IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 1, 2024

IN RE JACK C. L. ET AL.[1]

Appeal from the Chancery Court for Cumberland County
No. 2021-CH-2078 Ronald Thurman, Chancellor

No. E2022-01803-COA-R3-PT

The trial court terminated a father's parental rights to two minor children on the grounds of abandonment and failure to manifest an ability and willingness to assume custody of or financial responsibility for the children. We reverse the trial court's ruling as to abandonment but affirm the trial court's ruling as to the father's failure to manifest an ability and willingness. Because we also conclude that terminating the father's parental rights is in the children's best interests, we affirm the trial court's ultimate ruling.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed in Part, Affirmed in Part; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER and CARMA DENNIS MCGEE, JJ., joined.

Matthew J. McClanahan, Crossville, Tennessee, for the appellant, Jack L.

Jonathan R. Hamby, Crossville, Tennessee, for the appellee, Erika R.

OPINION

BACKGROUND

Jack L. ("Father") appeals the termination of his parental rights to two minor children, Jack C.L. and Catalina L. (together, "the Children"). The Children, who are

[1] This Court has a policy of abbreviating the last names of children and other parties in cases involving termination of parental rights in order to protect their privacy and identities.

twins, were born to Father and Christy L. ("Mother")[2] in 2015. The family resided in Ohio at the time. In August of 2015, when the Children were newborns, Father went to jail in Ohio. The details of what led to the Ohio incarceration are not entirely clear from the record. Mother, who has three additional children, struggled while on her own. In November of 2016, the Ohio Department of Children's Services contacted Debbie W., Mother's mother, and told Debbie W. that if she did not come to Ohio and retrieve the Children, they would be placed in state custody. Accordingly, Debbie W. and her long-time partner's daughter, Erika R., traveled from Tennessee to Ohio and retrieved all five children. Erika R. became the primary caregiver for the Children while Debbie W. cared for the three older siblings.[3]

Father remained incarcerated until December of 2017.[4] After being released, he moved to Tennessee. Father lived with his mother for a period of time, but he and Mother eventually settled in Lebanon, Tennessee. The Children remained with Erika R. but saw Father periodically. In October of 2018, Erika R. returned custody of the Children to Mother and Father, and the Children went to live in Lebanon with their parents. Debbie W. testified at trial that she felt it was all right for Erika R. to return the Children to their parents because Mother and Father appeared to be doing better, had a place to live, and Father was working. The Children remained in their parents' custody for several months, but Debbie W. and Erika R. saw the Children frequently and would often pick them up for the weekend. During this period when the Children lived with their parents but still visited with Debbie W. and Erika R., Debbie W. became concerned about the family's living conditions. Mother, Father, and the five children lived in a small trailer that Debbie W. described as very messy and crowded. The Children slept on a mattress in the floor with their siblings, and, according to Debbie W., the Children often appeared dirty and unwashed.

The situation deteriorated. On January 20, 2019, Mother sent Erika R. the following text message:

> [H]ey there are a lot of things going on at the house and [Father] has not been himself I dont know whats going on with him of jes [sic] back on pills or what cause he acts like it la[s]t night he started yelling and screaming and grabb[e]d my [sic] by my neck while i was trying to give catalina a bath its

[2] Mother's parental rights have also been terminated, but she has not appealed that decision and her rights are not at issue. Mother is mentioned only for context.

[3] Father's parental rights to the older three children have been terminated, and those children were adopted in 2021.

[4] Father testified that he was released in December of 2017, but his sister testified that he was released in 2018. The discrepancy is not ultimately relevant to our analysis.

> not fair to them and its not fair to me for someone to do that so after he burned out sideways I packed a few little things of cloths and we left is there anyway the twins can possibly come to your house [f]or a couple days till i can get a couple things in order and try to find a babysitter so I can work i hate to ask but I don't l ow [sic] what else to do[.]

