

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 1, 2023

IN RE KLOWII W., ET AL.

**Appeal from the Juvenile Court for Knox County
No. 10061 Timothy E. Irwin, Judge**

No. E2022-01789-COA-R3-PT

This is a parental rights termination case. The Tennessee Department of Children’s Services (“DCS”) filed a petition in the Juvenile Court for Knox County (“the Juvenile Court”) seeking to terminate the parental rights of Trent W. (“Father”) to his minor children Klowii W. and Mariah W. (collectively, “the Children”). After a hearing, the Juvenile Court entered an order terminating Father’s parental rights to the Children. The Juvenile Court found by clear and convincing evidence that DCS had proven the grounds of abandonment by failure to provide a suitable home, substantial noncompliance with the permanency plans, persistent conditions, and failure to manifest an ability and willingness to assume custody. The Juvenile Court also found by clear and convincing evidence that termination of Father’s parental rights is in the Children’s best interest. Father appeals, arguing that DCS failed to prove either grounds or best interest. We find that all four grounds found by the Juvenile Court were proven by the requisite clear and convincing evidence. We further find by clear and convincing evidence, as did the Juvenile Court, that termination of Father’s parental rights is in the Children’s best interest. 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.

Michael J. Stanuszek, Knoxville, Tennessee, for the appellant, Trent W.

Jonathan Skrmetti, Attorney General and Reporter, and Mara L. Cunningham, Assistant Attorney General, for the appellee, the Tennessee Department of Children’s Services.

OPINION

Background

Klowii was born to Father and Candice D. (“Mother”) in September 2011. Mariah was born to Father and Mother in September 2013.¹ In June 2019, DCS began receiving referrals concerning the family. The referrals alleged environmental neglect, sexual abuse, and mental health concerns. DCS worked with the family, but concerns remained. DCS filed a petition alleging that the Children were dependent and neglected. In October 2019, the Children were removed into DCS custody. The Juvenile Court entered a stipulated dependency and neglect finding based on Father’s inability to take care of the Children due to his failure to take medication for his mental health issues and for his educational neglect of a child who is not subject to this appeal and has since reached majority age.

In October 2019, a permanency plan was created which included the following responsibilities for Father: complete a mental health assessment and follow treatment recommendations; complete parenting classes and demonstrate parenting skills; obtain and maintain a legal source of income and provide proof of such to DCS; comply with court orders; cooperate with DCS and service providers; sign required release forms; pay such child support as ordered or \$40 a month per child until an order is issued; schedule at least four hours of supervised visitation per month; do not incur new legal charges and resolve pending legal matters; obtain and maintain a safe home; and make sure that the Children are transported by a licensed driver. Father agreed with the plan.

In April 2020, a second plan was created. This second plan required Father to do as follows: keep cooperating with his mental health recommendations and medication treatment; complete approved parenting classes and demonstrate learned parenting skills in visitation; obtain and maintain a legal source of income and provide proof of such to DCS; maintain appropriate housing; keep complying with court orders; pay court-ordered child support of \$80 per month per child; visit at least four hours a month; keep ensuring that the Children are driven by a licensed driver; and do not incur any legal charges. Father agreed with this plan, as well. In December 2020, the permanency plan was updated after difficulties emerged with a trial home placement. Father was to address domestic violence through counseling or classes. Father completed his mental health assessment, but he needed to continue with recommendations. In May 2021, the permanency plan was updated again to add an additional mental health assessment.

¹ Mother’s pleadings are separate and she is not a party to this appeal. Mother also has two other children by different fathers who are not subject to this appeal.

On July 19, 2021, DCS filed a petition in the Juvenile Court seeking to terminate Father's parental rights to the Children. DCS alleged five grounds: abandonment by failure to visit; abandonment by failure to provide a suitable home; substantial noncompliance with permanency plan; persistent conditions; and failure to manifest an ability and willingness to assume custody. DCS alleged further that termination of Father's parental rights is in the Children's best interest. This matter was tried in August 2022.

Testifying first was Alisha Dyer ("Dyer"), a DCS family service worker who worked on the Children's case through the end of May 2022. Dyer testified that the Children entered DCS custody in October 2019 because of environmental and educational neglect. When the Children entered DCS custody, the department helped the parents by making a permanency plan, paying for mental health assessments, paying for transportation, and supervising visitation. In September 2020, DCS attempted a trial home placement of the Children with Mother and Father. After a brief period, problems emerged. Dyer testified:

I went out on November the 5th and looked through the trailer, and it was no longer just clutter. There was trash. There was flies. There was a medicine bottle on the floor of the kitchen where it was within the kids' reach. The toilet wasn't working. They had just put in a used refrigerator the morning of right before I got there. It was not even cold. The kitchen sink was leaking where they had to use buckets to even clean up, but -- there was dog pee in the floor beside the front door. There was trash all out in the yard. It was not a healthy environment.

On November 4, 2020, Father told Dyer that he was leaving the family. The Children returned to DCS care. Father eventually moved back to Baltimore, Maryland, where he is from. Dyer tried to reach out to Father's medication management provider in Maryland to gather his records to see if he was still on medication management and receiving therapy. Father did not provide proof to Dyer that he was consistently in therapy. Father was on medication management for Bipolar I with psychotic features. When Father moved to Baltimore, he wanted to continue his therapy with Next Step Behavioral Health. Dyer submitted service requests. However, Father said that he was unable to attend the therapy and wanted help to find a therapist there. Father sent Dyer a copy of his insurance card, and she called to get in touch with a couple of providers. Ultimately, Father never provided any proof that he attended therapy after moving back to Baltimore. With regard to housing, Dyer stated that Father lives in a two-bedroom apartment in Baltimore. From March 18, 2021, to July 18, 2021, Father engaged in visitation with the Children five times for a total of four hours and twenty-seven minutes. He was offered two visits per month by Zoom.

With respect to the permanency plan, Dyer stated that Father had completed a mental health assessment; that he had completed a “full psychological”; that he had completed parenting classes; that he had provided Dyer with a lease; that he has a learner’s permit and uses public transportation; and that child support was taken out of his check. Father typically visited the Children during his lunch break at work. While Mariah would want to engage with Father, she got bored after five or ten minutes. Klowii would essentially just lay with the phone beside her. Dyer testified that Father’s relationship with Mother ended in November 2020.

On cross-examination, Dyer said that Father would ask her if he still needed to do anything, and she would answer that he needed to continue with therapy. Father told Dyer that “he never was able to get any therapy in Baltimore.” Dyer then spoke with Father’s medication management provider, which offered free therapy. Father told Dyer in January of 2021 that he would talk to his medication management provider about resuming therapy. Dyer acknowledged that Father had completed domestic violence counseling. Dyer said that, based on a video tour Father gave her, his home looked appropriate if unfurnished.

Ke’Ericka Houston (“Houston”), a family service worker assigned to the Children’s case since April 2022, testified next. Houston testified that Father was not in therapy. Regarding the Children’s views about visiting with Father, Houston said: “They don’t want to visit their father. They don’t want to visit because they’re boring. They don’t talk about anything. All they do is sit there. They’re weird.” On the other hand, the Children have a good relationship with their foster parents. The Children live with their half-sister, the foster parents, and two biological children of the foster parents. The Children attend therapy and are doing well in school.

Kristen France (“France”), a therapist, testified briefly. France had performed an evaluation of each of the Children. France stated that the Children seemed “very excited and happy” to be going to their current foster home.

One of the children’s foster parents (“Foster Mother”) testified after France. The Children had been in Foster Mother’s home on a permanent basis since July 2022. Before that, the Children had “respite” in her home in June 2022. Foster Mother said that the Children sleep in bunk beds in an all-girls room. Both Foster Mother and her spouse work. They would like to adopt the Children.

Sean McPherson (“McPherson”) testified next as an expert in psychological examination. In 2022, McPherson performed a psychological evaluation of Father. On cross-examination, McPherson stated with regard to Father: “His presentation to -- historical presentation, as well as his -- his presenting diagnostic features, put him in a category that would make him -- it would make it very difficult for him to be a single

parent, which is what he had told me he was wanting to pursue.” McPherson stated further that “[Father’s] multiple hospitalizations, as well as just the lifestyle that he was living, and how he had demonstrated that he was handling stress and just life, in general, he was not a great caretaker of himself individually, much less becoming the caretaker of two young girls.” As to Father’s parenting ability, McPherson concluded that “there was not a good prognosis for him being an effective parent without some strong supports in place.”

Ashley Mullen (“Mullen”), the Children’s Camelot worker, testified next. Mullen said that the Children are “thriving” in their foster home. According to Mullen, the Children got bored on their visits with Father. Mullen had no concerns about the Children remaining with the foster parents.

Father testified last. Father met Mother in a chat room. In 2010, Father moved to East Tennessee. He later moved back to Baltimore, his original home. Father lives by himself in an apartment. He said that if the Children come to live with him, they would have their own bedroom. Father works as a dietary aid in a nursing home. He is paid \$13.50 per hour and works 40 hours per week. Father prepares food and serves patients at the nursing home. He stated that he had not heard about McPherson’s recommendation for counseling until the month of the trial and that he had reached out about setting up counseling. Continuing his testimony, Father said that he kept up with his medication management. He stated that he was still married to Mother, but they were no longer a couple. Father testified: “I made mistakes ... getting into a relationship with somebody I barely knew, which was [Mother], but we have two children, and it’s not their fault of the things that’s transpired. But I just hope that the judge has compassion ... I can take care of my children. I don’t abuse them.” On cross-examination, Father said that he could not recall if he asked his medication management provider whether they could offer him therapy. He “[v]aguely” recalled Dyer telling him to set up therapy. Father agreed that he knew for a long time that he needed to get back into therapy. Other than telling Dyer about Next Step, his other actions up through the month of trial toward getting back into therapy were “little to none.”

In November 2022, the Juvenile Court entered its Order Terminating Parental Rights and Final Decree of Partial Guardianship. In its order, the Juvenile Court found that DCS had failed to prove against Father by clear and convincing evidence the ground of abandonment by failure to visit. However, the Juvenile Court found that four grounds for termination of parental rights were proven against Father by clear and convincing evidence: (1) abandonment by failure to provide a suitable home; (2) substantial noncompliance with the permanency plans; (3) persistent conditions; and (4) failure to manifest an ability and willingness to assume custody. The Juvenile Court found further, also by clear and convincing evidence, that termination of Father’s parental rights is in the Children’s best interest. The Juvenile Court found, in detailed and relevant part:

[Failure to Provide a Suitable Home]

The trial home placement was suspended on November 5, 2020. The children were removed from Respondent's care, for the second time, due to the Respondent's educational neglect, medical neglect, and his inability to provide appropriate care and supervision. Respondent's home had no working toilet or refrigerator, the sink was leaking, the home was cluttered, there were medicine bottles on the floor, and the home was covered in trash, as well as dog urine. Furthermore, the children had not been attending school, had not been bathed in two weeks, and were primarily cared for by their older half-sister, Tiara. On November 4, 2020, Respondent left the children in the home with the mother and called the Department. The father told FSW Dyer that he could no longer care for the children. Due to the deplorable conditions, the trial home placement was suspended on November 5, 2020. Prior to November 4, 2020, the father had resided in the travel trailer for over a year with the mother.

During the four months following the removal and closer in time to the suspension of the trial home placement, November 6, 2020 to March 6, 2021, the Department of Children's Services made reasonable efforts to assist Respondent to provide a suitable home for the children. The Department attempted to help Respondent in addressing his mental health issues by providing therapy through Health Connect of America and providing a psychological assessment. When the father moved to Baltimore in January of 2021, the Department continued to provide Health Connect of America therapeutic services via telephone. When the father stated that he preferred to attend therapy in Baltimore the Department attempted to help the father find services. The Department also offered visitation. Additionally, DCS provided services to support the children's basic needs for health, education and the necessities of life, including food, clothing and shelter; a nurturing foster care placement; and ongoing case management to monitor the safety of the children and address their medical needs and dental needs.

During the aforementioned four months, November 6, 2020 to March 6, 2021, Respondent did not address mental health or have stable housing. The father was diagnosed Bipolar I with Psychotic features. The father was to continue with individual therapy and he had not attended therapy. The father had previously been attending therapy at Health Connect of America via telephone but failed to continue with said therapy. When he moved to Baltimore in January of 2021, the Department continued to pay for therapeutic services through Health Connect but the father chose not to attend

the telephone sessions. Further from November 6, 2020 to March 6, 2021 the father was homeless. The father did not obtain a residence until July of 2021.

The father's failure to make even minimal efforts to improve the home and personal conditions demonstrates a lack of concern for the children to such a degree that it appears unlikely that he will be able to provide a suitable home for the children at an early date. Respondent has failed to address his mental health issues, which is one of the main reasons the children entered the care of the Department. The finding of failure to provide a suitable home is due to the father's inability to hang onto his kids once he got them back, and his continuing mental health struggles.

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

[Substantial Noncompliance with Permanency Plan]

The Department provided the terms of the permanency plan and the plan requirements were reasonable and related to remedying the conditions that caused the children to be removed from the Respondent's custody in the first place. Respondent [Father's] noncompliance was substantial in light of the degree of noncompliance and the importance of the particular requirements that were not met by the Respondent. The requirements of the permanency plans were intended to address the problems that led to removal; they were meant to place the father in a position to provide the children with a safe, stable home and consistent appropriate care. Respondent did not put in any real effort to complete the most vital requirement of the plan, mental health treatment, in a meaningful way in order to place himself in a position to take responsibility for the children.

The initial permanency plan was developed on October 23, 2019 and ratified on December 17, 2019. The initial plan was revised on April 15, 2020, ratified on August 20, 2020, and revised again on October 10, 2020. The permanency plan was revised again on December 15, 2020, when the children were returned to the physical custody of the Department, and has since been revised. The plan required Respondent to complete a mental health assessment and comply with recommendations from said assessment, complete parenting education, obtain and maintain appropriate housing, comply with all court orders, pay child support, maintain regular contact with

the Department, obtain a legal source of income, have transportation, be law abiding, and consistently participate in visitation.

As to the father's mental health, he has yet to be in substantial compliance. Since the father moved to Baltimore in January of 2021, he was aware that he needed to attend therapy and has not done so. The father has an extensive mental health history. As shown by the psychological evaluation, his diagnoses include Bipolar with Psychotic features. He had two occurrences of inpatient hospitalizations, between 2015 and 2018. Respondent is currently receiving medication management but has not attended therapeutic services since December of 2020. As written by the expert witness in the psychological assessment, page 14:

However, prognosis for successful single parenting remains very low. His work schedule and personal income do not demonstrate a preparedness to assume responsibilities as a primary caregiver for two young girls. Additionally, he has poor insight into his mental illness, with past stressors exacerbating his condition to the degree that he has abandoned all personal responsibilities. As he has also chosen to not involve any of his family in his mental health recovery, he is not considered a good candidate to be a primary caregiver. It is likely that intellectual deficits and presenting mental health issues are impairing his current ability, preventing him from using previously learned skills as needed. It would be necessary for him to demonstrate to the court and DCS that he has the sustained ability to consistently use appropriate skill sets to provide for selfcare and childcare responsibilities and as he now lives out of state, the support needed would be difficult for the state to provide and monitor. However, should there be family members who are willing to assume primary custodial responsibilities, [Father] could then be afforded the opportunity to excel as a second caregiver.

In addition, there were no family members present during the hearing to provide support for the father. The expert witness also recommended that the father engage with a Counselor and a Case Manager. As shown by the expert witness, Respondent's mental health issues are substantial enough to warrant his failure to attend therapy as noncompliance with the permanency [plan].

Respondent's visitation with the children has been sporadic at times, and in 2022 he visited the children on two occasions. Blame for the failure

to appear at visitation was placed upon the father's work schedule and the girls' desire not to attend visitation with the father. However, the Friday before the hearing, the father missed a scheduled visit even though the FSW reminded the father of said visit.

Respondent is in substantial noncompliance since Respondent has not substantially complied with the responsibilities and requirements set out for him in the permanency plans. Respondent has failed to comply with the main part of the permanency plan and has not complied with the recommendations of his mental health assessment or psychological assessment. Further, visitation with the children has been an issue since the trial home placement was revoked. Respondent has completed parenting education, obtained appropriate housing, paid child support, maintained regular contact with the Department, obtained a legal source of income, has transportation, and is a law-abiding citizen. The missing therapy piece is a big enough piece to where Respondent is not in compliance with the permanency plan. Respondent has failed to comply with the main component of the permanency plan, mental health, as such he is in substantial noncompliance with the permanency plan.

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

[Persistent Conditions]

As of the first date setting this matter for hearing, it has been more than six months since the Court order was entered that placed the children into the Department of Children's Services' custody and removed the children from the custody of the father. The conditions that led to the removal still persist: Respondent has not addressed his mental health issues and inability to provide appropriate care and supervision. Further, the father has not consistently visited with the children. The children were removed from the parents initially due the parents' inability to maintain an appropriate and safe home for them. The children were allowed to return to the care of the father. As shown by the entered photographs, the father could not maintain the home. The children were living in squalor and had to be returned to the physical custody of the Department. The father has not addressed the main issue which caused him to be unable to maintain the children, his mental health.

The conditions that led to the children's removal still persist, preventing the children's safe return to the care of Respondent or other conditions exist that, in all reasonable probability, would cause the children to be subjected to further abuse or neglect, preventing the children's safe return to the care of the Respondent. There is little likelihood that these conditions will be remedied at an early date so that the children can be safely returned to Respondent in the near future. Respondent is barely able to make ends meet just caring for himself. If the children were returned to his care, it is likely the same issues that occurred on the trial home placement would occur again. The continuation of the parent and child relationship greatly diminishes the children's chances of early integration into a safe, stable, and permanent home. The children are thriving in the foster home and all their needs are being met.

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

[Failure to Manifest an Ability and Willingness to Assume Custody]

Respondent failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the children. Placing the children in the legal and physical custody of Respondent would pose a risk of substantial harm to the physical or psychological welfare of the children. Respondent has unresolved mental health issues and the minor children are significantly bonded to the foster family. The father has shown that he has mental health issues and an inability to do what he needs to for the children. This inability is exhibited by the father's lack of scheduling. In order to facilitate the psychological assessment, the expert witness attempted to schedule appointments for many months. Further, Respondent has been unable to keep track of visitation times with his children. The father has not shown that he has a family support system to help with the children and the Court doesn't think the father can care for the children by himself. The father has shown that he was unable to maintain the physical environment of the children as they were living in squalor during the trial home placement. Respondent lacks the ability to care for children.

DCS has proven, by clear and convincing evidence, the ground for termination for failure to manifest an ability and willingness to assume custody against Respondent [Father].

[Best Interest]

The nonexclusive list of best interest factors, which are found in T.C.A. § 36-1-113(i), are supported by the facts of this case and weigh in favor of terminating the Respondent's parental rights. The best interest factors clearly indicate that termination of Respondent's parental rights is in the best interest of the minor children. In coming to that determination, the Court considered the following:

1. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] due to the effect that a termination of parental rights will have on the children's critical need for stability and continuity of placement throughout the children's minority. The children were placed in the care of the Department on October 2, 2019. The foster parents have provided care for the children and wish to continue to provide them with stability and continuity.

2. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since changing caretakers and physical environment is likely to have a negative effect on the children's emotional, psychological and medical condition. The children have been in the care of the Department since October of 2019 and the parent still has not shown an ability to safely provide for the care and supervision of the minor children. The foster parents have continuously provided for the children's physical, emotional, medical and psychological needs, changing caretakers would have an extreme negative effect on the children.

3. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the parent has not demonstrated continuity and stability in meeting the children's basic material, educational, housing, and safety needs. The parent has not completed the most vital requirements on the permanency plan, which is addressing his mental health issues and his inability to provide appropriate care and supervision.

4. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since there is no secure and healthy parental attachment between the parent and the children and there is no reasonable expectation that the parent can create such attachment. There is a parental attachment, but the children have shown that they do not want to talk to the Respondent and have shown that they are happy in their foster home.

5. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] because he has not maintained regular

visitation or other contact with the children and has not used the visitation or other contact to cultivate a positive relationship with the children. Respondent [Father] has not maintained regular visitation with the minor children. Respondent's work schedule makes it difficult to visit, but Respondent has failed to keep up with scheduling visits at a time that works for him.

6. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the minor children have created a healthy parental attachment with another person or persons in absence of the parent. The minor children are bonded with the foster parents. The foster parents have provided for all their physical and emotional needs including giving love and affection.

7. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] because the children have emotionally significant relationships with persons other than parent and caregivers, including biological and foster siblings, and the likely impact of various available outcomes on these relationships and the children's access to information and the children's heritage. The children have clearly indicated that they are bonded to their foster family. They reside with their half-sister. Removing them from that relationship would have a detrimental effect on Klowii and Mariah.

8. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the parent has not demonstrated such a lasting adjustment of circumstances, conduct or conditions to make it safe and beneficial for the children to be in the home of the parent. The father has not addressed his mental health issues.

9. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the parent has not taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct or conditions. The father has taken steps to attempt to make a lasting adjustment of circumstances by separating from the mother and taking advantage of some of the resources provided by the Department. However, Respondent has not taken advantage of those resources since he moved to Baltimore. Respondent has not completed the missing piece, therapy.

10. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the Department has made reasonable efforts to assist the parent in making a lasting adjustment.

11. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the parent has not demonstrated a sense of urgency in seeking custody of the children or addressing the

circumstances, conduct, or conditions that made an award of custody unsafe and not in the children's best interest to return home. The children entered the care of the Department in October of 2019, Respondent has yet to resolve the issues that brought the children into the care of the Department.

12. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] because the parent has never demonstrated the ability and commitment to creating and maintaining a home that meets the children's basic and specific needs and in which the children can thrive.

13. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the physical environment of the parent's home is not healthy and safe for the children. Respondent's apartment is probably okay, but Respondent does not make enough money to support the children. Respondent has never shown that he can have a healthy home environment for the children. It is likely that if the children were returned to the care of the Respondent the same issues that occurred during the trial home placement would occur again.

14. The father has paid child support.

15. It is in the best interest of the minor children for termination to be granted as to Respondent [Father] since the parent's mental or emotional fitness would be detrimental to the children and prevents the parent from consistently and effectively providing safe and stable care and supervision for the children. The parent has consistently shown that he is mentally unstable and has not addressed mental health issues.

Thus the Court finds that the Tennessee Department of Children's Services has proven, by clear and convincing evidence, that grounds for termination of parental rights exists and has proven, by clear and convincing evidence, that it is in the best interest of the children that all of the parental rights of said Respondent to said children be forever terminated[.]

Father timely appealed to this Court.

Discussion

Although not stated exactly as such, Father raises the following issues on appeal: 1) whether the Juvenile Court erred in finding the ground of abandonment by failure to provide a suitable home; 2) whether the Juvenile Court erred in finding the ground of substantial noncompliance with the permanency plans; 3) whether the Juvenile Court erred in finding the ground of persistent conditions; 4) whether the Juvenile Court erred in finding the ground of failure to manifest an ability and willingness to assume custody; and 5) whether the Juvenile Court erred in finding that termination of Father's parental rights is in the Children'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.² *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

² 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.”

640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

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 grounds³ 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

³ Tenn. Code Ann. § 36-1-113(g)(1)-(13).

enumerated,⁴ 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 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

⁴ Tenn. Code Ann. § 36-1-113(i).

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 conjunction with a best interest determination, 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).

On July 19, 2021, when DCS filed its petition seeking to terminate Father's parental rights to the Children, the four statutory grounds at issue read as follows:

- (g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:
- (1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;
 - (2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4;
 - (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;

(14) 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) (West July 1, 2021 to June 30, 2022).

The abandonment ground at issue, abandonment by failure to provide a suitable home, read as follows:

(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)(ii) (West July 1, 2021 to May 8, 2022).

We first address whether the Juvenile Court erred in finding the ground of abandonment by failure to provide a suitable home. In his brief, Father asserts that the Juvenile Court's order makes no mention of what DCS did to improve his living conditions. He states further that the order "focuses exclusively on [Father's] mental health treatment and his alleged lack of visitation; neither of which are contemplated by the statute." Regarding this ground, we have stated: "A suitable home requires more than an adequate physical space. Appropriate care and attention must be given to the child." *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *7 (Tenn. Ct. App. Apr. 20, 2016), *no appl. perm. appeal filed* (citations omitted). "Accordingly, a parent's compliance with counseling requirements is 'directly related to the establishment and maintenance of a suitable home.'" *Id.* (quoting *In re M.F.O.*, No. M2008-01322-COA-R3-PT, 2009 WL 1456319, at *5 (Tenn. Ct. App. May 21, 2009), *no appl. perm. appeal filed*). While DCS must make reasonable efforts relative to this ground, parents must make their own effort, as well. *In re Matthew T.*, 2016 WL 1621076, at *7 (citation omitted).

In its order, the Juvenile Court considered DCS's efforts and found them to be reasonable. The Juvenile Court found that DCS helped, or tried to help, Father address his mental health issues through therapy. The question of Father's mental health treatment absolutely bears on whether he provided a suitable home under the statute. Tennessee caselaw interpreting this ground for termination provides that a suitable home is not just a suitable physical structure. A physically sound home may still be host to conditions or behaviors which are harmful to children. So long as those conditions remain, the home's physical soundness alone will not render it suitable. As found by the Juvenile Court, Father failed to provide a suitable home for the Children in the four months following their removal despite DCS's reasonable efforts. In the end, Father's decision to abandon the Children and move to another state complicated efforts by DCS to assist him in establishing a suitable home. The evidence does not preponderate against the Juvenile Court's findings relative to this ground, especially as to Father's mental health issues. We find, as did the

Juvenile Court, that the ground of abandonment by failure to provide a suitable home was proven against Father by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of substantial noncompliance with the permanency plans. Father argues that he completed eight of nine tasks under the plans. He says that this does not amount to substantial noncompliance. Regarding this ground, we have stated:

Terminating parental rights based on Tenn. Code Ann. § 36-1-113(g)(2) requires more proof than that a parent has not complied with every jot and tittle of the permanency plan. To succeed under Tenn. Code Ann. § 36-1-113(g)(2), the Department must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, and second that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance.

In re M.J.B., 140 S.W.3d 643, 656-57 (Tenn. Ct. App. 2004) (citations omitted).

As a box-checking exercise, Father did complete most of the tasks on his permanency plans. However, Father failed to continue with therapy, which was a recommendation from his mental health assessment. This is especially significant given that Father's mental health issues are at the very heart of the case. Father's mental health issues contributed to his difficulty with managing interpersonal relationships and fulfilling responsibilities. Participation in recommended therapy towards addressing those issues was critical. It was a requirement that was reasonable and related to remedying the conditions that caused the Children to be removed from Father's custody in the first place. The Juvenile Court clearly did not credit Father's excuses as to why he failed to continue with therapy. Father's unresolved mental health issues were a significant barrier to his being able to safely parent the Children. Given the centrality of mental health to this case, Father's failure to continue therapy was not a technical or minor deviation from the permanency plan requirements. On the contrary, under the circumstances of this case, Father's failure to continue therapy constituted substantial noncompliance with the permanency plans. The evidence does not preponderate against the Juvenile Court's findings relative to this ground. We find, as did the Juvenile Court, that the ground of substantial noncompliance with the permanency plans was proven against Father by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of persistent conditions. The Children were removed and in DCS custody for a period greater than six months. Also, DCS had filed a petition alleging dependency and neglect. Father states that the condition leading to the Children's removal was his inability to care for the Children because of his failure to take his prescription medication. At trial, Father testified that he takes his medication regularly now. On appeal, he contends that no other conditions exist with him which would subject the Children to any abuse or harm. Nevertheless, granting that Father takes his medication regularly now, he still has not eliminated conditions which would in all reasonable probability subject the Children to further abuse or neglect. Of chief importance, he has not adequately addressed his mental health issues. He has not continued with therapy. Father has shown no ability to parent the Children. The trial home placement was a failure. The family home became unlivable, and Father abandoned the Children. The evidence reflects that Father cannot safely parent the Children on top of tending to his own needs.

The Children have been in foster care since 2019. In the time since their removal, Father has not shown that he can safely parent them. Given the length of the custodial period in this case versus the lack of tangible results by Father, there is little likelihood that these conditions will be remedied at an early date so that the Children can be safely returned to him in the near future. Meanwhile, the Children are doing well in their foster home. Therefore, the continuation of the parent-child relationship in this instance greatly diminishes the Children's chances of early integration into a safe, stable, and permanent home. The evidence does not preponderate against the Juvenile Court's findings relative to this ground. We find, as did the Juvenile Court, that the ground of persistent conditions was proven against Father by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of failure to manifest an ability and willingness to assume custody. This ground has two prongs. Regarding the first prong of our analysis, our Supreme Court has explained that "[i]f a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied." *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020) (citation omitted). The second prong of the statute requires the court to consider whether 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. *See* Tenn. Code Ann. § 36-1-113(g)(14).

Father argues that he demonstrated his willingness to assume custody of the Children by his completion of tasks on his permanency plans; by his visits with the Children; and by his cooperation with DCS throughout the case. However, Father's asserted willingness is undercut by his failure to continue with therapy, as well as by his

decision to abandon the Children and move to another state. Notwithstanding this, even if Father were found to have manifested a willingness to assume custody, under Tenn. Code Ann. § 36-1-113(g)(14), a finding by clear and convincing proof of either a failure to manifest willingness or a failure to manifest ability will satisfy the first prong. In his brief, Father does not argue that he is able to assume custody of the Children. Indeed, based on this record, Father has manifested no ability to assume custody of the Children. He has not sufficiently addressed his mental health issues, and the trial home placement he had with the Children resulted in them living in squalor. Father's inability to parent the Children was proven by clear and convincing evidence. As for the second prong of the ground, the Juvenile Court found that Father has unresolved mental health issues and that the Children are significantly bonded with their foster family. The evidence does not preponderate against these nor any of the Juvenile Court's findings relative to this ground. Removing the Children from their foster family, in whose home they are thriving, and placing them in Father's custody would pose a risk of substantial harm to the physical or psychological welfare of the Children. Both prongs of this ground were proven by clear and convincing evidence. We find, as did the Juvenile Court, that the ground of failure to manifest an ability and willingness to assume custody was proven against Father by clear and convincing evidence.

The final issue we address is whether the Juvenile Court erred in finding that termination of Father's parental rights is in the Children's best interest. On July 19, 2021, when DCS filed its petition, the best interest factors read as follows:

- (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.

(3) All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court's written order.

(4) Expert testimony is not required to prove or disprove any factor by any party.

(5) As used in this subsection (i), "parent" includes guardian.

Tenn. Code Ann. § 36-1-113(i) (West July 1, 2021 to June 30, 2022).

With regard to making a determination concerning a child's best interest, the Tennessee Supreme Court has instructed:

When conducting the best interests analysis, courts must consider nine statutory factors listed in Tennessee Code Annotated section 36-1-113(i). These statutory 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 Carrington H.*, 483 S.W.3d at 523 (citing *In re Audrey S.*, 182 S.W.3d 838, 878 (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 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. “[D]epending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.” *In re Audrey S.*, 182 S.W.3d at 878 (citing *White v. Moody*, 171 S.W.3d at 194). But this does not mean that a court is relieved of the obligation of considering all the factors and all the proof. Even if the circumstances of a particular case ultimately result in the court ascribing more weight—even outcome determinative weight—to a particular statutory factor, the court must consider all of the statutory factors, as well as any other relevant proof any party offers.

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017).⁵

Although the Juvenile Court did not identify each factor by letter, it is clear from the Juvenile Court’s order that it considered the applicable best interest factors. Father argues that the Juvenile Court erred in its best interest analysis as to factors (E), (J), and (R). Specifically, Father states that he maintained regular visitation with the Children; that he demonstrated a lasting adjustment of circumstances by completing nearly all of the tasks on his permanency plans; and that Father’s current home is appropriate.

Addressing these points in turn, Father visited with the Children but these visits were sporadic over the course of the case. The quality of the visits also left much to be desired. As for Father’s completion of many tasks on his permanency plans, this was commendable on his part. We also note Father’s payment of child support, which the Juvenile Court recognized in its best interest findings as well. All the same, Father’s failure to continue with therapy as recommended undermines his assertion of an adjustment of circumstances. Finally, Father is correct in that his current residence appeared clean. The Juvenile Court found that Father’s apartment is “probably okay,” but that he does not make enough money to support the Children and he has never shown he can have a healthy home environment for them. The evidence does not preponderate against this finding. However,

⁵ In *In re Gabriella D.*, a prior version of the best interest factors was in effect. However, we believe the Tennessee Supreme Court’s analysis applies to the amended version of Tenn. Code Ann. § 36-1-113(i), as well.

even granting in Father's favor this factor concerning the physical environment of his home, it is heavily outweighed by other factors.

Of particular significance in this case is factor (T), regarding mental fitness. The Juvenile Court found that "[Father] has consistently shown that he is mentally unstable and has not addressed mental health issues." Regrettably, Father's unresolved mental health issues have been and remain a major barrier in this case. Father has not shown any ability to safely parent the Children. When he had a trial home placement opportunity, the family home quickly became unlivable. He discontinued recommended therapy, which is especially serious in light of his mental health challenges. He abandoned the Children and moved to another state, which made his fostering a relationship with the Children that much harder. The Children do not have a meaningful relationship with Father; their visits with him are listless at best. By contrast, the Children are bonded to and thriving with their foster family, which includes the Children's half-sister. Respectfully, they do not need to wait indefinitely on Father to address his issues. The evidence does not preponderate against the Juvenile Court's findings made in accordance with the applicable statutory factors relative to the Children's best interest. We find by clear and convincing evidence, as did the Juvenile Court, that termination of Father's parental rights is in the Children's best interest.

Conclusion

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Trent W., and his surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE