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

IN RE TRENTON B., ET AL.

Appeal from the Juvenile Court for Marshall County
No. 2021-JT-3 Lee Bussart, Judge

No. M2022-00422-COA-R3-PT

This appeal involves a petition to terminate parental rights. The juvenile court found by clear and convincing evidence that three grounds for termination were proven against the father: (1) abandonment by incarcerated parent for failure to visit; (2) substantial noncompliance with a permanency plan; and (3) failure to manifest an ability and willingness to assume custody. The juvenile court also found that termination was in the best interests of the children. The father appeals. We affirm.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which JOHN W. MCCLARTY, and W. NEAL MCBRAYER, JJ., joined.

Nicholas W. Utter, Lewisburg, Tennessee, for the appellant, Dominique D. B.

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

OPINION

I. FACTS & PROCEDURAL HISTORY

This matter involves the termination of the parental rights of Dominique D. B. ("Father"), who is the father of two minor children, Trenton and Alayla, that were born out of wedlock to April B. B. ("Mother"). In December 2017, Mother allegedly abandoned the children and left them with the maternal grandmother. The maternal grandmother then voluntarily surrendered the children to the Department of Children's Services ("DCS") in January 2018. DCS's concerns regarding Mother included domestic violence,

homelessness, and drug exposure. Thereafter, the juvenile court entered an emergency protective custody order placing the children in the temporary custody of DCS. The children were placed in a foster home and have been in that home continuously since then. Soon after, DCS submitted an Interstate Compact on the Placement of Children ("ICPC") request in order to place the children with the paternal grandmother in Georgia. Meanwhile, Father was incarcerated in Georgia for aggravated assault, but he was released in February 2018.

In May 2018, the juvenile court entered an order adjudicating the children dependent and neglected as to Father, which was based on Father's stipulation due to his incarceration at the time the dependency and neglect petition was filed. The court then entered an amended order noting that Father requested a DNA test, but the court denied it stating that he was already the legal father of the children. Although Father had executed voluntary acknowledgements of paternity and was listed as the children's father on their birth certificates, the court subsequently entered an order in April 2019 establishing paternity of Father. The State of Georgia required a DNA test to confirm that Father was indeed the father of the children in order to complete the ICPC home study for the paternal grandmother in Georgia. The court's order reflects that the DNA test results established paternity of Father.

Father began participating in visitation with the children in 2019. However, he was incarcerated in Georgia again in November 2019 on drug-related charges. In April 2021, while he was still incarcerated, DCS filed a petition to terminate his parental rights alleging three grounds: (1) abandonment by incarcerated parent/wanton disregard; (2) substantial noncompliance with a permanency plan; and (3) failure to manifest an ability and willingness to assume custody. For the ground titled "Abandonment by Incarcerated Parent/Wanton Disregard," DCS alleged Father failed to visit the children other than token visitation, failed to make reasonable payments toward the children's support, and/or engaged in conduct exhibiting a wanton disregard for the children's welfare. DCS also alleged that termination was in the best interests of the children.

After Father was released from incarceration in May 2021, the juvenile court entered an order allowing him to resume visitation with the children, but he did not show up for many of the scheduled visits. In December 2021, Father filed an answer to DCS's petition, in which he raised the affirmative defense of the absence of willfulness for the ground of abandonment. Just before trial, he filed a motion to continue or, alternatively, to testify via zoom. In his motion, he explained that he had experienced mechanical issues with his automobile and was unable to make the drive from Georgia to appear for trial. The juvenile court denied the motion for continuance but permitted Father to testify at trial via Zoom. Nevertheless, Father was apparently unable to testify via Zoom and did not appear for trial.

The juvenile court held trial in February 2022. At trial, the only two witnesses who testified were the family service worker ("the FSW") and the foster mother of the children.

Afterward, the juvenile court entered its initial order terminating Father's parental rights in March 2022. The court then entered an amended final order in August 2022. The court found that DCS had proven all three grounds for termination: (1) abandonment by incarcerated parent for failure to visit; (2) substantial noncompliance with a permanency plan; and (3) failure to manifest an ability and willingness to assume custody.[1] Additionally, the court found that DCS had proven termination was in the best interests of the children. Father timely filed a notice of appeal.

II. ISSUES PRESENTED

Father presents the following issues for review on appeal, which we have slightly restated:

1. Whether the juvenile court erred in finding grounds for termination of parental rights upon abandonment by incarcerated parent for failure to visit, substantial noncompliance with the permanency plan, and failure to manifest an ability and willingness to assume custody; and
2. Whether the juvenile court erred in finding that termination of parental rights was in the best interests of the children, particularly in light of the failure of DCS to honor the ICPC in favor of placement with the paternal grandmother in Georgia.

For the following reasons, we affirm the decision of the juvenile court.

III. STANDARD APPLICABLE TO 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." *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020) (quoting *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016)). "Parental rights have been described as 'far more precious than any property right.'" *Id.* (quoting *In re Carrington H.*, 483 S.W.3d at 522). "No civil action carries with it graver consequences than a petition to sever family ties irretrievably and forever." *In re Kaliyah S.*, 455 S.W.3d 533, 556 (Tenn. 2015). Nevertheless, parental rights are not absolute. *In re Carrington H.*, 483 S.W.3d at 522.

Tennessee Code Annotated section 36-1-113 "sets forth the grounds and procedures for terminating the parental rights of a biological parent." *In re Kaliyah S.*, 455 S.W.3d at 546. Pursuant to this statute, the petitioner seeking termination of parental rights must prove two elements. *Id.* at 552. First, the petitioner must prove the existence of at least one of the statutory grounds for termination set forth in Tennessee Code Annotated section

[1] The juvenile court did not find that DCS had proven abandonment by incarcerated parent for failure to support or for wanton disregard.

36-1-113(g). *Id.* Second, the petitioner must prove that termination of parental rights is in the best interests of the child under the factors set forth in Tennessee Code Annotated section 36-1-113(i). *Id.* Due to the constitutional dimension of the rights at stake, the petitioner seeking termination must prove both elements by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *see* Tenn. Code Ann. § 36-1-113(c). "Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005), and eliminates any serious or substantial doubt about the correctness of these factual findings." *Id.* (citing *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *State, Dep't of Children's Servs. v. Mims (In re N.B.)*, 285 S.W.3d 435, 447 (Tenn. Ct. App. 2008)).

We review the juvenile court's factual findings de novo in accordance with Rule 13(d) of the Tennessee Rules of Appellate Procedure, presuming each factual finding to be correct unless the evidence preponderates otherwise. *In re Carrington H.*, 483 S.W.3d at 524. We then make our own determination regarding "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." *Id.* (citing *In re Bernard T.*, 319 S.W.3d at 596-97). In regard to conclusions of law, "[t]he 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." *Id.* (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)).

IV. DISCUSSION

A. Grounds for Termination

1. Abandonment by Incarcerated Parent for Failure to Visit

One ground for termination exists based on a parent's abandonment of his or her child. Tenn. Code Ann. § 36-1-113(g)(1). Under Tennessee Code Annotated section 36-1-102(1)(A), there are several alternative definitions of "abandonment." *See* Tenn. Code Ann. § 36-1-102(1)(A). The relevant definition of abandonment in this matter is provided under Tennessee Code Annotated section 36-1-102(1)(A)(iv):

> (iv) A parent . . . is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent . . . of the child who is the subject of the petition for termination of parental rights or adoption, or a parent . . . 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 . . . 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 non-incarceration 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)(*a*)-(*c*). Subsection (iv) "'contains multiple ways of abandonment for termination of parental rights.'" *In re Navada N.*, 498 S.W.3d 579, 598 (Tenn. Ct. App. 2016) (quoting *In re Kierra B.*, No. E2012-02539-COA-R3-PT, 2014 WL 118504, at *8 (Tenn. Ct. App. Jan. 14, 2014)). This Court has explained that incarceration is a condition precedent for this definition of abandonment:

> [A]bandonment by an incarcerated parent may only apply where the parent . . . "is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent . . . has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding."

Id. (citing Tenn. Code Ann. § 36-1-102(1)(A)(iv)). "[T]he parent's incarceration serves only as a triggering mechanism that allows the court to take a closer look at the child's situation to determine whether the parental behavior that resulted in incarceration is part of a broader pattern of conduct . . . ." *In re Audrey S.*, 182 S.W.3d at 866. While "parental incarceration is a strong indicator that there may be problems in the home that threaten the [children's] welfare," it "is not an infallible predictor of parental unfitness." *Id.* For this particular ground, "failed to visit" is defined as "the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation." Tenn. Code Ann. § 36-1-102(1)(E).

Father was incarcerated continuously from November 14, 2019, until May 13, 2021. DCS filed its petition to terminate the parental rights of Father in April 2021, which was during the time Father was incarcerated. Consequently, the condition precedent of incarceration is satisfied for this particular ground. The relevant four-month period preceding his incarceration is from July 14, 2019, through November 13, 2019. During this time, there were a total of three scheduled visits with the children. Father canceled the visits in July 2019 and October 2019. Therefore, he participated in only one visit during the relevant four-month period, which was in September 2019. Given that Father only participated in this one visit during the relevant four-month period, the juvenile court found that "there was insubstantial contact by the father with the minor children, which was perfunctory, infrequent, and minimal."

Although the juvenile court did not specifically use the term, the language used in its order indicates that it found Father's visitation to be nothing more than "token visitation." *Id.* § 36-1-102(1)(C) ("For purposes of this subdivision (1), 'token visitation' means that the visitation, under the circumstances of the individual case, constitutes nothing more than *perfunctory* visitation or visitation of such an *infrequent* nature or of such short duration as to merely establish *minimal* or *insubstantial* contact with the child." (emphasis added)). The record supports the court's finding that Father's efforts were token during this time frame. Father only participated in one visit with the children during the relevant four-month period. There was no indication that Father and the children were able to cultivate a meaningful relationship from this one visit in September 2019. Father had only "minimal or insubstantial contact" with the children due the infrequent nature of his visitation. *Id.* Accordingly, we agree with the court's determination that Father engaged in nothing more than token visitation.

In his answer to the petition, Father raised the affirmative defense of the absence of willfulness for this particular ground. "[A] parent's assertion that the failure to visit was not willful constitutes an affirmative defense." *In re Rhyder C.*, No. E2021-01051-COA-R3-PT, 2022 WL 2837923, at *12 (Tenn. Ct. App. July 21, 2022) (citing Tenn. Code Ann. § 36-1-102(1)(I) ("The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure.")). The parent bears "the burden of proof that the failure to visit . . . was not willful," and "[s]uch defense must be established by a preponderance of evidence." Tenn. Code Ann. § 36-1-102(1)(I). This Court has previously explained "willfulness" as follows:

> Failure to visit . . . a child is "willful" when a person is aware of his or her duty to visit or support, has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so. Failure to visit . . . is not excused by another person's conduct unless the conduct actually prevents the person with the obligation from performing his or her duty, or amounts to a significant restraint of or interference with the parent's efforts to support or develop a relationship with the child.

In re Audrey S., 182 S.W.3d at 864 (internal citations and footnotes omitted).

Father had moved to Georgia and had to drive approximately eight hours to visit the children in Tennessee. The FSW testified that Father cancelled one of the visits during the relevant four-month period because of lack of gas money. The FSW explained, however, that DCS offered gas cards to parents if they did not have sufficient funds to make the drive to visit with their children. Additionally, DCS had noted in the permanency plan that it would provide Father with money for fuel in order for visitation to take place. Although Father might not have had the capacity to make the eight-hour drive to visit his children at times, DCS was ready and willing to offer him assistance in the form of gas cards so that

visitation could take place. There is no proof in the record that Father made any requests for this assistance or that he took advantage of the gas cards offered by DCS in order to visit his children. *See In re Keagan P.*, No. E2019-00055-COA-R3-PT, 2019 WL 3545821, at *7 (Tenn. Ct. App. Aug. 5, 2019) (agreeing with the trial court's analysis that the father willfully failed to visit the child where the father did not, among other things, attempt to obtain gas cards from DCS).