Erika R. testified that after the January 20, 2019 incident, the Children stayed with her for a period of time, although it is unclear from the record how long. However, the Children continued to reside with their parents until later in 2019. At a family party in July of 2019, Father lost his temper with Erika R. and Debbie W. and threatened to take the Children to live in a tent in the woods. Erika R. then filed an emergency motion for custody of the Children on August 13, 2019, although that motion does not appear in the record. However, there is an order in the record from the Juvenile Court for Cumberland County, entered December 4, 2019, providing that custody would remain with Erika R. and that Father was incarcerated and "unfit to have custody at this time." Father was released from jail in early January of 2020 but violated his probation and was re-incarcerated later in 2020.[5]

The Children remained with Erika R. (hereinafter, "Petitioner") from August of 2019 through the trial in October of 2022. Petitioner filed her petition to terminate Father's parental right and to adopt the Children on August 24, 2021. For statutory grounds, Petitioner alleged abandonment by failure to support and failure to visit, as well as failure to manifest an ability and willingness to assume custody of or financial responsibility for the Children. Petitioner later amended her petition to allege abandonment by an incarcerated parent, claiming that in the consecutive 120 days preceding Father's incarceration, he failed to visit or provide any support for the Children. The amended petition also alleged that Father abandoned the Children through wanton disregard and that Father failed to manifest an ability and willingness to assume custody of or financial responsibility for the Children. Father answered the petition, denying both that grounds for termination existed and that termination of his rights was in the Children's best interests.

Father remained incarcerated until one month before trial, which was held on October 29, 2022. Debbie W., Petitioner, Father, and various of Father's friends and family testified. After hearing all of the proof, the trial court ruled orally that Petitioner met her burden of proof as to abandonment and failure to manifest. The trial court also concluded that terminating Father's parental rights serves the Children's best interests. The trial court entered a written order reflecting this ruling on November 29, 2022. Father timely appealed to this Court.

[5] As discussed later in this opinion, the record is not clear as to when Father was re-incarcerated.

ISSUES

While Father challenges only the trial court's ruling as to abandonment and best interests, we are required to review all statutory grounds for termination found by the trial court. *See In re Carrington H.*, 483 S.W.3d 507 (Tenn. 2016). Thus, the issues on appeal are as follows:

I. Whether the trial court correctly concluded that Petitioner proved, by clear and convincing evidence, that Father abandoned the Children.

II. Whether the trial court correctly concluded that Petitioner proved, by clear and convincing evidence, that Father failed to manifest an ability and willingness to assume custody of or financial responsibility for the Children.

III. Whether the trial court correctly concluded that Petitioner proved, by clear and convincing evidence, that terminating Father's parental rights is in the Children's best interests.

STANDARD OF REVIEW

"A person seeking to terminate parental rights must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest." *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (citing Tenn. Code Ann. § 36-1-113(c)). "Because of the profound consequences of a decision to terminate parental rights, a petitioner must prove both elements of termination by clear and convincing evidence." *In re Markus E.*, 671 S.W.3d 437, 456 (Tenn. 2023). This heightened burden "minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights" and "enables the fact-finder to form a firm belief or conviction regarding the truth of the facts[.]" *In re Carrington H.*, 483 S.W.3d at 522 (citing *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010)). "The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not." *Id.* (citing *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005)).

As our Supreme Court recently explained, we employ a two-step process in reviewing termination cases:

> To review trial court decisions, appellate courts use a [] two-step process, to accommodate both Rule 13(d) of the Tennessee Rules of Appellate Procedure and the statutory clear and convincing standard. First, appellate courts review each of the trial court's specific factual findings de novo under Rule 13(d), presuming each finding to be correct unless the evidence

> preponderates against it. *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); *In re Justice A.F.*, [No. W2011-02520-COA-R3-PT,] 2012 WL 4340709, at *7 [(Tenn. Ct. App. Sept. 24, 2012)]. When a trial court's factual finding is based on its assessment of a witness's credibility, appellate courts afford great weight to that determination and will not reverse it absent clear evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re Justice A.F.*, 2012 WL 4340709, at *7 (citing *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005)).
>
> Second, appellate courts determine whether the combination of all of the individual underlying facts, in the aggregate, constitutes clear and convincing evidence. *In re Taylor B.W.*, 397 S.W.3d at 112; *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re Justice A.F.*, 2012 WL 4340709, at *7. Whether the aggregate of the individual facts, either as found by the trial court or supported by a preponderance of the evidence, amounts to clear and convincing evidence is a question of law, subject to de novo review with no presumption of correctness. *See In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *see also In re Samaria S.*, 347 S.W.3d 188, 200 (Tenn. Ct. App. 2011). As usual, the appellate court reviews all other conclusions of law de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d [240,] 246 [(Tenn. 2010)].

In re Markus E., 671 S.W.3d at 457.

DISCUSSION

Grounds for termination

Abandonment by an incarcerated parent

First, the trial court found that Father abandoned the Children through his failure to visit and support the Children in the months prior to his incarceration. Abandonment by a parent is grounds for termination of parental rights. Tenn. Code Ann. § 36-1-113(g)(1). Abandonment may occur, among other circumstances, when:

> (iv) A parent or guardian is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, or a parent or guardian has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action and has:

> (*a*) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the parent's or guardian's incarceration;
>
> (*b*) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child during an aggregation of the first one hundred twenty (120) days of nonincarceration immediately preceding the filing of the action; or
>
> (*c*) Has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(iv).[6]

Determining the proper four-month period for purposes of abandonment can be difficult when, as in this case, the parent is "in and out of jail in the months prior to the filing of the termination petition." *In re Travis H.*, No. E2016-02250-COA-R3-PT, 2017 WL 1843211, at *9 (Tenn. Ct. App. May 5, 2017)). Here, the trial court found that "the period of time the Court will look at is January 2020 through June of 2020, as the undisputed proof establishes that [Father] had been released from incarceration during this time and this is the time period immediately preceding his subsequent incarceration and the filing of the Petition." As it is undisputed that Father was incarcerated when the original petition was filed, the trial court rightly noted that the analysis centers on the time leading up to Father's 2020 incarceration.[7] Nonetheless, the proof as to this ground, particularly the proof as to the relevant statutory period, is not conclusive.

Before reaching the trial court's ruling, however, there is a threshold issue with the abandonment by an incarcerated parent ground; specifically, Petitioner did not plead the relevant statutory period in her petition. The operative petition avers that Father

[6] In termination cases, we apply the version of the statute in effect at the time the petition was filed. *See In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017).

[7] The original petition was filed on August 24, 2021, but the operative amended petition was filed on October 6, 2022. Although Petitioner filed two amended complaints, we look at the period preceding the original complaint for purposes of abandonment. *See In re Elijah F.*, No. M2022-00191-COA-R3-PT, 2022 WL 16859543, at *5 (Tenn. Ct. App. Nov. 10, 2022) ("This Court has previously clarified that 'where an "amendment" to a termination petition does not constitute a separate and distinct petition, the proper four month period to consider is the four months preceding the filing of the original petition, not the amendment.'" (quoting *In re Chase L.*, No. M2017-02362-COA-R3-PT, 2018 WL 3203109, at *9 (Tenn. Ct. App. June 29, 2018))) (bracketing omitted).

> has failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the parent's or guardian's incarceration, and has failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child during an aggregation of the first one hundred twenty (120) days of nonincarceration immediately preceding the filing of the action; and has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child.

Accordingly, the petition alleges two different manners in which to calculate the salient period and fails to plead the actual time period. Citing due process concerns, we have previously explained that it is a petitioner's burden to "arrive at the correct statutory period prior to filing [a] petition for termination of parental rights." *In re Haskel S.*, No. M2019-02256-COA-R3-PT, 2020 WL 6780265, at *6 (Tenn. Ct. App. Nov. 18, 2020); *see also In re A.V.N.*, No. E2020-00161-COA-R3-PT, 2020 WL 5496678, at *8 (Tenn. Ct. App. Sept. 10, 2020) ("[W]hen abandonment is pled as a potential ground for termination, the petitioner must include the correct four-month period." (citing *In re Justine J.*, No. E2019-00306-COA-R3-PT, 2019 WL 5079354, at *8 (Tenn. Ct. App. Oct. 10, 2019); *In re D.H.B.*, No. E2014-00063-COA-R3-PT, 2015 WL 1870303, at *5 (Tenn. Ct. App. Apr. 23, 2015))).

Second, the proof regarding Father's incarceration dates is equivocal and unclear. Indeed, there was no proof at trial regarding the actual date on which Father re-entered custody in 2020. While there is a criminal court judgment reflecting a January 9, 2020 entry date, that sentence was suspended to four years of probation, and the judgment contains no information about when Father violated his probation and returned to jail. While Petitioner's counsel suggested at trial that Father returned to jail in June of 2020, Father could not recall:

> Q. Okay. When did you go back into prison?
>
> A. I'm not sure of the date, but maybe April.
>
> Q. Does June sound closer of that same year, June 2020?
>
> A. Maybe June. Maybe.
>
> Q. So if June is accurate, then from January of 2020 to June 2020, you were working construction. Right?
>
> A. I'm not sure where you're getting your timeline from, you know.

While Father does not dispute that he violated the conditions of his probation and returned to jail at some point during 2020, it is impossible to glean from the record before us the date on which that occurred. Consequently, determining the specific dates of the relevant statutory period for purposes of abandonment is essentially impossible in this case. Given the mandate "that 'courts must strictly comply with procedural requirements in termination of parental rights cases[,]'" this omission is problematic. *In re Haskel S.*, 2020 WL 6780265, at *5 (quoting *In re A.V.N.*, 2020 WL 5496678, at *8). The final problematic aspect with this ground for termination is that the trial court did not specifically state in its ruling the day on which the relevant period began to run or the date on which that period ended but instead held that the period ran from January of 2020 through June of 2020. Again, however, this conclusion is not supported by the record.

While this Court has previously concluded that a court's "miscalculation of the relevant four-month period can be considered harmless when the trial court made sufficient findings of fact that encompassed the correct determinative period," *In re J'Khari F.*, No. M2018-00708-COA-R3-PT, 2019 WL 411538, at *9 (Tenn. Ct. App. Jan. 31, 2019), we conclude that the error in this case is not harmless. Petitioner did not appropriately plead the relevant period at the outset, nor did she present clear and convincing evidence of same at trial. Accordingly, we reverse the trial court's ruling as to this ground for termination.[8]

Failure to manifest an ability and willingness

The second ground for termination found by the trial court was failure to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Children. This ground applies when

> [a] parent . . . 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). This ground requires clear and convincing proof of two elements. *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020). The petitioner must first prove that the parent has failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child. *Id.* The petitioner must then prove that placing the child in the custody of the parent poses "a risk

[8] Petitioner also alleged that Father abandoned the Children through wanton disregard. The trial court did not conclude, however, that Petitioner proved this ground by clear and convincing evidence. Petitioner does not challenge the trial court's decision on appeal; as such, the claim was abandoned, and we need not consider that statutory ground. *See In re Skylith F.*, No. M2022-01231-COA-R3-PT, 2023 WL 6546538, at *1 n.2 (Tenn. Ct. App. Oct. 9, 2023).

of substantial harm to the physical or psychological welfare of the child." *Id.* The statute requires "a parent . . . to manifest both an ability and willingness" to personally assume legal and physical custody or financial responsibility for the child. *Id.* at 677. Therefore, if a party seeking termination of parental rights establishes that a parent or guardian "failed to manifest *either* ability or willingness, then the first prong of the statute is satisfied." *Id.*

Regarding the second statutory prong,

> [t]he courts have not undertaken to define the circumstances that pose a risk of substantial harm to a child. These circumstances are not amenable to precise definition because of the variability of human conduct. However, the use of the modifier "substantial" indicates two things. First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. Second, it indicates that the harm must be more than a theoretical possibility. While the harm need not be inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

In re Virgil W., No. E2018-00091-COA-R3-PT, 2018 WL 4931470, at *8 (Tenn. Ct. App. Oct. 11, 2018) (quoting *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)).

Here, the trial court found as follows regarding this ground:

> [T]he Court finds that Petitioner has proven by clear and convincing evidence that [Father] has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the [C]hildren, and placing the [C]hildren in his legal or physical custody would pose a risk of substantial harm to the physical and psychological welfare of the [C]hildren. The Juvenile Court order specifically reserved him the right to come back to court for visitation, and by his own admission he did not file any petitions, nor did he attempt to visit. Additionally, the Petitioner testified as to how the [C]hildren are mindful of these proceedings and have nightmares, trauma and stress regarding the thought of being returned to [] [F]ather. The Petitioner testified that [Father] was going to take them to live in a tent because he was homeless. [Father] testified that he is currently without a permanent residence. The Petitioner has the [C]hildren in counseling for their psychological issues. The Court finds by clear and convincing evidence that placing the [C]hildren in [Father's] legal or physical custody would pose a risk of substantial harm to the physical and psychological welfare of the [C]hildren.

The record preponderates in favor of the trial court's factual findings as to this ground. Father has been in and out of prison throughout the Children's lives. He was

incarcerated shortly after the Children were born and was not released until 2017. While Father testified at trial that he loves the Children and desires a relationship with them, manifesting the "ability and willingness to assume legal and physical custody of a child must amount to more than mere words[,]" *In re Ken'bria B.*, No. W2017-01441-COA-R3-PT, 2018 WL 287175, at *10 (Tenn. Ct. App. Jan. 4, 2018), and "[c]riminal activity . . . raise[s] doubt as to a parent's actual willingness to assume custody or financial responsibility for the child." *In re Kaylene J.*, No. E2019-02122-COA-R3-PT, 2021 WL 2135954, at *17 (Tenn. Ct. App. May 26, 2021) (citing *In re Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, at *15 (Tenn. Ct. App. June 20, 2018)); *see also In re Brayden E.*, No. M2020-00622-COA-R3-PT, 2020 WL 7091382, at *5 (Tenn. Ct. App. Dec. 4, 2020) (noting that father's "willful disregard for authority frequently put him in a position where he was unable to care for" his children, supporting termination under section (g)(14)). Petitioner and Debbie W. testified that even when he was not incarcerated, Father did not send support for the Children or visit frequently.[9] Moreover, Father's own testimony reflects that he is not equipped to care for the Children at present. Father had been out of prison for only a month prior to the final hearing and was essentially homeless. He testified that he sometimes stays with his sister or a friend but that he otherwise stays in motels. He also testified that he works for his cousin's handyman business but that the work takes him "[a]ll over," even to Alabama and Ohio. Father conceded that he does not really have a support system to help him with the Children. Consequently, Father's lifestyle and circumstances do not reflect the ability to assume custody of or financial responsibility for the Children. Thus, Petitioner proved the first prong of section 36-1-113(g)(14) by clear and convincing evidence.

As to the second prong, we agree with the trial court that placing the Children in Father's custody poses a risk of substantial harm to the Children. Father's lifestyle is unstable and transient, and he has not seen the Children since 2019. By the time of trial, the Children were nearly eight years old, and Petitioner had been their primary caregiver for most of the Children's lives. Petitioner testified that the Children participate in various therapies and are doing well but become anxious and upset at the thought of returning to Father's custody. Petitioner explained that the Children have separation anxiety and keep a picture of Petitioner with them at school. Under these circumstances, we readily agree with the trial court that removing the Children from their current setting poses a risk of substantial harm to their physical and psychological welfare.

Accordingly, we affirm the trial court's conclusion that Petitioner proved the elements of Tennessee Code Annotated section 36-1-113(g)(14) by clear and convincing evidence. We thus turn to the best interests analysis.

[9] The trial court found Petitioner to be a credible witness. Father claimed at trial, however, that he wrote the Children letters from jail.

Best interests

In addition to proving at least one statutory ground for termination, Petitioner must prove by clear and convincing evidence that the Children's best interests are served by terminating Father's parental rights. Tenn. Code Ann. § 36-1-113(c). Indeed, "a finding of unfitness does not necessarily require that the parent's rights be terminated." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005) (citing *White v. Moody*, 171 S.W.3d 187, 193 (Tenn. Ct. App. 2004)). Our termination statutes recognize that "[n]ot all parental misconduct is irredeemable" and that "terminating an unfit parent's parental rights is not always in the child's best interests." *Id.* As such, the focus of the best interests analysis is not the parent but rather the child. *Id.*; *see also White*, 171 S.W.3d at 194 ("[A] child's best interests must be viewed from the child's, rather than the parent's, perspective.").

When determining whether termination is in a child's best interests, we refer to twenty non-exclusive factors found at Tennessee Code Annotated section 36-1-113(i). The trial court correctly applied the relevant factors, reasoning as follows:

> 6. The [C]hildren are roughly eight years old, and the Petitioner has had custody of them since 2019, going on three years. The majority of their lives, either [Debbie W.] or the Petitioner or both have provided the care and stability for the [C]hildren. The [C]hildren's need for continued stability and continuity of placement warrants the termination of parental rights of [Father].
>
> 7. A change of caregivers and physical environment at this point would have an extremely negative effect on the [C]hildren's emotional, psychological and medical condition. The [C]hildren are in counseling from the problems that they developed before being removed from the parents, and it would be detrimental to their well being to change their caregiver or environment at this time. The[] Petitioner has provided a safe environment for the [C]hildren, they are involved in extracurricular activities, and Petitioner is having their anxiety treated.
>
> 8. [Father] has not demonstrated continuity or stability in meeting the [C]hildren's basic needs. The Petitioner has provided care and taken the [C]hildren to the doctor, provided housing, and helping with their education.
>
> 9. The [C]hildren and [Father] do not have a secure and healthy parental attachment, and there is no reasonable expectation that one could be created at this time. The last time he saw the [C]hildren was in 2019. The [C]hildren are now almost eight years old, and he hasn't seen them in three years. There's not been time to develop a bond, in part because he was constantly incarcerated. The parental bond is with the Petitioner.

10. [Father] has not maintained regular visitation or other contact, even when he was out of jail.

11. The [C]hildren are fearful of living with [Father], and are in a stable home now with the Petitioner. The [C]hildren get anxiety when the biological parents' names are mentioned, and the idea of living in a home with [Father] triggers exacerbation of the child's experience of trauma.

12. The [C]hildren have created a healthy parental attachment with the Petitioner.

13. The [C]hildren have emotionally significant relationships with persons other than the parents or caregivers. The Petitioner has been having the [C]hildren visit with their biological siblings, who were previously adopted by others, and the Court finds this to be a healthy thing for them to keep in contact.

14. [Father] has not demonstrated a lasting adjustment of circumstances, conduct or conditions to make it safe or beneficial for the [C]hildren to be in his home. He testified he doesn't have a home, that he lives with a friend and in motels when he works. He testified that he does not have a drug or alcohol problem, and the Court accepts his word on that.

15. There was no proof presented as to whether [Father] has taken advantage of available programs or services, and the Department of Children's Services is not currently involved, so those factors are not relevant.

16. The [C]hildren were, however, removed from the parents by children's services in Ohio, so there is evidence of neglect. There is also evidence that [Father] choked [M]other in front of the [C]hildren, but [Debbie W.] testified that when she is on drugs, [M]other is not always truthful.

17. There was no evidence presented that [Father] has ever provided safe and stable care for the [C]hildren, that he has demonstrated an understanding of the basic specific needs required for the [C]hildren to thrive, or that he has demonstrated an ability and commitment to creating[.]

18. The physical environment of [Father's] home is not healthy or safe, as he has no home. Home is with the Petitioner.

19. [Father] has not provided any consistent support, and any support that may have been provided was token support.

20. There has been no evidence presented as to whether the mental or emotional fitness of the parent would be detrimental to the [C]hildren or prevent [Father] from consistently providing safe and stable care.

21. The Guardian ad Litem reports that in her opinion and upon her recommendation, it would be in the best interest of [the Children] to terminate the parental rights of [Father] and allow the Petitioner to adopt.

Having thoroughly reviewed the record, we conclude that it preponderates in favor of the trial court's above-listed factual findings. Considered in the aggregate, these facts amount to clear and convincing evidence that terminating Father's parental rights is in the Children's best interests. As such, we affirm the trial court's ultimate ruling that Father's parental rights to the Children are terminated.

CONCLUSION

We affirm in part and reverse in part the ruling of the Chancery Court for Cumberland County but affirm the ultimate ruling terminating Father's parental rights. We remand this case to the trial court for proceedings consistent with this opinion. Costs on appeal are assessed to the appellant, Jack L., for which execution may issue if necessary.

_____

KRISTI M. DAVIS, JUDGE