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

IN RE: MITCHELL B.

Appeal from the Circuit Court for Sumner County
No. 2021-CV-363 Joe Thompson, Judge

No. M2022-01285-COA-R3-PT

In this termination of parental rights case, Appellant/Father appeals the trial court's termination of his parental rights to the minor child on the grounds of abandonment by failure to visit and failure to support. Father also appeals the trial court's determination that termination of his parental rights is in the child's best interest. Discerning no reversible error, we affirm.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and THOMAS R. FRIERSON, II, J., joined.

Russell E. Edwards, Hendersonville, Tennessee, for the appellant, Curtis B.[1]

Thomas J. Martin, Jr. and Kylene Ross, Gallatin, Tennessee, for the appellees, Casey S. and Jay S.

Sonia Jennings Boss, Mt. Juliet, Tennessee, Guardian ad Litem.[2]

OPINION

I. Background

Appellant Curtis B. ("Father") and Casey S. ("Mother") were married when Mitchell B. (the "Child") was born in July 2012. Mother and Father separated in 2014 and were divorced in 2017. In 2018, Mother married Jay S. ("Stepfather," and together with

[1] In cases involving minor children, it is the policy of this Court to redact the parties' names so as to protect their identities.

[2] The *guardian ad litem* filed a brief in support of termination of Father's parental rights.

Mother, "Appellees"). A permanent parenting plan was entered at the time of the divorce; it granted Father supervised visitation with the Child every other weekend at the paternal grandmother's ("Grandmother") house. Since the Child's birth, Father has been incarcerated numerous times on charges including possession of firearms, drugs, and paraphernalia. At the time of the termination hearing, Father had pending criminal charges in Macon County.

On April 26, 2021, Appellees filed a petition to terminate Father's parental rights and for step-parent adoption.[3] As grounds, Appellees asserted that Father abandoned the Child by failure to visit and failure to support. On June 3, 2021, Father, acting *pro se*, filed an answer to the petition, wherein he asserted that he did not wish to surrender his parental rights. Father was declared indigent, and the trial court appointed counsel for him. The trial court also appointed a *guardian ad litem* for the Child. After obtaining counsel, Father filed a second answer to the petition on December 21, 2021.

On July 20, 2022, the trial court heard the petition to terminate Father's parental rights. By order of August 31, 2022, the trial court terminated Father's parental rights on the grounds of abandonment by both failure to visit and failure to support, and on its finding that termination of Father's parental rights is in the Child's best interest. Father appeals.

II. Issues

There are two dispositive issues:

1. Whether there is clear and convincing evidence to support at least one of the grounds relied upon by the trial court to terminate Father's parental rights.

2. If so, whether there is clear and convincing evidence to support the trial court's finding that termination of Father's parental rights is in the Child's best interest.

III. Standard of Review

It is well-settled that:

[3] The trial court delayed hearing on Stepfather's petition for adoption pending the resolution of the termination of parental rights decision. The trial court certified its order terminating Father's parental rights as final under Tennessee Rule of Civil Procedure 54.02(1) ("When more than one claim for relief is present in an action. . . the court . . . may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties . . . ."). Accordingly, this Court has jurisdiction to hear the appeal under Tennessee Rule of Appellate Procedure 3(a) ("In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right.").

> A parent's right to the care and custody of [his or] her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clause of the federal and state constitutions. ***Troxel v. Granville***, 530 U.S. 57, 65 (2000); ***Stanley v. Illinois***, 405 U.S. 645, 651 (1972); ***In re Angela E.***, 303 S.W.3d 240, 250 (Tenn. 2010); ***In re Adoption of Female Child***, 896 S.W.2d 546, 547-48 (Tenn. 1995); ***Hawk v. Hawk***, 855 S.W.2d 573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. ***In re Angela E.***, 303 S.W.3d at 250. "'[T]he [S]tate as *parens patriae* has a special duty to protect minors. . . .' Tennessee law, thus, upholds the [S]tate's authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child." ***Hawk***, 855 S.W.2d at 580 (quoting ***In re Hamilton***, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); ***see also Santosky v. Kramer***, 455 U.S. 745 (1982); ***In re Angela E.***, 303 S.W.3d at 250.

In re Carrington H., 483 S.W.3d 507, 522-23 (Tenn. 2016) (footnote omitted).

Termination of parental rights proceedings are governed by statute in Tennessee, ***In re Kaliyah S.***, 455 S.W.3d 533, 541 (Tenn. 2015), and the statutes identify "those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought." ***In re Jacobe M.J.***, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (quoting ***In re W.B.***, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at *7 (Tenn. Ct. App. Apr. 29, 2005) (citing Tenn. Code Ann. § 36-1-113(g))) (internal quotation marks omitted).

Tennessee Code Annotated section 36-1-113 governs the termination of parental rights. It provides, in pertinent part:

> (c) Termination of parental or guardianship rights must be based upon:
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> (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
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> (2) That termination of the parent's or guardian's rights is in the best interests of the child.

Tenn. Code Ann. § 36-1-113(c). Therefore, every termination of parental rights case requires the trial court "to determine whether the parent has engaged in a course of action or inaction that constitutes one of the statutory grounds for termination[,]" and whether termination of the parent's rights is in the child's best interest. ***In re Donna E.W.***, No. M2013-02856-COA-R3-PT, 2014 WL 2918107, at *2 (Tenn. Ct. App. June 24, 2014). "Because the stakes are so profoundly high[ ]" in a termination of parental rights case, the

statute "requires persons seeking to terminate a . . . parent's parental rights to prove the statutory grounds for termination by clear and convincing evidence." ***In re Audrey S.***, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). This Court has observed that "[t]his heightened burden of proof minimizes the risk of erroneous decisions." ***Id.*** (citations omitted).

If the trial court determines that clear and convincing evidence supports grounds for termination in light of its 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." ***In re Kaliyah S.***, 455 S.W.3d at 555. The party petitioning for the termination of parental rights bears the burden of demonstrating that termination is in the best interest of the child by clear and convincing evidence. ***In re Angela E.***, 303 S.W.3d 240, 250 (Tenn. 2010).

We review the trial court's findings of fact *de novo* on the record with a presumption of correctness. Tenn. R. App. P. 3; ***In re Carrington H.***, 483 S.W.3d at 524 (citations omitted). However, "[i]n light of the heightened burden of proof in termination proceedings . . . [we] must make [our] 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 (citation omitted). However, when the trial court has seen and heard witnesses, we give great deference to any findings that are based on the court's assessment of witness credibility. ***In re M.L.P.***, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007) (citation omitted). We will not reverse a finding based on witness credibility unless the record contains clear and convincing evidence to contradict it. ***Id.*** A trial court's conclusion that clear and convincing evidence supports termination of parental rights is a conclusion of law that we review *de novo* with no presumption of correctness. ***In re Carrington H.***, 483 S.W.3d at 524 (citation omitted). "This standard of review is consistent with the standard of review for mixed questions of law and fact." ***In re Taylor B.W.***, 397 S.W.3d 105, 112-113 (Tenn. 2013) (citing ***Starr v. Hill,*** 353 S.W.3d 478, 481–82 (Tenn. 2011) ("Although a presumption of correctness attaches to the trial court's findings of fact, we are not bound by the trial court's determination of the legal effect of its factual findings[.]").

IV. Grounds for Termination of Father's Parental Rights

The trial court terminated Father's parental rights on the ground of abandonment by both failure to visit and failure to support. Tenn. Code Ann. § 36-1-113(g)(1). Although only one ground must be proven by clear and convincing evidence, the Tennessee Supreme Court has held that "appellate courts must review a trial court's findings regarding all grounds for termination and whether termination is in a child's best interests, even if a parent fails to challenge these findings on appeal." ***In re Carrington H.***, 483 S.W.3d at 511. Accordingly, we will review the trial court's findings as to both abandonment by failure to support and abandonment by failure to visit.

Tennessee Code Annotated section 36-1-102(1)(A) defines the ground of abandonment as follows:

> (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[.]
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> (iv) A parent or guardian is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, or a parent or guardian has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action and has:
>
> (a) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the parent's or guardian's incarceration;
> (b) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child during an aggregation of the first one hundred twenty (120) days of nonincarceration immediately preceding the filing of the action. . . .

Tenn. Code Ann. §§ 36-1-102(A)(i), (iv).

As set out in his brief, Father's primary argument concerning the grounds for termination of his parental rights involves his assertion that the trial court applied the incorrect time period. Father states that he

> was served with the current petition while he was in jail. He may have been incarcerated during the four months preceding the filing of the Mother and Stepfather's petition. The Mother and Stepfather failed to establish by clear and convincing evidence the requisite timeframe when the Father was not incarcerated prior to the filing of their petition and that the Father failed to visit with the Child or pay child support during this time.

Although Father maintains that he was incarcerated at the time he was served with the petition to terminate his parental rights, the record does not establish that fact conclusively. The summons return listed Father's home address, and the sheriff certified that service was made "by hand delivery." Furthermore, Father testified that he had been in-and-out of jail over the last ten years, but he was unsure whether he was incarcerated during any part of the four months preceding the filing of the petition to terminate his parental rights, or whether he was served with the petition while he was incarcerated, to-wit:

> Q [to Father]. Do you know if you were in jail December 26, 2020 until April 26th, 2021 . . . .
> A. I don't know. If I told you, I'd—I don't know the dates.
> Q. Okay. Is it possible you were in jail during that time?
> A. Could have been.
> Q. When did you get how were you served with this petition . . . . where were you served with that, at home or in jail?
> A. I'm not sure. I've been served—I've been in jail before and she served me with papers regarding these court proceedings, but which one it was, I'm not for sure.

It is clear from the record that Father did receive the petition because he filed a *pro se* answer on June 3, 2021. Regardless, in this case, the time period is not dispositive because it is undisputed that Father has failed to provide support for Mitchell and has failed to visit the Child since the time of Father and Mother's divorce in 2018. As the trial court found in its order terminating Father's parental rights:

> During the relevant period of time from December 26, 2020 through April 26, 2021, the Father did not visit the child and there was no support either directly or indirectly. There was only one brief contact requesting visitation that was indirect from the Father through his mother.

Father's own testimony supports the trial court's findings:

> Q [to Father]. [Y]ou got divorced. I think the final decree was sometime early maybe 2018, and your parenting time with your son must be supervised by your mother. Is that right?
> A. Correct.
> Q. And you didn't ever go back to court to change that where you could see your son by yourself, did you, sir?
> A. No.
> Q And the child support was set, we know that, and according to [Mother], you only made one payment. Is that right?[4]

[4] The "one payment" was a payment of $72 by check drawn on Father's mother's account. This

A. Correct.
Q. Why didn't you make any more payments than that . . . .
A. Well, I wasn't able to see my son, sir? Because I wasn't able to see my son.
Q. Okay. So you think that if you don't see your son, you don't have to pay it?
A. No. That ain't [sic] how it works but that's how it was.
Q. But you just decided, all right, I'm not getting to see my son, so I'm not paying it. Is that what you're saying to the Court?
A. That's what I'm saying.
Q. Well, who did you expect to help support your son?
A. I guess the man [Mother's] got living with her[, *i.e.,* Stepfather].
Q. So you thought [Stepfather] ought to be doing that. Is that right?
A. That's the role he's wanting to play.
Q. Well, you and [Mother] had separated when the child was just two years old. Is that right?
A. I'm not for sure.

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Q. When's the last time you [saw] your son?
A. It's been three years ago.
Q. Where was that?
A. My mother's probably.
Q. You don't even remember where it was?
A. Probably at my mama's.
Q. I didn't ask you probably where it was. I asked where you saw him at, and you can't even tell me, can you, sir?
A. Yes.
Q. Sir?
A. Yes.
Q. You can tell me or you can't tell me?
A. At my Mother's.
Q. But you didn't live with your mother then, did you?
A. No.
Q. And you have never personally made any contact with [Mother] about seeing your son, have you?
A. I have not.
Q. Not one single time?
A. I have not.

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payment was made shortly after Mother and Father were divorced in 2018, and it constitutes the only child support payment made by, or on behalf of, Father in this case.

We acknowledge Father's mother's testimony that she texted Mother seeking visitation for Father. However, there is no evidence that Father requested that his mother send these texts, and there is no evidence that Father visited or intended to visit the Child. As Father stated in his testimony:

> Q [to Father]. Now, your mother has given a bunch of text messages to the Judge. . . . Was [sic] there any of those text messages from you?
> A. Not personally.
> Q. When is the last time you lived with your mom?
> A. It was before my divorce.
> Q. Okay. So your divorce was, what, five years ago?
> A. It was finalized.
> Q. Finalized in 2018?
> A. Correct.
> Q. So you haven't lived there since then. okay.

During his testimony, Father asserted that he did not contact Mother because there was a restraining order in place that prevented him from doing so. However, there is no proof that such restraining order existed. Nonetheless, as noted above, after counsel was appointed to represent Father, he filed a second answer to the petition to terminate his parental rights. However, he did not raise the affirmative defense of absence of willfulness as required by section 36-1-102(1)(I):

> [I]t 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). This Court held that omission results in waiver of lack of willfulness as an affirmative defense. *See*, *e.g.*, ***In re Jaidon S.***, No. M2021-00802-COA-R3-PT, 2022 WL 1017230, at *5 (Tenn. Ct. App. Apr. 5, 2022); ***In re Analesia Q.***, No. E2021-00765-COA-R3-PT, 2022 WL 1468786, at *5 (Tenn. Ct. App. May 10, 2022); ***In re Christopher L.***, No. M2020-01449-COA-R3-PT, 2021 WL 4145150, at *5 (Tenn. Ct. App. Sept. 13, 2021). However, assuming *arguendo* that Father preserved the defense of lack of willfulness, he wholly failed to provide any evidence to suggest that Mother thwarted any efforts on his part to see the Child or to provide support for him. As set out in its findings from the bench, which were incorporated by reference into its final order, the trial court found:

> It used to be that it was up to the petitioners to show that the failure to visit and failure to pay support was willful. That burden has now shifted to the

> parent whose rights are in peril, and that parent—in this case, [Father]—has the burden of proof to prove that his failure to visit and failure to pay support were not willful by a preponderance of the evidence. So in this case, the testimony is clear and unequivocal. . . that during the relevant time period, which is December 26th, 2020 through April 26th, 2021, there were no visits by [Father] to Mitchell and there were no payments of support directly or indirectly or necessities directly or indirectly by [Father] during the same time period. . . and there hasn't been testimony that establishes that [Father's] failure to do so was [not] willful.

We agree with the trial court that Father has never visited the Child and has provided no support for him. Furthermore, there is no evidence to establish that Father's failure to visit or support were not willful. In this regard, the instant case is similar to the case of ***In re Isabella G.***, in which this Court explained:

> The present case is distinguishable from . . . cases in which one parent has purposefully impeded the other parent's access to a child. *See, e.g.*, ***In re Braelyn S.***, [No. E2020-00043-COA-R3-PT,] 2020 WL 4200088, at *8 [(Tenn. Ct. App. July 22, 2022)] (reversing termination of father's parental rights for failure to visit because the child's mother "consistently rebuffed [f]ather's efforts to be any part of the child's life"). . . . [N]othing in the record supports Father's claim that Mother somehow impeded Father's access to the Child, inasmuch as Father concedes he did not pursue contact with the Child.

In re Isabella G., No. M2022-00246-COA-R3-PT, 2023 WL 1131230, at *9 (Tenn. Ct. App. Jan. 31, 2023). For these reasons, we conclude that there is clear and convincing evidence to support the trial court's findings that Father failed to visit or support the Child.

IV. Best Interest

Tennessee Code Annotated section 36-1-113(i)(1) contains a non-exclusive list of factors applicable to the court's best-interests analysis. The statute 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.

The Tennessee General Assembly amended the statutory best-interest factors in 2021. *See* 2021 Tenn. Pub. Acts ch. 190 § 1 (S.B. 205), eff. Apr. 22, 2021. Because Appellees filed the petition to terminate Father's parental rights on April 26, 2021, the new best interest factors apply in this case. *See* ***In re Braxton M.***, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017) (holding the version of a termination statute "'that was in force when the petition

was filed governs this case'") (quoting ***In re Tianna B.***, No. E2015-02189-COA-R3-PT, 2016 WL 3729386, at *7 (Tenn. Ct. App. July 6, 2016)). As noted by Appellant in his brief, "The Trial Court apparently, perhaps inadvertently, utilized the previous factors contained in section 36-1-113(i) in making its findings as well as some of the current ones." Indeed, from the trial court's findings, as incorporated into its final order, it appears that the trial court did conflate the old and new factors in reaching its ultimate decision that termination of Father's parental rights is in Mitchell's best interest. Although the new iteration of the factors is applicable here, the trial court's use of both the old and new factors does not constitute reversible error in this case. *See* ***In re Da'Moni J.***, No. E2021-00477-COA-R3-PT, 2022 WL 214712, at *23 (Tenn. Ct. App. Jan. 25, 2022), *perm. app. denied* (Tenn. April 1, 2022 ("We agree with the Juvenile Court that the best interest factors relevant to this case are included in the new version of factors that went into effect in April 2021."). As in ***Da'Moni J.***, here, the trial court's oral findings, as incorporated into its written order, provide this Court with a detailed summary of the trial court's reasoning concerning the Child's best interest. As such, this Court is positioned to make a meaningful review of the trial court's findings. Furthermore, the statutory factors are not exclusive but "illustrative . . . and any party to the termination proceeding is free to offer any other factor relevant to the best[-]interests analysis." ***In re Gabriella D.***, 531 S.W.3d 662, 681 (Tenn. 2017) (citation omitted). Accordingly, the trial court's application of some old factors and some new factors is not error so long as the factors considered are relevant to the facts presented in this case. The trial court's best interest analysis in this case is thorough and well-reasoned and does not require reconsideration or remand. Therefore, we exercise our discretion to proceed with our review of the trial court's best interest analysis. *See* ***In re Korey L.***, No. M2022-00487-COA-R3-PT, 2023 WL 2174854 (Tenn. Ct. App. Feb. 23, 2023).

Turning to the best interest factors, at the time of the filing of the petition to terminate Father's parental rights, those factors included, but were 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;
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> (B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
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> (C) Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs;
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> (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;

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(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;

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(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;

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(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.[5]

Whether termination is in the child's best interest must be "'viewed from the child's, rather than the parent's, perspective.'" ***Id.*** (quoting ***In re Audrey S.***, 182 S.W.3d at 878). "[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child[.]" ***Id.*** (quoting

[5] The pre-April 2021 version of Tennessee Code Annotated section 36-1-113(i) set out the following, non-exclusive, best-interest factors:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-101(d) (2017)). The court's "'focus on the perspective of the child is the common theme' evident in all of the statutory factors." ***In re Neveah M.***, 614 S.W.3d 659, 679 (Tenn. 2020) (quoting ***In re Audrey S.***, 182 S.W.3d at 878).

The trial court's best-interest analysis requires "more than a 'rote examination' of the statutory factors." ***In re Neveah M.***, 614 S.W.3d at 679 (quoting ***In re Audrey S.***, 182 S.W.3d at 878). Further, it "consists of more than tallying the number of statutory factors weighing in favor of or against termination." ***Id.*** (citing ***White v. Moody***, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004)). Although the court must consider all the statutory factors and other relevant proof, some factors may weigh more heavily than others in light of the circumstances surrounding the particular child and parent. ***Id.*** (quotation omitted). The trial court "may appropriately ascribe more weight—even outcome determinative weight—to one statutory factor or rely upon fewer than all of the statutory factors." ***Id.*** (citation omitted).

The trial court's factual findings relevant to the best-interest analysis must be supported by a preponderance of the evidence. ***In re Kaliyah S.***, 455 S.W.3d at 555 (citation omitted). Additionally, the court must determine whether the combined weight of the facts amounts to clear and convincing evidence that termination of parental rights is in the child's best interest. ***Id.*** (citation omitted). As noted above, we review the trial court's best-interest analysis under the standard of review applicable to mixed questions of fact and law. ***In re Taylor B.W.***, 397 S.W.3d at 112-113. We will affirm the trial court's factual findings unless they are unsupported by a preponderance of the evidence. ***In re Neveah M.***, 614 S.W.3d at 674 (citations omitted). Whether the court's factual findings amount to clear and convincing evidence that termination of parental rights is in the child's best interest is a question of law that we review *de novo* with no presumption of correctness. ***Id.*** (citations omitted). With the foregoing in mind, we turn to review of the trial court's findings.

In its oral ruling, which was incorporated into its written order, the trial court found:

> [W]hether, in this case, [Father] has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or the guardian. And in this case, the Court acknowledges and recognizes and finds, based upon the uncontroverted testimony . . . that [Father] has had long periods of incarceration over the last ten years and is currently facing . . . criminal charges in Macon County . . . .
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> (3) Whether the parent or guardian has maintained regular visitation or other contact with the child. . . . That factor is relevant, and that goes along with:

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child; whether the parent and child have a secure and healthy parental attachment; and whether the parent has maintained regular visitation or other contact. And in all four of those factors, the Court finds by clear and convincing evidence that there has not been the maintenance of a regular visitation schedule between [Father] and his son, Mitchell; that that relationship has not been established as a meaningful relationship, because whether I take the [M]other's testimony that the last time there was a visit was five years ago or the father's testimony that the last time there was a visit was three years ago, we're looking at a period that's almost either a third or a half of Mitchell's life where he hasn't had a relationship with his father, and so such attachment has not been created in this case. (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition. That was amended in 2021 to add the following factors: 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, and with respect to that factor, the Court is very concerned with [Father's] testimony that he's facing a very lengthy sentence of incarceration that would survive Mitchell's minority. If [Father] is not successful in defending himself on the charges, then it's very likely that he will be incarcerated until Mitchell is 18.

The other factors that are concerning to the court are that Mitchell has already established a lasting relationship with five half-brothers and sisters that he has been with the entirety of his life, and those have been stable relationships for him, and the Court is mindful of not disrupting those stable relationships and in solidifying those relationships with his four half-brothers and sisters.

Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent. Based upon the testimony of [Appellees], the court finds that Mitchell has created a healthy parental attachment with [Stepfather]. They do activities together. [Stepfather] is involved in attending [the Child's] sporting events and he serves as the role of a father figure to Mitchell.

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One of the other factors is whether the parent has demonstrated continuity and stability in meeting the child's basic material, education, housing and safety needs. [Father], because he's been incarcerated multiple times and been incarcerated for several periods of time throughout Mitchell's life, he's been unable to demonstrate that continuity and stability in meeting Mitchell's needs. That goes along with another factor, 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, again, I believe that during his periods of incarceration, he has been unable to do so.
>
> Urgency. One of the new factors is whether the parent has demonstrated a sense of urgency in establishing paternity of the child, and in this case believe those questions had to do with returning to court if [Father] felt there were violations, or in pursuing a more active role in trying to schedule parenting time are absent from the Court's record. Therefore, the Court finds that factor has been established by clear and convincing evidence.
>
> Finally, financial support. Whether a parent or guardian has paid child support consistent with the Child Support Guidelines and whether the parent has consistently provided more than token financial support for the child, and in both of those cases, [Father] has been unable to do so.
>
> From all of these factors, the Court finds that it is in Mitchell's best interest for a termination of parental rights to occur . . . and that is [the] final order of the court.

The evidence supports the trial court's findings. It is clear that Father has been absent from this Child's life since Father and Mother divorced in 2018. Any efforts toward communication or visitation have come solely from the Child's paternal Grandmother, and Father has made no independent effort to form any relationship with Mitchell. Father has provided no support, with the exception of $72 paid from Grandmother's account just after the divorce. Father has never sent a Christmas gift or birthday gift to the Child. Father's testimony that his failure to support the Child was due to the fact that he was precluded from seeing the Child is not persuasive. There is no evidence that Appellees have thwarted Father's visitation, and Father admitted that he has not sought any relief or change in custody or visitation since the time of the divorce. For all intents and purposes, Father has removed himself from the Child's life.

Father's testimony that Stepfather should be responsible for paying for the Child's expenses, *supra*, is telling. Father stated his opinion that Stepfather "ought to be [paying the Child's expenses and furnishing his necessaries]" because "[t]hat's the role [Stepfather is] wanting to play." This is exactly what happened in this case. Stepfather has clearly stepped into the role of father, and he has been the sole provider for the Child.

In addition to financially supporting the Child, the evidence shows that Stepfather is very active in the Child's extracurricular activities. Stepfather testified that he attends most of Mitchell's ballgames, whereas Father admitted that he has never attended any of the Child's games or school functions. Father has not seen this Child since Christmas 2017. Mother testified that Mitchell no longer asks about the Father.

In his brief, Father asserts that Stepfather also has a criminal history, as does Mother. Indeed, during their respective testimony, both Mother and Stepfather admitted to past criminal activity and incarcerations. However, from the record, it appears that neither has incurred criminal charges recently, and neither has pending criminal charges. On the other hand, Father continues to engage in criminal activity; as noted by the trial court, at the time of the hearing, Father had pending criminal charges in Macon County. Although the outcome of the Macon County charges was unknown at the time of the hearing, the fact of the charges indicates that Father, unlike Mother and Stepfather, has not modified his behavior and continues to engage in activities that result in criminal charges.

In his brief, Father also takes issue with the fact that "[t]he Mother, the Stepfather, and the Child live in a mobile home filled with nine people." Again, Mother and Stepfather admitted that their home is small, but there was no evidence that this fact presents a problem. During her testimony, Mother addressed this concern and testified about the sleeping arrangements. It appears that, although admittedly crowded, every child has his or her own space in the family home, and there is no evidence of any neglect or problematic activities within the home. No evidence was presented concerning Father's current living situation except for the fact that he lives with his current wife. Regardless, the evidence is clear that Mitchell is bonded with his siblings and enjoys stability and a healthy family dynamic in Mother and Stepfather's home. By all accounts, Mitchell is an outgoing, loving, playful, and responsible child. Furthermore, he is not only a good student, but he also excels in sports. Credit for this goes solely to Mother and Stepfather, who have obviously nurtured Mitchell and provided for him to the best of their ability. In return, Mitchell enjoys a bond with Stepfather that he has never had with Father. It is in Mitchell's best interest for Father's parental rights to be terminated and for the step-parent adoption petition to move forward in the trial court.

VI. Conclusion

For the foregoing reasons, we affirm the trial court's order terminating Father's parental rights. The case is remanded to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, Curtis B. Because Curtis B. is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE