

FILED

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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs March 1, 2023

**IN RE ZIQUAVIOUS P. ET AL.**

**Appeal from the Juvenile Court for Shelby County  
No. EE6924 Harold W. Horne, Special Judge**

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**No. W2022-00743-COA-R3-PT**

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Mother appeals the termination of her parental rights on five grounds: (1) abandonment by failure to visit the children; (2) abandonment by failure to financially support the children; (3) substantial noncompliance with the permanency plans; (4) persistence of conditions; and (5) failure to manifest an ability and willingness to care for the children. Discerning no reversible error, we affirm.

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

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

Ada Johnson, Memphis, Tennessee, for the appellant, Siera P.

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

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY**

This case involves the five children of Respondent/Appellant Siera P.<sup>1</sup> ("Mother"): Ziquavion,<sup>2</sup> born in August 2009; Ziniya, born in March 2011; Zakayla, born in March 2012; Za'Moria, born in September 2013, and Osiris, born in May 2015 (collectively, "the

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<sup>1</sup> In cases involving termination of parental rights, it is this Court's policy to remove the full names of children and other parties to protect their identities.

<sup>2</sup> The style of this case reflects a different name for the eldest child. We utilize the name reflected on his birth certificate, as do all of the parties to this case.

children”). On December 15, 2017, Petitioner/Appellee the Tennessee Department of Children’s Services (“DCS”) took physical custody of the children due to a referral that the children’s maternal grandmother—who had taken the children in when Mother was unable to care for them after being incarcerated and then later admitted to a mental health treatment facility—could no longer care for them. As a result, on December 18, 2017, DCS filed a petition to declare the children dependent and neglected and for an ex parte order of protective custody in the Shelby County Juvenile Court (“the trial court”). The trial court granted an order of protective custody placing the children in DCS’s legal custody on December 21, 2017.<sup>3</sup> The children were eventually adjudicated dependent and neglected by order of March 5, 2019, after Mother “stipulated that her mental health prevented her from properly caring for the minor child[ren] and she failed to properly supervise the child[ren].”

Mother cooperated with DCS at the outset of this case. Mother signed the Criteria for Termination of Parental Rights in January 2018. She also participated in the creation of the first, second, and third permanency plans spanning from January 2018 to late 2019. Although Mother did not participate when the plan was updated for the final time in 2021, the fourth plan contained generally the same requirements as its predecessors: complete a parenting assessment and comply with recommendations; obtain and maintain stable housing; pay child support; participate in supervised visits; complete a mental health assessment and comply with recommendations; take medication as prescribed; and maintain contact with DCS.

Mother’s cooperation, however, eventually waned, leading DCS to file a petition to terminate Mother’s parental rights on August 6, 2020.<sup>4</sup> The petition alleged the following grounds against Mother: (1) abandonment by failure to visit the children; (2) abandonment by failure to financially support the children; (3) substantial noncompliance with the permanency plans; (4) persistence of conditions; and (5) failure to manifest an ability and willingness to care for the children. On November 20, 2020, the trial court granted DCS’s motion to serve Mother by publication. Trial on the petition occurred on April 28, 2022. Mother was represented by counsel at the hearing, but she was not present. Only two witnesses testified: Tonya Russell, a team leader with DCS, and the children’s foster mother (“Foster Mother”).

According to Ms. Russell, in recent years, Mother’s participation in the case was essentially non-existent. Mother never completed a single task on any of the permanency plans. She never paid any child support or provided any gifts for the children. Although she was in contact with DCS initially, all contact with Mother was lost about a year before

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<sup>3</sup> The children had previously been removed in March 2016, but returned to Mother’s physical and legal custody.

<sup>4</sup> The petition was also filed against three separate fathers of the children. The petition was continued as to Osiris’s legal father, Patrick H., but granted as to two putative fathers. None of these individuals are at issue in this appeal.

trial. The last visit that Mother had with the children before the termination petition was filed occurred on January 6, 2020, at a court hearing. After the termination petition was filed, Mother saw the children three or four more times, once by video conference and once at a court hearing.<sup>5</sup> The last visit of any kind occurred in May 2021, nearly a year prior to trial. Ms. Russell testified that even though the COVID-19 pandemic impacted visitation, virtual visits were offered to Mother when she was in contact; she did not take DCS up on this offer. Because DCS was not able to locate Mother, she had not shown any improvement in the issues that led to the removal of the children—namely her mental health issues and her inability to supervise the children. Although DCS offered to submit a grant for Mother to receive the necessary mental health and parenting assessments, Mother did not cooperate and never completed either.

Ms. Russell testified that the children have been in the physical custody of Foster Mother throughout the entire four-and-one-half years they have been in DCS's legal custody. The children are doing very well in the home. The eldest child has stated that he is ready to be adopted. The children do not view Mother as a parent-figure. Instead, they love and have a strong bond with Foster Mother.

Foster Mother testified that when the children came to her, they were all failing in school and had various behavioral and emotional issues. All of the children's grades have improved since their placement with her. Due to some lingering emotional issues, the children receive counseling and some have been placed on medications. They participate in various community activities, such as church or sports. The children inform people that Foster Mother is their mother. Foster Mother testified that she hopes to adopt the children, and her home is pre-adoptive.

At the conclusion of trial, the trial court orally ruled that DCS's petition should be granted based on clear and convincing evidence to support both the grounds for termination and that termination was in the children's best interest. Thereafter, on May 13, 2022, the trial court entered a written order terminating Mother's parental rights on all five grounds alleged in the petition as to Mother. The trial court further found that termination was in the children's best interests. Mother then appealed to this Court.

## **II. ISSUES PRESENTED**

As we perceive it, this appeal involves two issues:

1. Whether the trial court erred in finding clear and convincing evidence of grounds to terminate Mother's parental rights?

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<sup>5</sup> The manner of the others visits was unclear from the testimony.

2. Whether the trial court erred in finding clear and convincing evidence that termination was in the children's best interests?

### III. STANDARD OF REVIEW

Parental rights are “among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016) (collecting cases). Therefore, “parents are constitutionally entitled to fundamentally fair procedures in parental termination proceedings.” *Id.* at 511. These procedures include “a heightened standard of proof—clear and convincing evidence.” *Id.* at 522 (quotation marks and citations omitted). “Clear and convincing evidence is evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (quotation marks and citation omitted).

In Tennessee, termination of parental rights is governed by statute, which identifies “situations in which [the] state’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth grounds on which termination proceedings can be brought.” *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (quoting *In re W.B.*, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at \*7 (Tenn. Ct. App. Apr. 29, 2005) (citing Tenn. Code Ann. § 36-1-113(g))). Thus, a party seeking to terminate a parent’s rights must prove by clear and convincing evidence (1) the existence of at least one of the statutory grounds in section 36-1-113(g), and (2) that termination is in the child’s best interest. See *In re Valentine*, 79 S.W.3d at 546. “Considering the fundamental nature of a parent’s rights, and the serious consequences that stem from termination of those rights, a higher standard of proof is required in determining termination cases.” *In re Addalyne S.*, 556 S.W.3d 774, 782 (Tenn. Ct. App. 2018). The clear and convincing evidence standard applicable here is “more exacting than the ‘preponderance of the evidence’ standard, although it does not demand the certainty required by the ‘beyond a reasonable doubt’ standard. To be clear and convincing, the evidence must eliminate any substantial doubt and produce in the fact-finder’s mind a firm conviction as to the truth.” *In re S.R.C.*, 156 S.W.3d 26, 29 (Tenn. Ct. App. 2004) (internal citation omitted).

In termination cases, appellate courts review a trial court’s factual findings de novo and accord these findings a presumption of correctness unless the evidence preponderates otherwise. See Tenn. R. App. P. 13(d); *In re Carrington H.*, 483 S.W.3d at 523–24 (citations omitted). “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 Carrington H.*, 483 S.W.3d at 524 (citation omitted).

## IV. ANALYSIS

### A. Grounds for Termination

The trial court found clear and convincing evidence of the following five grounds for termination: (1) abandonment by failure to visit the children; (2) abandonment by failure to financially support the children; (3) substantial noncompliance with the permanency plans; (4) persistence of conditions; and (5) failure to manifest an ability and willingness to care for the children. Rather than address any of these grounds individually, Mother makes a sweeping argument that none of the grounds can be sustained because DCS did not make reasonable efforts to assist her toward reunification. In support, Mother cites caselaw from 2002, 2006, and 2007.

In 2015, however, the Tennessee Supreme Court overruled the line of cases holding that reasonable efforts by DCS were a prerequisite to all grounds for termination. *See In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). Instead, reasonable efforts are only relevant to two inquiries: the ground of abandonment by failure to establish a suitable home and the best interest analysis. *Id.* at 527 n.17 & 554–55. Thus, while DCS’s reasonable efforts or lack thereof may be relevant to the best interests of the children at issue, DCS was not required to affirmatively prove that it exerted reasonable efforts as to any of the grounds at issue in this appeal. Although Mother includes no further argument as to the grounds at issue, we will thoroughly but briefly address each one as mandated by our supreme court. *See In re Carrington H.*, 483 S.W.3d 507, 535 (Tenn. 2016).

#### 1. Abandonment

DCS first relies on the ground of abandonment under Tennessee Code Annotated section 36-1-113(g)(1). Abandonment has various definitions, one of which is relevant to this appeal:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child . . . .

Tenn. Code Ann. § 36-1-102(1)(A)(i). So, under this definition, abandonment occurs when a parent has either failed to visit or failed to support his or her child in the four months preceding the filing of the termination petition. A parent fails to visit when he or she fails, “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). A parent fails to support when he or she

fails “for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child.” Tenn. Code Ann. § 36-1-102(1)(D).

The termination petition in this case was filed on August 6, 2020. As such, the relevant period for determining abandonment in this appeal is April 6, 2020, to August 5, 2020. Here, the evidence was uncontroverted that Mother neither visited nor provided any financial support of any kind for the children during this time period. Instead, her last visit prior to the filing of the termination petition was in January 2020 at a court hearing. Mother then had a few visits after the termination petition was filed. But “[a]bandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child[.]” Tenn. Code Ann. § 36-1-102(1)(F). And Mother never provided any financial support for the children throughout the time they were in DCS custody. Finally, Mother did not raise the affirmative defense that her failure to visit or support was not willful in an answer to the petition or at trial. *See* Tenn. Code Ann. § 36-1-102(1)(I) (making lack of willfulness an affirmative defense that must be proven by the parent). So it appears that the trial court did not err in finding that Mother abandoned the children by both failing to visit and failing to support them in the four months preceding the filing of the termination petition.

## **2. Substantial Noncompliance with Permanency Plans**

The trial court also found that Mother substantially failed to comply with permanency plans under Tennessee Code Annotated section 36-1-113(g)(2). According to the Tennessee Supreme Court:

Substantial noncompliance is a question of law which we review de novo with no presumption of correctness. Substantial noncompliance is not defined in the termination statute. The statute is clear, however, that noncompliance is not enough to justify termination of parental rights; the noncompliance must be substantial. *Black’s Law Dictionary* defines “substantial” as “[o]f real worth and importance.” *Black’s Law Dictionary* 1428 (6th ed. 1990).

*In re Valentine*, 79 S.W.3d at 548. As discussed by this Court in *In re M.J.B.*, 140 S.W.3d 643 (Tenn. Ct. App. 2004):

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), [DCS] 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,

*In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003), 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. *In re Valentine*, 79 S.W.3d at 548–49; *In re Z.J.S.*, [No. M2002-02235-COA-R3-JV,] 2003 WL 21266854, at \*12 [(Tenn. Ct. App. June 3, 2003)]. Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance. *In re Valentine*, 79 S.W.3d at 548; *Department of Children's Servs. v. C.L.*, No. M2001-02729-COA-R3-JV, 2003 WL 22037399, at \*18 (Tenn. Ct. App. Aug. 29, 2003) (No Tenn. R. App. P. 11 application filed).

*Id.* at 656–57.

The multiple permanency plans in the record generally required the following of Mother: (1) complete a parenting assessment and comply with recommendations; (2) obtain and maintain stable housing; (3) pay child support; (4) participate in supervised visits; (5) complete a mental health assessment and comply with recommendations; (6) take medication as prescribed; and (7) maintain contact with DCS.

There can be no rational dispute that these requirements were reasonable and related to remedying the conditions that necessitated foster care—namely, Mother's mental health issues and lack of stability. There can also be little dispute that Mother was substantially noncompliant with these requirements. As previously discussed, Mother barely visited the children in the four years that the children were in DCS custody. She never attempted to provide them any financial support. Mother failed to keep in touch with DCS, preventing DCS from determining her housing and medication compliance. DCS also never received any indication that Mother had completed any of the assessments required by the permanency plans, despite attempts to help fund these assessments. As such, there was clear and convincing evidence that Mother failed to substantially comply with the permanency plans.

### **3. Persistence of Conditions**

DCS also relies on the ground of persistence of conditions. This ground may be found in the following circumstances:

(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

(i) The conditions that led to the child's removal still persist,

preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard[.]

Tenn. Code Ann. § 36-1-113(g)(3).

Here, Mother offers no argument to dispute the applicability of this ground, as the children were removed from Mother's legal custody by an order of protective custody entered on December 21, 2017, following the December 18, 2017 filing of a dependency and neglect petition. The children had also been in DCS custody for well over six months by the time of trial. Thus, the dispositive questions are whether conditions persist that prevent the safe return of the children, whether the conditions will likely be remedied at an early date, and whether the continued relationship prevents early integration of the children into a safe, stable, permanent home. As we have previously explained,

“A parent's continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent's care.” *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*20 (Tenn. Ct. App. Oct. 13, 2008) (citing *In re T.S. & M.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at \*7 (Tenn. Ct. App. July 13, 2000)). The failure to remedy the conditions which led to the removal need not be willful. *In re T.S. & M.S.*, 2000 WL 964775, at \*6 (citing *State Dep't of Human Servs. v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990)). “Where . . . efforts to provide help to improve the parenting ability, offered over a long period of time, have proved ineffective, the conclusion [] that there is little likelihood of such improvement as would allow the safe return of the child to the parent in the near future is justified.” *Id.* The purpose behind the “persistence of conditions” ground for terminating parental rights is “to prevent the child's lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.” *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*20 (Tenn. Ct. App. Oct. 13, 2008) (quoting *In re D.C.C.*, No. M2007-01094-COA-R3-PT, 2008 WL



588535, at \*9 (Tenn. Ct. App. Mar. 3, 2008)).

*In re Nevada N.*, 498 S.W.3d 579, 605–06 (Tenn. Ct. App. 2016).

Here, the children were removed from Mother’s care because of a lack of supervision due to Mother’s mental health hospitalization. Since that time, Mother has made no progress on any of the tasks of her permanency plans. Of particular concern is whether Mother is receiving mental health treatment, as Mother never even claimed to have completed any of the required mental health and parenting assessments required by DCS. Mother failed to maintain any consistent contact with either DCS or her children. In fact, at the time of trial, she had essentially been missing for a period of nearly a year. Thus, conditions still exist that prevent the children’s safe return to Mother’s care and given Mother’s lack of cooperation in the over four years since removal, appear unlikely to be remedied at any near date. But fortunately, the children are placed in a loving, stable, home that is pre-adoptive. DCS therefore proved this ground for termination by clear and convincing evidence.

#### 4. Willingness and Ability

DCS next contends that Mother failed to manifest a willingness and ability, whether by act or omission, to personally assume legal and physical custody or financial responsibility of the children and that placing the children in her legal and physical custody would create a risk of substantial harm to the children’s physical or psychological welfare. *See* Tenn. Code Ann. § 36-1-113(g)(14). Essentially, the statutory ground has two distinct elements which must be proven by clear and convincing evidence:

First, DCS must prove that [the parent] failed to manifest “an ability and willingness to personally assume legal and physical custody or financial responsibility of the child.” DCS must then prove 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.”

*In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at \*7 (Tenn. Ct. App. Apr. 4, 2018) (quoting Tenn. Code Ann. § 36-1-113(g)(14)) (some alterations of the original text removed). As for the first element, the petitioner must “prove[] by clear and convincing proof that a parent or guardian has failed to manifest either [an] ability or willingness” to parent the child. *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020).

Here, Mother certainly failed to manifest any willingness to take financial responsibility for her children, as she made no effort to support the children in the more than four years they were in custody. Mother also failed to manifest either the ability or the willingness to take physical custody of the children. Mother did not attempt to keep in consistent contact with DCS or her children. She did not support them financially. She did

not demonstrate that she was seeking any treatment for her mental health issues or that she could provide a home for the children of any kind.

Moreover, returning the children to Mother would create a substantial risk of harm to them. By the time of trial, Mother had had no contact with either DCS or the children in nearly a year. DCS had no ability to determine where Mother was living, whether she was seeking mental health treatment or properly taking her medications, or whether she had any means to support her children. Given that the children had been removed from Mother's case on two occasions without substantial progress toward stability, this creates a substantial risk of harm to the children.

### **B. Best Interests**

Because we have determined that at least one statutory ground has been proven for terminating Mother's parental rights, we must now decide if DCS has proven, by clear and convincing evidence, that termination of Mother's rights is in the children's best interests. Tenn. Code Ann. § 36-1-113(c)(2); *White v. Moody*, 171 S.W.3d 187, 192 (Tenn. Ct. App. 1994). If "the interests of the parent and the child conflict, courts are to resolve the conflict in favor of the rights and best interest of the child." *In re Nevada N.*, 498 S.W.3d at 607.

According to the version of the statute in place when the termination petition was filed, the trial court was directed to consider the following best interest factors:

- (1) Whether the parent or guardian 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 or guardian;
- (2) Whether the parent or guardian 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;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian'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 or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i) (2020). “This list is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent's rights is in the best interest of a child.” *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005) (citations omitted).

On appeal, Mother argues that DCS did not present sufficient proof to support the trial court's finding that termination was in the children's best interest because: (1) no proof of a “bonding assessment” was presented; (2) no evidence was presented that the children would “suffer” if returned to Mother's care. Respectfully, we disagree that DCS was required to prove either of those facts.

First, Mother cites no law to suggest that a “bonding assessment” is a prerequisite to the best interest finding. We find no legal support for such a suggestion. Here, the evidence showed that Mother nearly completely abdicated her duty to visit and support the children in the year prior to the termination trial and was only sporadically and minimally involved with the children before and after that time. *See* Tenn. Code Ann. § 36-1-113(i)(3) (involving visitation with the children), (9) (involving support). As a result of Mother's failure to be in the children's lives, they have very little bond with her. *See* Tenn. Code Ann. § 36-1-113(i)(4) (involving the parent's relationship with the children). As evidence of this, both witnesses testified that the children's bond with Mother is nothing more than their knowledge that she is their biological parent. In contrast, the proof at trial was that the children are bonded to Foster Mother and that they are generally flourishing in her care.<sup>6</sup> Removing the children from this home where they have stability and the support they need in favor of the instability of Mother would clearly harm them. *See* Tenn. Code Ann. § 36-1-113(i)(5) (involving the effect on the children of a change in caretakers). As such, factors 3, 4, 5, and 9 heavily favor termination.

Importantly, because Mother has chosen not to cooperate with DCS, the proof indicates that she has made no efforts to make a lasting adjustment of circumstances. *See*

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<sup>6</sup> Of course, the proof shows that some of the children have lingering issues; however, it appears that Foster Mother is being proactive in seeking treatment for these issues.

Tenn. Code Ann. § 36-1-113(i)(1) (involving whether the parent has made an adjustment of circumstances). And while Mother was only sometimes in contact with DCS, the proof shows that DCS did offer some services to Mother that she never took advantage of. *See* Tenn. Code Ann. § 36-1-113(i)(2) (involving whether the parent utilized services provided to make lasting changes). So factors 1 and 2 also heavily favor termination.

Mother's mental health issues were a significant catalyst for DCS's involvement in this case. But Mother has never claimed to DCS that she was making serious efforts to seek mental health treatment. *See* Tenn. Code Ann. § 36-1-113(i)(8) (involving whether the parent's mental and emotional health would be detrimental to the children). In particular, we are concerned by the fact that the children seem to be improving because of Foster Mother's commitment to ensuring that they receive mental health treatment. If Mother is unable or unwilling to treat her own mental health issues, we have little confidence that she will continue the children's treatment. Mother's failure to keep consistent contact with DCS also meant that DCS had no information about her home or the people residing there. *See* Tenn. Code Ann. § 36-1-113(i)(8) (involving the parent's physical environment and the people living there). Finally, while there are no allegations of any abuse in this case, it cannot be discounted that the children came into DCS custody because Mother could not care for them and she has made little effort to attempt to care for them in the years that have followed. *See* Tenn. Code Ann. § 36-1-113(i)(8) (involving whether the children were victims of brutality or neglect).

We also disagree that DCS must show that the children will unequivocally "suffer" if returned to Mother. Instead, once a ground for termination has been found, our focus shifts only to what is in the children's best interest. *See In re Audrey S.*, 182 S.W.3d 838, 877–78 (Tenn. Ct. App. 2005). Even if we did not believe that the children would "suffer" in Mother's care,<sup>7</sup> the best interest factors and all of the evidence clearly demonstrate that the cessation of their non-existent relationship with Mother would allow the children to be fully integrated into the loving home of Foster Mother, which has been their home for the last four years. *See In re Da'Vante M.*, No. M2017-00989-COA-R3-PT, 2017 WL 6346056, at \*15 (Tenn. Ct. App. Dec. 12, 2017) ("Children deserve stability and an opportunity to move on from their present limbo."). In contrast, refusing to terminate Mother's parental rights at this point would leave these children lingering "with the instability and insecurity inherent" in a long-term foster care situation, a situation that this Court has recognized is often not in a child's best interest. *In re C.B.W.*, No. M2005-01817-COA-R3-PT, 2006 WL 1749534, at \*8 (Tenn. Ct. App. June 26, 2006). As a result, the trial court did not err in finding that the children's best interests are best served by terminating Mother's parental rights.

## V. CONCLUSION

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<sup>7</sup> As evidenced by our finding that there is a risk of substantial harm, *supra*, the evidence does not support Mother's contention that no risk of suffering was proven here.

The judgment of the Shelby County Juvenile Court is affirmed, and this cause is remanded for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Appellant, Siera P., for all of which execution may issue if necessary.

s/ J. Steven Stafford  
J. STEVEN STAFFORD, JUDGE