requested assistance with obtaining this treatment, they would have been provided information for all of these programs. This County now has Strong Futures which could have assisted both of the parents with overcoming their addictions.

The parents have failed to comply with the action steps on the permanency plan. They have failed drug screens, they do not have safe and stable housing, they have not paid child support, they have followed none of the recommendations and they failed to go to the local mental health service provider and complete an intake. The Court finds that DCS met the burden of proof as to ground 3 substantial noncompliance with the permanency plan.

The Court finds as to ground 4 that the conditions which led to removal continue to persist. The parents continue to use drugs, and both are incarcerated they lack stable housing. The conditions which led to removal continue to exist. The mother failed a drug screen for methamphetamine and the father failed a drug screen for methamphetamine. The first drug screen prior to the July hearing both parents failed for methamphetamine and MDMA and it is significant that they both failed for the same substances. The conditions continued to persist and a hair follicle drug screen in September 2021 showed values for methamphetamine over 11,000. The

Court is aware that those levels shown are significantly high and represent heavy use on a consistent basis. The mother failed to submit to a drug screen after that. This child was born premature which is significant alone. The child was attached to monitors and suffered from tremors and shakes at the time of his birth. The child still has swallowing issues and attends physical therapy. It would be overwhelming for the parents to provide care for this child due to his substantial needs. The court finds by clear and convincing evidence that DCS has met the burden of proof as the persistent conditions ground.

The Court finds as to ground 5 failure to manifest an ability and willingness DCS has met the burden of proof by clear and convincing evidence. The Court finds that it has been fifteen months and the parents have not visited, they have not paid child support and the Court finds that placement with either parent would pose a substantial risk of harm to the child and adversely affect the psychological or physical welfare of the child. This child has unique health issues, and it would cause problems for the child if he were removed from the foster parents at this time.

\* \* \*

GROUND 1  
ABANDONMENT - FAILURE TO PROVIDE SUITABLE HOME  
T.C.A. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii)

7. This Honorable Court adjudicated the child dependent and neglected and placed him in DCS custody, pursuant to a petition filed with this Honorable Court, after he was removed from [Mother and Father's] legal custody on August 11, 2021. The Court finds that the four months immediately following the removal began on August 12, 2021 and ended on December 12, 2021.

8. This Honorable Court's protective custody order approving the removal found that the Department could not make reasonable efforts to prevent removal due to the child's circumstances.

9. The Court finds that during the relevant four-month period of August 12, 2021 through December 12, 2021, the Department made reasonable efforts to assist the parents to provide a suitable home for the child, to wit: DCS provided drug screens and requested an alcohol and drug assessment and mental health intake to address the concerns which prevented them from maintaining a suitable home. DCS also offered parenting education and

made diligent efforts to maintain contact with the Respondents despite periods of time where they were unable to be located.

10. The Court finds that, during the relevant four-month period of August 12, 2021 through December 12, 2021, which followed the physical removal of the child from the custody of [Mother and Father], they made no reasonable efforts to provide a suitable home. Instead, they evaded DCS during that time period and were not engaged with any services and they engaged in illegal drug use and criminal activity which resulted in their respective incarceration.

11. The Respondents' failure to make even minimal efforts to improve their home and personal condition demonstrates a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.

12. The efforts of the Department to assist the Respondents in establishing a suitable home for the child were reasonable, in that they are equal to, or exceed, the efforts of the Respondents toward establishing a suitable home, and the Respondents were aware that the child was in DCS custody.

13. DCS has proven, by clear and convincing evidence, the ground of abandonment by failure to provide a suitable home against [Mother and Father].

GROUND 2  
ABANDONMENT BY INCARCERATED PARENT/WANTON  
DISREGARD

T.C.A. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(iv), -102(1)(B), -102(1)(C), -  
102(1)(D) and -102(1)(E)

14. [Mother and Father] were in jail part or all of the four months immediately preceding the filing of the States termination Petition. . . . [Mother] was arrested on February 22, 2022 for identity theft, failure to appear, and child abuse.

[FAILURE TO VISIT]

16. In the four months before [Mother] was arrested October 21, 2021 through February 21, 2022, she failed to visit the child, although she was able to visit, she knew the child was in DCS custody, and there was no court order or any other impediment to visitation other than the requirement in the Court

order that she submit to two drug screens which were free from all substances not prescribed to her.

[FAILURE TO SUPPORT]

18. In the four months before [Mother] went to jail, October 21, 2022 through February 21, 2022, she failed to make reasonable payments toward the child's support.

[WANTON DISREGARD]

19. [Mother and Father] have engaged in conduct that exhibits a wanton disregard for the child's welfare by continuing to utilize illegal drugs and engaging in illegal behaviors which have resulted in their respective incarcerations. Both parents were arrested on June 18, 2021 for possession of schedule 3 and 4 drugs when they were discovered in their vehicle unconscious. . . . [Mother] was arrested on February 22, 2022 for identity theft, failure to appear, and child abuse. These criminal behaviors demonstrate a broader pattern of criminal activity showing their wanton disregard for the child which is also evident from their abandonment of the child at the hospital after his birth.

20. DCS has proven, by clear and convincing evidence, the ground of abandonment by incarcerated parent and abandonment by wanton disregard against [Mother and Father].

GROUND 3

SUBSTANTIAL NONCOMPLIANCE WITH PERMANENCY PLAN

T.C.A. §§ 36-1-113(g)(2) and 37-2-403

21. After the child came into state custody, DCS created permanency plans for him. The Court finds that, in sum, there have [been] three permanency plans in the underlying dependency and neglect proceedings that gave rise to this cause.

22. The permanency plans listed a number of requirements that the Respondents needed to satisfy before the child could safely be returned home. The plans gave the Respondents six months to satisfy those requirements.

23. The plan required [Mother and Father] to complete an alcohol and drug assessment and follow all recommendations, obtain and maintain safe and stable housing, cooperate with DCS and all service providers, refrain from

engaging in illegal behaviors which could result in new criminal charges, complete a mental health intake and follow all recommendations, visit with the child and pay child support.

24. DCS reviewed the criteria and procedures for termination with [Mother] on August 4, 2021 and February 22, 2022 . . . .

25. DCS explained the requirements and responsibilities to [Mother and Father] on August 4, 2021.

26. The Juvenile Court ratified the initial permanency plans on August 11, 2022 as in the child's best interests and found that the requirements for the Respondents were reasonably related to remedying the reasons for foster care.

27. The permanency plan was revised on December 9, 2021.

28. The revised plans required [Mother] to comply with random drug screens, complete an alcohol and drug assessment and follow all recommendations, complete a mental health intake and follow all recommendations, complete parenting education at the Hope Center, maintain visitation with the minor child, obtain and maintain safe and stable housing, obtain and maintain a legal source of income, complete anger management classes and follow all recommendations, develop a transportation plan, and pay child support.

\* \* \*

30. The revised plans gave [Mother and Father] six months to satisfy the requirements.

31. DCS explained the new requirements and responsibilities to [Mother] on February 22, 2022.

32. The Juvenile Court ratified the revised permanency plans on February 9, 2022 as in the child's best interests and found that the revised requirements for the Respondents were reasonably related to remedying the reasons for foster care.

33. The Court finds that [Mother and Father] have not substantially complied with the responsibilities and requirements set out for them in the permanency plans. [Mother and Father] have not complied with random drug screens, failed to complete the alcohol and drug assessment, failed to complete the mental health intake, failed to refrain from engaging in activities which could

result in additional criminal charges, failed to obtain and maintain safe and stable housing, and failed to engage in visitation with the child, failed to obtain and maintain a legal source of income, failed to maintain visitation, failed to pay child support, failed to develop a transportation plan, failed to complete parenting classes, and failed to complete anger management classes.

34. DCS made reasonable efforts to help [Mother and Father] to satisfy the requirements in the permanency plan.

35. The Court finds that, as of the date of hearing, the permanency plans are reasonable and related to remedying the reasons for which the child was placed into foster care, such that, had the Respondent cooperated with the same, it would have addressed the reasons for which the child was in DCS custody.

36. DCS has proven, by clear and convincing evidence, the ground of substantial noncompliance with the permanency plan against [Mother and Father].

GROUND 4  
PERSISTENT CONDITIONS  
T.C.A. §§ 36-1-113(g)(3)

37. The child has been removed from the physical and legal custody of [Mother and Father] for a period exceeding six (6) months by a court order at the initial stage of the underlying dependency and neglect proceedings in that gave rise to this cause. This order was based upon a petition which alleged that the child was dependent and neglected and was filed on June 30, 2021.

38. As of the first date setting this matter for hearing, it had been more than six months since the Court order was entered that placed the child into DCS custody.

39. DCS removed the child from their custody because the child was born prematurely with substances in his system and was in the NICU at UT hospital for two months prior to being released to the custody of DCS. The parents abandoned the child at the hospital calling only three times in two months to check on him and never visiting. The Respondents were both arrested on June 18, 2021 after having been found in their vehicle unconscious in possession of Schedule 3 and 4 drugs.

40. The conditions that led to the removal still persist: The parents have not resolved their drug dependency and continue to engage in illegal behaviors resulting in their respective arrests and incarceration. Neither parent has engaged in visitation with the child since he was born.

41. Other conditions in the home exist that, in all reasonable probability, would lead to further neglect or abuse of the child: Both Respondents are currently incarcerated and neither has obtained housing or a legal source of income in order to provide for the child during the times which they are not incarcerated.

42. The Court finds there is little chance that those conditions will be remedied soon so that the child can be returned safely to the home because, for nine months, DCS made the following reasonable efforts to help [Mother and Father] remedy them, to no avail: DCS requested funding for alcohol and drug assessments and hair follicle drug screens, provided information to the parents about parenting education classes, DCS met with the mother in the jail, offered them both random drug screens so they could begin visiting with the child, scheduled Child and Family Team Meetings to discuss permanency and to develop a permanency plan, created and ratified the permanency plan, located suitable foster care placement, scheduled and organized regular and necessary medical care, maintained communication with Respondents by various means including letters, phone calls and text messages, assessed the Respondents' situation and needs, attempted to place service providers onto the case to assist the Respondents with parenting skills, ensured that monthly face to face visit was accomplished between the child and the Department, notified the parents of court hearings, staffings and meetings at the Department.

43. Continuation of the parent/child relationship greatly diminishes the child's chances of being placed into a safe, stable and permanent home.

44. DCS has proven, by clear and convincing evidence, the ground of persistent conditions against [Mother and Father].

GROUND 5  
FAILURE TO MANIFEST AN ABILITY AND WILLINGNESS TO  
ASSUME CUSTODY T.C.A. § 36-1-113(g)(14)

45. [Mother and Father] are the legal parents of the child having been established as such by being listed on the child's birth certificate. The Respondents have failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial



responsibility of the child. They have failed to visit and support the child since he was placed in DCS custody shortly after he was born and currently both are incarcerated preventing them from providing care for the child and both continue to use illegal substances.

AND

46. Placing the child in the Respondents' legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child because he has never met them, and they are both incarcerated and unable to provide care for the minor child and they continue to use illegal drugs.

47. DCS has proven, by clear and convincing evidence, the ground for termination contained in T.C.A. § 36-1-113(g)(14) against [Mother and Father].

BEST INTEREST  
T.C.A. § 36-1-113(i)(1)

The Court finds that, after having found that grounds exist to terminate the parental rights of a Respondent, the Court must then analyze whether or not it is in the child's best interest for termination to be granted. The Court further finds that the nonexclusive list of best interest factors which the Court must consider are contained in Tennessee Code Annotated § 36-1-113(i)(1).

48. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(A) is applicable in this matter. Thus, the Court finds that it is in the best interest of the minor child for termination to be granted as to the Respondents, because the child requires stability and continuity of placement through the child's minority. The minor child has been in the care of the foster parents since July 15, 2021 when he was released from the hospital. The foster parents were present while the child was being treated at the hospital due to premature birth and they have attended every medical appointment required thereafter to address all of his needs. The Respondents did not visit the child while he was hospitalized, abandoned the child at the hospital and have failed to visit the child since the child was placed in DCS custody. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

49. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(B) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted as to the Respondents, because the effect of a change in caretakers and physical environment is likely to have a detrimental effect on the child's emotional, psychological,

and medical conditions. The foster parents took the child home from the hospital and have been the only caregivers this child has ever known. The foster parents have attended the child's numerous medical appointments to address all of his medical conditions due to being born prematurely. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

50. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(C) is applicable in this matter. The Court finds that it is in the child's best interest for termination to be granted as to the Respondents, because they have not demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs. The Respondents have not complied with DCS and not visited with the child since he entered custody. They are both incarcerated and have ongoing mental health and substance abuse issues. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

51. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(D) is applicable in this matter. The Court finds that it is in the child's best interest for termination to be granted as to the Respondents, because there is no secure and healthy parental attachment between themselves, and the child and it is unlikely that such an attachment can be created. The Respondents have not had any contact with the child since he entered custody. They have no relationship with him. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

52. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(E) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted as to the Respondents, because the parents have failed to maintain regular visitation or other contact with the child in order to cultivate a positive relationship with the child. The Respondents have not visited with the child since he was placed in DCS custody. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

53. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(F) is not applicable in this matter and does not weigh in favor of, or against, termination.

54. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(G) is not applicable in this matter and does not weigh in favor of, or against, termination.

55. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(H) is applicable in this matter. Thus, the Court finds that that it is in the child's best interest for termination to be granted as to the Respondents, because the child has created a healthy parental attachment with another person or persons in the absence of the Respondents. The child is attached to his foster parents, and they provide for all of his needs. They take the child to church, on vacation and out in the community. They have had him in their home since he was released from the hospital after his birth, and they visited with him in the hospital prior to his release. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

56. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(I) is applicable in this matter. Thus, the Court finds that that it is in the child's best interest for termination to be granted as to the Respondents, because the child has an emotionally significant relationship with persons other than the Respondents or caregivers and it would have a detrimental impact on the child's relationships with these persons and the child's access to information about the child's heritage. The child has a significant relationship with the foster parents' child and the extended family members. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

57. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(J) is applicable in this matter. Thus, the Court finds that [it is] in the child's best interest for termination to be granted as to the Respondents, because they have failed to demonstrate such a lasting adjustment of circumstances, conduct, or conditions as to make it safe and beneficial for the child to be placed in their home and they continue to use alcohol and controlled substances which render them consistently unable to provide safe and stable care for the child. The Respondents have unresolved substance abuse issues, and both are incarcerated which would prevent the child returning to their home. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

58. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(K) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the Respondents have not taken advantage of available programs, services, and community resources to assist them in making a lasting adjustment of circumstances, conduct or conditions which would make it safe for the child to return to their care. The Respondents have not completed any of the steps on the permanency plans and have not taken advantage of the services

offered. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

59. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(L) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because DCS has provided reasonable efforts to assist the Respondents in making a lasting adjustment of circumstances, conduct or condition which would make it safe for the child to return to their care to no avail. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

60. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(M) is not applicable in this matter and does not weigh in favor of, or against, termination.

61. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(N) is not applicable in this matter and does not weigh in favor of, or against, termination.

62. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(O) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the Respondents have not provided safe and stable care for this child or any other child. The Respondents have other children and they have lost custody of those children as well. The Respondents have never provided anything for this child and did not even visit the child while he was in the NICU after his birth. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

63. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(P) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the Respondents have not demonstrated an understanding of the basic and specific needs required for the child to thrive. The Respondents have never attended a medical appointment for this child and do not have an idea about what his medical needs are. They have not established a safe and stable home or had any contact with the child to even begin to understand what his needs are at this time. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

64. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(Q) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the

Respondents have demonstrated [sic] a commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

65. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(R) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the physical environment in the Respondents['] home is not healthy and safe for the child. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

66. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(S) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the Respondents have not provided financial support for the child. The Respondents have never paid child support and never provided anything at all for the child. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

67. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(T) is applicable in this matter. Thus, the Court finds that it is in the child's best interest for termination to be granted, because the Respondents['] mental or emotional unfitness would be detrimental to the child and prevent the Respondents from consistently and effectively providing safe and stable care and supervision for the child. Thus, the Court finds that this factor weighs in favor of terminating the Respondents' parental rights.

Based on the foregoing findings of fact, the Juvenile Court found that DCS has proven by clear and convincing evidence the statutory grounds against Mother of abandonment by failure to provide a suitable home, abandonment by failure to visit, abandonment by failure to support, abandonment by wanton disregard, substantial noncompliance with the permanency plan, persistent conditions, and failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child. The Juvenile Court further found by clear and convincing evidence that termination of Mother's parental rights is in the Child's best interest. Mother timely appealed to this Court.

### **Discussion**

Although not stated exactly as such, Mother raises the following issue for our review on appeal: whether the Juvenile Court erred in finding by clear and convincing evidence that the termination of Mother's parental rights was in the Child's best interest. As our

Supreme Court has instructed regarding the standard of review in parental rights termination cases:

A parent's right to the care and custody of her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.<sup>2</sup> *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. *In re Angela E.*, 303 S.W.3d at 250. “[T]he [S]tate as *parens patriae* has a special duty to protect minors . . . .” Tennessee law, thus, upholds the [S]tate’s authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child.” *Hawk*, 855 S.W.2d at 580 (quoting *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); see also *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Angela E.*, 303 S.W.3d at 250. “When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.” *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388. “Few consequences of judicial action are so grave as the severance of natural family ties.” *Id.* at 787, 102 S.Ct. 1388; see also *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are “far more precious than any property right.” *Santosky*, 455 U.S. at 758-59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(l)(1); see also *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is “final and irrevocable”). In light of the interests and consequences at stake, parents are constitutionally entitled to “fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; see also *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

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<sup>2</sup> U.S. Const. amend. XIV § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .”). Similarly, article 1, section 8 of the Tennessee Constitution states “[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”

Among the constitutionally mandated “fundamentally fair procedures” is a heightened standard of proof – clear and convincing evidence. *Santosky*, 455 U.S. at 769, 102 S.Ct. 1388. This standard minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights. *Id.*; *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010). “Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005).

Tennessee statutes governing parental termination proceedings incorporate this constitutionally mandated standard of proof. Tennessee Code Annotated section 36-1-113(c) provides:

Termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

This statute requires the State to establish by clear and convincing proof that at least one of the enumerated statutory grounds<sup>3</sup> for termination exists and that termination is in the child’s best interests. *In re Angela E.*, 303 S.W.3d at 250; *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination.” *In re Angela E.*, 303 S.W.3d at 254. Although several factors relevant to the best interests analysis are statutorily enumerated,<sup>4</sup> the list is illustrative, not exclusive. The parties are free to offer proof of other relevant factors. *In re Audrey S.*, 182 S.W.3d at 878. The trial court must then determine whether the combined weight of the facts “amount[s] to clear and convincing evidence that termination is in the child’s best interest.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). These

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<sup>3</sup> Tenn. Code Ann. § 36-1-113(g)(1)-(13).

<sup>4</sup> Tenn. Code Ann. § 36-1-113(i).

requirements ensure that each parent receives the constitutionally required “individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Furthermore, other statutes impose certain requirements upon trial courts hearing termination petitions. A trial court must “ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child.” Tenn. Code Ann. § 36-1-113(k). A trial court must “enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” *Id.* This portion of the statute requires a trial court to make “findings of fact and conclusions of law as to whether clear and convincing evidence establishes the existence of each of the grounds asserted for terminating [parental] rights.” *In re Angela E.*, 303 S.W.3d at 255. “Should the trial court conclude that clear and convincing evidence of ground(s) for termination does exist, then the trial court must also make a written finding whether clear and convincing evidence establishes that termination of [parental] rights is in the [child’s] best interests.” *Id.* If the trial court’s best interests analysis “is based on additional factual findings besides the ones made in conjunction with the grounds for termination, the trial court must also include these findings in the written order.” *Id.* Appellate courts “may not conduct de novo review of the termination decision in the absence of such findings.” *Id.* (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n.15 (Tenn. Ct. App. 2007)).

### ***B. Standards of Appellate Review***

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. *In re Bernard T.*, 319 S.W.3d at 596-97. The trial court’s ruling that the evidence sufficiently supports termination of parental rights is a conclusion



of law, which appellate courts review de novo with no presumption of correctness. *In re M.L.P.*, 281 S.W.3d at 393 (quoting *In re Adoption of A.M.H.*, 215 S.W.3d at 810). Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d at 246.

*In re Carrington H.*, 483 S.W.3d 507, 521-24 (Tenn. 2016) (footnotes in original but renumbered). In combination with a best interest finding, clear and convincing evidence supporting any single ground will justify a termination order. *E.g.*, *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Furthermore, concerning the credibility of witnesses, our Supreme Court has instructed:

When credibility and weight to be given testimony are involved, considerable deference must be afforded to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997) (quoting *Randolph v. Randolph*, 937 S.W.2d 815, 819 (Tenn. 1996)). Because trial courts are able to observe the witnesses, assess their demeanor, and evaluate other indicators of credibility, an assessment of credibility will not be overturned on appeal absent clear and convincing evidence to the contrary. *Wells v. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999).

*Hughes v. Metro. Gov't of Nashville and Davidson County*, 340 S.W.3d 352, 360 (Tenn. 2011). In addition to explicit credibility determinations, this Court has acknowledged implicit credibility determinations. *See, e.g.*, *In re H.S.*, No. M2019-00808-COA-R3-PT, 2020 WL 1428777, at \*9 (Tenn. Ct. App. Mar. 20, 2020), *no appl. perm. appeal filed*; *In re Wyatt S.*, No. E2012-00539-COA-R3-JV, 2012 WL 5482215, at \*9 (Tenn. Ct. App. Nov. 13, 2012), *no appl. perm. appeal filed*; *Taylor v. McKinnie*, No. W2007-01468-COA-R3-JV, 2008 WL 2971767, at \*4 (Tenn. Ct. App. Aug. 5, 2008), *no appl. perm. appeal filed*.

Although Mother has not raised statutory grounds as an issue on appeal, our Supreme Court has instructed “that in an appeal from an order terminating parental rights the Court of Appeals must review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 525-26 (footnote omitted). Therefore, we will review the grounds utilized for the termination of Mother’s parental rights as directed by our Supreme Court.

We first address whether the Juvenile Court erred by terminating Mother’s parental rights based on the ground of persistent conditions. Tenn. Code Ann. § 36-1-113(g)(3) (2022) provides as follows regarding the statutory ground of persistent conditions:

- (3)(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:
- (i) The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;
  - (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and
  - (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;
- (B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard;

The Child had been in DCS custody for the requisite six months prior to the first setting of this termination action. The Child was removed from Mother's custody by court order due to Mother's drug use and her limited contact with the Child while hospitalized. Although Mother claimed during trial that she had visited the Child while in the hospital several times, it is clear, based on its findings, that the Juvenile Court found Mother's testimony not to be credible. The Child was born prematurely and tested positive for illegal drugs at the time of his birth. After his birth, the Child had difficulties feeding and had tremors. Additionally, Mother was arrested in June 2021 shortly after the Child was born after being found unconscious in a vehicle with the Child's father. She was arrested at that time for possession of a schedule III drug.

Mother has not resolved her drug addiction issues and has continued her criminal activity. Mother was incarcerated at the time of trial on a failure to appear charge. She also had pending charges of identity theft and child abuse and neglect of another child. Additionally, despite DCS approving payment for Mother to complete an alcohol and drug assessment, Mother had yet to complete any kind of drug treatment program by the time of trial. Although there was testimony that Mother had a prescription for Suboxone in August 2021 for at least one of the drug screens in August 2021, Mother tested positive for methamphetamine on a hair follicle drug screen in September 2021. Mother's level of methamphetamine in her system for the hair follicle drug screen was 11,090 pg/mg with a cut-off level to test positive at 100 pg/mg. The Juvenile Court found that this was a high level and indicative of heavy drug use on a consistent basis. As the Juvenile Court found, Mother failed to take a drug screen after September 2021.

Ms. Lundy testified that Mother had not been in contact with her until Mother was ultimately incarcerated in February 2022. The Juvenile Court further found that the conditions leading to the Child's removal from Mother's custody still persisted, that there was little likelihood those conditions would be remedied anytime soon such that the Child could be safely placed with Mother, and that continuation of the parent/child relationship greatly diminished the Child's chances of being placed in a safe, stable, and permanent home. The evidence supports these findings by the Juvenile Court. We hold, as did the Juvenile Court, that DCS proved the ground of persistent conditions by clear and convincing evidence as a statutory ground for the termination of Mother's parental rights. Therefore, this ground is affirmed.

We next address the remaining statutory grounds that the Juvenile Court found when terminating Mother's parental rights. Pursuant to *In re Carrington*, 483 S.W.3d at 525-26, we have reviewed the following remaining grounds the Juvenile Court utilized to terminate Mother's parental rights, including (1) abandonment by failure to provide a suitable home for the Child; (2) abandonment by failure to visit; (3) abandonment by failure to support the Child; (4) abandonment by wanton disregard for the Child's welfare; (5) substantial noncompliance with the permanency plans; and (6) failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child. Upon a thorough review of the record, the evidence presented does not preponderate against the Juvenile Court's findings of fact relevant to these grounds, and these findings of fact support the Juvenile Court's conclusion that DCS proved each of these grounds by clear and convincing evidence.

Having determined that at least one statutory ground exists, we next turn to the best interest analysis. Mother argues on appeal that the Juvenile Court erred by failing to make specific findings of fact regarding the best interest factors. Tenn. Code Ann. § 36-1-113(i)(1) provides a set of non-exclusive factors courts are to consider in determining whether termination of parental rights is in a child's best interest:

- (A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority;
- (B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
- (C) Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs;
- (D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;

(E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;

(F) Whether the child is fearful of living in the parent's home;

(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;

(H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;

(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;

(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;

(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;

(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;

(O) Whether the parent has ever provided safe and stable care for the child or any other child;

(P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;

(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;

(R) Whether the physical environment of the parent's home is healthy and safe for the child;

(S) Whether the parent has consistently provided more than token financial support for the child; and

(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

Tenn. Code Ann. § 36-1-113(1) (2021). A trial court shall consider all relevant and child-centered factors that are applicable to the particular case, and expert testimony is not required to prove or disprove any factor. *Id.* § 36-1-113(i)(1) and (4). All applicable factors must be identified by the trial court and supported by specific findings of fact in the trial court's written judgment. *Id.* § 36-1-113(i)(3). Statutory authority for the best interest factors further provides a presumption that "the prompt and permanent placement of the child in a safe environment" would be in the child's best interest. *Id.* § 36-1-113(i)(2).

This Court recently compared the newly-enacted best interest factors to the previous best interest factors and concluded that the old factors were included within the new factors. *See In re Da'Moni J.*, No. E2021-00477-COA-R3-PT, 2022 WL 214712, at \*23 (Tenn. Ct. App. Jan. 25, 2022), *perm. app. denied* (Tenn. Apr. 1, 2022). Similar to the old factors, the newly-enacted best interest factors are "illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis." *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). We believe the following guidance provided by our Supreme Court concerning the previous statute also would be applicable to the newly-enacted factors:

Facts considered in the best interests analysis must be proven by "a preponderance of the evidence, not by clear and convincing evidence." *In re Kaliyah S.*, 455 S.W.3d at 555 (citing *In re Audrey S.*, 182 S.W.3d at 861). "After making the underlying factual findings, the trial court should then

consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child's best interest[s].” *Id.* When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” *In re Audrey S.*, 182 S.W.3d at 878. Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. *Id.* “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child. . . .” Tenn. Code Ann. § 36-1-101(d) (2017).

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. *In re Audrey S.*, 182 S.W.3d at 878. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. *White v. Moody*, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004). Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. *See In re Audrey S.*, 182 S.W.3d at 878. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated. *In re Carrington H.*, 483 S.W.3d at 523.

*In re Gabriella D.*, 531 S.W.3d at 681-82 (Tenn. 2017). “In all cases, when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child . . . .” Tenn. Code Ann. § 36-1-101(d) (2021).

In making its decision, the Juvenile Court identified the applicable statutory best interest factors to the present action and included findings of fact regarding those factors in its written order. Although Mother argues that the Juvenile Court failed to make specific findings of fact regarding the best interest analysis, we disagree. The Juvenile Court made detailed findings in the best interest analysis and throughout its final judgment sufficient to support its conclusion that termination of Mother’s parental rights was in the Child’s best interest. The Juvenile Court found that the combined relevant best interest factors weighed in favor of terminating Mother’s parental rights. Mother had not remedied the issues that had caused her Child to be removed from her custody despite reasonable efforts provided by DCS. DCS had attempted to assist Mother in finding housing, obtaining an alcohol and drug assessment, and providing drug screens. DCS had offered to pay for an alcohol and drug assessment for Mother. However, the Juvenile Court found that Mother had not taken advantage of the programs and resources available to assist her and had not made a lasting adjustment of her circumstances, conduct, or condition that would make it

safe for the Child to be placed in her care or custody. Mother continued to have unresolved substance abuse issues and continued to participate in criminal activity.

Although Mother passed at least one drug screen in August 2021, she failed a hair follicle drug screen in September 2021 for methamphetamine at more than 11,000 pg/mg, which the Juvenile Court found was indicative of heavy and consistent drug use. Although Mother claimed she no longer had an active drug addiction while incarcerated, Mother had never completed a drug treatment program.

The Juvenile Court found that Mother had not demonstrated continuity and stability such that she would be able to meet the Child's basic material, educational, housing, and safety needs because she has not complied with DCS, had not visited the Child, was incarcerated at the time of trial, and had ongoing mental health and substance abuse issues. The Juvenile Court found that such substance abuse by Mother rendered her consistently unable to provide safe and stable care for the Child.

Mother had not provided child support for the Child. Furthermore, despite Mother's testimony to the contrary, the Juvenile Court found that Mother had not visited the Child while he was hospitalized after his birth and had essentially abandoned the Child while at the hospital. The Juvenile Court clearly found Mother's testimony regarding her visitation at the hospital not to be credible. Mother also has not visited the Child while he has been in foster care and is essentially a stranger to the Child. The Juvenile Court found that it was unlikely that such an attachment could be created at this point.

In contrast, the Child had a strong bond with the foster parents and his foster siblings. He has been with the foster family since he was discharged from the hospital after his birth. Due to the Child's premature birth and *in utero* drug exposure, the Child continues to have issues with feeding, is underweight, and is not meeting his development milestones. The foster parents have been heavily involved with the Child's physical therapy, speech therapy, and medical care. The Child has a referral to a children's hospital in Cincinnati and likely will require continued therapy and medical appointments for the foreseeable future to address his continued health issues. The parents, however, have never attended medical appointments for the Child and have no knowledge of how to care for the Child with his specific needs. The foster parents are the only caregivers that the Child has ever known, and the Juvenile Court found that changing caregivers or physical environment at this stage would have a detrimental effect on the Child's emotional, psychological, and medical conditions.

The evidence does not preponderate against the findings of fact by the Juvenile Court regarding the best interest analysis. We find and hold by clear and convincing evidence, as did the Juvenile Court, that termination of Mother's parental rights is in the Child's best interest.

### **Conclusion**

The judgment of the Juvenile Court terminating the parental rights of Amanda E. is affirmed in its entirety, and this cause is remanded to the Juvenile Court for collection of the costs assessed below. The costs on appeal are assessed against the appellant, Amanda E., and her surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE