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Clerk of the  
Appellate Courts

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

**IN RE B.D.M.<sup>1</sup>**

**Appeal from the Juvenile Court for Anderson County  
No. J36396 Brian J. Hunt, Judge**

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**No. E2022-00557-COA-R3-PT**

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Father appeals the termination of his parental rights. The trial court found multiple grounds for termination, including abandonment by failure to provide a suitable home, substantial noncompliance with the permanency plan, persistence of conditions, failure to manifest a willingness and ability to assume custody, and mental incompetence. The trial court also found that it was in the best interests of the child to terminate Father's parental rights. We conclude that clear and convincing evidence supports each of the grounds for termination found by the juvenile court and the juvenile court's determination that termination is in the best interest of the child. Accordingly, we affirm.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Christin L. Dummer, Knoxville, Tennessee, for the appellant, S.M.

Jonathan Skrmetti, Attorney General and Reporter; and Amber L. Barker, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

**OPINION**

I.

S.M. ("Father") obtained physical custody of B.D.M. about a month prior to B.D.M.'s mother's suicide in 2012. B.D.M. had been born in 2009 with Father listed on

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<sup>1</sup> It is the policy of this Court to protect the privacy of children in parental termination cases by avoiding the use of full names.

the birth certificate; B.D.M. continued to reside with Father after his mother's death. In July 2020, the Tennessee Department of Children's Services (DCS) received a referral alleging that B.D.M. had been exposed to drugs and suffered sexual abuse perpetrated by family friends.

Following its initial investigation, on October 15, 2020, DCS filed a petition seeking to have B.D.M. found to be dependent and neglected and to require protective supervision. The forensic examiner at the child advocacy center expressed concern about Father's mental health. DCS's petition alleged that although Father "appeared to be protective" after the revelation of sexual abuse in July, Father was being evicted from his home, appeared paranoid, and dressed the child inappropriately. Father had left the State of Tennessee in August, only to have a child protective services case opened in North Carolina based on Father's driving under the influence with B.D.M. in the vehicle. Father returned to Tennessee. B.D.M. did report to DCS that he felt safe with Father at this time. Father participated in the creation of a non-custodial family permanency plan, which included requirements that Father complete a mental health assessment and an alcohol and drug assessment and comply with all resulting recommendations; that Father ensure B.D.M. attend individual therapy until successfully discharged; that Father obtain and maintain stable housing and income; that Father complete parenting classes; and that Father cooperate with DCS and any recommended services and sign necessary releases. Father waived a preliminary hearing in the dependency and neglect proceeding. The juvenile court entered an order bringing B.D.M. under the protective supervision of the court and ordering Father to comply with the parenting plan. B.D.M. remained in Father's physical custody.

However, on December 18, 2020, DCS changed course, petitioning for B.D.M. to be placed into DCS custody. DCS alleged that Father had failed to complete a mental health assessment, failed to complete an alcohol and drug assessment, did not complete a parenting assessment, did not take B.D.M. to therapy, refused a drug screen and pill count on two consecutive days, reported that he was not taking his prescribed mental health medication, and appeared disoriented, confused, and paranoid. The trial court granted the order ex parte, placing B.D.M. into DCS custody that same day.

B.D.M. entered foster care as a result of Father's lack of supervision of B.D.M. and Father's failure to comply with his mental health treatment by not taking his prescribed medications. At the time B.D.M. entered foster care, DCS also had concerns regarding the physical environment of Father's home. Desirae Shelton, a case manager for DCS, testified that Father's home had no furniture, that Father was sleeping on a mattress in the living room, and that "there was nothing in [B.D.M.'s] bedroom." The home was cluttered with trash, Father's bed was unkempt, and the sink contained dishes that appeared to be weeks old.

A permanency plan was created on January 22, 2021, and ratified on February 16, 2021; Father participated in the creation thereof. Under the plan, Father was required to

complete mental health, psychological, parenting, and alcohol and drug assessments and to follow recommendations and sign releases. The plan required Father to participate in drug screens and pill counts, resolve legal issues, complete parenting classes, visit the child, and provide proof of income, transportation, and housing. Father completed a psychological evaluation, which DCS paid for and assisted with scheduling, on March 29, 2021. An August 2021 plan included the same requirements as the prior plan and stated a requirement that Father comply with his current mental health treatment.

DCS case manager Ms. Shelton testified that in the four months following removal, DCS held child and family team meetings, conducted phone calls with Father, and paid for visitation and a parenting assessment. Ms. Shelton attempted to assist further with mental health treatment but was informed by Father that he was receiving treatment at the Helen Ross McNabb Center. DCS scheduled a parenting assessment and attempted multiple times to coordinate an alcohol and drug assessment. Ms. Shelton spoke with Father multiple times regarding what he had to do to go through his insurance to get into residential drug treatment. Ms. Shelton helped Father identify stable housing. She helped him with parenting classes as part of visitation, and DCS assisted Father in setting up a parental capacity assessment. Recommendations from the parenting assessment included that Father receive case management, complete non-offender parenting classes, remain in therapy, and follow recommendations regarding his medications and his therapy sessions. Father's efforts included providing proof of transportation, income, and housing, attending some visitation, and completing the parental capacity assessment in December 2020. According to DCS, Father's home continued to be physically inappropriate and full of trash during this time, and there was no furniture for B.D.M. According to Ms. Shelton, Father also did not comply with mental health treatment or recommendations, did not take his mental health medication during this time, and did not complete the non-offender parenting class. His mental health records indicate that Father reported stopping his medication of his own accord and an awareness that he needed to start taking his medication in order to regain custody.

Father's medical records from the Helen Ross McNabb Center indicate that he had been treated for Schizoaffective Disorder over the course of many years. Father had received in-patient psychiatric services at ages 25 and 39. His medical records reflect that Father repeatedly reported feeling that someone was listening into his conversations or spying on him, particularly through his phone. He believed his phone had been cloned, and he was at times reluctant to speak on it for fear of being overheard. He believed someone was coming into his home, and he canceled his credit cards as a result. During his time in therapy, he repeatedly reported suicidal ideation. Father also reported hallucinations. He heard noises that he thought might be evil spirits. He reported he sometimes saw B.D.M.'s deceased mother, and that on another occasion that she appeared on his television. Father stated that B.D.M. had also seen her and had seen ghosts. Father had also seen his dead mother and grandmother and believed people in the television were talking to him. He reported seeing "faces" which appeared to be "demons" and hearing his

name called. Father also reported urges to harm his cats. Father's medical records reflect missed mental health appointments following B.D.M.'s removal. Father consistently struggled with taking his medication. He reported that he did not want to take his medication because "they are trying to control everybody through medication." Father reported numerous times to his therapist that he was not taking his medication. He also reported struggling with keeping his home clean and organized and with performing everyday tasks such as completing paperwork.

An order entered on April 28, 2021, reflects that an adjudicatory hearing was waived and Father stipulated that B.D.M. was dependent and neglected as alleged in the petition. Father was granted supervised visitation.

Karen Orsulak, a Family Intervention Specialist at Omni Visions, conducted therapeutic visits with Father and B.D.M. from January 2021 to June 2021. Father was consistently argumentative during the visits, for example, undermining Ms. Orsulak's attempt to correct B.D.M. when he was speaking negatively about others. During visitation, Father repeatedly expressed fear to B.D.M. that B.D.M. would be in an accident. For instance, Father told B.D.M. not to be outside if it was windy to avoid falling trees. When Ms. Orsulak denied that B.D.M. would be crushed by a tree, Father said, "Yes, a seventy-foot tree could fall down, hit him, and smush him down into the ground and kill him." Father also told B.D.M. that he would be killed by a riptide or a shark on vacation in Florida with his foster family.

Ms. Orsulak described some of Father's statements as "bizarre" and said Father was "hyperfocused" on certain topics. For instance, at one visit, he insisted on talking about volcanoes erupting in Iceland and was surprised that B.D.M. and Ms. Orsulak were not familiar with the eruptions. He resisted B.D.M.'s attempts to change the subject, in which B.D.M. showed no interest. During the last visit, on June 8, 2021, Father arrived with his cell phone in a box covered in aluminum foil. The phone also had foil over the microphone and camera, and Father explained that people were trying to "hack" or find him. He began speaking about electrical fields and cloud formations and crashes of tractor-trailers. He talked about twenty drones flying over from Oak Ridge. Father began talking about unicorns, and B.D.M. laughed. Father then grew upset and agitated. Ms. Orsulak asked if he meant real unicorns, and he replied, "They were real to me." Father urged B.D.M. to look at the clouds out of the window. B.D.M. resisted by stating clouds were boring and attempting to redirect Father by speaking of things he was doing at his foster home.

During many visits, Father and B.D.M. sat next to each other and did not interact, and Ms. Orsulak testified there appeared to be no bond between them. During one two-hour visit, Father asked B.D.M. if he wanted to leave one hour into the visit. B.D.M. did not want to leave, but Father ended the visit thirty-five minutes early. Ms. Orsulak denied that Father ended the visit early due to an upset stomach, and instead stated that Father said he was "tired and bored." Father did not listen when B.D.M. attempted to talk about events

in his life. Ms. Orsulak testified that Father did attempt to bond with B.D.M., for instance bringing a foam number eight that B.D.M. used to chew on as a child, family pictures, and a blanket Father's grandmother had made for Father. B.D.M. did not appear interested in these items. Ms. Orsulak attempted to guide Father when she observed that B.D.M. was not interested, but Father would not follow her suggestions and was "not teachable." Ms. Orsulak testified that she was "very much" concerned about Father's behavior, whether it stemmed from struggles with mental health or substance abuse. Father's behavior worsened over time. Father did not visit at all in April. Father attended six out of eleven visits. He brought a home-cooked meal to one visit, and brought barbeque and fast food on two other occasions. Ms. Orsulak agreed that, due to financial concerns, Father only brought food for B.D.M. and not for himself, and she agreed this was selfless. She also agreed that Father's behavior was never so concerning that she ended the visit early. Ms. Orsulak noted that initially she did not suspect mental health or substance abuse issues. She agreed that Father loves and misses B.D.M., but reiterated that the two did not really interact during visits. Father interjected, interrupting several times during Ms. Orsulak's testimony to deny her statements.

Ms. Shelton also testified that Father's behavior during supervised visitation was concerning. For instance, Ms. Shelton also observed the visit during which Father wrapped his phone in tinfoil due to Father's belief that "people were trying to hack his phone and follow him." Father described these beliefs in front of B.D.M. At another visitation, Father told B.D.M. about a "cloud phenomenon" causing accidents on the interstate and that he had seen a unicorn in the sky. Ms. Shelton also heard and introduced into evidence a voicemail Father left for B.D.M.'s Foster Father in which Father said:

I would really like to talk to my son before whatever happens to me happens. He's going to have to know that you did not let him talk to me . . . I hope I don't die, but right now, there are giant creatures floating over my apartment looking dead at me. The moon is straight up over my head. I can't send pictures; it won't let me. [Panting.] I'm scared. I am under a psychic attack, and I believe it's by God. . . .

As the recording was played in court, Father interjected, "I thought I was dying."

During the trial proceedings, when the State admitted into evidence text messages written by Father to Foster Father, Father again interjected, responding to a particular text, "Yeah, I was pretty out of my mind. I don't remember, I don't remember writing it." Father sent three text messages in June 2021 stating that he was worried someone was following Foster Father and B.D.M., asserting that the man "is no joke he studied me and set me up for years and I couldn't figure it out . . . if he's following he stood behind the mailman . . . ." On another occasion, Father sent a text about a "phenomenon" with cloud formations, asserting that "it breaks my heart that I can experience this was [B.D.M.] it's tearing me apart so would you tell him and he will understand . . . ." Father's mental health

records from June 2021 indicate that he reported that individuals were sneaking into his home, urinating on his possessions, using his car, and listening to him through his phone.

At some point, a no-contact order was issued. Subsequently, Father voluntarily entered a residential program at Freeman Recovery Center on July 23, 2021, and he completed the program and an intensive outpatient treatment. Father reported alcohol, cocaine, and methamphetamine use. During that time, he was subject to drug screens and medication management. Father passed all drug screens except the initial one at the recovery center. Father identified the program through his insurance, without DCS assistance. Ms. Shelton stated that she had spoken with Father multiple times prior to his entry into treatment about his substance abuse and that prior to entering Freeman, he was refusing drug screens and had not made any substantial progress toward reunification. The intake materials from the recovery center indicate that he had last used cocaine and methamphetamine on July 4<sup>th</sup> and 6<sup>th</sup> of 2021, respectively, and that he had consumed a six-pack of beer on the day before admission. The records reflect that Father denied having hallucinations, but they noted that he experienced paranoia, stating “others break into his apartment, urinate on his possessions, hack his phone, but is convinced that this is happening.” Ms. Shelton agreed that Father was referred by the recovery center to a ten-step parenting program and that DCS did not assist with this program.

DCS continued to hold meetings with Father, conducted random home visits, and attempted to obtain his mental health and alcohol and drug assessments. DCS told Father where he could complete the parenting classes, but Father had not completed non-offender parenting classes as of the termination hearing. An order from September 1, 2021, reflected that Father had not completed his tasks under the plan, and he was ordered to release his records from Freeman Recovery and the Helen Ross McNabb Center to DCS.

The DCS termination petition was filed July 27, 2021, and the hearing took place on April 21, 2022. At the hearing, DCS case manager Ms. Shelton testified that on April 12, 2022, she completed a drug screen and pill count for Father. Father tested negative on the drug screen. However, Father’s prescription for mental health medication had been filled in December and should have run out in March if he had been taking it as prescribed; instead, Father still had 46 of the 90 pills. Ms. Shelton noted that Father’s mental health records from the Helen Ross McNabb Center, dating back to 2015, indicated that he consistently failed to take his medication. Ms. Shelton conducted the home visit on April 12, 2022, after Father informed DCS that he had received his furniture, and she took pictures of the home. The room intended for B.D.M. had a mattress leaning against the wall and had so many boxes of “random things” that it could not be entered because there was no room to walk. The hallway leading to the bedrooms, the entryway, and Father’s bedroom were also filled with boxes, and Father’s mattress was leaning against the wall. Father appeared to be sleeping either on the couch or on a mattress in the living room. The living room was cluttered with clothing and multiple bottles of coke and steak sauce. Ms. Shelton disagreed that the clutter was merely the result of a recent move, stating that Father

told her around March 23rd that he had received his possessions from storage, but only one box appeared unpacked on April 12th, and she stated that the trash around the apartment was not the result of a move. Ms. Shelton would have been concerned to have B.D.M. in the physical environment of the home, and she expressed concern regarding Father's current mental health.

Ms. Shelton testified she was concerned that Father was not compliant with his mental health treatment. Furthermore, she stated that B.D.M. had indicated multiple times that he did not wish to return to Father's custody and was afraid to live with Father. She testified that, when confronted with Father's delusions or erratic behavior, B.D.M. would attempt to ignore Father or to divert Father's attention. In response, Father would stay hyperfocused on a specific subject such as the unicorn. B.D.M. was in a foster home, in therapy, and had no behavioral issues. He enjoyed the farm animals at the foster home, appeared relaxed and comfortable, and was able to talk to his foster parents about things that were bothering him. The foster parents appeared loving, and B.D.M. expressed a desire to remain with them.

Ms. Shelton agreed that a child protective services worker was involved in the case before B.D.M. was moved to foster care. She testified that DCS had received approximately six prior referrals regarding B.D.M. She agreed that Father was not involved in any sexual abuse, that Father had housing, and that he had not failed any drug tests within the past six months. Father had numerous times expressed a desire to see B.D.M. and regain custody, and she agreed he was "devastated" to lose custody. Ms. Shelton testified that Father told her he had "bought things for" B.D.M. and that she had seen Father give Foster Father 50 dollars in cash. Ms. Shelton agreed Father had told her that he was participating in aftercare at the Helen Ross McNabb Center and that he was attending AA meetings, and she agreed that he had made efforts to be compliant. She noted, however, that Father was not compliant with his mental health treatment, as he was not taking his prescribed medication and had failed his pill counts. She also testified that Father told her on April 12, 2022 that he did not believe his apartment was safe for a child.

Father testified that B.D.M. moved in with him approximately one month before B.D.M.'s mother's suicide in 2012 and that the two had lived in Tennessee since that time. Father stated that it was "devastating" when B.D.M. revealed the sexual abuse to him and that he contacted authorities one week later, explaining that he waited until the perpetrators had returned his truck so he would have transportation. He conceded that at the time, he was "using," that he "wasn't acting right," that he "had lost [his] mind," and that he was "out of it." He clarified that he was "very erratic" and "paranoid" and that he thought his phone was being hacked. He acknowledged that he used cocaine, alcohol, and methamphetamine during the pendency of the litigation, and that the last time he did it was when he saw the unicorns and it "almost killed" him. He indicated that the intake form for the recovery center, which stated he used five grams of cocaine a day for over thirty years, was inaccurate, that he could not have afforded that much cocaine, and that he was told the

center would exaggerate substance abuse in order to facilitate insurance coverage. Insurance paid for Father's recovery. He recalled that he was initially scheduled to go to a treatment center in Knoxville but missed his appointment because he was using drugs. He testified he had not used alcohol or drugs since July 23, 2021.

Father also testified that since Ms. Shelton's visit, he had unpacked his possessions but still had sixty more boxes to unpack. He introduced pictures of the bedroom intended for B.D.M., which was free from clutter and had a bed, desk, and bookshelf set up, and of the cleaned stairway. He stated the living room "still needs work" but was "all clean now." He testified that the kitchen was "still a wreck" and that there were bugs. Father expressed his intention of doing "anything I need to do" and "whatever they want me to do to talk to my son." He stated that he went to the Helen Ross McNabb Center two days prior to trial to sign releases and that he was in weekly therapy there. Father asserted that he had not hallucinated since he stopped using drugs and felt embarrassed and ashamed of his past hallucinations. Father testified he sent three or four hundred dollars in Amazon cards to the Foster Father, as well as Christmas and birthday presents. He testified he had purchased "a couple thousand dollars" worth of gifts, including clothing, jackets, a phone charger, and a radio, but he had been unable to give them to B.D.M. due to the no-contact order, and he gave some of the gifts to Ms. Shelton for B.D.M. Ms. Shelton agreed that Father gave her some gifts for B.D.M., which she described as clothing that was the wrong size and a jar of "random objects," including a rusted potato peeler, Mardi Gras beads, and a corkscrew. Father interjected that the jar was a "grab jar" which he purchased from an antique store.

Having considered the evidence presented, the juvenile court found clear and convincing evidence to support termination based on abandonment by failing to provide a suitable home, substantial noncompliance with the permanency plan, persistence of conditions, failure to manifest a willingness and ability to assume custody, and mental incompetence. The juvenile court also concluded termination was in the child's best interest. Accordingly, the juvenile court terminated Father's parental rights.

## II.

On appeal before this court, Father contests the termination of his parental rights. Parents have a fundamental constitutional interest in the care and custody of their children, *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007), and this interest is "far more precious than any property right," *In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016) (quoting *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982)). "[P]ublic policy strongly favors allowing parents to raise their biological or legal children as they see fit, free from unwarranted governmental interference." *In re Bernard T.*, 319 S.W.3d 586, 597 (Tenn. 2010). However, a parent's rights are not absolute and may be terminated on clear and convincing evidence that statutory grounds for termination exist and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(1)-(2); *In re Adoption*



of *Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013).

“[I]n 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. Likewise, this court must “review the trial court’s findings of fact and conclusions of law as to each ground for termination, even though the statute only requires the finding of one ground to justify terminating parental rights.” *Id.* at 525 (quoting *In re Angela E.*, 303 S.W.3d 240, 251 n.14 (Tenn. 2010)). This court applies the versions of the parental termination statutes in effect on the date the petition was filed. *See In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017) (holding “that the version of the statute in effect at the time of the petition’s filing controls this action”).

We review the trial court’s findings of fact related to parental termination de novo on the record, giving the findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *see* Tenn. R. App. P. 13(d). The grounds for termination and the determination that termination is in the child’s best interest must be established by clear and convincing evidence, that is, evidence that “enables the fact-finder to form a firm belief or conviction regarding the truth of the facts” and which “eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596; *see* Tenn. Code Ann. § 36-1-113(c)(1)-(2). Given the heightened burden of proof in termination proceedings, “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 Carrington H.*, 483 S.W.3d at 524. We review de novo with no presumption of correctness the trial court’s legal conclusion regarding whether the evidence sufficiently supports termination to meet this standard. *Id.*

## A. Grounds for Termination

### 1. Abandonment by Failure to Provide a Suitable Home

Tennessee Code Annotated section 36-1-113(g) delineates the grounds upon which termination may be based. The juvenile court found abandonment by failure to provide a suitable home. Tenn. Code Ann. § 36-1-113(g)(1). Under subsection (g)(1), termination may be based on “[a]bandonment by the parent or guardian,” as defined in Tenn. Code Ann. § 36-1-102. The referenced section provides:

(1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, “abandonment” means that:

...

(ii)(a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order 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 the child was placed in the custody of the department or a licensed child-placing agency;

(b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and

(c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated 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. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department . . . .

Tenn. Code Ann. § 36-1-102(1)(A).

The juvenile court found DCS made reasonable efforts to prevent removal and made reasonable efforts to remedy the need for foster care in the four months<sup>2</sup> following removal by hosting child and family team meetings, providing opportunities for random drug screening, providing referrals and funding for parenting assessment and psychological evaluations and referrals for alcohol and drug assessment, mental health assessment, substance abuse treatment, and mental health services, conducting random pill counts and home visits, providing visitation supervision, and providing referrals to parenting

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<sup>2</sup> Although the four-month period is not limited to the four months following removal, we review this period, as the juvenile court's ruling relied on this particular period. See *In re Stephen H.*, No. M2022-00674-COA-R3-PT, 2022 WL 17843018, at \*8 n.4 (Tenn. Ct. App. Dec. 22, 2022); *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at \*13 (Tenn. Ct. App. Dec. 15, 2016).

education and non-offender parenting classes.

The court found that during the four months following removal, Father's home remained environmentally inappropriate and filled with clutter and trash. It found that Father did not treat his substance abuse, did not remedy the home environment, and did not take his mental health medication. As a result, Father continued to experience auditory and visual hallucinations and extreme paranoia. The court noted that Ms. Orsulak and Ms. Shelton observed Father attempt to engage the child in his hallucinations during visitation. The court concluded that Father's "severe mental illness and impairment renders [him] unable to adequately provide" care and that his inability to comply with mental health treatment demonstrated he would not be able to provide a suitable home at an early date. The court noted that Father's home remained environmentally inappropriate at the time of the April 2022 home visit and that Father was also not compliant with his mental health medication at that time. The court observed that Father suffers from Schizoaffective Disorder, and his home was "in complete disarray and environmentally inappropriate" nine days prior to the termination hearing.

Father argues that DCS failed to establish this ground for termination by clear and convincing evidence. He argues that DCS failed to demonstrate reasonable efforts with regard to assisting him in connection with the physical condition of his home due to a failure to provide a referral for homemaker services or for resources to obtain furniture. Furthermore, he argues that DCS failed to actually inform him that the physical condition of his home was unsuitable. Thus, he contends DCS did not make reasonable efforts. In support of the suitability of his home, Father also notes that he provided DCS with proof of transportation and income.

In arguing DCS failed to establish this ground for termination by clear and convincing evidence, Father focuses, as properly noted by DCS, on countering allegations regarding the physical environment. Whether reasonable efforts were made is a fact-intensive inquiry and examined on a case-by-case basis. *In re C.L.M.*, No. M2005-00696-COA-R3-PT, 2005 WL 2051285, at \*9 (Tenn. Ct. App. Aug. 25, 2005). It is "the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." *Id.* (quoting Tenn. Code Ann. § 37-1-166(g)(1)). "We have long held that providing drug screens, maintaining consistent communication with a parent, coordinating alcohol and drug assessments, and offering counseling services constitute reasonable efforts to assist a parent in establishing a suitable home." *In re H.S.*, No. M2019-00808-COA-R3-PT, 2020 WL 1428777, at \*7 (Tenn. Ct. App. Mar. 20, 2020). Ms. Shelton described the services DCS provided, which included numerous referrals for assessment and treatment, conducting visitation, maintaining contact, and helping Father identify stable housing. Even if, for purposes of argument, we discounted the juvenile court's findings as to the physical condition of the home, we would still conclude the court did not err in finding reasonable efforts in connection with this ground for termination.

That result would follow because providing a suitable home “requires more than a proper physical living location.” *In re Nevada N.*, 498 S.W.3d 579, 595 (Tenn. Ct. App. 2016). It requires a “safe and stable environment” and a caregiver “who can supply the care and attention” that the child requires. *In re Stephen H.*, No. M2022-00674-COA-R3-PT, 2022 WL 17843018, at \*9 (Tenn. Ct. App. Dec. 22, 2022) (quoting *In re James V.*, No. M2016-01575-COA-R3-PT, 2017 WL 2365010, at \*5 (Tenn. Ct. App. May 31, 2017)). As particularly relevant, “failure to address mental health issues can also lead to a finding that the parent has failed to establish a suitable home.” *In re Ashanti P.*, No. M2021-00039-COA-R3-PT, 2021 WL 5549590, at \*11 (Tenn. Ct. App. Nov. 29, 2021); see *In re Daylan D.*, No. M2020-01647-COA-R3-PT, 2021 WL 5183087, at \*5 (Tenn. Ct. App. Nov. 9, 2021) (collecting cases in which failure to address mental health issues supported termination on this ground).

We conclude that clear and convincing evidence supports the juvenile court’s finding. As noted above with regard to reasonable efforts, even accepting for purposes of argument Father’s contention that the court should disregard the physical condition of the home because of alleged inadequate efforts from DCS in connection with ameliorating the physical condition of his home, Father, nevertheless, continued to exhibit a long-term inability to comply with taking the medications prescribed for his mental illness. He suffered a significant deleterious psychological impact on his mental health as a result of his failure to follow through in taking his medication. DCS case manager Ms. Shelton testified she attempted to assist Father with his mental health challenges but that he refused. Father told Ms. Shelton that he was already receiving treatment at the Helen Ross McNabb Center, which DCS was able to confirm. DCS sought the release of medical records, but Father resisted for an extended period of time. DCS was able to schedule and pay for a psychological assessment for Father and also engaged in pill counts of Father’s mental health related medication.

Ultimately, Father did not follow his prescribed mental health treatment and declined to accept help offered by DCS. In connection with his serious mental health problems, Father experienced extreme paranoia and hallucinations, which he attempted to impose upon B.D.M. during supervised visitation and by means of contacting Foster Father. Father shared hallucinations of unicorns and flying creatures, fears of B.D.M.’s death by freak accidents, and paranoia that someone was entering into his home, urinating on items therein, and spying on him through his phone. Father’s paranoia and struggles with taking medication are long-standing, and Father continued to be non-compliant with taking his mental health medication shortly before trial. Due to Father’s inability to manage his mental illness, it appears unlikely that Father will be able to provide a suitable home at an early date. Accordingly, we conclude the juvenile court’s finding of this termination ground is supported by clear and convincing evidence.

## 2. Substantial Noncompliance with Permanency Plan

The juvenile court found clear and convincing evidence that Father had not substantially complied with the statement of responsibilities in a permanency plan. Termination can be ordered on clear and convincing evidence that “[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan. . . .” Tenn. Code Ann. § 36-1-113(g)(2). This ground requires the responsibilities as outlined by the plan to be “reasonable and related to remedying the conditions which necessitate[d] foster care placement.” *In re Carrington H.*, 483 S.W.3d at 537 (quoting *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002)). In analyzing this ground, the court does not merely “count[] up the tasks in the plan to determine whether a certain number have been completed.” *In re Carrington H.*, 483 S.W.3d at 537. Substantial noncompliance “requires more proof than that a parent has not complied with every jot and tittle of the permanency plan.” *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004). Instead, the parent’s noncompliance must be “substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met.” *Id.* “Trivial, minor, or technical deviations from a permanency plan’s requirements will not be deemed to amount to substantial noncompliance.” *Id.* Whether noncompliance is substantial is a question of law reviewed de novo with no presumption of correctness. *In re Ethan W.*, No. M2021-01116-COA-R3-PT, 2023 WL 415999, at \*6 (Tenn. Ct. App. Jan. 26, 2023) (citing *In re Valentine*, 79 S.W.3d at 548).

With regard to this ground for termination, Father again challenges the adequacy of the DCS’s assistance of Father with regard to the physical condition of the home. Father also argues that DCS failed to adequately provide support in connection with his mental health and drug treatment. However, “nothing in the plain language of Section 36-1-113 indicates that a petitioner in a proceeding to terminate parental rights is in fact required to put on proof of DCS’s reasonable efforts to assist the respondent parent,” with the exception of the reasonable efforts required for abandonment for failure to provide a suitable home. *In re Kaliyah S.*, 455 S.W.3d 533, 554 & n.31 (Tenn. 2015). Accordingly, “[f]or the ground of substantial noncompliance, DCS is not required to prove that it made reasonable efforts to assist the parent as an essential component of the ground for termination.” *In re Edward R.*, No. M2019-01263-COA-R3-PT, 2020 WL 6538819, at \*14 n.12 (Tenn. Ct. App. Nov. 6, 2020); see *In re J’Khari F.*, No. M2018-00708-COA-R3-PT, 2019 WL 411538, at \*10 (Tenn. Ct. App. Jan. 31, 2019) (noting that “DCS was not required to provide reasonable efforts in order to prove” substantial noncompliance); *In re Skylar P.*, No. E2016-02023-COA-R3-PT, 2017 WL 2684608, at \*7 (Tenn. Ct. App. June 21, 2017) (“...DCS is not required to prove it made reasonable efforts to assist Mother in complying with the requirements of the permanency plans for the trial court to terminate Mother’s parental rights based upon the ground of substantial noncompliance.”).

In any event, with regard to mental health and drug treatment, the record simply does not support Father’s contention that DCS did not make reasonable efforts. DCS endeavored to provide mental health and drug treatment support. Father declined to cooperate. With regard to mental health assistance, Father declined DCS’s offers of

assistance, noting that he was already in treatment at the Helen Ross McNabb Center. For an extended time period, Father also declined to allow DCS access to his medical records. DCS did conduct pill counts on mental health related medication and was successful in arranging and paying for a psychological evaluation. As for drug treatment support, Father repeatedly declined to cooperate with DCS as to random drug test administration. DCS also spoke with Father both in person and over the phone repeatedly emphasizing the importance of a residential drug treatment program. DCS helped to arrange for a drug and alcohol assessment. DCS also directed Father on how to utilize his insurance to obtain in-patient drug treatment.

Even assuming for purposes of argument that this court discounted the physical condition of Father's home, clear and convincing evidence would still exist to support this ground. Here, the permanency plan included requirements that Father complete a mental health assessment, alcohol and drug assessment, and parenting assessment and follow all recommendations. Father was to submit to random drug screens and pill counts, visit B.D.M., complete parenting classes, and obtain housing and transportation. These requirements are reasonably related to remedying the circumstances which led to B.D.M.'s removal, foremost among which were Father's severe mental illness and substance abuse. The juvenile court found that Father was substantially noncompliant with the plan. The court noted that Father admitted using methamphetamine and cocaine immediately prior to the filing of the petition. For a time, he refused to sign releases of information to allow DCS to verify his compliance. Father never completed the recommended non-offender parenting class. Most significantly, though, Father remained noncompliant with his mental health treatment and medication at the time of trial. His inability to comply with his medication has consistently led to his suffering from paranoia and hallucinations. Father has several times attempted to involve B.D.M. in his paranoia and hallucinations. Father has improved in terms of his drug abuse by successfully completing substance abuse treatment and remaining free from the use of drugs after completing the program. Nevertheless, Father's noncompliance with the parenting plan was substantial in light of the fact that his mental health was one of the foremost impediments to reunification and that he continued to be noncompliant with his mental health treatment. We conclude that the juvenile court's finding of this termination ground is supported by clear and convincing evidence.

### 3. Persistence of Conditions

Tennessee law permits the termination of parental rights on a finding of persistence of conditions upon a showing that:

(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

Tenn. Code Ann. § 36-1-113(g)(3).

The purpose behind this statutory provision is to prevent a child from languishing in foster care if it appears that the parent cannot demonstrate an ability to provide a safe and caring environment within a reasonable amount of time. *In re Nevada N.*, 498 S.W.3d at 606. "The failure to remedy the conditions which led to the removal need not be willful"; instead, even in the absence of any willful failure to remedy the conditions, an inability to provide fundamental care constitutes a condition preventing the child's safe return. *Id.* Accordingly, "this termination ground is not dependent on a parent's efforts to improve the circumstances that led to a child's removal. Rather, the focus lies on the results of those efforts." *In re Jeremiah B.*, No. E2022-00833-COA-R3-PT, 2023 WL 2198864, at \*8 (Tenn. Ct. App. Feb. 24, 2023).

Here, B.D.M. was removed from Father's home pursuant to a petition alleging dependency and neglect on December 18, 2020, and he has remained in DCS custody since that time. The removal petition alleged that DCS received the initial referral regarding sexual abuse by Father's friends, drug exposure, and concerns regarding Father's mental health. The petition detailed Father's inability to comply with the parenting plan, in particular relying on "concerns regarding the father's mental health and his noncompliance with medication management and mental health treatment." At the time of the dependency and neglect petition, Father had been unsuccessful in overseeing B.D.M.'s participation in remote schooling and unable to complete a mental health assessment or parenting assessment, to schedule alcohol and drug assessment, or to turn in paperwork to request housing. He had refused to participate in a drug screening and a pill count, and he reported he was not taking his mental health medication. He appeared disheveled, scattered, and

disoriented.

In terminating Father's rights, the juvenile court found that Father's untreated mental health condition or severe mental illness greatly impaired his ability to parent B.D.M. Father suffers from Schizoaffective Disorder, and his home was "in complete disarray and environmentally inappropriate" nine days prior to the termination hearing. On that day, a pill count revealed that Father was not taking his mental health medication as prescribed. The court noted that Father's medical records indicate long-standing non-compliance with treatment and medication. Father's untreated mental health condition had in the past led to extreme paranoia and hallucinations. The court found that the conditions leading to B.D.M.'s removal persist, preventing his safe return; that other conditions existed which, in all reasonable probability, would cause him to be subjected to further abuse or neglect; that there was little likelihood that the conditions would be remedied at an early date; and that the continuation of the parent-child relationship diminished his chance of integration into a safe, stable, and permanent home.

In opposition to this ground for termination, Father argues that DCS failed to make reasonable efforts to assist him in ameliorating the problems with the physical condition of the home and as to his mental health treatment. Initially, we note that this argument appears to be misdirected as "the language of the statute indicates only that the trial court is to consider DCS's reasonable efforts, or the lack thereof, in determining whether termination of the parent's rights is in the child's best interest" or the ground of abandonment by failure to provide a suitable home. *In re Kaliyah S.*, 455 S.W.3d at 554 & n.31. Additionally, as discussed above, DCS has shown reasonable efforts to assist Father with his mental health challenges, and even if we were to, for purposes of argument, disregard the physical condition of his home, this ground still would be adequately supported by the evidence presented.

It is uncontested that B.D.M. was removed from Father's custody pursuant to a dependency and neglect action and that he has been removed for over six months. The main concern of the petition, Father's inability to comply with treatment for his mental illness, has not changed. The record demonstrates that Father's struggles with complying with mental health treatment has persisted over the course of many years, and the court did not err in concluding there was little likelihood these impediments would be remedied at an early date. Father not only has a history of suffering from paranoia and hallucinations, but he has actively attempted to involve B.D.M. in his paranoia and hallucinations, predicting B.D.M.'s accidental death or B.D.M.'s victimization at the hands of some spy and attempting to get B.D.M. to verify his hallucinations. Accordingly, the court did not err in concluding that the continuation of the relationship diminished B.D.M.'s chances of early integration into a safe, stable, and permanent home. We conclude that clear and convincing evidence supports this ground.

#### 4. Failure to Manifest a Willingness and Ability to Assume Custody



Father's rights were also terminated on the basis that he had failed to manifest a willingness and ability to assume custody. A parent's rights to a child may be terminated when:

A parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child

Tenn. Code Ann. § 36-1-113 (g)(14).

In order to prove the first prong of (g)(14), DCS had to show that Father lacked either a willingness or an ability to assume legal and physical custody. *See In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020) (the party seeking termination need not show both a lack of willingness and ability). "Ability focuses on the parent's lifestyle and circumstances," while willingness revolves around a parent's attempts "to overcome the obstacles" preventing the parent from assuming custody. *In re Serenity W.*, No. E2018-00460-COA-R3-PT, 2019 WL 511387, at \*6 (Tenn. Ct. App. Feb. 8, 2019). A parent's express desire to reunite with the child is insufficient to establish a willingness to assume custody. *See In re Nicholas C.*, No. E2019-00165-COA-R3-PT, 2019 WL 3074070, at \*17 (Tenn. Ct. App. July 15, 2019). On the contrary, "[w]hen evaluating willingness, we look for more than mere words." *In re Zaylee W.*, No. M2019-00342-COA-R3-PT, 2020 WL 1808614, at \*5 (Tenn. Ct. App. Apr. 9, 2020) (quoting *In re Ayden S.*, No. M2017-01185-COA-R3-PT, 2018 WL 2447044, at \*7 (Tenn. Ct. App. May 31, 2018), *overruled on other grounds by In re Neveah M.*, 614 S.W.3d at 677). This court may instead consider "whether a parent has attempted 'to overcome the obstacles that prevent them from assuming custody or financial responsibility for the child.'" *In re Jaxx M.*, No. E2018-01041-COA-R3-PT, 2019 WL 1753054, at \*9 (Tenn. Ct. App. Apr. 17, 2019) (quoting *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at \*8 (Tenn. Ct. App. Mar. 22, 2019)).

Here, Father has consistently professed a desire to obtain custody of B.D.M. He also notes his progress with regard to addressing his drug abuse and that B.D.M. lived with him for seven years. He further argues that DCS failed to adequately apprise him of the deficiencies in the physical condition of his home.

It is clear that Father cares deeply for his child. However, Father's circumstances, in particular his untreated mental illness, continue to be an obstacle to reunification. Father sought treatment for substance abuse and has made meaningful progress in addressing his substance abuse problem. Father, however, was not able to successfully comply with treatment for his Schizoaffective Disorder. Father's medical records reveal habitual

noncompliance with medication that was accompanied by paranoia that the medication is meant to harm him. Father's untreated mental health condition has led him to suffer paranoia and hallucinations. These have in the past included hallucinations that ghosts were talking to him through the television, beliefs that he was being followed or spied on, and hallucinations of unicorns and other objects in the sky. Nine days prior to the hearing, Ms. Shelton observed that Father remained noncompliant with taking his mental health medication. We conclude that the juvenile court did not err in concluding that Father failed to manifest an ability and willingness to assume custody.

DCS also had to demonstrate that returning B.D.M. to Father would pose a risk of substantial harm to B.D.M.'s physical or psychological welfare. A substantial risk of harm requires "a real hazard or danger that is not minor, trivial, or insignificant" and requires the harm to be more than a "theoretical possibility" but to be "sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not." *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001); see *In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at \*8 (Tenn. Ct. App. Apr. 4, 2018). As noted above, Father was noncompliant with his mental health medication, and his failure to treat his condition had previously led to paranoia and hallucinations. During supervised visitation, Father attempted to impose his paranoia on B.D.M. by telling B.D.M. he would be crushed by a tree, carried away by a rip current, or killed by a shark. Father contacted Foster Father with fears that someone, who had previously followed Father hiding behind a mailman, was following B.D.M. Father also attempted to engage B.D.M. in his hallucinations during supervised visitation, speaking about unicorns in the sky and a dangerous cloud phenomenon. B.D.M. attempted unsuccessfully to redirect Father during these episodes. Responding to his Father's mental health challenges, B.D.M. has expressed a desire to stay in his foster home and a fear of returning to Father's custody. In terms of the Father's contention regarding B.D.M. successfully living with him for seven years, it is worth remembering that a halcyonic view of this time would be misplaced. DCS became involved initially, in part, because B.D.M. was the victim of sexual abuse by family friends that Father failed to immediately report out of concern for getting his truck returned and having transportation. Additionally, Father conceded that his drug abuse at that time meant that he "wasn't acting right," that he "had lost [his] mind," and that he was "out of it." He also conceded that he had been "very erratic" and "paranoid." We conclude that returning B.D.M. to Father's custody would pose a real, substantial danger to B.D.M.'s physical or psychological welfare. Accordingly, the juvenile court did not err in finding both prongs of this ground established by clear and convincing evidence.

## 5. Mental Incompetence

The juvenile court also terminated Father's rights for mental incompetence. Under the relevant statute,

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption

proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

Tenn. Code Ann. § 36-1-113 (g)(8).

In order “to protect children from harm caused by a parent who is incapable of safely caring for them,” this statute does not require willfulness. *In re Josie G.*, No. E2021-01516-COA-R3-PT, 2022 WL 4241987, at \*9 (Tenn. Ct. App. Sept. 15, 2022) (quoting *In re D.A.P.*, No. E2007-02567-COA-R3-PT, 2008 WL 2687569, at \*5 (Tenn. Ct. App. July 9, 2008)). The statute is intended to prevent a child from remaining indefinitely in foster care when the parents will not be able to properly care for the child due to mental illness. *In re Diamond F.*, No. M2020-01637-COA-R3-PT, 2022 WL 905791, at \*10 (Tenn. Ct. App. Mar. 29, 2022). The relevant inquiry is whether clear and convincing evidence establishes that “the parent of the child is incompetent to adequately provide care and supervision because the parent's mental condition is so impaired and likely to remain so that it is unlikely that the parent will be able to assume care and responsibility for the child in the future.” *In re Jayda J.*, No. M2020-01309-COA-R3-PT, 2021 WL 3076770, at \*6 (Tenn. Ct. App. July 21, 2021) (quoting *State Dept. of Children's Services v. Whaley*, No. E2001-00765-COA-R3-CV, 2002 WL 1116430, at \*14 (Tenn. Ct. App. May 30, 2002)). A finding of mental incompetence does not require a condition that is untreatable. *In re Josie G.*, 2022 WL 4241987, at \*10. Instead, the statute requires impairment to the extent that the parent cannot adequately provide care and supervision of the child. *Id.* DCS must show

(1) that the parent is presently unable to care for the child; and (2) that the parent is unlikely to be able to care for the child in the near future. *In re Joseph D.*, No. M2021-01537-COA-R3-PT, 2022 WL 16848167, at \*19 (Tenn. Ct. App. Nov. 10, 2022) (citing *In re David J.B.*, No. M2010-00236-COA-R3-PT, 2010 WL 2889265, at \*7 (Tenn. Ct. App. July 23, 2010)).

Here, Father has been diagnosed with Schizoaffective Disorder and has a long history of noncompliance with taking his prescribed treatment medication. Father remained noncompliant at the time of trial. Father has experienced repeated paranoia that people are following him or spying on him using his phone and breaking into his home to urinate on items in his home. He arrived to visit B.D.M. with his phone in a box lined with tin foil and with the phone's camera and microphone covered. He left Foster Father a message that he believed someone was following B.D.M. and that this person had previously followed him, hiding behind a mailman. He also told B.D.M. he might be crushed by a tree if he went outside when it was windy and that he could be carried away by a riptide or attacked by a shark when on vacation with his foster family. Father previously reported seeing dead people, including his mother and B.D.M.'s mother, in the television, and he reported B.D.M. also saw B.D.M.'s dead mother. Father left a voicemail for Foster Father detailing a hallucination in which giant creatures were floating over his apartment "looking dead at me." Father attempted to involve B.D.M. in his hallucinations during supervised visitation, and he resisted B.D.M. redirecting him. He spoke to B.D.M. about a unicorn and was upset when B.D.M. laughed. *See In re Ashanti P.*, 2021 WL 5549590, at \*17 (mental incompetence was supported when mother's Schizoaffective Disorder led to bizarre and irrational behavior and mother had not addressed her mental health needs). During the termination hearing, Father did not remain under control and instead repeatedly interjected statements while others were testifying. *See In re Joseph D.*, 2022 WL 16848167, at \*20 (citing mother's inability to control her frustration during trial in concluding her mental health was so impaired she would not be able to care for child in the near future). Father's mental health has also led to struggles with being able to keep his home environmentally appropriate. Father's home was extremely cluttered and full of trash at the time B.D.M. was removed in 2020, and it remained environmentally inappropriate nine days before the hearing, with extreme clutter and no furniture set up. Father cleaned much of the home before the hearing, but testified the kitchen was a "wreck" and had bugs in it.

DCS introduced evidence that B.D.M. expressed a desire to stay with his foster family until he was an adult and that B.D.M. did not want to return to Father's custody. B.D.M. was bonded with his foster family and had not had contact with Father due to a no-contact order after Father's attempts to include B.D.M. in his hallucinations. The court noted in its findings that the evidence showed that visitation did not cultivate a positive relationship between Father and B.D.M.

While Father's appellate argument focuses on DCS's efforts, the statute does not

require reasonable efforts under this ground. *In re Kaliyah S.*, 455 S.W.3d at 554; *State, Dep't of Children's Servs. v. Mims*, 285 S.W.3d 435, 449 (Tenn. Ct. App. 2008). Father argues that there was no expert or other testimony that he would be unable to assume care for B.D.M. in the near future. See *In re Cyric W.*, No. M2021-00410-COA-R3-PT, 2021 WL 5881753, at \*24 (Tenn. Ct. App. Dec. 13, 2021), *perm. app. denied* (Tenn. Apr. 1, 2022). The record including Father's medical records therein, however, reflect that Father has attempted to participate in treatment over the course of years but has not successfully managed his mental health condition. Father's contention that with mental health treatment, he could improve and handle his parenting responsibilities is misplaced when Father has persisted over the course of years in failing to follow his prescribed treatment plan including taking medication for his mental health problems.

Father also contends that B.D.M. was successfully able to live with him for seven years as a basis for rejecting this ground. As stated above and similarly relevant to Father's argument here, it is worth remembering that a halcyonic view of this time would be misplaced. DCS became involved initially, in part, because B.D.M. was the victim of sexual abuse by family friends that Father failed to immediately report out of concern for getting his truck returned and having transportation. Additionally, Father conceded that his drug abuse at that time meant that he "wasn't acting right," that he "had lost [his] mind," and that he was "out of it." He also conceded that he had been "very erratic" and "paranoid."

The juvenile court found that Father's mental condition was impaired at present, and would probably remain so, to the extent that it would be unlikely he would be able to resume care of and responsibility for B.D.M. in the near future, and it found termination in B.D.M.'s best interest under this ground. Father objects to the court's use of the word "probably," but the court was merely rephrasing the statutory requirement that Father would not "likely" be able to resume care of B.D.M. We agree that this ground is established by clear and convincing evidence.

## B. Best Interest

Having determined that there were grounds for termination, the juvenile court also considered and found termination to be in B.D.M.'s best interest. When termination is supported by the establishment of at least one statutory ground for termination of parental rights, as here, the focus shifts to what is in the child's best interest. *In re Audrey S.*, 182 S.W.3d 838, 877 (Tenn. Ct. App. 2005). "Facts considered in the best interests analysis must be proven by 'a preponderance of the evidence, not by clear and convincing evidence.'" *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (quoting *In re Kaliyah S.*, 455 S.W.3d at 555). The court, however, must determine whether the sum of the proof amounts to clear and convincing evidence that termination is in the child's best interest. *Id.* The statutory best interest factors in Tennessee Code Annotated section 36-1-113(i) are "illustrative, not exclusive," and the court must not merely "tally[]" the statutory factors

but analyze the weight and relevance under the facts and circumstances of the case. *Id.* at 681-82. “Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case.” *Id.* at 682. Under some circumstances, one factor may dictate the outcome of the best interest analysis, although the court is required to consider all the factors and any other relevant proof. *Id.* The relevant statutory considerations include a list of non-exclusive factors to be considered by the court:

(i)(1) In determining whether termination of parental or guardianship rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court.

Those factors may include, but are not limited to, the following:

(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.

(2) When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.

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

The juvenile court found that B.D.M. had a need of stability and continuity of placement, that a change in caretakers and physical environment would have a negative effect on his emotional, psychological, or medical conditions, and that Father had failed to demonstrate continuity and stability in meeting B.D.M.'s material, educational, housing,

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<sup>3</sup> "This court applies the versions of the parental termination statutes in effect on the date the petition was filed." *In re J.S.*, No. M2022-00142-COA-R3-PT, 2023 WL 139424, at \*6 (Tenn. Ct. App. Jan. 10, 2023).

and safety needs. Tenn. Code Ann. § 36-1-113(i)(1)(A)–(C). The court found that there was no healthy and secure parental attachment and no reasonable expectation that Father could create such an attachment. Tenn. Code Ann. § 36-1-113(i)(1)(D). The juvenile court found that Father had failed to demonstrate a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in his home. Tenn. Code Ann. § 36-1-113(i)(1)(J). The court added that Father’s use of controlled substances had rendered him unable to consistently care for the child in a safe and stable manner. Tenn. Code Ann. § 36-1-113(i)(1)(J). Finding that Father had failed to take advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions, the court concluded Father had failed to make a lasting adjustment of circumstances despite DCS’s reasonable efforts to assist him. Tenn. Code Ann. § 36-1-113(i)(1)(K)–(L). The court further found that Father had not demonstrated a sense of urgency in addressing the circumstance, conduct, or conditions that necessitated removal, that he had never provided safe and stable care for B.D.M., and that he had no understanding of the basic and specific needs required for B.D.M. to thrive. Tenn. Code Ann. § 36-1-113(i)(1)(M), (O), (P). Father had not demonstrated the ability and commitment to creating and maintaining a home that met the child’s basic and specific needs and in which the child could thrive. Tenn. Code Ann. § 36-1-113(i)(1)(Q). Finally, the court found that 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(i)(1)(T).

Father clearly loves B.D.M. deeply and desires to be reunited with him. We note that the evidence at trial established that since the filing of the petition, Father has successfully completed substance abuse treatment and repeatedly tested negative for drugs. *See In re Matthew K.*, No. E2020-00773-COA-R3-PT, 2021 WL 3578703, at \*25 (Tenn. Ct. App. Aug. 13, 2021) (considering Mother’s success in ceasing her drug use after the filing of the petition in the best interest analysis); *In re James W.*, No. E2020-01440-COA-R3-PT, 2021 WL 2800523, at \*17 (Tenn. Ct. App. July 6, 2021) (considering mother’s progress in treatment since the filing of the petition). Father has made meaningful progress with regard to his drug abuse. Accordingly, the evidence preponderates against the finding that Father’s use of controlled substances renders him currently unable to consistently care for the child in a safe and stable manner. Tenn. Code Ann. § 36-1-113(i)(1)(J).

Unfortunately, despite Father’s sincere desire to parent B.D.M. and progress with substance abuse, Father has proven unable to address his severe mental health issues. Father consistently struggled with his mental health and with maintaining a sanitary home for years prior to the removal. Father has consistently failed to take his mental health medication. Father’s Schizoaffective Disorder caused him to have paranoia that he was being followed and observed or that others were out to get him. It caused him to hallucinate and believe that he saw dead people or that people on television were speaking to him. He reported urges to harm his pets. Father was unable to maintain his home in a condition suitable to house a child. During supervised visitation, he imposed his paranoid ideation



on B.D.M., telling B.D.M. that B.D.M. would die in unlikely accidents. He also attempted to involve B.D.M. in hallucinations regarding creatures flying through the sky, a unicorn, and a dangerous cloud phenomenon. Ms. Orsulak testified that B.D.M. attempted to redirect Father and that the two did not frequently interact in a productive way. Father came to visitation with his telephone contained in a box lined with aluminum foil and with the speaker and camera covered. While Father successfully progressed as to his substance abuse, Father continued to be noncompliant with his mental health medication at the time of the trial. The juvenile court did not err in finding that Father had not demonstrated an ability to meet B.D.M.'s basic needs, that B.D.M. did not have a secure and healthy attachment to Father, that Father had not demonstrated a lasting adjustment of his circumstances such that reunification would be safe, that Father proved unable to take advantage of programs to assist his mental health and did not demonstrate urgency in resolving this impediment, that DCS had made reasonable efforts, that Father has failed to provide stable care or understand B.D.M.'s needs, that he has proven unable to maintain a home which meets B.D.M.'s needs. Most importantly, Father's mental or emotional fitness would be detrimental to B.D.M. and prevents Father from providing safe and stable care and supervision. B.D.M. expressed a desire to stay in his current placement and is attached to his foster parents. The evidence supports the court's findings that a change in caretakers would have a negative effect on B.D.M. Assessed in light of all of the statutory factors, there is clear and convincing evidence to support the conclusion that termination is in B.D.M.'s best interest.

### III.

For the aforementioned reasons, we affirm the juvenile court's conclusions as to the grounds for termination, the juvenile court's best interest conclusion, and the ultimate decision of the juvenile court to terminate Father's parental rights. Costs of this appeal are taxed to the appellant, S.M., for which execution may issue if necessary.

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JEFFREY USMAN, JUDGE