IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 5, 2023 Session

IN RE PRESTON H.

Appeal from the Juvenile Court for Williamson County
No. 39316-21-JT2 Sharon Guffee, Judge

No. M2022-00786-COA-R3-PT

Courts in both Florida and Ohio denied petitions to terminate Father's parental rights in favor of the Prospective Adoptive Parents. While Florida courts were still exercising jurisdiction over the transition of the child from his Prospective Adoptive Parents to his Mother and Father, the Prospective Adoptive Parents sought for the third time to have a court terminate Father's parental rights, asserting willful failure to support in Tennessee. The juvenile court dismissed the petition, finding that Father's failure to support was not willful because the failure to support was tied to the Prospective Adoptive Parents' representations that they would no longer pursue custody, to Father's financial outlays related to preparing his home for a transition of custody, and to the complex, multi-jurisdictional nature of the litigation, in which Florida courts were expressly exercising jurisdiction for many months after the filing of the Tennessee petition and during the entirety of the period of non-payment. The Prospective Adoptive Parents appeal, asserting that the ground for termination was established by clear and convincing evidence, that termination is in the child's best interest, and that the court erred in assessing fees for the guardian ad litem. We affirm the judgment of the juvenile court.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., joined. W. NEAL MCBRAYER, J., filed a separate concurring opinion.

David R. Grimmett, Franklin, Tennessee, for the appellants, Kelly H., Pamela H., and Sarah C.

Crystal M. Etue, Franklin, Tennessee, Guardian ad Litem for the minor child, Preston H.

Mark T. Freeman, Nashville, Tennessee, for the appellee, Chris W.

OPINION

Chris W. (Father) has been seeking custody of his child since before his son Preston H. was born. He never relinquished his parental rights and has twice litigated in opposition to attempts by Kelly and Pamela H. (the Prospective Adoptive Parents) to terminate his parental rights in two different states. Father prevailed both times. After years of litigation and failing to succeed in terminating Father's parental rights in a second state, during which time the Prospective Adoptive Parents have maintained custody of Preston, the Prospective Adoptive Parents finally through their attorney contacted Father to concede that there was no path forward for them to adopt Preston. Under the jurisdiction of the Florida Courts, Father was working through a transition process to secure custody of his son and was preparing for his son to finally live in his home when he was confronted with litigation in the State of Tennessee. This is the third state in which the Prospective Adoptive Parents have sought to terminate Father's parental rights. The trial court declined to terminate Father's parental rights, concluding that the Prospective Adoptive Parents did not establish any grounds for termination of Father's parental rights. On appeal, the Prospective Adoptive Parents contend that Father willfully abandoned Preston by failing to pay child support from November 2020 through February 2021. This litigation presents this court with a complex legal question requiring assessing willfulness in connection with Father's failure to pay child support. This question unfortunately arises in the context of a dispute that is understandably, given the stakes, deeply emotional and challenging for all of the parties involved.

Turning to the foundational circumstances underlying this dispute, Father and Sarah C. (Mother) met while students at a university in Ohio. Mother and Father were never married. In 2015, Mother was temporarily living in Florida as part of an internship, and Father had graduated and lived in Louisiana. Mother visited Father during Mardi Gras, and Preston was conceived between February 14th and 18th. On March 5, 2015, Mother told Father she was pregnant and that she wanted to allow the Prospective Adoptive Parents, a childless married couple from Tennessee whom she met through a family she lived with as a nanny, to adopt the child. Father expressed hesitancy about the adoption of his child from the beginning:

> Although [Mother] testified that she believed that [Father] initially supported her decision to place the child for adoption, [Father's] text messages reflect his ambivalence about her decision. On March 6, the day after the phone conversation in which [Mother] told him about the pregnancy, [Father] wrote, "I don't know [if I'll] want it to be adopted or not. I won't for a couple months." [Father] told [Mother] that he was raised without a father and that he "made a vow" never to let his own child grow up without a father. [Father] also stated that the decision is "kinda up to both of us" and that he would find it "hard" to "act like it never happened." [Mother] insisted that her "mind

> [was] made up," even if [Father] wanted to keep the child, and that she wanted the child to "have two parents and a stable life."

In re Adoption of P.L.H., 91 N.E.3d 698, 700-01 (Ohio 2017). In April, Father asked about the baby's sex and health. Mother said the baby was healthy and she did not know the sex. *Id.* at 701. Father responded, "Ok cool love you," and Mother replied, "Love you too! Thanks for checking on me!" *Id.* Mother assured Father she knew he was a "good guy" but that that did not change anything, telling him, "We made a mistake, but it's handled. I'm not worried about it. I will always [be] here for you!" *Id.* Father responded, "Good. As I am for you." *Id.* There were no communications between the parties from June 8 to September 1, 2015. *Id.*

In September, Mother was apparently living in Ohio and asked for Father's address to send a consent form for adoption. *Id.* Father gave his address but told Mother he would not sign anything until he talked to his own mother. *Id.* After a phone conversation, Mother stated she was "shocked" that Father did not want to consent to the adoption, and she directed communications to go through her attorney. *Id.* Father completed a form on the Ohio putative father registry on September 4, 2015. *Id.* Father's attorney contacted Mother's attorney on September 28, 2015, to notify Mother that Father was seeking sole custody and objecting to adoption. *Id.* The letter informed Mother that Father was able to assist her with medical expenses and the costs of her medical care. *Id.*

Mother did not initially inform the Prospective Adoptive Parents that Father was reluctant to consent to an adoption. Nevertheless, the Prospective Adoptive Parents were aware from Father's letter in late September, which indicated that Father wished to parent Preston and was opposed to adoption. The record contains an email that the Prospective Adoptive Parents sent Father from an email account bearing a fictitious name, acknowledging that they knew Father did not want to consent to adoption asking him "to please reconsider" allowing the adoption to proceed. Neither Mother nor the Prospective Adoptive Parents informed Father of Preston's due date or of his birth. *Id.* at 702. A court order found that the Prospective Adoptive Parents were not credible in their claim that they intended to facilitate a bond between Preston and Father. Father, meanwhile, prepared to receive his baby into his home by decorating a room, arranging for daycare (where Preston was to attend with Father's goddaughter), rearranging his house, and purchasing furniture, bedding, clothing, and diapers.

On early November 2015, Preston was born in Ohio, and Mother gave custody of Preston to the Prospective Adoptive Parents almost immediately after his birth. *Id.* at 701. Prospective Adoptive Father, Kelly H., cut the umbilical cord. Prospective Adoptive Mother, Pamela H., having induced lactation, nursed Preston and continued to do so for twenty-two months. Preston has lived with the Prospective Adoptive Parents since his birth. They have for years provided Preston with a safe and loving home. The day after the birth, Mother filed an application with an Ohio court to place Preston with the

Prospective Adoptive Parents, which was approved, and the Prospective Adoptive Parents filed a petition to adopt on November 6. *Id.* at 701-02. Prior to the time Father learned of the birth through social media, *id.* at 702, he texted Mother, asking her to apprise him of the birth so that he could retrieve the child. He also wrote to the Prospective Adoptive Parents at their alias email on November 9, 2015, offering to reimburse them approximately $8,500 in pregnancy expenses. *Id.* He filed a petition to establish paternity on December 3, 2015, in Ohio juvenile court[1] and sent a $100 check for child support to the Prospective Adoptive Parents on December 10, 2015. *Id.* In his petition, Father also sought to have the court establish child support. Having received notice from Ohio probate court about the termination petition the same day, Father filed an objection in that court and sought sole custody. *Id.*

The Ohio trial court concluded that Father's consent to the adoption was not required because he willfully abandoned and failed to support Mother during her pregnancy, and it granted a final decree of adoption on September 7, 2016. *Id.* at 702-03. The Ohio Supreme Court reversed this decision, finding error. *Id.* at 708. Concluding that the statute premised termination only on abandonment and not on failure to support the birth mother, the Ohio Supreme Court held that remand was not necessary because there was no evidence to support abandonment. *Id.* at 706. Faced with the imperfect choice of "a result that either overrides the adoption plan of a diligent birth mother and separates [Preston] from the only home he has ever known or that terminates permanently [Father's] fundamental right to raise and nurture his child," the Ohio Supreme Court, considering the litigation to be at an end, chose the former and rejected the Prospective Adoptive Parents' petition to terminate Father's rights. *Id.* at 708. After the Ohio Supreme Court reversed the decree of adoption, Father again attempted to establish paternity by filing an action in Ohio. Because none of the parties lived in Ohio at the time (Mother having moved to Florida and Father having moved to Michigan), the Ohio paternity action was dismissed on December 5, 2017.

Seven days after the Ohio Supreme Court rejected the Prospective Adoptive Parents' attempt to terminate Father's parental rights, the Prospective Adoptive Parents filed an action to terminate Father's parental rights in Florida,[2] alleging failure to support, among other grounds. While Mother resided in Florida, the Prospective Adoptive Parents continued to live in Tennessee with Preston.

The Florida court found that Mother "had no intention to negotiate a parenting plan"

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[1] The action in juvenile court was dismissed because the adoption was already pending in probate court.

[2] The Florida court found that this was filed one hour and one minute after a notice seeking to voluntarily dismiss the Ohio litigation, a notice which was filed before the Ohio probate court was able to enter a dismissal as directed by the Ohio Supreme Court.

with Father and that the Prospective Adoptive Parents reached out to Father after the Ohio decision only to attempt to persuade him to give up Preston. The court found:

> It is clear from the totality of the circumstances that at all intervals, including prior to [Preston's] birth when [the Prospective Adoptive Parents] received formal notice [Father] wanted to raise his child and following the Ohio Supreme Court's ruling, their goal was to convince [Father] to agree to the adoption or to pursue any legal remedy they could. Although [the Prospective Adoptive Parents] testified they wanted an open adoption and believed it is important for [Preston] to know his biological father, during the pendency of the Ohio proceedings, neither [the Prospective Adoptive Parents] nor [Mother] made any efforts to allow [Preston] to meet his father, nor did they do so after the Florida litigation was filed. Their only initiated communications with [Father] were to try to convince him to agree to the adoption.

Father began sending monthly child support to the Prospective Adoptive Parents three months after the commencement of the Florida litigation. He testified in Florida that he did not previously send support because he believed he should file a paternity action and would gain custody after the Ohio court's decision. Father had provided the Prospective Adoptive Parents with an incorrect address and did not receive cards and photos from the Prospective Adoptive Parents, but the Florida court found this did not indicate abandonment, as the Prospective Adoptive Parents acknowledged that all their communications were aimed at convincing Father to give up Preston. Despite making prior requests in Ohio and Florida,[3] Father was first permitted visitation in September 2018. Before permitting visitation, the Prospective Adoptive Parents required Father to undergo psychological testing, and Father ultimately paid $3,000 for psychological testing and travel expenses for a visit lasting three-and-one-half hours. The Florida court found, "Despite no evidence [Father] had any psychological deficiencies, [the Prospective Adoptive Parents] required him to undergo extensive psychological testing at significant cost before he could see [Preston] for a first supervised visit."

Florida denied the petition to terminate Father's parental rights on June 6, 2019, finding that Father neither consented to adoption nor abandoned the child. The court adjudicated Father as the legal parent of Preston.[4] The court noted that abandonment under Florida Statutes Annotated section 63.032(1) (2017) required a showing that the parent, "while being able, makes little or no provision for the child's support or makes little or no

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[3] Father testified in Tennessee, and the Florida court found in its order, that he had requested visitation during the Ohio proceedings and in 2017 in Florida.

[4] This order came from the Circuit Court of The Thirteenth Judicial Circuit in Hillsborough County. There is a separate judgment of paternity entered July 28, 2020, from the Circuit Court of the Ninth Judicial Circuit in and for Osceola County.

effort to communicate with the child, which situation is sufficient to evince an intent to reject parental responsibilities." The court found that Father's acts of filing two paternity claims, defending the adoption matters in Ohio and Florida courts, paying child support, attempting to visit Preston, and in generally persevering in "this epic battle" did not evince an intent to reject his parental responsibilities. The court found that the Prospective Adoptive Parents and Mother prevented Father from developing a relationship with Preston or taking responsibility for him. The court noted that Mother had requested that all communication go through counsel and that the Prospective Adoptive Parents were using Father's compliance with Mother's requested mode of communication and his understandable reluctance to force contact upon them "as a sword to argue he abandoned" Preston. The court found Father's "substantial efforts," in which he "jumped over every hurdle put in front of him," were "continually hindered" by the Prospective Adoptive Parents and Mother. Describing Father as a man who "desperately wishes to parent his child," the court found that Mother "has done everything in her power to ensure that did not happen because of her belief that [Preston] should be raised in her chosen two-parent household" and that both Mother and the Prospective Adoptive Parents "continuously frustrated his attempts to parent his child." The court noted that, without a pending paternity action, it had no authority to impose a reunification plan, but it appointed Dr. Teresa Parnell as the reunification expert to assist in transitioning Preston to Mother's care, pending a determination of custody between Mother and Father. The Florida circuit court warned the Prospective Adoptive Parents that their second attempt to terminate Father's rights "could potentially lead to more harm to [Preston] than he would have endured had they transitioned [Preston] at 20 months old." The Florida court noted that it was "well aware of the difficulty of transitioning [Preston] at his current age and does not take this decision lightly. However, this factor does not override the constitutional rights of [Father]. The Court finds it unfortunate that [the Prospective Adoptive Parents] thwarted [Father's] attempts to know his son and did not attempt to diminish any potential harm or trauma to [Preston] by fostering a relationship between [Preston] and [Father]." Accordingly, while the Florida trial court acknowledged the upcoming difficulty of transitioning Preston, who was then three-and-one-half years old, the court determined, "[I]t is time for this matter to end — for [Preston's] sake." The order concluded, "The Court hereby reserves jurisdiction to enforce this Order, and enter other orders necessary to effectuate the reunification plan and any further action relating to these parties or the minor child."

The Prospective Adoptive Parents appealed. Father wrote a letter to the Prospective Adoptive Parents in July 2019 expressing his "relief and happiness" at the Florida trial court's ruling. He also expressed his "disappointment" about the Prospective Adoptive Parents' appeal of the Florida trial court's decision, describing it as a "slap in the face." Father described it as an attempt "to continue to try and take this joy from our lives." Father told the Prospective Adoptive Parents they were only hurting Preston and "prolonging the inevitable." Father described their actions as kidnapping and told Prospective Adoptive Parents that if they dropped the appeal, he would include them in Preston's life and forgive

them but that if they continued to fight, he would remove their involvement from Preston's life.

The Florida appellate court affirmed the trial court's decision to not terminate Father's parental rights. *Interest of P.L.H.*, 310 So. 3d 118 (Fla. Dist. Ct. App. 2020). The Prospective Adoptive Parents thus lost in their attempt to terminate Father's parental rights in Florida. Thereafter, on November 5, 2020, counsel for the Prospective Adoptive Parents in Florida sent Father's Florida counsel a letter that indicated that the Prospective Adoptive Parents were no longer pursuing adoption of Preston:

> As you know, the adoption pathway that had been pursued by my clients has come to an end, and [Mother's Florida counsel] is handling the paternity matter where visitation issues are at play. Because of this, and because [Mother] has the right to have a voice in this matter, I understand that all of these discussions should go through [Mother's Florida counsel's] office.

In January 2021, Father filed a motion in Florida "To Appoint Transition Specialist And To Treat Father As An Equal In Transition Process," and a hearing was held on January 28, 2021. At the hearing, Father argued that Mother and the Prospective Adoptive Parents had not cooperated with sharing custody of Preston.

While Prospective Adoptive Parents' November letter may have caused Father to believe that Mother and the Prospective Adoptive Parents would finally facilitate a change in custody, in reality, Mother and the Prospective Adoptive Parents were preparing to shift litigation to yet another forum. On February 8, 2021, Mother filed a petition with the Florida court, seeking to relocate to Williamson County "to be closer to [Preston] to provide primary care for [Preston]." Under penalty of perjury, Mother represented to the court that her relocation would "bolster the relationship and bonding already established between Mother and [Preston]," would "enable Mother to participate personally in the therapy treatment of [Preston] and provide the direct care necessary for the continuing positive development of [Preston] moving forward," would aid in "the eventual facilitation of timesharing with [Preston] between Mother and Father," and that the "long-distance timesharing schedule will be easier with Mother's move to Tennessee." Mother represented to the Florida court that "[r]elocation to the Tennessee Residence shall allow Mother to parent [Preston] in a more meaningful manner as [Preston] transitions into the primary care of Mother." With these representations, the Florida Court granted Mother's relocation motion.

Fifteen days later, on February 23, 2021, the Prospective Adoptive Parents filed a petition in Williamson County Juvenile Court to terminate Father's parental rights. The petition included an affidavit from Mother asserting that although she was "not a party to this action," she consented to adoption and had been "unrelenting and unambiguous in [her] desire that the Prospective Adoptive Parents adopt Preston." The filing was in diametric

opposition to Mother's representations to the Florida courts and the Prospective Adoptive Parents' representations to Father's counsel. Mother did state that she intended to exercise custody if the Prospective Adoptive Parents were not permitted to adopt. The petition alleged that Preston had been a resident of Tennessee "since his birth and continuously for over five (5) years." The Prospective Adoptive Parents sought termination based on failure to manifest a willingness or ability to assume legal and physical custody and based on abandonment by failure to support, asserting that Father last paid child support on October 22, 2020. It appears from the record that Father had been previously paying child support without a court order to do so.

On March 11, 2021, an order referencing the January 28th hearing was entered by the Florida court, again appointing Dr. Parnell as a transition specialist to help transition the child to the custody of Mother and Father. In other words, while the Prospective Adoptive Parents were now seeking to terminate Father's parental rights in Tennessee, the Florida courts were exercising jurisdiction and overseeing the transition of Preston from the Prospective Adoptive Parents to Father and Mother. The Florida court's order noted that all appeals had been exhausted and that, other than a brief visit by Mother in January 2021 as she searched for housing in Tennessee, neither parent had seen the child in person since February 2020. The court found that Preston had not been reunified with Mother. The court ordered that both parents should have visitation, unsupervised but in the presence of the Prospective Adoptive Parents, and it stated it would appoint a guardian ad litem by separate order. The March order, filed after the termination petition in Tennessee, noted that the Florida court "reserves jurisdiction over the subject matter, over the Parties and over the Minor Child to enter such further Orders as necessary and appropriate."

The Prospective Adopted Parents submitted the affidavit of a process server that eight attempts at service of the termination petition on Father in March 2021 had been unsuccessful, and they attempted to contact Father's Florida attorney on April 1, 2021, to effectuate service.[5] In Florida, Father shortly thereafter filed a "Motion for Court to Take Judicial Notice of Mother and Former Adoptive Parents/Present Caregivers' Attempt to Strip Florida of Jurisdiction." On April 9, 2021, the Florida court, having held a hearing, determined that through an order entered July 21, 2020, and through the parties' agreement, Florida had jurisdiction over Preston.[6] The court recited that a termination petition had been filed in Tennessee and stated it would coordinate a conference with the Williamson County Juvenile Court. Father filed a motion to dismiss in the Tennessee proceedings, arguing that the Tennessee court lacked jurisdiction under Tennessee Code Annotated sections 36-6-216 to -218 because the Florida court was exercising jurisdiction. In response to Father's motion to dismiss, the Prospective Adoptive Parents asserted that

[5] Father was ordered to be served by publication in April.

[6] This order was not made an exhibit at trial, but was attached to and referenced by documents filed by Prospective Adoptive Parents in Williamson County Juvenile Court.

because Preston had only lived in Tennessee, "[t]he Florida court should have never exercised jurisdiction to start with." This was a surprising assertion from the Prospective Adoptive Parents, given that they had haled Father into Florida courts seeking to terminate his parental rights and spent multiple years litigating in that forum.

On August 26, 2021, with Mother having relocated, the Florida Circuit Court entered an order finding that there were no longer any significant contacts between the State and any of the parties, and it held that Tennessee was now the proper state to exercise jurisdiction. The Williamson County Juvenile Court likewise found that under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Tennessee properly had jurisdiction, noting, however, that "[t]he Florida court is concerned with the circumstances surrounding the mother's previous request to relocate to Tennessee considering the litigious history of this case."

Father filed an answer to the Tennessee termination petition, asserting that the petitioners were estopped from seeking termination because Mother deceived the Florida court in order to move to Tennessee, where the definition of abandonment was more favorable for the Prospective Adoptive Parents, despite the fact that Florida courts had been exercising jurisdiction. He asserted unclean hands and lack of fundamental fairness in allowing termination to commence in Tennessee while the matter had been "active and pending" in Florida. Father asserted that any deficiency in child support payments were "with good cause" and "resolved."

It is undisputed that, prior to the filing of the petition in February 2021, Father last paid child support in October 2020. In May 2021, after the filing of the termination petition, Father sent his Florida counsel four checks backdated to reflect the months at issue. In May 2021, Father's Florida counsel sent a check for $1,600 to the Prospective Adoptive Parents, noting that the money represented child support for November 2020, December 2020, January 2021, and February 2021. Attached were copies of checks numbered 1261, 1264, 1307, and 1348 from Father for $400 each, dated in the months at issue in the petition. The affidavit of the office manager of Father's Florida counsel established that Father had consistently paid child support on a monthly basis since 2017 but that counsel received no payments between October 22, 2020, and May 17, 2021, when Father sent four checks for the statutory four-month period. During the entirety of this time of failure to pay child support, Florida courts were exercising jurisdiction over the custody of Preston, including overseeing the transition of custody to Father and Mother. There is no dispute that Father's income is approximately $75,000 per year and that he had the ability to pay child support.

Asked why he stopped paying child support, Father pointed to the letter from the Prospective Adoptive Parents' Florida attorney indicating they would no longer seek adoption:

> From that letter, you know, I got that, from my experience, the adoption had ended, their adoption pursuit had ended. So to me, that told me, you know, as his parent is to prepare for his arrival. And so what I did is, you know, I bought a lot of necessities for him, you know, purchased a bed, bedding, dressers, another refrigerator, washing machine and dryer. I purchased a lot of things so that way he has what he needs so he can be transitioned to me during those four months.

Father noted that Preston's bedroom was made ready for him, with a desk, bedding, books, and necessities. Father testified he believed from the Prospective Adoptive Parents' letter that Preston would move in with him "and that's what stopped that . . . because it was my goal to take care of him myself and not have to send any child support." He clarified that he thought he did not have to pay child support because the letter "said that the adoption pursuit had ended," and he accordingly "chose to pursue paying for him through my own. . . ." Father testified that he interpreted the letter to mean "it's time for him to go to his legal parents. And I take that exactly for what it says and I do exactly that and I prepare for his arrival." Father testified that he "prepared a room for him in that same four months" and "used that money to prepare a room for his essentials." Regarding a jurisdictional issue in terms of child support, he elaborated, "Well, at this time, you know, everything had been handled in Florida, so, you know, under my understanding that we're under Florida law. So I had no reason to believe that we'd be under any other laws or procedures."

Father's mother, Marie W. (Paternal Grandmother), confirmed that in November 2020, Father was very "excited" because of the letter from the Prospective Adoptive Parents' lawyer and "started really preparing to bring him home." Father bought furniture, bedding, clothing, and books. Paternal Grandmother became aware at some point that Father had not paid child support. She testified, "[H]e didn't know where to send the money to. He didn't want to pay if he didn't know who to send it to. . . . Especially since their lawyer sent the letter saying that it's over with." In his testimony, Father expressed confusion, stating "there was a jurisdictional issue as far as who to pay."

Father testified that he first requested visitation with Preston in his petition to establish paternity in December 2015, again in April 2016, and that he first visited Preston in September 2018. The parties introduced proof that Father subsequently had eighteen face-to-face visits, and had not missed any visits except when there was a miscommunication regarding the location. Father also had weekly zoom calls with Preston. The Prospective Adoptive Parents introduced videos tending to show that the five-year-old child was not generally engaged in zoom visitation with Father but tended to be absorbed in art projects during the visits. Father testified that his in-person visits were very different, and that he and Preston would play and interact extensively in these visits, in which Preston would copy his actions and run races with him. Regarding his current relationship with Preston, Father testified that he felt he had been prevented from

establishing as deep a relationship as he wanted, stating, "I've never been allowed to have a relationship" with Preston, and "I've never been allowed to be a dad," but asserting a parental attachment was "what I'm seeking." Father testified that "to have the opportunity to be able to raise my child is something that I desire over anything." Father testified that the Prospective Adoptive Parents interfered with his attempts to develop a relationship with Preston, noting one outing where Kelly H. was "physically boxing me out from being able to interact with Preston, so much so that [Dr. Parnell] had to step in." He testified that Kelly H. said in Preston's presence at the same outing that Father did not deserve a relationship with Preston. Father acknowledged having sent a letter to the Prospective Adoptive Parents when they were appealing the Florida trial court's decision and that in the letter, he threatened to cut the Prospective Adoptive Parents out of Preston's life if they continued to pursue adoption. Father testified he was frustrated at the time and that he now felt it would be in Preston's best interest to have all four adults in his life.

The Prospective Adoptive Parents introduced evidence that the parties had agreed Father should not refer to himself as Preston's father. Nevertheless, Father had told Preston that Preston got his melanin from Father[7] and that Father was Preston's dad, and called him "son" on one occasion; however, the Prospective Adoptive Parents' attorney acknowledged that Preston's "birth story," which the Prospective Adoptive Parents had allegedly read to Preston, included the fact that Father was Preston's birth father.[8] The Prospective Adoptive Parents also emphasized that, during one visit, Father told Preston, "Just so you know, you'll be staying with me soon because I'm your dad, OK?"[9] Father acknowledged Preston would experience trauma in a change in custody, and he stated he was committed to finding Preston resources to help him process the change. Father works remotely from 8:00 to 4:00 and had identified a nearby school for Preston to attend. He has taken parenting classes and read books on parenting. Paternal Grandmother testified that there was a "huge family" waiting for Preston.

Father acknowledged that he was sanctioned in the Florida litigation for failure to submit timely discovery and that he did not disclose in discovery a savings account and one of his employers, explaining the latter by noting the position was "like getting a job at McDonald's." He acknowledged not listing his address because he did not want to be served with papers. Father testified that he believed he did not know about the termination petition when he sent the child support checks in May 2021, but when shown his April filing in Florida regarding jurisdiction, he stated his recollection was refreshed that he did

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[7] Father is Black, and Prospective Adoptive Parents are White.

[8] Father noted that the "birth story" told Preston that Father wanted to be in Preston's life "when he was a certain age" and that Father disagreed with this statement, since he had wanted custody of Preston since birth.

[9] Father agreed that he had broken parameters set by Dr. Parnell. The recording reveals Kelly H. hurrying Preston away in an agitated tone after this, while Preston looks for Father and says, "There he is." Prospective Adoptive Parents testified that Preston suffered trauma from this interaction.

know about the petition at that time.

Tracy Boucher, the director of Preston's preschool, testified that Preston attended the school from when he was a few months old to when he was almost three, and that he re-enrolled in the summer of 2020, when he was four. Ms. Boucher testified that he had no behavioral issues and was almost potty trained when he left the school but that he had aggression and severe behavioral issues and bathroom accidents when he returned. Ms. Boucher, a friend of the Prospective Adoptive Parents, also attends their church and saw Preston have behavioral issues in Sunday school. She agreed that the Prospective Adoptive Parents raised funds for the litigation at their church and that "on behalf of" the preschool, she donated to the case. She acknowledged, pursuant to the guardian ad litem's questions, that the Prospective Adoptive Parents have a biological child who was born when Preston was three and that this child has serious health issues.

Pamela H. testified that Mother initially told her that Father consented to adoption. Pamela H. detailed Preston's needs, stating he requires occupational therapy, has auditory issues, visual processing issues, and has aggression, including one incident where he broke his one-year-old brother's wrist. She stated this behavior started in 2018 and escalated in the summer of 2019. She testified that Preston has a hard time separating from her and that this started after Father's first visit to Preston in September 2018. Pamela H. confirmed that her biological child was born in October 2018, had a liver transplant in February 2019, and continued to have therapy and health needs. She described Preston's relationship with Father as "traumatic" and a "recurring trauma" but also stated Preston thought of Father as a "playmate." Pamela H. testified that Preston started punching a wall when told he would have dinner with Father but acknowledged that during the visit he was "smiling and happy and having fun." She noted that Father had threatened to cut the Prospective Adoptive Parents out of Preston's life but stated they had always wanted Father to be a part of Preston's life. She described the Prospective Adoptive Parents as "the ones who got the raw end of the deal." She acknowledged she knew in September 2015 that Father did not consent to adoption. She acknowledged Father was not in any of the pictures displayed throughout the home of the family and of Mother. Kelly H. testified he believed visits with Father were detrimental to Preston and that Preston would have behavioral problems related to the visits.

Michelle Houk, a licensed clinical social worker, testified that Father's telling Preston that he is Preston's father and that Preston would live with him was "traumatizing, scary, and confusing" and that interacting with Father was dysregulating for Preston. She stated removing him from the Prospective Adoptive Parents would be "catastrophic" but agreed that a child with a secure attachment is better able to deal with trauma. Ms. Houk testified that she did not believe Father had a secure attachment with Preston. She was impeached with an email she sent to the guardian ad litem stating that Preston "enjoys [Father] and appears to have a healthy attachment with him," and in which she stated that research showed Preston "would recover [from trauma] due to his strong secure attachment

style." The Prospective Adoptive Parents paid Ms. Houk to appear at trial.

Mother testified that she signs Preston's school forms as his legal mother and is aware of his various therapies. She stated that Father ignored efforts to engage with Preston's current circumstances and that he "threatened" her in an email by telling her to do something "or else," causing her to be afraid. She acknowledged that the "threat" consisted of an email wherein Father asked her to address questions including whether she was trying to terminate his rights in Tennessee and stated the questions "all need to be answered truthfully if you want to move forward[;] otherwise please continue your silence when it comes to speaking to and about [Father]." She stated it was "very threatening" that Father wrote, "I'm willing to work with you ONLY (enormous emphasis added) as it's in Preston's best interest to have a relationship with his biological mom and dad. . . ." She did not believe visits with Father were in Preston's best interest and believed that they were "traumatic," but agreed she was not present at the visits. Mother testified Father initially wanted her to get an abortion and that he initially supported adoption. The Florida court found, however: "[Mother] claims [Father] asked her to have an abortion, . . . this Court finds [Father's] testimony credible that he was merely asking [Mother] if she had pursued all her options, not that he ever asked her to get an abortion." Mother acknowledged text messages from March 6, 2015, in which Father told her, "If you really want me to act like it never happened it will be hard for me." He also asked Mother, "If I wanted to take care of it you wouldn't want that. Am I correct?" Regarding adoption, Father initially told Mother, "I'm not so sold yet but that can change." He told Mother he had made a vow not to be absent from his child's life and "if this baby is going to be adopted I will not be satisfied until I for surely can't" be in the child's life.

The Williamson County Juvenile Court denied the petition to terminate Father's parental rights. The court found that Father established by a preponderance of the evidence that the failure to support was not willful. The court noted Father's testimony that he stopped paying child support when his Florida attorney relayed the representations of the Prospective Adoptive Parents' attorney that "the adoption pathway that had been pursued by my clients has come to an end," and that "all of these discussions should go through [Mother's Florida counsel's] office." The court found Father purchased several large-ticket items, including a bed, washer and dryer, bedding, books, and furniture preparing his home and Preston's room for his son's arrival, and that "[c]learly, this was a turning point in the minds of Father and his family." Emphasizing that abandonment by failure to support involves having no justifiable excuse for failing to pay child support, the court concluded,

> The Court cannot in any way say Father has abandoned this child. No, he did not pay child support in the four months preceding the filing of the petition. However, the Court does not believe the legislative intent of this statute is to penalize a parent on a technicality. Father has fought for years to maintain his parental rights.

> In November 2020, he thought he was finally finished with litigation. Adoption was off the table. He was making preparations for his son. His family was involved. They had been transitioning with a specialist. One attorney says the case is over and another attorney is going to be doing the work for Mother regarding visitation. Was Father frustrated and exhausted over the years of litigation? Yes, that was apparent even at this trial. Was he intentionally not paying child support because he was giving up and abandoning the child? No.

Noting that Father had never before missed a payment and had not intentionally missed any visits, the court found he had "never abandoned this child" but was caught in "constant, complex, multi-jurisdictional litigation" which was "challenging for even lawyers to follow." The court concluded, "If ever there was an instance of having a justifiable excuse for not making his monthly child support payment during this turbulent, legally complex time, this is it." The court likewise found Father demonstrated an ability and willingness to assume custody, detailing Father's efforts as he "stood ready to be a Father." The court found no risk of substantial harm to the physical or psychological welfare of the child because Father, "a well-educated adult with stable housing and income" and no substance abuse or criminal history, was aware of the potential trauma of separation, and the Prospective Adoptive Parents' own expert testified that Preston's secure bond with Prospective Adoptive Parents would help him cope with the change. Acknowledging Preston's bond with Prospective Adoptive Parents, the court expressed a hope that "all the parents can, at some point, share in the joy of this little boy."

The Prospective Adoptive Parents appeal the juvenile court's determination regarding abandonment, and they further assert that the best interest analysis favors termination. During litigation, a guardian ad litem (GAL) was appointed, and the Prospective Adoptive Parents also contest whether they had notice they would have to share in the GAL's fees.

We affirm the decision of the trial court finding a lack of willfulness. We also affirm the trial court's decision to pretermit the analysis of the best interest analysis and its determination as to GAL fees.

II.

The Prospective Adoptive Parents argue that Father willfully abandoned Preston through failure to support because he had the ability to pay, was aware he owed child support, and chose not to pay it. The Prospective Adoptive Parents do not challenge the trial court's finding that they did not establish grounds to terminate Father's rights based on a failure to manifest a willingness or ability to assume custody. Father responds that his failure to support was not willful because it was attributable to the complex, multi-

jurisdictional nature of the case, to the Prospective Adoptive Parents' representations that they would cede custody, and to his expenditures in preparation for Preston's arrival. We conclude that the jurisdictional legal complexities, compounded by variances between Florida and Tennessee law on abandonment and the transition being overseen in the Florida courts, together with the Prospective Adoptive Parents' letter and Father's expenditures, establish that Father's failure to support was not willful. Accordingly, we affirm the juvenile court's conclusion that this ground was not proven by clear and convincing evidence.

The "care and nurture of the child reside first in the parents," and it would be a violation of due process for the State, based solely on the child's best interest, "to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Smith v. Org. of Foster Families*, 431 U.S. 816, 862-863 (1977) (Stewart, C.J., concurring)). "[A] parent's desire for and right to 'the companionship, care, custody and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27 (1981) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). This interest is "far more precious than any property right," *In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016) (quoting *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982)), and it is "superior to the claims of other persons," *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005) (citing *State Dep't of Children's Servs. v. C.H.K.*, 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004)). "[P]ublic policy strongly favors allowing parents to raise their biological or legal children as they see fit, free from unwarranted governmental interference," *In re Bernard T.*, 319 S.W.3d 586, 597 (Tenn. 2010) (citing *Bellotti v. Baird*, 443 U.S. 622, 638 (1979)), and the removal of a child from a parent is "a unique kind of deprivation." *Lassiter*, 452 U.S. at 27. Indeed, "[f]ew consequences of judicial action are so grave as the severance of natural family ties." *Santosky*, 455 U.S. at 787 (Rehnquist, J., dissenting). However, a parent's rights are not absolute, and they may be terminated on clear and convincing evidence that statutory grounds for termination exist and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(1)-(2); *In re Adoption of Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013); *In re Audrey S.*, 182 S.W.3d at 860 (citing *State Dep't of Children's Servs.*, 154 S.W.3d at 589).

We review the trial court's findings of fact related to parental termination de novo on the record, giving the findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *see* Tenn. R. App. P. 13(d). The grounds for termination and the determination that termination is in the child's best interest must be established by clear and convincing evidence, that is, evidence which "enables the fact-finder to form a firm belief or conviction regarding the truth of the facts" and which "eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d at 596 (citing *In re Valentine*, 79 S.W.3d

539, 546 (Tenn. 2002); *State, Dep't of Children's Servs. v. Mims*, 285 S.W.3d 435, 447 (Tenn. Ct. App. 2008); *see* Tenn. Code Ann. § 36-1-113(c)(1)-(2). Given "the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights." *In re Carrington H.*, 483 S.W.3d at 524. "The 'clear and convincing evidence' burden of proof required by Tenn. Code Ann. § 36-1-113(c)(1) requires the reviewing courts to distinguish between the specific facts found by the trial court and the combined weight of those facts." *In re Chelbie F.*, No. M2006-01889-COA-R3-PT, 2007 WL 1241252, at *4 (Tenn. Ct. App. Apr. 27, 2007) (citing *In re Audrey S.*, 182 S.W.3d at 861 n.26). We review de novo with no presumption of correctness the trial court's legal conclusion regarding whether the evidence sufficiently supports termination by clear and convincing evidence. *Carrington H.*, 483 S.W.3d at 524.

The concurrence, citing Tennessee Rule of Appellate Procedure 13(d), asserts that under the 2018 revision to Tennessee Code Annotated section 36-1-102, willfulness is now a question of fact, not law. This court has previously often described willfulness under the abandonment statute as a question of law. *See, e.g.*, *In re Kendall K.*, No. M2021-01463-COA-R3-PT, 2022 WL 10331612, at *5 (Tenn. Ct. App. Oct. 18, 2022)) ("While the failure to visit or support presents a fact question, whether that failure is willful presents a question of law."); *In re Anna G.*, No. M2018-01456-COA-R3-PT, 2019 WL 1934472, at *4 (Tenn. Ct. App. May 1, 2019); *In re Mackenzie N.*, No. M2013-02805-COA-R3-PT, 2014 WL 6735151, at *4 (Tenn. Ct. App. Nov. 26, 2014) ("Whether such failure was willful, however, is a question of law."); *In re Raven S.*, No. M2014-00789-COA-R3-PT, 2015 WL 9311863, at *5 (Tenn. Ct. App. Dec. 21, 2015); *In re Envy J.*, No. W2015-01197-COA-R3-PT, 2016 WL 5266668, at *13 (Tenn. Ct. App. Sept. 22, 2016); *In re Bonnie L.*, No. M2014-01576-COA-R3-PT, 2015 WL 3661868, at *7 (Tenn. Ct. App. June 12, 2015); *In re Gavin G.*, No. M2014-01657-COA-R3-PT, 2015 WL 3882841, at *6 (Tenn. Ct. App. June 23, 2015). Additionally, the standard of review for willfulness has been described as de novo in a published decision and in cases decided after the law was altered in 2018. *In re Emarie E.*, No. E2022-01015-COA-R3-PT, 2023 WL 3619594, at *6 (Tenn. Ct. App. May 24, 2023); *In re Archer R.*, No. M2019-01353-COA-R3-PT, 2020 WL 820973, at *6 (Tenn. Ct. App. Feb. 19, 2020) ("Whether he proved that his failure to visit was not willful is a question of law that we review de novo, according the trial court's determination no presumption of correctness."); *In re Addalyne S.*, 556 S.W.3d 774, 787 (Tenn. Ct. App. 2018) ("[D]etermining whether a parent's abandonment is willful is a question of law which we review de novo."); *see* Tenn. R. Sup. Ct. 4(G)(2) ("Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction."); *but see In re Adoption of Muir*, No. M2002-02963-COA-R3-CV, 2003 WL 22794524, at *5 (Tenn. Ct. App. Nov. 25, 2003) (citing *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003)) ("A person's demeanor and credibility as a witness also play an important role in determining intent. Accordingly, trial courts are best suited for making willfulness

determinations."). It is certainly clearly established that the larger question, whether there is clear and convincing evidence of abandonment by failure to support, is a question of law. *In re Adoption of Angela E.*, 402 S.W.3d at 640 ("Whether a parent failed to visit or support a child is a question of fact. Whether a parent's failure to visit or support constitutes willful abandonment, however, is a question of law."); *In re Mattie L.*, 618 S.W.3d 335, 342, 345 (Tenn. 2021) (noting that "the trial court's determination about whether the facts constitute clear and convincing evidence to support termination" are conclusions of law and that "[a] termination of parental rights cannot be based on a failure to pay support unless the court finds by clear and convincing evidence that the failure was willful"). Resolution of whether willfulness presents a question of law, fact, or a mixed question of fact and law is unnecessary to the determination of this appeal. Deference is unnecessary for this court to reach the conclusion that the trial court properly determined that Father's failure to pay child support did not constitute willful abandonment. Assuming for purposes of argument that willfulness presents a question of fact, as asserted by the concurrence, only serves to further bolster the conclusion that the trial court did not err.

Turning to the merits, a parent's rights may be terminated on clear and convincing evidence of abandonment. Tenn. Code Ann. § 36-1-113(c)(1), (g)(1) (effective Mar. 6, 2020, to Apr. 21, 2021). In the case at bar, the Prospective Adoptive Parents assert that Father has abandoned Preston by failing to support him under the statutory definition:

> (1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, "abandonment" means that:
>
> > (i) 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) (effective Mar. 6, 2020, to Jun. 30, 2021). Failure to support is further defined as the failure to provide monetary support or more than token payments for the statutory period, and the ability to make only small payments is not a defense to failure to make any payments. Tenn. Code Ann. § 36-1-102 (1)(D). This court applies the versions of the parental termination statutes in effect on the date the petition was filed. *In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017) (holding "that the version of the statute in effect at the time of the petition's filing controls this action"). Accordingly, while abandonment previously required the party seeking termination to adduce proof that the failure to support was willful, *see In re Mattie, L.*, 618 S.W.3d at

345-46,[10] an absence of willfulness is now, under statute, an affirmative defense that must be established by the parent:

> (I) For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure. . . .

Tenn. Code Ann. § 36-1-102(1)(I).[11]

"Failure to support is willful when a parent is aware of the duty to support and has the ability but makes no attempt to provide support and has no justifiable excuse for failure to do so." *In re Mattie L.*, 618 S.W.3d at 345. "'Willfulness' does not require the same standard of culpability required by the penal code. Nor does it require malevolence or ill will." *In re S.M.*, 149 S.W.3d 632, 642 (Tenn. Ct. App. 2004) (citations omitted). Instead,

> Willful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent. . . . Conduct is "willful" if it is the product of free will rather than coercion. Thus, a person acts "willfully" if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.

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[10] Prior to 2018, the statute defined abandonment as a showing that the parent "willfully failed to support . . . or willfully failed to make reasonable payments toward the support of the child." Tenn. Code Ann. § 36-1-102(1)(A)(i) (effective July 1, 2016, to Jun. 30, 2018); *see* Tenn. Code Ann. § 36-1-102(1)(D) (defining willful failure to support as "willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child"). Accordingly, the court was previously required to find that the party seeking termination established willfulness by clear and convincing evidence. *In re Mattie L.*, 618 S.W.3d at 345; *see also In re Swanson*, 2 S.W.3d 180, 185-86, 188 (Tenn. 1999) (holding that the definition of "willfully failed to support" in the statute as amended in 1995, which created an irrebuttable presumption that a failure to provide monetary support constituted abandonment, was unconstitutional).

[11] The parties agreed during oral arguments that the issue of willfulness was tried by consent. *See In re Brian W.*, No. M2020-00172-COA-R3-PT, 2020 WL 6390132, at *4 n.2 (Tenn. Ct. App. Oct. 30, 2020) ("A thorough examination of the record, however, shows that DCS did not object when Mother and Father introduced evidence regarding 'willfulness' at trial nor did they bring this issue to the juvenile court's attention after the court entered the termination order which clearly considered the parents' willfulness argument. Thus, the issue of 'willfulness' was tried by consent."); *In re Braelyn S.*, No. E2020-00043-COA-R3-PT, 2020 WL 4200088, at *4 n.3 (Tenn. Ct. App. July 22, 2020) (citing *McLemore v. Powell*, 968 S.W.2d 799, 803 (Tenn. Ct. App. 1997)); *see also* Tenn. R. Civ. P. 15.02 ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.").

> Failure to visit or support 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 or to support 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 863-64 (citations and footnotes omitted).

"The willfulness of particular conduct depends upon the actor's intent. Intent is seldom capable of direct proof, and triers-of-fact lack the ability to peer into a person's mind to assess intentions or motivations. . . . Accordingly, triers-of-fact must infer intent from the circumstantial evidence, including a person's actions or conduct." *In re J.J.C.*, 148 S.W.3d 919, 926 (Tenn. Ct. App. 2004) (quoting *In re Adoption of Muir*, 2003 WL 22794524, at *5). "[I]n determining whether a parent's conduct was 'willful,' it may become necessary in a given case to evaluate events occurring prior to the start of the four-month period." *In re Brookelyn W.*, No. W2014-00850-COA-R3-PT, 2015 WL 1383755, at *9 (Tenn. Ct. App. Mar. 24, 2015).

In this case, the trial court, in examining the jurisdictional morass that Father was attempting to wade through, concluded, "If ever there was an instance of having a justifiable excuse for not making his monthly child support payment during this turbulent, legally complex time, this is it." We agree that Father's failure to pay was not willful under the circumstances presented here. Our conclusion is based on the interplay of five factors: the jurisdictional confusion caused by proceedings in Florida in which Florida courts had been exercising and had expressly retained jurisdiction, the transition process that was proceeding in Florida courts, the existence of pertinent variances between Florida and Tennessee law with regard the to the termination of parental rights, the letter from the Prospective Adoptive Parents' counsel indicating that they were not going to be proceeding with seeking to adopt and directing Father to deal with Mother's Florida counsel, and Father's significant expenditures related to preparing his home for assuming custody of his child after years of litigation.

First, Florida courts were explicitly exercising jurisdiction over Preston and the parties for the entire duration of the four-month period relied on by the Prospective Adoptive Parents, and beyond. In an order entered in July 2020, the Florida circuit court explicitly reserved jurisdiction. Furthermore, in January 2021, Father, who was frustrated with the lack of progress in transitioning custody of Preston, filed a motion in the Florida court asking the court to appoint a transition specialist and to "Treat Father As An Equal In Transition Process." On January 28, 2021, the Florida court held a hearing on the motion. Mother, who acknowledged the jurisdiction of the Florida court, filed a motion in

the Florida proceedings on February 8, 2021, in which she asked to relocate to Tennessee, swearing under penalty of perjury that she was doing so to facilitate the transition in custody. This motion was granted. Fifteen days later, on February 23, 2021, the Prospective Adoptive Parents, with Mother's explicit consent, instead filed the termination petition in Tennessee. The Florida court continued to exercise jurisdiction over Preston in March 2021, re-appointing Dr. Parnell and again explicitly reserving "jurisdiction over the subject matter, over the Parties and over the Minor Child to enter such further Orders as necessary and appropriate." In April, Father alerted the Florida court of the termination petition in a Tennessee court, and the Florida court on April 9, 2021, entered an order confirming that the Florida court, not the Tennessee court, was the court that had jurisdiction over Preston. It was not until August 2021, well after the four-month statutory period had passed, that Florida relinquished jurisdiction and transferred the case to the Juvenile Court of Williamson County, Tennessee. As Father stated in his testimony, "everything had been handled in Florida, so, you know, under my understanding that we're under Florida law. So I had no reason to believe that we'd be under any other laws or procedures." The trial court expressly noted from the bench during Father's testimony that Father believed Florida, not Tennessee, law to be applicable. In considering willfulness, we cannot ignore that Father expressly testified that in taking his actions he understood Florida, not Tennessee, law to be applicable and that such an understanding was far from unreasonable.

Additionally, Father had reason to believe that, under the supervision of the Florida courts, he was in the process of obtaining custody of Preston. During the relevant time period of non-payment of child support, Father took legal action in Florida in connection with the transition of custody, including participating in a hearing involving the appointment of a transition specialist who would be overseeing the transition of custody to Father. Additionally, the trial court concluded that Father had actually been "transitioning with a specialist" during this non-payment time period. Father's failure to pay, accordingly, was also linked to the active transition of custody involving Father being overseen in a Florida court.

Furthermore, we note that significant questions raised by this jurisdictional confusion are compounded by pertinent distinctions between Florida and Tennessee law. Florida has two statutes addressing termination, one addressing termination related to dependency and neglect, Florida Statutes Annotated section 39.806, and one addressing "Proceeding to terminate parental rights pending adoption," Florida Statutes Annotated section 63.089. *See A.M. v. D.S.*, 314 So. 3d 747, 758-59 (Fla. Dist. Ct. App. 2021); *V.M. v. Home at Last Adoption Agency*, 93 So. 3d 1112, 1115 (Fla. Dist. Ct. App. 2012). Neither statute contains a temporal limitation on abandonment by failure to support. In other words, there is no four-month rule in Florida related to child support. Furthermore, Florida law pertaining to termination by adoption (the law under which the Prospective Adoptive

Parents were proceeding)[12] requires showing an intent to reject parental responsibilities,[13] which has been interpreted to require "a settled purpose to forgo and relinquish all parental responsibilities." *In re B.W.G.*, 198 So. 3d 1025, 1027 (Fla. Dist. Ct. App. 2016) (quoting Fla. Stat. Ann. § 63.032(1));[14] *cf. In re Audrey S.*, 182 S.W.3d at 862 & n.30 (noting that

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[12] The termination statute related to dependency and neglect does not contain a requirement of a settled purpose to forgo parental responsibilities but is an "objective" inquiry regarding whether the parent has made no significant contribution to the child's care and maintenance. *A.M. v. D.S.*, 314 So. 3d at 758-59; Fla. Stat. Ann. § 39.01(1) (effective July 1, 2017, to Jun. 30, 2018).

[13] Abandonment is defined in the adoption statute as:

> a situation in which the parent or person having legal custody of a child, while being able, makes little or no provision for the child's support or makes little or no effort to communicate with the child, **which situation is sufficient to evince an intent to reject parental responsibilities**. If, in the opinion of the court, the efforts of such parent or person having legal custody of the child to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. In making this decision, the court may consider the conduct of a father towards the child's mother during her pregnancy

Fla. Stat. Ann. § 63.032(1) (effective July 1, 2014) (emphasis added). Florida statutes give guidance on the requirements of abandonment:

> (4) Finding of abandonment.--A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.
> (a) In making a determination of abandonment at a hearing for termination of parental rights under this chapter, the court shall consider, among other relevant factors not inconsistent with this section:
>
> 1. Whether the actions alleged to constitute abandonment demonstrate a willful disregard for the safety or welfare of the child or the unborn child;
>
> 2. Whether the person alleged to have abandoned the child, while being able, failed to provide financial support;
>
> 3. Whether the person alleged to have abandoned the child, while being able, failed to pay for medical treatment; and
>
> 4. Whether the amount of support provided or medical expenses paid was appropriate, taking into consideration the needs of the child and relative means and resources available to the person alleged to have abandoned the child.

Fla. Stat. Ann. § 63.089 (effective Oct. 1, 2016, to Sept. 30, 2017).

[14] *See M.A.F. v. E.J.S.*, 917 So. 2d 236, 239 (Fla. Dist. Ct. App. 2005) (citing *Webb v. Blancett*, 473

the "General Assembly expressly disapproved the definition of abandonment developed by the courts for use in adoption proceedings" by amending Tennessee Code Annotated section 36-1-102(1)(G) to exclude any requirement of a settled purpose to forgo parental rights). In this case, the Florida court, which in 2019 denied the termination and adoption proceeding, specifically rejected the contention that Father evinced an intent to reject parental responsibilities, finding that the Prospective Adoptive Parents and Mother "continuously frustrated" Father's attempts to parent his child. Noting that failure to provide financial and emotional support was only one factor, the court rejected the argument that Father's failure to pay support for three months after the Ohio Supreme Court reversed the termination constituted abandonment under Florida law. In other words, the Prospective Adoptive Parents sought to terminate Father's parental rights in Florida courts, Father continued to proceed in Florida courts in connection with the transition of custody, and Florida courts expressly ruled that they, not Tennessee courts, had continuing jurisdiction over Preston. Father took action in purchasing items to provide a home for his child and to enable a successful transition to his home after years of litigation that would not lead to termination of parental rights in Florida but potentially could in Tennessee. Accordingly, the circumstances of this case, in which Father had no notice that the laws of Tennessee (in which failure to support for four months is, standing alone, a ground for termination) rather than the laws of Florida (in which such failure would not be dispositive of abandonment) would apply, weigh in favor of the trial court's finding of a lack of willfulness.

Compounding any jurisdictional issue, Father's nonpayment was also premised on representations made by the Prospective Adoptive Parents' attorney on their behalf. Father testified that he stopped sending child support to the Prospective Adoptive Parents because their attorney wrote a letter in November representing that they would no longer be seeking to adopt Preston and instructing him that "all of these discussions should go through [Mother's Florida counsel's] office." The trial court expressly noted both statements in connection with the lack of willfulness in the present case. According to both Father and Paternal Grandmother, Father interpreted this letter to mean that the Prospective Adoptive Parents would no longer fight a transition in custody to Father and Mother. There is a clear

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So. 2d 1376, 1378 (Fla. Dist. Ct. App. 1985)) (noting that "the ultimate issue is the intent of the parent"). In particular, under Florida law governing termination by adoption, "[t]he failure to pay support is a factor to consider in determining whether a party has abandoned a child, but it alone is not conclusive to support a finding of abandonment." *S.M.K. v. S.L.E.*, 238 So. 3d 925, 929 (Fla. Dist. Ct. App. 2018) (citing *M.A.F.*, 917 So. 2d at 237) (reversing abandonment finding when father filed a paternity action in Indiana, subsequently came to Florida to attempt to have contact with child, filed a paternity action in Florida, and had complied with court-ordered support and other conditions since being adjudicated as child's father, although father had previously failed to provide financial support); *Hinkle v. Lindsey*, 424 So. 2d 983, 985 (Fla. Dist. Ct. App. 1983) (citations omitted) ("Failure of the non-consenting parent to pay required support for the child is not conclusive on the issue of abandonment, especially where the failure to provide support was because of unemployment or lack of assets . . . or in retaliation to the custodial parent's actions in concealing the child's whereabouts and impairing visitation rights. . . .").

temporal relationship between the Prospective Adoptive Parents' letter of November 5, 2020, and Father's cessation of child support later in November 2020, after three years of no missed payments by Father.

This court has previously concluded that failure to support was not willful based on misleading statements made to the parent. For instance, in *In re J.J.C.*, this court found that "[g]iven the fact that the permanency plans would have led Father to believe that support payments were required only if a court ordered such payments, Father's failure to pay cannot be considered to have been willful." 148 S.W.3d 919, 927 (Tenn. Ct. App. 2004) ("Moreover, the permanency plans not only failed to state that Father was obligated to pay child support, they, in fact, implied that he was not required to do so unless there was a court order of support."). Likewise, in *In re S.M.*, father's failure to support was initially justified by mother's misrepresentation that the child had died and later justified by the adoption agency's directions to father to litigate custody rather than to seek contact. 149 S.W.3d 632, 643 (Tenn. Ct. App. 2004); *see In re Audrey S.*, 182 S.W.3d at 864 n.34 (telling a man he is not the child's biological father constitutes interference which may defeat willfulness); *In re Brianna B.*, No. M2017-02436-COA-R3-PT, 2018 WL 6719851, at *7 (Tenn. Ct. App. Dec. 19, 2018) (vacating when the trial court did not address how the parenting plan, which did not require child support, affected willfulness).

In the present case, Father had not missed a payment to the Prospective Adoptive Parents since he had begun paying child support in 2017. After the November letter in which the Prospective Adoptive Parents told Father they would not pursue custody of Preston and in which they instructed him to communicate with Mother's Florida counsel in the future, Father stopped paying. Father had no reason to think four months of nonpayment could be the basis for termination of his parental rights under Florida law. The misleading statements of the letter (which proved to be false or incorrect, as the Prospective Adoptive Parents, rather than ceding custody, filed for termination in Tennessee four months later) also factor into the trial court's conclusion that failure to pay was supported by a justifiable excuse.

The Prospective Adoptive Parents raise the concern that finding a lack of willfulness will lead to future complications in termination proceedings with parents' failure to pay being justified if their attorneys instruct them to cease payment. It is unclear why this result would follow. The Prospective Adoptive Parents ignore the fact that the justifiable excuse of Father's failure to pay was not premised on his counsel's advice but instead related to statements made by the *Prospective Adoptive Parents' own attorney*, who told Father that the Prospective Adoptive Parents were no longer pursuing adoption and that "all of these discussions" should go through Mother's Florida counsel. Furthermore, our ruling in upholding the trial court's decision in this case is not based on this consideration in isolation but instead the amalgamation of the misleading statements of Prospective Adoptive Parent's attorney to Father combined with the jurisdictional confusion in the present case, including Florida courts continuing to expressly exercise jurisdiction, the

variance between Florida and Tennessee law in connection with termination of parental rights, the transition process having begun in Florida's courts, and Father's substantial expenditures on costs directly related to purchases for his child in preparing for the transition in the wake of multi-year multi-jurisdiction litigation.

Expanding upon this amalgamation, our willfulness analysis takes into consideration the significant expenditures made by Father, who bought furniture, bedding, and appliances and prepared a room for a child after the November letter, in order to prepare his home for Preston. Significantly, the trial court expressly found that these substantial expenditures were made for Preston in preparation for his arrival. This court has previously considered similar expenditures in determining whether a failure to support was willful. In *Dep't of Children's Servs. v. C.L.*, the court was confronted with a circumstance in which a father admitted he did not make all his child support payments, expressing some confusion regarding the amount and method of payment. No. M2001-02729-COA-R3-JV, 2003 WL 22037399, at *17 (Tenn. Ct. App. Aug. 29, 2003). This court observed that during this time, DCS required the father to maintain "suitable housing and furnishings" to accommodate the nine children. *Id.* We concluded, "Obviously, the amounts spent on these items were also a form of support." *Id.* The appellate court explicitly agreed with the argument "that Father's failure to pay support in the four months preceding the filing of the termination should be considered in light of mitigating factors such as the money he spent on furnishings and the court costs. . . ." *Id.*

Additionally, we note that, given the circumstances of the present case, there is a not insubstantial underlying due process constitutional concern. This issue was not argued on appeal. Conventional waiver principals, however, are inapplicable in the context of parental termination appeals in Tennessee under the Tennessee Supreme Court's decision in *Carrington*. Therein, the Tennessee Supreme Court stated the following:

> [I]ssues not raised in the Court of Appeals generally will not be considered by this Court, [but] there are exceptions to this general rule. . . . [C]onsistent with our statement in *In re Angela E.*, we hold that in an appeal from an order terminating parental rights the Court of Appeals must review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal.

In re Carrington H., 483 S.W.3d at 525-26. In other words, in parental termination cases in Tennessee "waiver does not apply in the context of either the grounds for termination or whether termination is in a child's best interest." *In re Aniyah W.*, No. W2021-01369-COA-R3-PT, 2023 WL 2294084, at *6 (Tenn. Ct. App. Mar. 1, 2023). Having concluded that the trial court did not err in finding the termination ground to not be established, we reach no resolution on the constitutional question of whether Father's due process rights would be violated by a finding that a ground for termination had been established in the

present case. Assuming ambiguity exists in connection with defining willfulness in the context of circumstances such as those in the present case, constitutional avoidance principles of statutory interpretation,[15] however, bolster the conclusion that willfulness does not extend to the circumstances of this case. A contrary ruling would raise serious constitutional concerns. While this aspect of our opinion is not essential to our decision, it does further support our determination that the trial court correctly found a lack of willfulness.

Taken in conjunction, given the jurisdictional confusion caused by proceedings in Florida during which Florida courts had been exercising jurisdiction and had expressly retained jurisdiction, the transition process that was proceeding under the supervision of the Florida courts, the existence of pertinent variances between Florida and Tennessee law with regard the to the termination of parental rights, the letter from the Prospective Adoptive Parents' counsel indicating that they were not going to be proceeding with seeking to adopt and directing Father to deal going forward instead with Mother's Florida counsel, and Father's significant expenditures related to assuming custody of his child, we cannot find that the trial court erred in determining that Father's failure to pay child support was not willful abandonment. A contrary decision would find willfulness in violating a law that Father quite reasonably would not have thought applied to him, where said law differed from the law of the jurisdiction that was at the same time expressly exercising jurisdiction over Preston's custody. We conclude that clear and convincing evidence does not support this ground for termination, and we affirm the trial court.

III.

The Prospective Adoptive Parents argue that adoption is in Preston's best interest. However, they acknowledge that caselaw establishes that without grounds to terminate, there is no need for a best interest analysis. *See In re Avagaline S.*, No. E2020-00222-COA-R3-PT, 2020 WL 7310987, at *13 (Tenn. Ct. App. Dec. 11, 2020) ("Because we

[15] "Under the constitutional-avoidance canon, when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems, but a court relying on that canon still must interpret the statute, not rewrite it." 16A Am. Jur. 2d Constitutional Law § 173 (2023) (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018); *Moorcroft v. Stuart*, No. M2013-02295-COA-R3-CV, 2015 WL 413094, at *10 (Tenn. Ct. App. Jan. 30, 2015) (citations omitted) ("[W]hen faced with two equally plausible interpretations, one of which poses constitutional concerns, the canon of constitutional avoidance directs us to adopt the other interpretation. . . . [T]he canon permits us to avoid constitutional questions by 'resting on the reasonable presumption that [the Legislature] did not intend the alternative which raises serious constitutional doubts.'").

conclude the trial court erred when it found grounds to terminate Appellants' parental rights, the issue of whether termination is in the Child's best interest is pretermitted."); *In re Kingston A.B.*, No. M2018-02164-COA-R3-PT, 2019 WL 3946095, at *7 (Tenn. Ct. App. Aug. 21, 2019) (citing cases for the proposition that "[i]n the absence of a ground for termination, we do not proceed to consider whether termination would be in the child's best interest"); *In re Damien G.M.*, No. E2016-02063-COA-R3-PT, 2017 WL 1733867, at *10 (Tenn. Ct. App. May 3, 2017) ("Having determined that none of the grounds for termination of parental rights is met in this case, we pretermit the best interest discussion."); *In re Jaiden C.*, No. E2016-00366-COA-R3-PT, 2016 WL 4410725, at *6 (Tenn. Ct. App. Aug. 18, 2016) ("Having determined that neither ground for termination of Appellee's parental rights was proven by clear and convincing evidence, we pretermit discussion of whether termination of Appellee's parental rights is in Jaiden's best interest."). As we have affirmed the trial court's conclusion that there were no grounds to terminate Father's parental rights, we conclude that the court did not err in pretermitting the best interest analysis.

IV.

The Prospective Adoptive Parents also contest their share of the GAL's fees. They argue that the initial order of appointment "failed to determine whether the parties were indigent, and it simply stated 'to be determined.'" The Prospective Adoptive Parents assert they received inadequate notice that they would have to pay the fees under Tennessee Code Annotated section 37-1-150(d)(1) and that litigation was "completed" by the time they were provided notice. The GAL argues that the Prospective Adoptive Parents had adequate notice and that the court did not abuse its discretion. Father does not contest the assessment of fees.

Early in the litigation, the GAL was appointed by an order consisting of a form signed by the judge. In the section of the form labeled "Parent Not Indigent," the court did not check the box finding that "after due inquiry made, that the child(ren)'s parent(s), _____ is NOT indigent," and it did not put the parties' names into the blank. However, insofar as the form was filled out, it bypassed the section entitled "Indigent Parent" and only included notations in the section entitled "Parent Not Indigent." In this section, the order reflected that compensation was "to be determined." The GAL moved to certify the case as extended or complex on October 20, 2021, prior to the first day of trial, and the motion was granted. On December 6, 2021, prior to the final two days of trial, the GAL moved the court to order the parties to put money into escrow with the Juvenile Court Clerk, noting the complex, protracted, and multi-jurisdictional nature of the litigation.

On January 24, 2022, a hearing was held regarding the GAL's fees with all parties present, and the GAL submitted an affidavit of fees. Mother's counsel argued that notice to the parents was inadequate, and the Prospective Adoptive Parents' counsel joined the argument and also asserted that funds spent on the child should be credited to the

Prospective Adoptive Parents. No objections were made as to the reasonableness of the fees, and the parties agreed that none of them were indigent. Finding the fees reasonable and necessary, the court granted the motion and apportioned the fees equally among Father, Mother, and the Prospective Adoptive Parents. The Prospective Adoptive Parents acknowledge on appeal that the fees are reasonable and that they are able to pay "all or part of the fees."

Tennessee Code Annotated section 37-1-150(a)(3) allows "[r]easonable compensation" for a guardian ad litem. Furthermore,

> If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subdivisions (a)(1)-(5), the court may order them to pay the same and prescribe the manner of payment.

Tenn. Code Ann. § 37-1-150(d)(1); *see also* Tenn. Code Ann. § 37-1-150(e)(1) ("Attorneys appointed hereunder, other than public defenders, are entitled to reasonable compensation for their services, both prior to and at the hearing of the cause, and are entitled to reimbursement for their reasonable and necessary expenses in accordance with the rules of the supreme court.").[16]

"The trial court's determination to assess guardian ad litem fees is reviewed under the abuse of discretion standard." *In re Ashton B.*, 2017 WL 5158746, at *2 (affirming under Tennessee Rules of Civil Procedure 17.03 and 54.04 the assessment of guardian ad litem fees to a party when that party initiated the unsuccessful termination, did not assert it was indigent, and did not dispute the reasonableness of the fees); *see* Tenn. Code Ann. § 37-1-150(d)(1) (providing that the court "may" order parents, legal custodians, or guardians to pay the guardian's fees). "A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard,

[16] Courts have awarded fees to guardians ad litem under various statutory provisions, but Prospective Adoptive Parents appeal the fee award under Tennessee Code Annotated section 37-1-150(d)(1). *See* Tenn. S. Ct. Rule 13 § 1(d)(2)(D) ("The court shall appoint a guardian ad litem for the child, unless the termination is uncontested. . . . For purposes of this subsection, the compensation limits established in section 2 apply to each guardian ad litem appointed rather than to each child."); Tenn. R. Civ. P. 17.03 ("The Court shall at any time after the filing of the complaint appoint a guardian ad litem to defend an action for an infant or incompetent person who does not have a duly appointed representative, or whenever justice requires. The court may in its discretion allow the guardian ad litem a reasonable fee for services, to be taxed as costs."); Tenn. R. Civ. P. 54.04(2) (calling guardian ad litem fees discretionary costs); *see, e.g.*, *In re Ashton B.*, No. W2017-00372-COA-R3-PT, 2017 WL 5158746, at *5 (Tenn. Ct. App. Nov. 7, 2017) (concluding that assessing guardian ad litem fees against party unsuccessfully seeking to terminate father's rights was proper under Rules 17.03 and 54.04); *see also* Tenn. Code Ann. § 20-12-119(a)-(b) (effective July 1, 2012) (providing that the presiding judge has the discretion to apportion costs, including guardian ad litem fees, as the equities of the case demand).

(2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

The Prospective Adoptive Parents assert they should not be assessed the fees under *In re Jackson H.*, No. M2014-01810-COA-R3-JV, 2016 WL 6426742, at *1-2 (Tenn. Ct. App. Oct. 28, 2016). In that case, the guardian ad litem was appointed in June and again in December 2013, but the court made no finding regarding the parents' indigency on either occasion. At a hearing on January 31, 2014, the court found that the parents, who were represented by counsel, were not indigent, and ordered each parent to pay half the guardian ad litem's fees, which would be finalized at the conclusion of the case. *Id.* at *2. The juvenile court assessed fees for work performed between December 5th and March, and on appeal to the circuit court, the circuit court found the fees reasonable and divided the fees between the parents. *Id.* at *3. In the Tennessee Court of Appeals, the mother argued that she did not have notice she would be responsible for fees prior to January 31. This court observed "that notice was not handled in an ideal manner," but we nevertheless concluded "that the notice given to Mother was sufficient under the statute." *Id.* at *5. In reaching that conclusion, we noted in particular that the mother did not contend she was indigent. *Id.*

In this case, the Prospective Adoptive Parents had more notice than the mother in *Jackson H.*, where we concluded notice was sufficient. In particular, the court in *Jackson H.* made no initial finding of indigency, but the parties here knew from the time of appointment that the court had marked, in the section of the form entitled "Parent Not Indigent," a finding that compensation was "to be determined." All parties were represented by counsel throughout the proceedings, and the parties were aware that the court deemed them not indigent and had not yet determined the allocation of the fees. All parties were aware prior to the first day of trial in October 2021 that the GAL had asked for the case to be deemed complex and extended, and they were aware in December that she was asking the parties to pay the fees into escrow. The parties had an opportunity to be heard on the issue at a hearing. The Prospective Adoptive Parents concede that the fees were reasonable and that they are not indigent. Accordingly, we observe no abuse of discretion.

V.

The Prospective Adoptive Parents, who have provided Preston with a loving home, knowingly took Preston from his biological Father, who made it clear from the beginning that he wanted to raise his own child. Father has been deprived of his son and is now litigating in his third state in defense of his parental rights. Father has steadfastly, through seven years of litigation conducted in multiple foreign jurisdictions, sought to gain custody, wanting to parent and provide a loving home to his own son. Because Father's failure to

pay support was not willful abandonment, we conclude that grounds for termination have not been established.

For the aforementioned reasons, we affirm the judgment of the Juvenile Court for Williamson County. Costs of the appeal are taxed to the appellants, Kelly H., Pamela H., and Sarah C., for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

JEFFREY USMAN, JUDGE