As stated previously, the parent bears "the burden of proof that the failure to visit . . . was not willful." Tenn. Code Ann. § 36-1-102(1)(I). Here, we conclude that Father has failed to meet his burden of proof in showing that his failure to visit was not willful. As such, we conclude that the juvenile court did nor err in finding that DCS met its burden in proving the ground of abandonment by incarcerated parent for failure to visit.

2. Substantial Noncompliance with a Permanency Plan

A parent's rights may be terminated for substantial noncompliance with the statement of responsibilities in a permanency plan. Tenn. Code Ann. § 36-1-113(g)(2). "Tennessee law requires the development of a plan of care for each foster child and further requires that the plan include parental responsibilities that are reasonably related to the plan's goal." *In re Jamel H.*, No. E2014-02539-COA-R3-PT, 2015 WL 4197220, at *7 (Tenn. Ct. App. July 13, 2015) (citing Tenn. Code Ann. § 37-2-403(a)(2)(A)). To establish this ground, the parent's noncompliance with the plan must be substantial, and the plan's requirements must be "reasonable and related to remedying the conditions which necessitate[d] foster care placement." *In re Valentine*, 79 S.W.3d at 547. "In the context of the requirements of the permanency plan, the real worth and importance of noncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement." *Id*. at 548. Determining whether the parent has sufficiently complied with a permanency plan "involves more than merely counting up the tasks in the plan to determine whether a certain number have been completed and 'going through the motions' does not constitute substantial compliance." *In re Carrington H.*, 483 S.W.3d at 537 (citing *In re Valentine*, 79 S.W.3d at 547).

There were several permanency plans developed and ratified throughout DCS's involvement in this matter. Father's responsibilities in those permanency plans are summarized as follows:

1. Comply with all laws and rules of society, resolve all legal charges, and refrain from incurring any new charges;
2. Obtain documents regarding his current case status (regarding his aggravated assault charge);
3. Notify DCS and the visitation worker at least 24 hours in advance if a visitation must be cancelled, maintain regular and positive visitation, maintain regular contact with DCS, notify DCS of any changes in relation to visitation, and notify DCS of

any changes in address or phone number including employment if applicable;

4. Complete a mental health assessment to address history of domestic violence, follow all recommendations, and sign a release of information for DCS to verify completion and provide a copy of the recommendations to DCS;
5. Complete an alcohol and drug ("A&D") assessment to address history of domestic violence, follow all recommendations, and sign a release of information for DCS to verify completion and provide a copy of the recommendations to DCS;
6. Locate safe and stable housing and be able to maintain it for at least a 3-month period, notify DCS once housing is located, provide DCS with proof of housing, and complete the ICPC process and become an approved home for the children;
7. Refrain from allowing people under the influence of drugs or alcohol to be in the presence of the children;
8. Pay child support according to Tennessee child support guidelines;
9. Complete domestic violence classing/training;
10. Obtain and maintain employment and provide DCS with proof of ongoing legal income;
11. Complete a budget, with the aid of DCS, that shows the ability to meet the financial needs of the children and submit it back to DCS; and
12. Notify DCS when he is released from jail in Georgia and provide DCS with any outcome/documents of the charges he currently has (regarding his drug-related charges).

The responsibilities of the permanency plans were reasonable and related to remedying the conditions that existed at the time the children entered DCS custody. Perhaps most important, Father was required to refrain from incurring any new charges due to his incarceration at the time the children entered DCS custody.

DCS provided Father with the form setting forth the criteria and procedures for termination of parental rights on at least one occasion. The FSW testified that DCS set up child and family team meetings ("CFTMs") in order to outline the criteria for Father to complete so that he could get his children back. However, he stated that it was more difficult to provide assistance because Father had moved back to Georgia. Furthermore, he explained that Father did not make himself available to work on any of the services offered by DCS. He also stated that Father participated in the development of a few of the plans. However, he explained that Father did not complete any of the responsibilities. For instance, Father did not provide any proof that he had a safe home for the children or any documentation showing that he was employed or that he paid child support. There was also no proof in the record that he completed a mental health assessment or A&D assessment. The FSW had difficulty communicating with Father and had no knowledge of Father paying any child support. Moreover, Father did not refrain from incurring any new charges because he was incarcerated again in November 2019. Before this incarceration, he was participating in visitation, but he had cancelled many of the scheduled visits. At one of the visits he participated in, he threatened the foster parents. After Father

was released from incarceration, he was permitted to resume visitation. Still, he did not show up for most of the visits. He was two hours and forty minutes late for the one visit he did show up for, although he did give advance notice that he was going to be running late. For his scheduled visit during Christmas time, for which he did not appear, Father indicated several days prior that he might not be able to make it, but he never subsequently confirmed whether he would attend the visit. From the time the children entered DCS custody until DCS filed its petition, Father had more than three years to complete these tasks in order to put himself in a position to get his children back. He was aware of the consequences of his noncompliance because he received the form setting forth the criteria and procedures for termination of parental rights. However, due to his own choices, he was incarcerated for most of that time and failed to complete any of his responsibilities.

In light of the foregoing, we find that Father's noncompliance with his responsibilities in the permanency plans was substantial. As such, we conclude that the juvenile court did not err in finding that DCS met its burden in proving the ground of substantial noncompliance with a permanency plan.

3. Failure to Manifest an Ability and Willingness to Assume Custody

Another ground for termination exists 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). Under this statutory ground, there are two elements necessary to prove. *In re Neveah M.*, 614 S.W.3d at 674. The first element "places a conjunctive obligation on 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. Accordingly, "clear and convincing proof that a parent . . . has failed to manifest either ability or willingness" satisfies the first element of this ground. *Id.* (adopting *In re Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, at *13 (Tenn. Ct. App. June 20, 2018)). A parent's ability to assume custody or financial responsibility is evaluated based "on the parent's lifestyle and circumstances." *In re Zaylee W.*, No. M2019-00342-COA-R3-PT, 2020 WL 1808614, at *5 (Tenn. Ct. App. Apr. 9, 2020) (citing *In re Ayden S.*, 2018 WL 2447044, at *7). Parents commonly state that they are willing to assume custody or financial responsibility for their children. However, as we have explained, "[w]hen evaluating willingness, we look for more than mere words." *In re Jonathan M.*, No. E2018-00484-COA-R3-PT, 2018 WL 5310750, at *5 (Tenn. Ct. App. Oct. 26, 2018). The second element requires the petitioner to establish that "placing the child in the [parent'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); *see In re Neveah M.*, 614 S.W.3d at 677.

We note again that the children entered DCS custody in January 2018 after the

maternal grandmother voluntarily surrendered them. During that time, Father was incarcerated in Georgia. More than three years later, Father did not have the ability to assume custody of the children when DCS filed its petition for termination against him. Father did not make himself available to work on any of the services offered by DCS. He failed to provide any proof that he had a safe home for the children or, at the very least, any proof that he had a home of his own. He failed to provide any documentation showing that he was employed or that he paid child support. There was no proof in the record showing that he completed a mental health assessment or A&D assessment. Father cancelled or did not show up for many of his scheduled visits with the children. He also engaged in criminal activity, and, as a result, incurred several new charges in November 2019 that led to his incarceration of more than two years. Additionally, he did not even make himself available to testify at trial via Zoom in February 2022 despite requesting and receiving permission from the juvenile court to do so.

Since the children entered DCS custody, Father has failed to demonstrate an ability to assume custody of his children. Particularly, Father's lifestyle of repeated incarceration poses a risk of substantial harm to the children's welfare. Therefore, we conclude that the juvenile court did not err in finding that DCS met its burden in proving this ground for termination.

B. Best Interests of the Children

We now review whether termination of Father's parental rights was in the best interests of the children.[2] This Court "must consider nine statutory factors listed in Tennessee Code Annotated § 36-1-113(i)." *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). "The relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending 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. We view these factors from the children's perspective rather than the parent's perspective. *Id.* Finally, we "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 at 682. However, "a finding on each factor is not required." *In re Kaylene J.,* No. E2019-02122-COA-R3-PT, 2021 WL 2135954, at *18 (Tenn. Ct. App. May 26, 2021); *see In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *16 (citing *In re Dominique L.H.*, 393 S.W.3d 710, 719 (Tenn. Ct. App. 2012)).

The first statutory factor is "[w]hether the parent . . . has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent . . . [.]" Tenn. Code Ann. § 36-1-113(i)(1). The juvenile court

[2] The petition to terminate parental rights was filed on April 15, 2021. Therefore, we note that we are considering the previous best-interests factors instead of the amended best-interests factors, which went into effect on April 22, 2021, after the petition was filed. *See* 2021 Tenn. Pub. Acts, Ch. 190 § 1 (S.B. 205)

found that this factor weighed in favor of termination. Father was incarcerated at the time the children entered DCS custody. He was released in February 2018 but was incarcerated again in November 2019. He ultimately pled guilty to possession of methamphetamine, possession of marijuana, and crossing guard lines. He was not released from incarceration until May 2021. Given that Father was incarcerated at the time the children entered DCS custody and was then incarcerated again in November 2019, he failed to make an adjustment of circumstance, conduct, or conditions as to make it safe and in the children's best interests to be with him. The first factor weighs in favor of termination.

The second statutory factor is "[w]hether the parent . . . has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible[.]" *Id.* § 36-1-113(i)(2). The juvenile court found that this factor weighed in favor of termination. DCS made efforts to assist with completing the ICPC request to place the children with the paternal grandmother in Georgia. DCS also set up CFTMs in order to review the criteria for Father to complete so that he could get his children back. According to the FSW, however, it was more difficult for DCS to provide assistance in this case because Father had moved back to Georgia. Still, Father did not make himself available to work on any of the services offered by DCS. After reasonable efforts made by DCS, Father failed to effect a lasting adjustment, and a lasting adjustment does not reasonably appear possible. The second factor weighs in favor of termination.

The third statutory factor is "[w]hether the parent . . . has maintained regular visitation or other contact with the child[.]" *Id.* § 36-1-113(i)(3). The juvenile court found that this factor weighed in favor of termination. Father began participating in visitation with the children in 2019 but cancelled some of the scheduled visits. He was then incarcerated in Georgia in November 2019. After he was released from incarceration in May 2021, he was permitted to resume visitation with the children; however, he did not show up for many of the scheduled visits. Father failed to maintain regular visitation or other contact with his children. Thus, the third factor weighs in favor of termination.

The fourth statutory factor is "[w]hether a meaningful relationship has otherwise been established between the parent . . . and the child[.]" *Id.* § 36-1-113(i)(4). The juvenile court found that this factor weighed in favor of termination. As previously stated, Father had infrequent contact with his children despite having the opportunity to participate in visitation consistently. Prior to one of the visits, both children cried saying that they did not want to go to the visit. Afterward, they asked the foster parents when they were going to be adopted. The children refer to their foster parents as "Mom" and "Dad." There is no meaningful relationship between Father and the children. The fourth factor weighs in favor of termination.

The fifth statutory factor is "[t]he effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical

condition[.]" *Id.* § 36-1-113(i)(5). The juvenile court found that this factor weighed in favor of termination. On appeal, Father concedes that the factors applicable to the foster family and the children's circumstances in the foster home do not weigh in his favor. The children were placed in a foster home in January 2018 and had been in that same home for four years at the time of trial. The FSW testified that the children were doing well there and were bonded to their foster parents. The children had also formed a bond with their foster parents' newborn daughter. Due to the length of time the children had spent in their foster home and the bonds that they had formed with those in their foster home, removing them would likely have a detrimental effect on their emotional and psychological condition. Therefore, the fifth factor weighs in favor of termination.

The sixth statutory factor is "[w]hether the parent . . . , or other person residing with the parent . . . , has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household[.]" *Id.* § 36-1-113(i)(6). The juvenile court found that this factor was not applicable. Likewise, we find that this factor is not applicable.

The seventh statutory factor is "[w]hether the physical environment of the parent's . . . home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent . . . consistently unable to care for the child in a safe and stable manner[.]" *Id.* § 36-1-113(i)(7). The juvenile court found that this factor weighed in favor of termination. Foremost, we note that Father failed to provide any proof that he had a safe home for the children. Additionally, we note again that he was incarcerated for aggravated assault at the time the children entered DCS custody. He was incarcerated a second time in November 2019 on drug-related charges. He later pled guilty to possession of methamphetamine, possession of marijuana, and crossing guard lines, and he was not released from incarceration until May 2021. Due to Father's incarcerations and the nature of his charges, he has demonstrated that he would be unable to care for the children in a safe and stable manner. This factor weighs in favor of termination.

The eighth statutory factor is "[w]hether the parent's . . . mental health and/or emotional status would be detrimental to the child or prevent the parent . . . from effectively providing safe and stable care and supervision for the child[.]" *Id.* § 36-1-113(i)(8). The juvenile court found that this factor was not applicable. We agree.

The ninth statutory factor is "[w]hether the parent . . . has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101." *Id.* § 36-1-113(i)(9). The juvenile court found that this factor weighed in favor of termination. Father failed to provide any documentation demonstrating that he paid child support, and the FSW had no knowledge of Father paying any child support. This factor weighs in favor of termination.

As a final matter, we consider Father's issue regarding the ICPC request with the paternal grandmother in Georgia. The record reveals that DCS considered placing the children with the paternal grandmother but opted against doing so. The State of Georgia rejected the ICPC request at first because it required a DNA test establishing paternity of Father. Afterward, Father took a DNA test, and the juvenile court entered an order establishing paternity of Father. An ICPC home study with the paternal grandmother was then completed, but it was denied due to concerns with her home. The concerns included a door that was off the hinges in her home, trash and junk strewn around her home, and other family members living in her home. Corrective actions were taken to address these concerns, and the ICPC request with the paternal grandmother was ultimately approved in January 2020.[3] At that point, however, DCS was not interested in placing the children with the paternal grandmother due to their progress and length of time with the foster parents.

Father contends that the idea of placement with the paternal grandmother appears to have been disregarded by DCS. However, he concedes that this issue has been addressed by this Court in *In re Joseph L.*, No. M2011-02058-COA-R3-PT, 2012 WL 2389609, at *6-7 (Tenn. Ct. App. June 25, 2012). Indeed, we have "repeatedly held that the failure to place a child with a relative is not a basis to defeat termination." *Id.* at *7 (citing *In re Arteria H.*, 326 S.W.3d 167, 184 (Tenn. Ct. App. 2010); *In re Deashon A.C.*, No. E2009-01633-COA-R3-PT, 2010 WL 1241555, at *8 (Tenn. Ct. App. Mar. 31, 2010); *In re K.L.D.R.*, No. M2008-00897-COA-R3-PT, 2009 WL 1138130, at *8 (Tenn. Ct. App. Apr. 27, 2009)). "DCS is not required under either statutory or case law to make reasonable efforts to reunite children with their extended family prior to terminating a parent's parental rights." *In re Aiden R.B.*, No. E2011-00147-COA-R3-PT, 2011 WL 2206637, at *11 (Tenn. Ct. App. June 7, 2011). DCS's decision to maintain the children in their foster home was reasonable given that the children had been there for more than four years and were doing well.

Based on our review of these factors, we find that termination of Father's parental rights is in the best interests of the children. Accordingly, we conclude that the juvenile court did not err in finding that termination was in the children's best interests.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the juvenile court. Costs of this appeal are taxed to the appellant, Dominique D. B., for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE

[3] There were still other concerns regarding placement of the children in the paternal grandmother's home due to twelve 911 calls that had taken place in the past at her home.