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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 1, 2020

IN RE AIDEN M.

Appeal from the Chancery Court for Sullivan County
No. 16-CK-40448 E.G. Moody, Chancellor

No. E2019-01536-COA-R3-PT

A mother appeals the termination of her parental rights. The original petition, which asserted multiple grounds for termination, was filed in June of 2016. At the time, the ground of abandonment for failure to visit and support required the petitioners to prove the parent's failure to visit and support the child was, *inter alia*, willful. Prior to trial, the petitioners filed an amended complaint to assert, *inter alia*, the ground of abandonment based on the amended statute, which did not require proof of willfulness. When the case went to trial, the court based its ruling on the grounds asserted in both the original and amended petition, considered two different four-month periods for the ground of abandonment—one preceding the filing of the original petition and one preceding the filing of the amended petition—and determined that all of the alleged grounds had been proven and that termination of the mother's parental rights was in the child's best interest. This appeal followed. We have determined that the petitioners failed to prove the ground of failure to manifest an ability and willingness to assume custody or financial responsibility of the child. We also hold, *inter alia*, that the trial court erred in considering two different four-month periods for the ground of abandonment because the claims asserted in the amended petition arose out of the same conduct as that set forth in the original petition; thus, the amendment related back to the date of the original pleading. Nevertheless, the record contains clear and convincing evidence to support the trial court's determination that the petitioners proved grounds based on the mother's conduct during the relevant period preceding the filing of the original petition. We also find the record contains clear and convincing evidence to support the trial court's determination that termination of the mother's parental rights is in the child's best interest. Having affirmed the trial court's determination that two grounds were established and that termination of the mother's parental rights is in the child's best interest, we affirm the termination of the mother's parental rights.

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

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which JOHN W. MCCLARTY and ARNOLD B. GOLDIN, JJ., joined.

Kenneth E. Hill, Kingsport, Tennessee, for the appellant, Sheena C.¹

Jason Andrew Creech, Johnson City, Tennessee, for the appellees, Robyn M. and Christopher M.

Carroll Christopher Raines, III, Kingsport, Tennessee, guardian *ad litem*.

OPINION

Aiden M. (“the Child”) was born to Sheena C. (“Mother”) and Christopher M. (“Father”) in December 2011. Although Mother and Father were never married, they lived together when the Child was born. Mother and Father separated when the Child was approximately seven months old. Mother and Father exchanged visitation and parenting time for three months between July and September 2012. In August of 2012, Mother was given temporary custody of the Child by a court in North Carolina, but Mother lost temporary custody in October 2012.

Mother last saw the Child in October of 2012, when she was charged with kidnapping. On October 25, 2012, Mother asked Father to meet her at the hospital to pick up the Child. While Father went inside to pick up the Child from Mother’s ex-husband, Mother hid inside the trunk of Father’s vehicle. After Father began driving the Child home, Mother crawled out of the trunk and tried to choke Father. Mother put either a knife or ice scraper² to Father’s neck, cut Father’s neck, and stated: “You need to pull the car over. I’d hate for you to get into an accident with your son in the back seat.” Mother attempted to handcuff Father to the steering wheel, but Father was able to force Mother out of the car and lock the vehicle. Once outside the car, Mother jumped on the hood and demanded that Father give her the Child. Eventually, Father was able to drive away and call the Sheriff’s Department.

As a result of this incident, Father obtained a restraining order against Mother on October 26, 2012. Mother was charged with involuntary kidnapping and assault with a deadly weapon. Mother pled guilty to attempted felonious restraint and assault with a deadly weapon. Mother was placed on probation; one of the conditions of her probation was to “not assault, threaten, be found in or on the premises or workplace of, or have any contact with [Father]” and “not assault/threaten/harass/abuse/be in the presence of/be on

¹ This court has a policy of protecting the identity of children in parental termination cases by initializing the last names of the parties.

² Father and Mother’s accounts conflicted as to whether Mother used a knife or an ice scraper.

the property of [Father]/his work place or his immediate family except as may be authorized by court order.”

Father was granted temporary custody through the court in North Carolina and has maintained legal and physical custody over the Child since. The temporary custody order stated that “[Mother] is denied visitation at this time pending further hearing with defendant present.” Despite the restraining order, Mother filed a Petition for Emergency Custody and/or to Change the Custody Order of the Court in December of 2012. Just over a month later, Mother voluntarily dismissed her petition. Mother never filed any other petition seeking parenting time and moved to Ohio in July 2015. Father moved to Tennessee in June 2013. As such, the custody litigation in North Carolina never resulted in a final court order suspending Mother’s parenting time.³

The proceedings underlying this appeal began on June 1, 2016, when Father and his wife, Robyn M., (“Petitioners”), filed a Petition for Termination of Parental Rights and Petition for Stepparent Adoption. Petitioners alleged three grounds: abandonment by willful failure to visit, abandonment by willful failure to support, and willful failure to visit and support the Child for a period of four months immediately preceding incarceration. On January 22, 2019, Petitioners filed an amended petition in which they asserted the grounds of abandonment by failure to visit and abandonment by failure to support⁴ and added the ground of failure to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the minor child.

At trial, Mother, Father, Robyn M. (“Step-Mother”), and Father’s twin sister testified.⁵ By order entered on July 11, 2019, the trial court granted the petition and terminated Mother’s parental rights. The trial court considered each of the six grounds proposed in the original and the amended petitions, ultimately holding there was clear and convincing evidence with regard to each ground, except willful failure to visit and support the Child for a period of four months immediately preceding incarceration. The trial court applied two different four-month periods⁶ when ruling on the grounds of abandonment by

³ The North Carolina litigation was ultimately dismissed, and there is no pending case in North Carolina.

⁴ The grounds of abandonment by failure to visit and abandonment by failure to support were both re-asserted in the amended petition under the new statutory scheme, which removed the willfulness requirement. *See* 2018 Tenn. Pub. Acts, Ch. 875 § 1 (effective July 1, 2018).

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

⁶ The trial court applied two different four-month periods, one preceding the filing of the original petition and one preceding the filing of the amended petition. As will be discussed in more detail later, the trial court properly applied the statutory scheme and time period to the grounds of abandonment in the original petition.

failure to visit and abandonment by failure to support. The trial court also held that termination of Mother's parental rights was in the best interest of the child. Based on these findings, the trial court terminated Mother's parental rights. This appeal followed.

ISSUES

1. Whether the court erred in terminating Mother's parental rights on the ground of willful failure to visit?
2. Whether the court erred in terminating Mother's parental rights on the ground of willful failure to support?
3. Whether the court erred in terminating Mother's parental rights on the ground of failure to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the minor child?
4. Whether the trial court erred in finding that termination of Mother's parental rights was in the best interests of the Child pursuant to Tennessee Code Annotated section 36-1-113(i)?

STANDARD OF REVIEW

Tennessee Code Annotated section 36-1-113 "sets forth the grounds and procedures for terminating the parental rights of a biological parent." *In re Kaliyah S.*, 455 S.W.3d 533, 546 (Tenn. 2015). According to the statute, the petitioner seeking termination of parental rights must prove two elements. *Id.* at 552. First, that party must prove the existence of at least one of the statutory grounds for termination set forth in Tenn. Code Ann. § 36-1-113(g). *Id.* Second, the petitioner must prove that termination of parental rights is in the best interest of the child, considering the best interest factors listed in Tenn. Code Ann. § 36-1-113(i). *Id.*

Because of the constitutional dimension of the parent's rights at stake, the party seeking termination must prove both of the required elements 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)). To be clear and convincing, the evidence must enable the finder of fact "to form a firm belief or conviction regarding the truth of the facts" sought to be established and eliminate "any serious or substantial doubt about the correctness" of the findings. *Id.*

Due to this heightened burden of proof applicable in parental termination cases, we adapt our customary standard of review on appeal. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). Appellate courts review the trial court's factual findings de novo in accordance with Tennessee Rule of Appellate Procedure 13(d), presuming each factual

finding to be correct unless the evidence preponderates otherwise. *In re Carrington H.*, 483 S.W.3d 507, 524 (Tenn. 2016). Then, we make our own determination regarding “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.” *Id.* “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.” *Id.*

ANALYSIS

I. GROUNDS FOR TERMINATION

A. Abandonment

Petitioners alleged that Mother abandoned the Child by failing to visit and support him during two separate four-month periods, one preceding the filing of the original complaint in June of 2016 and the other preceding the filing of the amended complaint in January of 2019.

To determine the applicable four-month period, we note that the Tennessee Rules of Civil Procedure contain a specific rule that governs relation back of “amendments.” According to Rule 15.03 of the Tennessee Rules of Civil Procedure, “[w]henver the claim or defense asserted in amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” Relying on this rule, this court has previously held that where an “amendment” to a termination petition did not constitute a separate and distinct petition, the proper four-month period to consider was the four-months preceding the filing of the original petition, not the amendment:

[W]e conclude that the amended petition in this case was not a “separate and distinct” petition from the original petition, as the facts alleged in the initial petition and the amended petition were largely identical. Consequently, the amended petition will relate back to the filing date of the initial petition. *See also In re Adoption of Angela E.*, 402 S.W.3d 636, 640 (Tenn. 2013) (“Although the petition was later amended in September 2005, the relevant period for purposes of abandonment is the four-month period immediately preceding the filing of the original petition.”); *In re Chase L.*, No. M2017-02362-COA-R3-PT, 2018 WL 3203109, at *9 (Tenn. Ct. App. June 29, 2018) (citing *In re J.G.H.*, 2009 WL 2502003, at *13) (“[T]his Court has previously held that where an ‘amendment’ to a termination petition did not constitute a separate and distinct petition, the proper four month period to consider was the four months preceding the filing of the original petition, not the amendment.”). In evaluating Mother’s alleged willful failure to visit and

support, we therefore consider the four-month period preceding the filing of the initial petition. *See* Tenn. Code Ann. 36-1-102(1)(A)(i) (stating that abandonment occurs when a parent willfully fails to visit or support in the four months preceding the filing of the termination petition).

In re P.G., No. M2017-02291-COA-R3-PT, 2018 WL 3954327, at *7 (Tenn. Ct. App. Aug. 17, 2018). Even more recently, this court held that because the amended petition “did not materially alter the claims” made by the petitioner and “was not a ‘separate and distinct’ petition from the original, . . . the proper period to consider abandonment was . . . the four months preceding the filing of the original petition.” *In re Braelyn S.*, No. E2020-00043-COA-R3-PT, 2020 WL 4200088, at *5 (Tenn. Ct. App. July 22, 2020).

Despite the passage of more than two years since the filing of the original petition, Petitioners’ allegations concerning the grounds of abandonment were essentially the same as those in the original petition. Petitioners alleged in the original petition that Mother abandoned the Child by willfully failing to visit and willfully failing to support him. In the amended petition, Petitioners merely contended that Mother had not visited or supported the minor child for an additional four-month period.

We do not regard the latter as separate or distinct from the former. Rather, they are a continuation of the allegations made pertaining to the same grounds alleged in the original petition. Thus, we find the amended petition was not “separate and distinct.” As such, the relevant four-month period for the ground of abandonment is January 31 to May 31, 2016, the four months preceding the filing of the original petition.⁷

1. Willful Failure to Visit

When the original petition was filed, the statutory definition of abandonment included the following:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading 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 **willfully** failed to visit or

⁷ For petitions filed on or after July 1, 2018, it is a parent’s burden to show that his or her failure to visit or support was not willful. *See* 2018 Tenn. Pub. Acts Ch. 875 § 2 (effective July 1, 2018) (codified at Tenn. Code Ann. § 36-1-102(1)(I)). The original petition in this matter was filed on June 1, 2016. Because this change is substantive, and the amended claims relate back to the initial filing, the amended statute does not apply to this case. *See In re Gaberiel S.*, No. M2018-00522-COA-R3-PT, 2018 WL 6523239, at *8 n.3 (Tenn. Ct. App. Dec. 11, 2018).

have *willfully* failed to support or have *willfully* failed to make reasonable payments toward the support of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(i) (Supp. 2016) (emphasis added). Furthermore, Tenn. Code Ann. § 36-1-102(1)(E) defined “willfully failed to visit” as “the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation.” The statute explained that a parent engaged in “token visitation” when “the visitation, under the circumstances of the individual case, constitute[d] nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child[.]” *Id.* § 102(1)(C).

During the relevant period preceding the filing of the original petition, the Child lived in Tennessee with Petitioners. Mother testified that she knew Father had relocated to Tennessee. During the same period, Father lived with his parents in Tennessee. Father maintained that Mother knew his email address and his parent’s physical address. Despite relocating, Father still owned the home that he and Mother lived in together in North Carolina. Father testified that he rented his home in North Carolina and had not received any correspondence from Mother through his renters. Further, Father testified that Mother knew where his brother lived in Tennessee and had visited his brother’s home.

Mother testified that she traveled from her home in Ohio to North Carolina roughly every two weeks. However, the record revealed that she never extended the same effort to visit with the Child. Mother testified that she knew Father’s parent’s home address and could have contacted Father through them. Despite all of these avenues for contacting Father, Mother testified that she “Googled a couple of times” to find information on Father but never found an address. The trial court found that Petitioners proved by a preponderance of the evidence that Mother failed to visit the Child during the relevant period, and we concur in this finding.

The trial court also found that the facts support a finding that Mother’s failure to visit was “willful.” Despite knowing how, Mother chose not to file a petition for visitation or custody. During trial, Mother conceded that she neither visited nor attempted to visit the Child since she last saw him in October of 2012. Mother acknowledged she never requested visitation during the pendency of the litigation, despite having an attorney to represent her since October 2016. Mother testified that she never called the police, filed a missing person’s report, or tried to reach out to Father. Mother insisted that even if she had found Father, she was not allowed to do anything because of the court order. However, Mother could have petitioned the court for visitation or custody to procure a court for visitation. There is no evidence that Mother attempted to contact Petitioners to schedule a visit, that she called Petitioners to speak with the Child, or that she undertook any effort whatsoever to have any contact with the Child.

The trial court also determined that these facts clearly and convincingly established that Mother willfully failed to visit the Child during the relevant period, and we concur in this determination as well.

2. Willful Failure to Support

At the time Petitioners filed this action, Tenn. Code Ann. § 36-1-102(1)(D) defined “willfully failed to support” as “the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child.” The statute explained that that “‘token support’ means that the support, under the circumstances of the individual case, is insignificant given the parent’s means.” *Id.* § 102(1)(B).

Father testified that he had not received support of any kind from Mother since 2012—for approximately seven years. At trial, Mother testified that she worked as a receptionist at a doctor’s office in Ohio. Mother conceded that from January 31 to May 31, 2016, she was able to pay child support; she simply chose not to do so. Mother admitted that she had also been able to pay during other periods but had never done so. Mother testified that she never tried contacting the North Carolina court or Father’s attorney in North Carolina to pay financial support for the Child. Mother testified that she had almost four thousand dollars in the bank, takes family vacations, has a fiancé that brings home “almost \$1,000 a week,” pays \$300 per month for cell phones, and voluntarily purchased a 2016 Chevy Silverado for \$25,000 for her fiancé shortly after this case began in 2016. Mother testified that she purchased gifts and toys for the minor child, which she pays seventy-seven dollars per month to store in a storage unit in North Carolina.

During the relevant time period, the four months preceding the filing of the original petition, Mother was working, had disposable income, and had the ability to pay support, yet chose not to. Based upon these and other findings of fact, the trial court found the proof presented was clear and convincing that Mother had abandoned the Child by willfully failing to support him throughout the relevant period. The evidence does not preponderate against any of the trial court’s findings relevant to this ground. Moreover, the facts, as found by the trial court, amount to clear and convincing evidence of the elements necessary to establish this ground. Accordingly, we affirm the trial court’s ruling on this ground as well.

3. Failure to Manifest Ability and Willingness to Assume Custody

We next address the ground of failure to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the minor child pursuant to Tenn. Code Ann. § 36-1-113(g)(14). This ground became law effective July 1, 2016, after the original petition was filed. *See* 2016 Tenn. Pub. Acts, Ch.

919 § 20. Moreover, it was not asserted the original petition; it was first raised in the amended petition.

Section 113(g)(14) provides as follows:

A 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). Thus, to establish this ground, Petitioners were required to prove two elements by clear and convincing evidence. *In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at *7 (Tenn. Ct. App. Apr. 4, 2018). First, that Mother failed to manifest “an ability and willingness to personally assume legal and physical custody or financial responsibility of the child.” Tenn. Code Ann. § 36-1-113(g)(14). Second, that placing the child in Mother’s “legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.”⁸ *Id.*

Because the amendment adding the ground set forth in § 113(g)(14) impairs a vested right, it may not be applied retroactively, meaning the court may not consider Mother’s acts and omissions prior to its effective date, July 1, 2019, to prove this ground. *See In re D.A.H.*, 142 S.W.3d 267, 269 (Tenn. 2004). In *In re D.A.H.*, the Tennessee Supreme Court determined that retrospectively applying an amendment regarding the statutory grounds for termination of parental rights would cause the father to lose his vested rights as a parent. *Id.* The Court acknowledged that, while statutes are presumed to operate prospectively,

⁸ Although we do not get to the merits of this ground, there is disagreement within this court concerning the proof required to establish the ground. Some panels have interpreted Tenn. Code Ann. § 36-1-113(g)(14) as requiring DCS to prove that the parent failed to manifest an ability **and** failed to manifest a willingness to assume custody of the Children. *See In re Nakayia S.*, 2018 WL 4462651, at *5 (citing *In re Ayden S.*, No. M2017-01185-COA-R3-PT, 2018 WL 2447044, at *7 (Tenn. Ct. App. May 31, 2018)). Other panels have interpreted § 113(g)(14) as requiring the petitioner to prove the parent failed to manifest an ability **or** failed to manifest a willingness to assume custody or financial responsibility. *See, e.g., In re Jeremiah S.*, No. W2019-00610-COA-R3-PT, 2020 WL 1951880, at *7 (Tenn. Ct. App. Apr. 23, 2020) (citing *In re Amynn K.*, No. 2017-01866-COA-R3-PT, 2018 WL 3058280, at *12 (Tenn. Ct. App. June 20, 2018)). Even more recently, this court applied a consistent interpretation of the proof required that was based on the determination that the statute was ambiguous, which afforded the court the opportunity to consider legislative intent. *See In re Braelyn S.*, No. E2020-00043-COA-R3-PT, 2020 WL 4200088, at *1 (Tenn. Ct. App. July 22, 2020). In *Braelyn* we determined that legislative history clearly shows the intent to provide a ground for termination if the petitioner proves “**either inability or unwillingness**” under section 36-1-113(g)(14). *Id.* at *17 (emphasis added). In the interim, on June 15, 2020, the Tennessee Supreme Court granted a Rule 11 application for permission to appeal in *In re Neveah M.*, No. M2019-00313-COA-R3-PT, 2020 WL 1042502 (Tenn. Ct. App. Mar. 4, 2020), *appeal granted* (June 15, 2020). We surmise the Supreme Court took the case to resolve the conflict within the Court of Appeals on the interpretation of this ground for termination of parental rights.

certain statutes may be retroactive. *Id.* at 273. For example, statutes considered remedial or procedural apply retrospectively to causes of action arising before such acts became law and to suits pending when the legislation took effect. *Id.* (quoting *Nutt v. Champion Int'l Corp.*, 980 S.W.2d 365, 368 (Tenn. 1998)). However, “even a procedural or remedial statute may not be applied retrospectively if it impairs a vested right or contractual obligation in violation of Tennessee Constitution article 1, section 20.” *Id.* (quoting *Doe v. Sundquist*, 2 S.W.3d 919, 923–24 (Tenn. 1999)). The Court defined “vested right” as “a right which ‘is proper for the state to recognize and protect and of which [an] individual could not be deprived arbitrarily without injustice.’” *Id.* (quoting *Sunquist*, 2 S.W.3d at 923). Accordingly, the Court held that pursuant to article 1, section 20 of the Tennessee Constitution, the amended statute could not be applied retroactively. *Id.* at 274.

As explained above, the failure to manifest an ability and willingness to assume custody or financial responsibility was not a ground for termination when the original petition was filed, and retroactively applying the amendment could deprive Mother of her vested rights as a parent. Accordingly, only her acts and omissions from July 1, 2019, to the time of the trial are material to this ground. *See In re Maya R.*, 2018 WL 1629930, at *7 (considering conduct including that included acts and omissions between filing of petition and trial).

In support of this ground, Petitioners included the following allegations in their amended petition:

Termination is warranted in that Mother has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the minor child, and placing the child in the Mother’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child. Mother has failed to visit or support the child even since the original Petition was filed. Mother has failed to ever pay any support, monetary or otherwise for the support of the child. Mother has failed to take any steps toward building a relationship with the child that would lead to being able to assume custody of the child. The child is thriving in the care and custody of the Petitioners—the only family the child has ever known—and returning the child to Mother would pose a serious risk of substantial harm to his physical and psychological welfare. The child has no relationship with Mother.

The foregoing allegations reveal that Petitioners relied almost entirely on the same facts alleged in the original petition, which preceded the enactment of § 113(g)(14). Having reviewed the facts in this record that allegedly occurred on or after July 1, 2019, we have determined that the facts preponderate against a finding that Petitioners proved any of the essential elements to establish this ground even by a preponderance of the

evidence. Accordingly, we reverse the trial court's determination that this ground was established.

Our ruling on this one ground notwithstanding, we have found that more than one ground for terminating Mother's parental rights has been established. Therefore, we shall determine whether terminating her parental rights is in the Child's best interest.

II. BEST INTERESTS

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). So even if a ground for termination is established by clear and convincing evidence, we must also determine whether termination of parental rights is in the child’s best interests.

Tennessee Code Annotated § 36-1-113(i) lists nine factors that are to be considered in making the 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 interest analysis.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). In reaching a decision, “the court must consider all of the [relevant] statutory factors, as well as any other relevant proof any party offers.” *Id.* at 682. The best interest analysis is a fact-intensive inquiry, and each case is unique. *White v. Moody*, 171 S.W.3d 187, 193–94 (Tenn. Ct. App. 2004). 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. Additionally, 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 at 535.

The first two statutory factors look at the parent’s current lifestyle and living conditions. The first focuses on whether the parent “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 [parent’s] home.” Tenn. Code Ann. § 36-1-113(i)(1). The trial court found that Mother showed no interest in being part of the Child’s life and that she placed the Child in imminent danger in October 2012. The second factor considers whether a lasting adjustment is possible. *See id.* § 113(i)(2) (asking “[w]hether the parent . . . 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”). The court found that the second factor was not relevant.

The third and fourth statutory factors look at the parent's relationship with the child. The third factor focuses on the consistency of visitation. *See id.* § 113(i)(3). The fourth factor considers "[w]hether a meaningful relationship has otherwise been established between the parent . . . and the child." *Id.* § 113(i)(4). The trial court found Mother had not visited the Child and had no meaningful relationship with the Child; Mother had no contact with the Child for nearly seven years. The evidence does not preponderate against these findings.

The fifth factor evaluates the effect a change in caregivers would have on a child's emotional, psychological, and medical condition. *Id.* § 113(i)(5). The court found that it would be detrimental to the Child to move from Petitioners' home. Specifically, the court found that Mother's previous behavior, instability, and failure to seek reunification revealed that Mother's past behavior was not improved. The court also found the Child created healthy familial bonds with Petitioners and had become accustomed to the physical environment, community, and schedule. The court concluded that the Child would be greatly harmed emotionally and psychologically if placed into Mother's custody. We agree with the juvenile court that this factor favored termination of Mother's parental rights.

The trial court found that the sixth, seventh, and eighth factors were not relevant.

The ninth factor considers the parent's child support history. *See id.* § 113(i)(9). The trial court found that Mother had not paid child support consistent with the child support guidelines, even after the petition was filed. Thus, Mother's failure to support the Child financially also weighs in favor of terminating her parental rights.

After considering all of the relevant statutory factors, the trial court determined that termination of parental rights was in the Child's best interest. We agree. The combined weight of the proven facts amounts to clear and convincing evidence that termination of Mother's parental rights is in the Child's best interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellant, Sheena C.

FRANK G. CLEMENT JR., P.J., M.S.