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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs February 1, 2023

IN RE AVERY W. ET AL.

Appeal from the Juvenile Court for Davidson County
No. PT264180 Sheila Calloway, Judge

No. M2022-01057-COA-R3-PT

A mother and father appeal the termination of their parental rights to two children. The trial court concluded that the petitioner proved five statutory grounds for termination by clear and convincing evidence. The court also concluded that there was clear and convincing evidence that termination was in the children's best interest. After a thorough review, we agree that clear and convincing evidence supports three grounds for termination and that termination was in the children's best interest. So we affirm.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON II, and KENNY W. ARMSTRONG, JJ., joined.

C. Michael Cardwell, Nashville, Tennessee, for the appellant, David W.

Ashley Preston, Nashville, Tennessee, for the appellant, Rhiannon W.

Jonathan Skrmetti, Attorney General and Reporter, and Erica M. Haber, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

OPINION

I.

A.

David W. ("Father") and Rhiannon W. ("Mother") are the legal and biological parents of Avery and Aaliyah.¹ The children were first removed from the parents' custody

¹ Mother also has two other children that are not the subject of these proceedings.

in May of 2016. The juvenile court adjudicated the children dependent and neglected due to drug exposure and educational neglect. About a year later, the children began a trial home visit with Mother. The trial home visit went well, so the court awarded full legal and physical custody of the children to Mother effective September 13, 2017. Father's whereabouts at that time were unknown.

Father reunited with the family in 2018. On July 17, 2019, employees at a local business called law enforcement because Mother was aggressively panhandling in the parking lot with six-year-old Aaliyah. Officers discovered drug paraphernalia in Mother's possession. She also admitted to using methamphetamine earlier in the day. She was arrested on a probation violation.

A week later, law enforcement responded to a disturbance outside a store where Father was panhandling with both children. Father drove away when the police arrived. Law enforcement performed a traffic stop. Father admitted to using heroin earlier in the day. He also disclosed that the family was homeless. He was arrested for driving on a revoked license, failing to use proper child restraint devices, and possession of heroin.

The juvenile court awarded the Tennessee Department of Children's Services ("DCS") emergency custody of the children on July 26, 2019. It later adjudicated the children dependent and neglected based on the parents' substance abuse, unstable housing, and incarceration.

B.

Two years later, DCS filed a petition to terminate Mother's and Father's parental rights to Avery and Aaliyah. The petition alleged six grounds for termination: abandonment by failure to visit; abandonment by failure to support; abandonment by failure to provide a suitable home; substantial noncompliance with the permanency plan; persistence of conditions; and failure to manifest an ability or willingness to assume custody. At trial, DCS voluntarily nonsuited the ground of abandonment by failure to visit.

DCS called Mother as its first witness. Mother denied having a substance abuse problem. She claimed that she only used illegal drugs recreationally. As she explained, "If I go to a party, like, I'm telling you there'll be somebody knocking on my door tomorrow. Everybody else can do it but not me, you know? I have bad luck, I'm telling you." She claimed to be drug free at the time of trial.

Mother professed to love her children "more than the air I breathe." She believed that it was in the children's best interest to reunite the family. She "c[ould]n't say that [she was] straightened out." But she was optimistic, explaining "you never know[, e]verything c[ould] straighten out in 30 days." Mother insisted that she had "some things working right now."

By the time of trial, the children had been in foster care for almost three years. Mother agreed that she was aware of her responsibilities in the permanency plans. She blamed DCS for any lack of progress. She claimed that she completed her assessments, but no one ever told her about the results.

Mother admitted that the parents had five or six different residences while the children were in foster care. She recognized that none of these homes were suitable for the children. But she did not view her housing choices as a cause for concern. In her words, “my children weren’t with me, so why does it matter where I live?”

Mother acknowledged that she had been employed throughout the children’s time in foster care. Yet she never paid any formal child support. Instead, she gave the children cash and other presents when she saw them. The foster parent agreed that the parents bought gifts for the children or paid for an activity or meal during their visits.

Currently, the parents were cleaning hotels for cash payments. They lived wherever they were working at the time. According to Mother, their boss offered to help them obtain suitable housing and reliable transportation. And Mother knew he had an available house. But she opted to wait on the outcome of the termination proceeding before she seriously pursued that option.

DCS submitted proof that Mother and Father were arrested on new drug-related charges around the time the petition to terminate parental rights was filed. And there were outstanding warrants for their arrest stemming from those charges. Learning that they would likely be taken into custody at the end of the day, Mother and Father left the courthouse during the lunch recess and did not return. So the trial continued in their absence.

Jennifer Maloy was the team leader for DCS. She was assigned to the case a few months before trial. To prepare for trial, she reviewed DCS’s file on the family. Ms. Maloy testified that Mother and Father made only minimal progress on the requirements of the permanency plans despite DCS’s ongoing efforts to help them.

DCS created three permanency plans during this custodial episode. Among other things, Mother and Father were required to refrain from incurring additional legal charges; resolve all outstanding legal issues; maintain visitation with the children; pay child support; complete assessments for alcohol and drug abuse, parenting, and mental health; follow all recommendations from those assessments; sign releases of information; submit to random drug screens; and provide proof of legal income and stable housing.

Ms. Maloy acknowledged that the parents had attempted to address their substance abuse issues. Mother completed a rehabilitation program in September 2020. But they

were arrested on new drug-related charges in 2021. The parents completed new alcohol and drug assessments, but they never followed the recommendations. A month before trial, the parents refused to submit to a drug screen.

The parents also completed parenting assessments. But they never completed the recommendations. They never paid any child support. They never provided DCS with proof of income.

Ms. Maloy told the court that communication with the parents was difficult. The DCS file contained seven contact numbers for Mother, but none were reliable. Despite repeated requests, Ms. Maloy was never able to obtain a physical address for the parents. They also failed to respond to email messages.

Ms. Maloy described the parents' visitation as "very sporadic and inconsistent." Eventually, DCS required the parents to confirm that they would attend a visit 24 hours in advance. Even then, the parents missed visits or showed up late.

By all accounts, the children, now twelve and nine, were thriving in their foster home. They caught up with their peers academically. They were involved in multiple extracurricular activities as well as their church youth group. They had bonded with their foster family. Even so, both Ms. Maloy and the foster parent agreed that the children still loved their parents.

The juvenile court terminated both parents' parental rights. It concluded that there was clear and convincing evidence of all five grounds for termination of Mother's and Father's parental rights. And clear and convincing evidence showed that termination was in the children's best interest.

II.

A parent has a fundamental right, based in both the federal and state constitutions, to the care and custody of his or her own child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996); *In re Adoption of Female Child*, 896 S.W.2d 546, 547 (Tenn. 1995). But parental rights are not absolute. *In re Angela E.*, 303 S.W.3d at 250. The government's interest in the welfare of a child justifies interference with a parent's constitutional rights in certain circumstances. *See* Tenn. Code Ann. § 36-1-113(g) (2021).

Tennessee Code Annotated § 36-1-113 sets forth both the grounds and procedures for terminating parental rights. *In re Kaliyah S.*, 455 S.W.3d 533, 546 (Tenn. 2015). Parties seeking termination of parental rights must first prove the existence of at least one of the statutory grounds for termination listed in Tennessee Code Annotated § 36-1-113(g). Tenn. Code Ann. § 36-1-113(c)(1). If one or more statutory grounds for termination are

shown, they then must prove that terminating parental rights is in the child's best interest. *Id.* § 36-1-113(c)(2).

Because of the constitutional dimension of the rights at stake in a termination proceeding, parties seeking to terminate parental rights must prove both the grounds and the child's best interest by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citing Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808-09 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002)). This heightened burden of proof serves "to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights." *Id.* "Clear and convincing evidence" leaves "no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). It produces a firm belief or conviction in the fact-finder's mind regarding the truth of the facts sought to be established. *In re Bernard T.*, 319 S.W.3d at 596.

We review the juvenile court's findings of fact "de novo on the record, with a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise." *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); TENN. R. APP. P. 13(d). We then "make [our] own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim." *In re Bernard T.*, 319 S.W.3d at 596-97. We review the trial court's conclusions of law de novo with no presumption of correctness. *In re J.C.D.*, 254 S.W.3d 432, 439 (Tenn. Ct. App. 2007).

A.

1. Abandonment by Failure to Support

One of the statutory grounds for termination of parental rights is "[a]bandonment by the parent." Tenn. Code Ann. § 36-1-113(g)(1). The word "abandonment" is statutorily defined in multiple ways. *See id.* § 36-1-102(1)(A) (2021). In this case, DCS claimed that Mother and Father abandoned the children by failing to support them or make reasonable payments toward their support in the four months preceding the filing of the termination petition. *See id.* § 36-1-102(1)(A)(i). Because the petition to terminate parental rights was filed on June 15, 2021, the relevant four-month period is February 15, 2021 to June 14, 2021, the day before the petition was filed. *See In re Jacob C.H.*, No. E2013-00587-COA-R3-PT, 2014 WL 689085, at *6 (Tenn. Ct. App. Feb. 20, 2014) (concluding that the day before the petition is filed is the last day in the relevant four-month period).

The juvenile court found that Mother and Father provided only token support during the relevant four-month period. A parent has "failed to support" a child when the parent

does not provide any monetary support or provides only token support. *See* Tenn. Code Ann. § 36-1-102(1)(D). Here, the parent provided “sporadic gifts and meals.”

Support payments are token if “the support, under the circumstances of the individual case, is insignificant given the parent’s means.” *Id.* § 36-1-102(1)(B). A parent’s means includes “both income and available resources for the payment of debt.” *In re Adoption of Angela E.*, 402 S.W.3d 636, 641 (Tenn. 2013). The juvenile court only found that both parents were “able bodied and capable of working and earning enough to support themselves as well as paying child support.” They were not in jail or otherwise incapacitated during the relevant four-month period. But the court made no findings beyond that.

We conclude that DCS failed to prove this ground for termination against either Mother or Father. It offered no proof of the income either parent might have earned or their expenses during the relevant four-month period. Without proof of means, a determination could not be made that the support that was provided was insignificant under the circumstances.²

2. Failure to Provide a Suitable Home

The juvenile court also found that the record supported termination of parental rights under another definition of abandonment. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). The second definition considers whether a child has a suitable home to return to after the child’s court-ordered removal from the parent. Under Tennessee Code Annotated § 36-1-102(1)(A)(ii), termination of parental rights may be appropriate if:

- (a) The child has been removed from the home or the physical or legal custody of a parent or parents . . . by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of [DCS] . . . ;
- (b) The juvenile court found . . . that [DCS] . . . made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and

² On appeal, Mother complained that DCS did not prove that any deficiency in her support was willful. But DCS did not need to prove willfulness. Lack of willfulness is an affirmative defense that a parent must prove by a preponderance of the evidence. Tenn. Code Ann. § 36-1-102(1)(I). Mother never raised this affirmative defense in a pleading or at trial. So she waived this argument. *See In re L.F.*, No. M2020-01663-COA-R3-PT, 2021 WL 3782130, at *7-8 (Tenn. Ct. App. Aug. 26, 2021).

- (c) For a period of four (4) months following the physical removal, [DCS] . . . made reasonable efforts to assist the parent or parents . . . to establish a suitable home for the child, but that the parent or parents . . . have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.

Id.

A “suitable home” means something “more than a proper physical living location.” *Tenn. Dep’t of Children’s Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at *3 (Tenn. Ct. App. Nov. 29, 2007). A suitable home requires “[a]ppropriate care and attention . . . to the child[ren].” *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *7 (Tenn. Ct. App. Apr. 20, 2016).

It is undisputed that the first two elements of this ground for termination were established. DCS removed Avery and Aaliyah from the parent’s custody on July 26, 2019. Three days later, DCS filed a dependency and neglect petition. And the juvenile court granted DCS emergency protective custody, concluding that immediate removal of the children was appropriate under the circumstances. This conclusion was warranted given that both Mother and Father were incarcerated at the time, the children were living out of a car, and there were no family members who could take custody of the children.

The juvenile court found that “during the relevant four-month period [DCS] made reasonable efforts to assist the [parents] in providing a suitable home for the child[ren].” Among other things, DCS provided therapeutic visitation, arranged funding for the parents’ assessments and services, provided information on housing resources, developed permanency plans, and conducted Child and Family Team Meetings.

The court’s order does not specify the particular four-month period it considered relevant. DCS may offer “proof of reasonable efforts during any four-month period following a child’s removal” to establish this ground for termination. *In re Roderick R.*, E2017-01504-COA-R3-PT, 2018 WL 1748000, at *11 n.13 (Tenn. Ct. App. Apr. 11, 2018) (emphasis omitted). At trial, DCS offered proof of its efforts during the four-month period immediately following the children’s removal—July 27, 2019 to November 26, 2019. So we construe the court’s order in light of the proof presented at trial. *See Morgan Keegan & Co., Inc. v. Smythe*, 401 S.W.3d 595, 608 (Tenn. 2013).

Although Ms. Maloy had only recently been assigned to this case, she was asked to describe DCS’s efforts to assist the parents during the four-month period immediately following the children’s removal. From her review of the file, she noted that DCS assigned case services for the parents’ assessments, arranged for therapeutic visitation, conducted

random drug screens, and provided the parents with a list of available community resources during this time period.

DCS's efforts to assist the parents "in establishing a suitable home for the child[ren] shall be found to be reasonable if such efforts equal or exceed the efforts of the parent[s] . . . toward the same goal." Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c). The court found that the parents "made no reasonable efforts to provide a suitable home for the children" during the relevant four-month period. The parents did not maintain contact with DCS, continued to abuse illicit substances, continued to engage in criminal activity, failed to obtain stable employment, and failed to obtain safe and appropriate housing.

As Mother points out, she was incarcerated for the entire four-month period. Father was also incarcerated for all or part of this time frame. The trial exhibits indicate that he was incarcerated from late July, 2019 to at least mid-September. We cannot determine the exact date Father was released based on this record.

Incarceration does not excuse a parent from fulfilling the requirements set out in a permanency plan, but incarceration is a "relevant consideration when judging that parent's ability to fulfill his . . . responsibilities to the child." *In re Jonathan F.*, No. E2014-01181-COA-R3-PT, 2015 WL 739638 at *13 (Tenn. Ct. App. Feb. 20, 2015). Under these circumstances, we are not firmly convinced that DCS met its burden of proof on this ground for termination of Mother's and Father's parental rights.³

3. Substantial Noncompliance with Permanency Plan Requirements

Another ground for termination is "substantial noncompliance by the parent . . . with the statement of responsibilities in a permanency plan." Tenn. Code Ann. § 36-1-113(g)(2). Before analyzing whether a parent complied with the permanency plan, the court must find that the plan's requirements were "reasonable and [we]re related to remedying the conditions that necessitate foster care placement." *Id.* § 37-2-403(a)(2)(C) (Supp. 2021). Permanency plan requirements may focus on remedying "conditions related both to the child's removal and to family reunification." *In re Valentine*, 79 S.W.3d at 547.

We agree with the juvenile court that the permanency plan requirements were reasonable and related to remedying the conditions that necessitated foster care. The children entered foster care due to the parents' drug use and incarceration along with the family's unstable housing. To address these issues, the permanency plans required Mother and Father to pay child support; participate in visitation; sign releases; complete an alcohol and drug assessment and comply with the recommendations thereof; resolve all pending legal issues and refrain from incurring additional charges; complete a parenting assessment

³ DCS does not defend this ground for termination as to Mother.

and comply with the recommendations thereof; obtain and maintain suitable housing; obtain a valid source of income; complete a psychological evaluation and comply with the recommendations thereof; obtain reliable transportation; and submit to random drug screenings.

Next, we must determine whether the parents' noncompliance was substantial in light of the importance of the requirements to the overall plan. *Id.* at 548-49. We presume the court's findings of fact concerning a parent's compliance are correct unless the evidence preponderates against them. *Id.* at 547. But whether a parent's noncompliance was substantial "is a question of law which we review de novo with no presumption of correctness." *Id.* at 548. A "[t]rivial, minor, or technical" deviation from the permanency plan's requirements does not qualify as substantial noncompliance. *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004).

The juvenile court found that the parents only completed the required assessments. They did not follow the recommendations from the assessments. They did not obtain safe and appropriate housing for the children. They did not pay child support. They "failed to address or even acknowledge their drug addiction." And they continued to engage in criminal activity. Both parents "ha[d] an active warrant for their arrests and [we]re likely returning to jail in the near future." The evidence does not preponderate against these findings. Mother repeatedly denied having a substance abuse issue. Yet both parents have been arrested multiple times on drug-related charges. The parents' assessments recommended intensive outpatient drug treatment services and mental health counseling. Father never participated. Mother had one counseling session. But she never sought additional drug treatment after her most recent arrest. Both parents refused to submit to a drug screen shortly before trial. Mother also admitted that none of the parents' multiple living arrangements during the past three years had been appropriate for the children.

The parents' efforts to address their issues with housing, illegal drugs, and criminal activity fell short. We conclude that the evidence clearly and convincingly supports termination of Mother's and Father's parental rights to Avery and Aaliyah on the ground of substantial noncompliance with the permanency plan.

4. Persistence of Conditions

The juvenile court also found termination of parental rights appropriate under Tennessee Code Annotated § 36-1-113(g)(3), a ground commonly referred to as "persistence of conditions." *See In re Audrey S.*, 182 S.W.3d 838, 871 (Tenn. Ct. App. 2005). The ground of persistence of conditions focuses "on the results of the parent's efforts at improvement rather than the mere fact that he or she had made them." *Id.* at 874. So the question before the court is "the likelihood that the child can be safely returned to the custody of the [parent]." *In re K.A.H.*, No. M1999-02079-COA-R3-CV, 2000 WL 1006959, at *5 (Tenn. Ct. App. July 21, 2000).

Persistence of conditions may be a basis to terminate parental rights when:

The child has been removed from the home or the physical or legal custody of a parent . . . 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 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 . . . ;
- (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 . . . in the near future; and
- (iii) The continuation of the parent . . . and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home[.]

Tenn. Code Ann. § 36-1-113(g)(3)(A). Each of the statutory elements must be established by clear and convincing evidence. *In re Valentine*, 79 S.W.3d at 550.

It is undisputed that the first statutory element was satisfied. The children had been in DCS custody for almost three years by the time of trial. *See* Tenn. Code Ann. § 36-1-113(g)(3)(B) (“The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard.”).

Mother and Father argue that they remedied the conditions that precipitated the children's removal. We disagree. The children were removed due to the parents' substance abuse, unstable housing, and incarceration. At the time of trial, Mother and Father were “staying from place to place.” They continued to use drugs and accumulate new criminal charges. And both Mother and Father had outstanding warrants for their arrest.

The evidence is equally clear and convincing that there is little likelihood that these conditions will be remedied in the near future. Mother and Father had nearly three years to make meaningful changes in their lives. Yet, they made minimal progress. *See In re Dakota C.R.*, 404 S.W.3d 484, 499 (Tenn. Ct. App. 2012) (“Where . . . efforts to provide help to improve the parenting abilities, 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.” (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008))).

At trial, Mother insisted that she would be ready to assume custody of the children in thirty days. Considering her lack of progress over the past 36 months, such a transformation appears unlikely. And her utter failure to acknowledge her own deficiencies further diminishes the likelihood that she will remedy these conditions in the near future. *See In re Roderick R.*, 2018 WL 1748000, at *10.

Returning the children to Mother and Father would greatly diminish their chances of integration into a safe, stable, and permanent home. The children have found stability in their current environment. They live in a safe and stable home with foster parents who provide for their needs and want to adopt them.

5. Failure to Manifest an Ability and Willingness to Assume Custody or Financial Responsibility for the Children

The court also found termination of Mother's and Father's parental rights appropriate under Tennessee Code Annotated § 36 -1-113(g)(14). Under this ground, a parent's rights may be terminated if he or she

[1] has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and [2] placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

Tenn. Code Ann. § 36-1-113(g)(14). Both prongs must be established by clear and convincing evidence. *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020).

As to the first prong, the petitioner may prove that a parent is either unable or unwilling to "assume legal and physical custody or financial responsibility for the child." *Id.* at 677. Mother expressed a desire to assume custody of the children. But desire is not enough. A parent must also demonstrate an ability to assume custody. *See id.* Like the juvenile court, we conclude that the evidence is clear and convincing that Mother and Father are unable to assume custody of their children. They have continued to use illegal drugs. They have been incarcerated multiple times during this custodial episode, and they are likely to be incarcerated again considering the outstanding warrants for their arrest. They also failed to secure a suitable home.

As to the second prong, the evidence is equally clear and convincing that returning the children to Mother and/or Father would pose a risk of substantial harm to their emotional and psychological welfare. The parents continue to use illegal drugs and incur new criminal charges. There are outstanding warrants for their arrest. They cannot offer the children safe and appropriate housing. So we have little difficulty concluding that the

children, more likely than not, faced a real danger of harm if returned to either parent's custody. *See Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001).

B.

Because “[n]ot all parental misconduct is irredeemable,” our parental termination “statutes recognize the possibility that terminating an unfit parent’s parental rights is not always in the child’s best interests.” *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). Tennessee Code Annotated § 36-1-113(i) lists twenty factors for courts to consider in a best interest analysis. The “factors are illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). In reaching a decision, “the court must consider all of the statutory factors, as well as any other relevant proof any party offers.” *Id.* at 682.

The focus of this analysis is on what is best for the child, not what is best for the parent. *In re Marr*, 194 S.W.3d at 499. The analysis should consider “the impact on the child of a decision that has the legal effect of reducing the parent to the role of a complete stranger.” *In re C.B.W.*, No. M2005-01817-COA-R3-PT, 2006 WL 1749534, at *6 (Tenn. Ct. App. June 26, 2006). Although “[f]acts relevant to a child’s best interests need only be established by a preponderance of the evidence, . . . the combined weight of the proven facts [must] amount[] to clear and convincing evidence that termination is in the child’s best interests.” *In re Carrington H.*, 483 S.W.3d 507, 535 (Tenn. 2016).

We agree with the juvenile court that termination of Mother’s and Father’s parental rights is in the children’s best interest. Avery and Aaliyah have found stability in the care of their foster parents. Tenn. Code Ann. § 36-1-113(i)(1)(A). This has been their home for three years. They have bonded with their foster family. And they want to be adopted if they cannot return to Mother and Father. *Id.* § 36-1-113(i)(1)(H). Meanwhile, Mother and Father have demonstrated that they cannot provide the same permanence and stability. *Id.* § 36-1-113(i)(1)(C), (P).

Despite DCS’s efforts to provide resources for Mother and Father, they have not made a lasting adjustment of circumstances. *Id.* § 36-1-113(i)(1)(J), (K), (L). Nor have they demonstrated a sense of urgency in remedying the problems that led to the children’s removal. *Id.* § 36-1-113(i)(1)(M). Three years after the children were removed, Mother and Father continue to use illicit drugs, consume alcohol, and incur new criminal charges. And while both parents completed an alcohol and drug assessment as well as a parenting assessment, they did not comply with any of the subsequent recommendations. As a result, at the time of trial, Mother still had unresolved mental health and substance abuse issues. *Id.* § 36-1-113(i)(1)(T). Mother and Father have never been able to offer the children a suitable home. *Id.* § 36-1-113(i)(1)(Q)-(R).

The parents did not maintain consistent visitation with the children. And when they did visit, they often were late. *Id.* § 36-1-113(i)(1)(E).

It is clear that Mother and Father love their children. And Avery and Aaliyah love them too. *Id.* § 36-1-113(i)(1)(D). They also provided some support for the children. *Id.* § 36-1-113(i)(1)(S). But while these factors weigh in favor of Mother and Father, it does not change our conclusion. The combined weight of the proven facts amounts to clear and convincing evidence that termination of both parents' parental rights is in the children's best interest. *See In re Gabriella D.*, 531 S.W.3d at 682.

III.

We affirm the termination of Mother's and Father's parental rights to Avery and Aaliyah. Clear and convincing evidence supports three grounds for termination of parental rights. And we conclude that termination is in the best interest of both children.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE