

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 1, 2022

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IN RE JEREMIAH G.

**Appeal from the Juvenile Court for Clay County
No. 2021-JV-87 James D. White, Jr. Judge**

No. M2022-00869-COA-R3-PT

A father appeals the termination of his parental rights to his child on the grounds of (1) substantial noncompliance with the permanency plan; (2) abandonment by failure to establish a suitable home; (3) persistence of conditions; and (4) failure to manifest an ability and willingness to personally assume custody or financial responsibility. He also challenges the trial court’s finding that termination of his parental rights was in the child’s best interest. We affirm the trial court’s conclusion that clear and convincing evidence supports the aforementioned grounds for termination and that termination is in the child’s best interest.

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

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S, and CARMA DENNIS MCGEE, J., joined.

Emily E. Wright, Livingston, Tennessee, for the appellant, Jacob A. G.¹

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

Cindy G. Johns, Livingston, Tennessee, Guardian *ad litem*.

¹ In cases involving minor children, it is the policy of this Court to redact the parties’ names to protect their identities.

OPINION

I. BACKGROUND

Jeremiah G. (“the child”) was born in 2014 to Jacob A. G. (“Father”). The child’s mother surrendered her parental rights and is not a party to this action. On September 21, 2020, the Tennessee Department of Children’s Services (“DCS”) received a referral alleging that the child was a victim of physical abuse. DCS’s case manager spoke with the child that same day. He related that Father hit him in the face with his fist, causing bleeding and tooth pain. The child stated he loved Father, but that Father would always hit him and also hit his half-brother who had been placed into DCS’s custody six days earlier. Father also had another case with DCS involving allegations of physical abuse. The child stated to the case manager that he was fearful of staying in Father’s home due to its lack of water and electricity. He would bathe at his grandmother’s home next door. Upon the case manager’s question about Father’s alcohol use, the child stated that Father had instructed him to not discuss what he does with anyone. The child did not then know his mother’s identity.

Upon investigation, DCS learned from the child’s paternal grandmother that she was then his primary caretaker, but that she allowed the child to stay with Father off and on. The grandmother confirmed that the mother was estranged and explained that she allowed Father to put his “junkie trailer” on her property so he could help take care of the child and so she could monitor Father. The grandmother further stated that Father exhibited drug and anger management issues. She detailed several instances of domestic violence between Father and his then-girlfriend. The grandmother denied knowing whether Father hit the child but stated that she did not know what he was capable of when he was under the influence. Next, the DCS case manager, a Clay County Sheriff’s Department officer, and a school resource officer visited Father at his residence. Father allowed them entry to his trailer, but not the bedroom. The trailer lacked running water and electricity, as reported by the child. It was dirty, cluttered with automotive parts, and featured an upright knife stabbed into the kitchen floor. Father admitted that he had a pending criminal charge for vandalism and that he smoked marijuana, but declined to submit to a drug screen. Finally, DCS and the officers spoke with Father’s then-girlfriend. She reported that she and Father had recently used methamphetamine, but had turned to marijuana because they could no longer afford methamphetamine.

Following its investigation, DCS filed a dependency and neglect petition on September 24, 2020 in the Juvenile Court for Clay County (“trial court”), seeking emergency removal of the child. The same day, the trial court entered a protective custody order giving DCS temporary custody of the child and finding probable cause existed to believe that the child was at risk of harm due to physical abuse, drug exposure, and

environmental neglect. Father was ordered to have only supervised visitation with the child. By signature dated October 1, 2020, Father acknowledged that he received a copy and explanation of the Criteria and Procedures for Termination of Parental Rights form. Following an adjudicatory and dispositional hearing on November 10, 2020, the trial court granted a default adjudication against Father because he failed to appear. The court found that the child was dependent and neglected and ordered that custody remain with DCS.

During the nineteen months following the child's removal, DCS created five permanency plans that listed several responsibilities for Father to complete. The core responsibilities included: completing anger management treatment; resolving legal issues and not incurring new ones; completing alcohol and drug treatment; obtaining and maintaining stable housing; visiting with the child; completing a parenting assessment; completing a mental health assessment; and providing proof of income. Father participated in the development of the first four permanency plans, and those were ratified by the trial court. The goal of the first permanency plan was return to parent. The second and third plans maintained the goals of return to parent and adoption. The fourth plan was created after DCS petitioned to terminate Father's parental rights and set forth the permanency goal of adoption. Per the fourth permanency plan, DCS would continue to work with Father on all action steps required in the original plan while the termination petition was pending. The fifth permanency plan was created on May 2, 2022. Father did not participate in its development because the DCS case manager did not know where Father was at the time.

On September 14, 2021, the parties appeared for an annual permanency hearing.² Father was represented by counsel. The trial court found that Father was not in substantial compliance with the then-current permanency plan because he had "made little progress on [its] requirements." On November 5, 2021, DCS petitioned the trial court to terminate Father's parental rights to the child, alleging several statutory grounds.³

On May 10, 2022, the trial court held a hearing on the termination petition. Father and DCS family service worker Jennifer Ross testified.⁴ The child was then seven years old. Three major themes emerged from the testimony.⁵ First, Father did not take the permanency plan requirements seriously. He successfully maintained visitation with the child, but otherwise failed to complete the permanency plan steps. He believed the trial

² See Tenn. Code Ann. § 37-2-409.

³ Upon proper motion, the trial court struck the termination ground of failure to support, Tennessee Code Annotated sections 36-1-113(g)(1); 36-1-102(1)(A).

⁴ Ms. Ross was assigned to the case on July 26, 2021, but had been involved from the beginning in her capacity as the first case manager's supervisor.

⁵ The testimony will be discussed in greater detail below as relevant to the issues on appeal.

court would return the child to his custody regardless of his progress on the permanency plan requirements. Second, Father failed to manage his anger and verbal aggression either through required treatment or through self-control in his interactions with DCS and service providers. Third, Father did not communicate well with DCS and service providers.

By order entered June 10, 2022, the trial court found clear and convincing evidence of the following grounds for termination of Father's parental rights: (1) substantial noncompliance with the permanency plan; (2) abandonment by failure to establish a suitable home; (3) persistence of conditions; and (4) failure to manifest an ability and willingness to personally assume custody or financial responsibility. The trial court also determined that termination of Father's parental rights was in the child's best interest. The child has been in foster care since entry of the protective custody order in September of 2020. Father appealed.

II. ISSUES

Father raises five issues on appeal which we consolidate as follows:

- A. Whether clear and convincing evidence supports the trial court's findings of the statutory grounds for termination.
- B. Whether clear and convincing evidence supports the trial court's findings that termination of Father's parental rights was in the best interest of the child.
- C. Whether the trial court erred by not making findings as to witness credibility in its final order.

III. STANDARD OF REVIEW

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions." *In re M.J.B.*, 140 S.W.3d 643, 652–53 (Tenn. Ct. App. 2004). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations' of the parent." *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 36-1-113(I)(1)). "[F]ew consequences of judicial action are so grave as the severance of natural

family ties.’” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787 (1982)).

Although parental rights are superior to the claims of other persons and the government, they are not absolute and may be terminated upon appropriate statutory grounds. See *In Re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds for termination. *In re Drinnon*, 776 S.W.2d at 97. A parent’s rights may be terminated only upon:

- (1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) [t]hat termination of the parent’s or guardian’s rights is in the best interest[] of the child.

Tenn. Code Ann. § 36-1-113(c). “[A] court must determine that clear and convincing evidence proves not only that statutory grounds exist [for the termination] but also that termination is in the child’s best interest.” *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court’s decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000), *abrogated on other grounds by In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). “Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re Audrey S.*, 182 S.W.3d at 861 (citations omitted). It produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

In 2016, the Tennessee Supreme Court provided guidance to this court in reviewing cases involving the termination of parental rights:

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence

preponderates otherwise. In light of 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. The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review de novo with no presumption of correctness. Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness.

In re Carrington H., 483 S.W.3d at 523–24 (citations omitted); *see also In re Gabriella D.*, 531 S.W. 3d 662, 680 (Tenn. 2017).

Lastly, in the event that the “resolution of an issue in a case depends upon the truthfulness of witnesses, the trial judge, who has had the opportunity to observe the witnesses and their manner and demeanor while testifying, is in a far better position than this Court to decide those issues.” *In re Navada N.*, 498 S.W.3d 579, 591 (Tenn. Ct. App. 2016) (citing *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997)). “Thus, this court gives great weight to the credibility accorded to a particular witness by the trial court.” *In re Christopher J.*, No. W2016-02149-COA-R3-PT, 2017 WL 5992359, at *3 (Tenn. Ct. App. Dec. 4, 2017) (citing *Whitaker*, 957 S.W.2d at 837).

IV. DISCUSSION⁶

A.

As stated above, the trial court granted the termination petition against Father based upon the following statutory grounds: (1) substantial noncompliance with the permanency plan; (2) abandonment by failure to establish a suitable home; (3) persistence of conditions; and (4) failure to manifest an ability and willingness to personally assume custody or financial responsibility. We will discuss each ground in turn.

⁶ We will reference the statutes which were in effect when DCS filed the petition for termination of parental rights on November 5, 2021.

Substantial Noncompliance with the Permanency Plan

A court may terminate a parent's parental rights when the parent is in "substantial noncompliance . . . with the statement of responsibilities in a permanency plan." Tenn. Code Ann. § 36-1-113(g)(2). To terminate parental rights under this ground, the court "must first find that the plan requirements are reasonable and related to conditions that necessitate foster care placement." *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *10 (Tenn. Ct. App. June 10, 2014). "Conditions necessitating foster care placement may include conditions related both to the child's removal and to family reunification." *In re Valentine*, 79 S.W.3d at 547. "The trial court must then find that the noncompliance is substantial." *In re Hannah H.*, 2014 WL 2587397, at *10 (citation omitted). When determining whether a parent's noncompliance with a plan was substantial, the court must do more than "count[] up the tasks in the plan to determine whether a certain number have been completed." *In re Carrington H.*, 483 S.W.3d at 537. DCS must show "that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met." *In re M.J.B.*, 140 S.W.3d at 656 (citing *In re Valentine*, 79 S.W.3d at 548–59; *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at *12 (Tenn. Ct. App. June 3, 2003)).

In the period that followed the child's removal, DCS created five permanency plans. The trial court ratified four of these plans and found that Father's requirements were "reasonably related to remedying the reasons for foster care." The first permanency plan created October 20, 2020 required Father to: (1) pay child support pursuant to court orders or, if no court order has been entered, contact the child support office to set up a child support schedule, and provide proof of payment to DCS; (2) provide for the child's needs, including clothing, shoes, and school supplies; (3) participate in anger management classes or counseling that focuses on healthy relationships and how domestic violence impacts the child; (4) sign releases to allow DCS to communicate with all providers; (5) resolve any criminal history; (6) if on probation, follow all probation rules, pass all drug screens given by a probation officer, and provide contact information for a probation officer to DCS; (7) not engage in criminal activity or associate with anyone with a criminal history; (8) follow all recommendations from education programs and demonstrate skills learned when interacting with the child; (9) honestly participate in an alcohol and drug assessment and follow all recommendations; (10) provide DCS with proof of all prescription medications, only take medication as prescribed, not share medication, and allow pill counts; (11) not associate with known drug users or allow drug users to be around the child; (12) pass drug screens; (12) refrain from using illegal drugs or non-prescribed medication and abusing alcohol; (13) obtain and maintain safe and appropriate housing; (14) allow DCS to conduct scheduled and unannounced home visits; (15) provide proof of rent and utility bills; (16) attend and follow all rules of visitation, including being on-time, paying attention to the

child, providing for the child's needs, and not discussing the DCS case with the child; (17) participate in scheduled phone calls with the child; (18) not participate in any visitation under the influence of drugs or alcohol; (19) work with providers to create a healthy set of rules/expectations for the family that includes meeting the child's medical needs; (20) participate in parenting education; (21) participate in all of the child's scheduled educational meetings; (22) attend all of the child's scheduled medical appointments; (23) participate in financial education classes; (24) complete budgets; and (25) maintain and provide proof of legal means of income to DCS.

Pursuant to the second permanency plan dated April 5, 2021, Father's additional responsibility was to complete a mental health assessment or clinical parenting assessment and to follow all recommendations until successfully discharged. Ms. Ross explained that DCS added this responsibility because, by that point, Father had exhibited "so much anger" that DCS "[was] concerned about how that would impact his parenting of [the child]." The requirements of the third permanency plan dated September 8, 2021, remained the same except that Father was to complete a full clinical parenting assessment. Father's time to complete the steps of this permanency plan was expedited in light of the eleven months that the child had already been in foster care. At the concurrent child and family team meeting, Ms. Ross and her supervisor urged Father to work harder to complete the permanency plan steps. The fourth permanency plan, created after the petition to terminate parental rights was filed, contained the same requirements.

For most of the custodial episode, Father demonstrated little to no effort to address the permanency plans' requirements. At trial, Ms. Ross stated that Father was instructed to first prioritize substance abuse treatment before DCS began other services such as a mental health assessment and treatment. She explained that this course of action would allow the psychologist to assess Father and not his addiction. DCS assisted Father with setting up alcohol and drug assessments and placing him in inpatient treatment. DCS also offered transportation to those services. For his part, Father completed an alcohol and drug assessment which recommended inpatient treatment. Father entered inpatient treatment but became angry and discharged himself from the program after reviewing the attendance policy with the provider. Then, the provider requested Father to attend an intensive outpatient program at a location with male staff. DCS arranged for Father to attend the program's meetings, but he did not comply with the attendance policy and inconsistently followed the program's recommendations. The record contains many examples of DCS's attempts in 2021 to contact, follow up with, and work with Father to aid him in completing the steps of the permanency plans. For instance, DCS communicated with Father about inpatient treatment and arranged a placement for him at a center in East Tennessee, but Father admitted that he was dismissed from it less than a week later. DCS also traveled to Bradford Health with Father to help him enroll in inpatient treatment. Upon follow-up, DCS learned that Bradford Health could not contact Father. Additionally, DCS paid for,

arranged, and reminded Father about the clinical parenting assessment, but he failed to attend. Father consistently failed to communicate with DCS and displayed anger, resistance, and aggression when he did communicate.

We “determine compliance in light of the permanency plan’s important goals.” *In re Bonnie L.*, No. M2014-01576-COA-R3-PT, 2015 WL 3661868, at *8 (Tenn. Ct. App. June 12, 2015). This Court has previously explained:

As we see it, the compliance required with a permanency plan is that which is necessary to overcome the reasons that children are removed from a parent and placed in foster care. Regaining custody requires parents to complete certain tasks and maintain compliance with the plan to the point that it is appropriate and safe to return the children to them. In our view, a permanency plan is not simply a list of tasks with boxes to be checked off before custody is automatically restored. Rather, it is an outline for doing the things that are necessary to achieve the goal of permanency in children’s lives. We think that where “return to parent” is the goal, parents must complete their responsibilities in a manner that demonstrates that they are willing and able to resume caring for their children in the long-term, not on a month-to-month basis.

In re V.L.J., No. E2013-02815-COA-R3-PT, 2014 WL 7418250, at *8 (Tenn. Ct. App. Dec. 30, 2014).

The evidence at trial showed that DCS regularly attempted to contact Father and provide him with the resources and services necessary to address the issues that led to the child’s foster care placement. In short, besides maintaining visitation with the child, Father did not complete any of the other permanency plan requirements. At trial and on appeal, Father attempted to shift the blame for such an incomplete permanency plan onto DCS. However, we agree with the trial court’s observation that Father is a knowledgeable and capable person who does not need to be handfed. Based on our review of the evidence in this record, we conclude that there is clear and convincing evidence to support a finding that Father was in substantial noncompliance with the permanency plans. We affirm the trial court’s finding on this ground.

Abandonment by Failure to Establish a Suitable Home

A parent may be found to have abandoned his or her child by failing to establish a suitable home. Tenn. Code Ann. § 36-1-113(g)(1). This ground for the termination of parental rights is established when:

(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 the department or a licensed child-placing agency;

(b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency 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

(c) For a period of four (4) months following the physical removal, the department or agency 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. The efforts of the department or agency to assist a parent . . . in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent . . . toward the same goal, when the parent . . . is aware that the child is in the custody of the department[.]

Tenn. Code Ann. § 36-1-102(1)(A)(ii). This ground for termination requires DCS to make reasonable efforts to assist a parent in obtaining a suitable home. Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c); *In re Kaliyah S.*, 455 S.W.3d 533, 555 n.32 (Tenn. 2015). Although the statute requires DCS to make reasonable efforts toward the establishment of a suitable home for “a period of four (4) months following the physical removal” of the children, “the statute does not limit the court’s inquiry to a period of four months immediately following the removal.” *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at *13 (Tenn. Ct. App. Dec. 15, 2016). A suitable home requires “more than a proper physical living location.” *In re Daniel B.*, No. E2019-01063-COA-R3-PT, 2020 WL 3955703, at *4 (Tenn. Ct. App. July 10, 2020) (quoting *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)). It requires a “safe and stable environment in which a child can live and ‘the presence of a care giver who can supply the care and attention a child needs.’” *In re James V.*, No. M2016-01575-COA-R3-PT, 2017 WL 2365010, at *5 (Tenn. Ct. App. May 31, 2017) (quoting *In re Malaki E.*, No. M2014-01182-COA-R3-PT, 2015 WL 1384652, at *9 (Tenn. Ct. App. Mar. 23, 2015)) (citation omitted).

Here, the child was ordered by the trial court into DCS's custody on September 24, 2020. The trial court found that DCS made reasonable efforts to prevent removal. DCS subsequently filed a petition alleging that the child was dependent and neglected. On appeal, Father argues that DCS did not make reasonable efforts to assist him to establish a suitable home for the child because DCS did not conduct a home visit. However, the record is replete with DCS's reasonable efforts to assist Father in establishing a suitable home for the child during the four months following removal and throughout the custodial episode. As detailed above, DCS's efforts included developing permanency plans, working with Father to complete the steps of the permanency plans, particularly those relating to overcoming substance abuse and managing anger, sharing the housing authority's contact information with Father, and offering transportation to appointments. The testimony established that in September 2021 Father was living on a houseboat that he acknowledged was unsuitable for the child. Father informed DCS that he had located another residence, but never provided DCS with proof of stable housing or income, as required.

In this case, DCS's efforts to assist Father exceeded his own efforts to establish a suitable home. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c) ("The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department[.]"). The evidence does not preponderate against the trial court's finding that Father's "failure to make even minimal efforts to improve his home and personal condition demonstrates a lack of concern for the child to such a degree that it appears unlikely that [Father] will be able to provide a suitable home for the child at an early date." Under the circumstances of this case, we, like the trial court, conclude that Father abandoned the child by failing to establish a suitable home for him. This ground was proven by clear and convincing evidence and we affirm the trial court's judgment terminating Father's parental rights on this ground.

Persistence of Conditions

"Persistence of conditions" may be established as a ground for termination of parental rights when:

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

(i) The conditions that led to the child’s removal still persist, preventing the child’s safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child’s safe return to the care of the parent or guardian;

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

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

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

Tenn. Code Ann. § 36-1-113(g)(3).

Termination of parental rights requires clear and convincing evidence of all three factors. *In re Valentine*, 79 S.W.3d at 550. Additionally, the persistence of conditions ground may only be applied “where the prior court order removing the child from the parent’s home was based on a judicial finding of dependency, neglect, or abuse.” *In re Audrey S.*, 182 S.W.3d at 874. The statute does not require that only the original conditions leading to removal be used to establish grounds for termination. On the contrary, the statute specifically includes both “[t]he conditions that led to the child’s removal . . . or other conditions [] that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect[.]” Tenn. Code Ann. § 36-1-113(g)(3)(A)(i). “A parent’s continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent’s care.” *In re Nevada N.*, 498 S.W.3d at 605 (omission in original) (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008)). When DCS’s efforts to help “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.” *In re T.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at *7 (Tenn. Ct. App. July 13, 2000). The purpose behind the “persistence of conditions” ground for terminating parental rights is “to prevent the child’s lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment

for the child.” *In re Dakota C.R.*, 404 S.W.3d 484, 499 (Tenn. Ct. App. 2012) (citing *In re A.R.*, 2008 WL 4613576, at *20).

Here, the child was removed from Father by court order and then adjudicated dependent and neglected more than six months before the termination hearing. *See* Tenn. Code Ann. § 36-1-113(g)(3)(A)–(B). The conditions leading to the child’s removal included physical abuse, Father’s drug use, and environmental neglect. In the nineteen months following the child’s removal, Father did not remedy these conditions. The evidence shows that Father failed to address his anger and aggression. By his own admission, he displayed an aggressive “attitude” and “tone” to caseworkers. Father never successfully completed alcohol and drug treatment or parenting classes, and never provided proof of stable, appropriate housing or income. At trial, Father explained that he did not prioritize these matters because “every time [he would] start doing something right, something would hit [him] from [his] past and knock [him] right back down.” He admitted to a recent arrest based on “a warrant for child support” and had recently incurred a criminal charge relating to drug paraphernalia. These facts reasonably called into question his ability to provide for the child’s needs at an early date.

The evidence adduced at trial showed that the child was aggressive in foster care and requires counseling to address his trauma, but that Father consistently downplayed the child’s mental health, trauma, and behavioral needs. The child was diagnosed with encopresis and attention deficit hyperactivity disorder. It is unrefuted in the record that the child’s behavior worsens after visits with Father, yet Father opined that the child does not need the medication and services he is receiving. Ms. Ross related that the child is engaged during her visits with him and seems safe and happy in his current foster home, but that he “shuts down” and runs away when asked about visitation with Father. With the foregoing considerations in mind, and also considering the length of time the child has been in DCS’s custody, we affirm the trial court’s finding that “[c]ontinuation of the parent/child relationship greatly diminishes the child’s chances of being placed into a safe, stable, and permanent home.” *See* Tenn. Code Ann. § 36-1-113(g)(3)(A)(iii).

We have determined that there is clear and convincing evidence sufficient to prove the ground of persistence of conditions, Tennessee Code Annotated section 36-1-113(g)(3). Accordingly, we affirm the trial court’s judgment terminating Father’s parental rights based upon this ground.

Failure to Manifest an Ability and Willingness to Assume Custody or Financial Responsibility

Pursuant to Tennessee Code Annotated section 36-1-113(g)(14) parental rights may be terminated when:

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

Tenn. Code Ann. § 36-1-113(g)(14). This ground requires the petitioner to prove two elements by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)(1), (g)(14); *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020). First, a petitioner must prove that the parent failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child. *In re Neveah M.*, 614 S.W.3d at 674. Second, a petitioner must prove that placing the child in the parent's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child. *Id.*

As to the first element, our Supreme Court has instructed as follows:

[S]ection 36-1-113(g)(14) places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility for the child. If a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest *either* ability or willingness, then the first prong of the statute is satisfied.

Id. at 677 (citation omitted).

As to the second element, whether placing the child in the parent's custody "would pose a risk of substantial harm to the physical or psychological welfare of the child," we have explained:

The courts have not undertaken to define the circumstances that pose a risk of substantial harm to a child. These circumstances are not amenable to precise definition because of the variability of human conduct. However, the use of the modifier "substantial" indicates two things. First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. Second, it

indicates that the harm must be more than a theoretical possibility. While the harm need not be inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

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

The record reveals that Father failed to manifest an ability to care for the child. “Ability focuses on the parent’s lifestyle and circumstances.” *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at *8 (Tenn. Ct. App. Mar. 22, 2019) (citing *In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at *7 (Tenn. Ct. App. Apr. 4, 2018)). As discussed in our review of the testimony above, Father’s circumstances at the time of trial included incurring a new criminal charge. He affirmed to the trial court that he was currently in jail pending resolution of this charge.

The evidence also calls into question Father’s willingness to assume legal and physical custody or financial responsibility of the child. “Parents demonstrate willingness by attempting to overcome the obstacles that prevent them from assuming custody or financial responsibility for the child.” *In re Cynthia P.*, 2019 WL 1313237, at *8. Overall, Father hardly attempted to overcome his obstacles because he failed to complete anger management treatment, substance abuse treatment, a parenting assessment, or a mental health assessment. He did not provide proof of income.

As to the element of substantial harm, the evidence shows, among other things, that Father does not know the child’s developmental milestones and downplays the child’s significant needs. This, along with the fact that Father did not meaningfully participate in services, poses a real risk of harm to the child. With the foregoing considerations in mind, we believe that the child’s placement in Father’s custody would pose a risk of substantial harm to his welfare. We conclude that DCS proved by clear and convincing evidence that Father failed to manifest both an ability and willingness to assume custody or financial responsibility of the child and that placing him in Father’s care would pose a risk of substantial harm to the physical or psychological welfare of the child.

B.

Best Interest of the Child

Having concluded that there was clear and convincing evidence supporting at least one statutory ground of termination, the trial court was required to consider whether termination of Father’s parental rights was in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113(c)(2); *In re Audrey S.*, 182 S.W.3d at 860. After a court finds that clear

and convincing evidence exists to support a termination ground, “the interests of the parent and the child diverge” and the court focuses on the child’s best interests. *In re Audrey S.*, 182 S.W.3d at 877. A finding that at least one ground for termination of parental rights exists does not necessarily require that a parent’s rights be terminated. *Id.* Because some parental misconduct is redeemable, Tennessee’s termination of parental rights statutes recognize “that terminating an unfit parent’s parental rights is not always in the child’s best interests.” *Id.* The facts a court considers in the best interest analysis “must be proven by a preponderance of the evidence, not by clear and convincing evidence.” *In re Kaliyah S.*, 455 S.W.3d at 555. After making the underlying factual findings, the court “should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest.” *Id.*

Effective April 22, 2021, the General Assembly amended Tennessee Code Annotated § 36-1-113(i) by deleting the previous subsection in its entirety and substituting a new subsection providing, inter alia, twenty factors to be considered in determining a child’s best interest in a case involving termination of parental rights. *See* 2021 Tenn. Pub. Acts, Ch. 190 § 1 (S.B. 205). Thus, “the amended statute applies only to petitions for termination filed on or after April 22, 2021.” *In re Riley S.*, No. M2020-01602-COA-R3-PT, 2022 WL 128482, at *14 n.10 (Tenn. Ct. App. Jan. 14, 2022) perm. app. denied (Tenn. Mar. 17, 2022). The statute, as amended, provides:

(i)(1) In determining whether termination of parental or guardianship rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court. Those factors may include, but are not limited to, the following:

(A) The effect a termination of parental rights will have on the child’s critical need for stability and continuity of placement throughout the child’s minority;

(B) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition;

(C) Whether the parent has demonstrated continuity and stability in meeting the child’s basic material, educational, housing, and safety needs;

(D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;

(E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;

(F) Whether the child is fearful of living in the parent's home;

(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;

(H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;

(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;

(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;

(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;

(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;

(O) Whether the parent has ever provided safe and stable care for the child or any other child;

(P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;

(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;

(R) Whether the physical environment of the parent's home is healthy and safe for the child;

(S) Whether the parent has consistently provided more than token financial support for the child; and

(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

(2) When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.

(3) All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court's written order.

(4) Expert testimony is not required to prove or disprove any factor by any party.

Tenn. Code Ann. § 36-1-113(i). "This list is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent's parental rights is in the best interest of a child." *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The General Assembly has also stated that "when the best interest[] of the child and those of the adults are in conflict, such conflict shall

always be resolved to favor the rights and the best interest[] of the child, which interests are hereby recognized as constitutionally protected.” Tenn. Code Ann. § 36-1-101(d); *see also White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004) (holding that when considering a child’s best interest, the court must take the child’s perspective, rather than the parent’s).

In its order, the trial court made specific findings as to each relevant best interest factor. The trial court found that factors (F), (G), (H), and (I) were inapplicable, but determined that the remaining factors weighed in favor of terminating Father’s parental rights. Additionally, the trial court found that “the child needs and deserves permanency that [Father] cannot provide.” Although the child was placed in several foster homes since his removal, the testimony confirms that he was safe and happy in the current home, and that the foster family was contemplating adoption. Particularly, the trial court emphasized Father’s failure to demonstrate a sense of urgency in seeking custody of the child and addressing the circumstances, conduct, or conditions that would make an award of custody unsafe and against the child’s best interest. *See* Tenn. Code Ann. § 36-1-113(i)(1)(M). The trial court also highlighted the fact that Father has failed to take advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions in contrast to DCS’s efforts to help him do so. *See* Tenn. Code Ann. § 36-1-113(i)(1)(K), (L). Further, the trial court determined that Father’s dismissiveness about the child’s behavioral issues and mental health diagnoses shows a misunderstanding of the basic and specific needs required for the child to thrive. *See* Tenn. Code Ann. § 36-1-113(i)(1)(P).

We agree with the trial court’s assessment and findings and again note Father’s overall lack of effort during nineteen months to make corrective steps toward issues that led to the child’s removal. Accordingly, we find that clear and convincing evidence in the record supports the trial court’s determination that it was in the child’s best interest that Father’s parental rights be terminated.

C.

Witness Credibility Findings

Finally, Father argues that we should reverse the termination of his parental rights because the trial court failed to make explicit findings of fact as to witness credibility and because DCS’s witness, Ms. Ross, was not credible. “The weight, faith, and credit to be given to any witness’s testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court.” *Weatherford v. Weatherford*, No. W1999-01014-COA-R3-CV, 2000 WL 1891057, at *4 (Tenn. Ct. App. Dec. 29, 2000). However, “[w]e may infer the trial court’s findings on issues of credibility

and weight of testimony from the manner in which the trial court resolved conflicts in the testimony and decided the case.” *In re Sidney J.*, 313 S.W.3d 772, 777 (Tenn. 2010) (citing *Interstate Mech. Contractors, Inc. v. McIntosh*, 229 S.W.3d 674, 678 (Tenn. 2007)). Father and Ms. Ross were the only witnesses to testify in this matter. Throughout its order, the trial court cited Ms. Ross’s testimony, and the order leaves no doubt about whose testimony the trial court believed and credited. This issue lacks merit and we discern no reversible error here.

V. CONCLUSION

The trial court’s judgment is affirmed. The case is remanded for such further proceedings as may be necessary and consistent with this Opinion. Costs of the appeal are taxed to the appellant, Jacob A.G.

JOHN W. McCLARTY, JUDGE