

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 1, 2016

IN RE SOPHIE O. ET AL.

Appeal from the Juvenile Court for Sevier County
Nos. 15-001445, 15-001446, 15-001447 Jeffrey D. Rader, Judge

No. E2016-01141-COA-R3-PT-FILED-DECEMBER 23, 2016

This appeal arises from the termination of Mother’s parental rights. The minor children at issue were removed from Mother’s custody after the Tennessee Department of Children’s Services (“DCS”) received referrals alleging that Mother was abusing drugs and that one of the children tested positive for opioids at the time of his birth. Thereafter, the juvenile court adjudicated the children dependent and neglected and found that Mother’s drug use while pregnant constituted severe child abuse. The children were subsequently placed in the custody of their father, and Mother was ordered to have no contact with the children. After it was discovered that Mother had violated the order by living with the children and their father, the children were once again placed in state custody. DCS then filed a petition to terminate Mother’s parental rights on the grounds of severe abuse, abandonment by wanton disregard and failure to support, substantial noncompliance with a permanency plan, and persistence of conditions. The juvenile court found that each of these grounds existed and that termination was in the children’s best interests. Mother appealed; we affirm.

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

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

Gregory E. Bennett, Seymour, Tennessee, for the appellant, Erin M.¹

Herbert H. Slatery, III, Attorney General and Reporter, and Rachel E. Buckley, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

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

OPINION

At issue in this case are the parental rights of Erin M. (“Mother”) to her three minor children: Sophie O., born June 2008; Micah O., born April 2010; and Samuel O., born December 2012.²

In February 2011, the Department of Children’s Services (“DCS”) received a referral alleging that Sophie and Micah were dependent and neglected due to the fact that Mother had been incarcerated for prescription drug fraud. DCS filed a petition for temporary custody of the children, which was granted by the juvenile court. Following Mother’s release from prison, the court found that she had established stable housing, transportation, and employment and that she was participating in a drug addiction treatment program; thus, the court returned custody of the children to Mother.

In August 2012, DCS received another referral alleging that Mother was abusing drugs and that Sophie and Micah had been exposed to this drug use. Thereafter, Mother submitted to a drug screening in which she tested positive for opiates and benzodiazepines. Further, in December 2012 Mother gave birth to Samuel, and at the time of Samuel’s birth, both Mother and Samuel tested positive for oxycodone. Based on these facts, DCS filed petitions seeking custody of the children and asserting that the children were dependent and neglected. Additionally, DCS alleged that Samuel was the victim of severe child abuse based on Mother’s drug use while pregnant. Thereafter, the juvenile court entered protective custody orders placing the children in DCS custody pending an adjudicatory hearing.

In January 2013, the juvenile court adjudicated Sophie and Micah to be dependent and neglected due to Mother’s drug abuse, unemployment, and lack of stable housing. The court subsequently adjudicated Samuel to be dependent and neglected due to Mother’s drug abuse and found that Mother severely abused Samuel by exposing him to drugs in utero.³ Accordingly, the children remained in DCS custody.

Several months later, the juvenile court approved a trial home visit for the children with their father, Elijah O. (“Father”). The court subsequently found that the trial home visit was successful and granted custody of the children to Father. However, the order stated that Mother was not to have any contact with the children.

² Mother has a fourth child, born in June 1998, who is not at issue in this case.

³ Samuel was initially adjudicated dependent and neglected after a hearing in March 2013; however, the juvenile court reserved the issue of whether Samuel was severely abused for a second adjudicatory hearing. After a second hearing in May 2013, the court entered an order finding Samuel to be severely abused. The record indicates that Mother had notice of both hearings but failed to appear at either of them. However, Mother was represented by counsel at these hearings.

In November 2014, DCS received a referral alleging that Mother was living with Father and the children in violation of the court's no-contact order. Accordingly, DCS filed a petition for custody of the children. The juvenile court granted this petition and on January 28, 2015, adjudicated the children to be dependent and neglected.

Thereafter, DCS developed a permanency plan for the children that required, *inter alia*, Mother to obey all court orders; complete substance abuse treatment; comply with all probation requirements and avoid incurring new criminal charges; submit to random drug screenings; pay child support; maintain reliable transportation and suitable housing; and provide proof of employment. In May 2015, DCS developed a subsequent permanency plan with similar requirements as the January 2015 plan.⁴

DCS subsequently determined that reunification was no longer a viable option. Therefore, on October 30, 2015, DCS filed a petition to terminate Mother's parental rights as to Sophie, Micah, and Samuel, alleging that Mother: (1) committed severe child abuse against Samuel; (2) abandoned the children by wanton disregard; (3) abandoned Sophie by failure to support; (4) was not in substantial compliance with the DCS permanency plan; and (5) failed to remedy the conditions that brought the children into DCS custody. The petition also alleged that termination of Mother's parental rights was in the best interests of the children.⁵

A trial took place on March 10, 2016. The juvenile court heard testimony from Krista Fox, the DCS worker assigned to this case; Steve M., the children's foster father; Mother; and Father. Ms. Fox testified that Mother was unable to provide a safe and stable home for the children, failed to provide proof of consistent employment and transportation, and failed to pay child support. She stated that Mother failed to complete substance abuse treatment and was unable to be located for random drug screenings. Ms. Fox also testified that the children's foster home is a stable environment and that the children are extremely comfortable and well-bonded with their foster parents. Based on these facts, Ms. Fox opined that termination of Mother's parental rights would be in the best interests of the children.

Additionally, the children's foster father testified that he and his wife had been the foster parents for the children for a little over two years. He stated that he loves the children and that he desires to see them in a stable and comfortable environment. Further, the foster father testified that the family intended to adopt the children should the court order termination of parental rights.

⁴ Permanency plans were also established in October 2012, January 2013, and June 2013. These plans contained similar requirements as the January 2015 permanency plan.

⁵ The petition also sought to terminate Father's parental rights but was unsuccessful in this regard. Father's parental rights are not at issue in this appeal.

The bulk of Mother's testimony pertained to her criminal history and drug use. Specifically, Mother admitted that she was convicted of prescription drug fraud in December 2010 and subsequently pled guilty to violating her probation on three occasions—in October 2012, March 2014, and August 2014. Further, Mother was incarcerated in October 2015 for possession of drugs and drug paraphernalia. Mother admitted to abusing drugs while pregnant with Samuel and stated that she was actively using drugs from March through October 2015.

When asked about the permanency plans, Mother acknowledged that she had failed to complete any of the plans' requirements. Mother testified that, although she was required to pay \$50 per child each month in child support, she provided "very little" support for her children and that the last time she paid child support was in March 2015. However, Mother maintained that she is able-bodied, intelligent, and capable of holding a job. She stated that until March 2015 she worked 30 hours a week at a restaurant making \$2.13 per hour plus tips. During this time, Mother was living with Father and was not required to pay rent, although she did help pay some of the utilities. After March 2015, Mother stopped working due to her drug relapse and because she "didn't care about anything at that point." Mother stated that she moved out of Father's home and began "staying between places," at times living on the street. Mother testified that she did not seek employment from the end of March to October of 2015 even though nothing prevented her from doing so.

Father also testified, although his testimony is of little consequence. He admitted that he too had been non-compliant with the court's orders. He insisted that Mother did not move into his home until after the children were removed from his home; however, he admitted that he allowed Mother to visit the children and to stay the night in his home on occasion. He also admitted that he put Mother on the pick-up list at the daycare to authorize her to pick up Samuel on occasion. Nevertheless, Father stated that he did not believe Mother's limited contact with the children violated any court order because he thought that was his decision to make.

Following the conclusion of the trial, the juvenile court found that the following grounds had been established by clear and convincing evidence with regard to Sophie, Micah, and Samuel: severe abuse, abandonment by wanton disregard, substantial noncompliance with the responsibilities of the permanency plan, and persistence of the conditions that led to the child's removal. Further, the juvenile court found grounds for terminating Mother's rights to Sophie due to Mother's abandonment by failure to provide support. The juvenile court also found that termination of Mother's parental rights was in the children's best interests. Based on these and other findings, the juvenile court entered an order terminating Mother's parental rights. Mother initiated this appeal.

STANDARD OF REVIEW

Parents have a fundamental right to the care, custody, and control of their children under both the United States and Tennessee Constitutions. *Keisling v. Keisling*, 92 S.W.3d 374, 378 (Tenn. 2002) (citing *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972)). This right is superior to the claims of other persons and the government, but it is not absolute; the state may terminate a person's parental rights under certain circumstances. *In re Heaven L.F.*, 311 S.W.3d 435, 438 (Tenn. Ct. App. 2010); *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982).

To terminate parental rights, a court must determine by clear and convincing evidence the existence of at least one of the statutory grounds for termination and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013) (citing *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002)). Clear and convincing evidence is “evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Adoption of Angela E.*, 402 S.W.3d at 640 (quoting *In re Valentine*, 79 S.W.3d at 546).

We review the trial court's findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Carrington H.*, 483 S.W.3d 507, 523-24 (Tenn. 2016) (citing *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010)). Under Rule 13(d), appellate courts review factual findings de novo on the record with a presumption of correctness unless the evidence preponderates otherwise. *Id.* (citing *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)). “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.” *Id.* (citing *In re Bernard T.*, 319 S.W.3d at 596-97). The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which we review de novo with no presumption of correctness. *Id.* (citing *In re M.L.P.*, 281 S.W.3d at 393). As in other appeals, all other questions of law in a parental termination case are reviewed de novo with no presumption of correctness. *Id.* (citing *In re Angela E.*, 303 S.W.3d 240, 246 (Tenn. 2010)).

ANALYSIS

I. GROUNDS FOR TERMINATION

In order to terminate the parental rights of a biological parent, a petitioner must first prove, by clear and convincing evidence, at least one of the listed grounds for termination. *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015); Tenn. Code Ann. § 36-

1-113(g). The petitioner need only establish one ground for termination, after which the juvenile court will determine whether termination is in the child's best interests. *See In re Angela E.*, 303 S.W.3d at 251.

In this case, the juvenile court found that the following grounds for terminating Mother's rights to Sophie, Micah, and Samuel had been established by clear and convincing evidence: severe abuse, abandonment by wanton disregard, substantial noncompliance with the responsibilities of the permanency plan, and persistence of the conditions that led to the child's removal. *See* Tenn. Code Ann. § 36-1-113(g). Additionally, the juvenile court found grounds for terminating Mother's rights to Sophie due to Mother's failure to provide the child with support. *See id.* We will address each of these grounds in turn. *See In re Carrington H.*, 483 S.W.3d at 526-27 (requiring this court to "review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal.").

A. Severe Abuse

An individual's parental rights may be terminated when the parent is found to have committed severe child abuse "under any prior order of a court or . . . by the court hearing the petition to terminate parental rights . . . against the child who is subject to the petition [for termination of parental rights] or against any sibling or half-sibling of such child . . ." Tenn. Code Ann. § 36-1-113(g)(4). In this case, the juvenile court concluded that DCS had met its burden of proof with respect to this ground because the court's May 2013 dependency and neglect order found that Mother had committed severe child abuse against Samuel. Mother contends that this conclusion was in error.

Tenn. Code Ann. § 37-1-102 defines "severe child abuse" to include, *inter alia*, "[t]he knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death[.]" *See* Tenn. Code Ann. § 37-1-102(b)(21)(A)(i). We have previously held that a mother's drug use while pregnant may constitute severe child abuse to the unborn child under this provision. *See In re Joshua C.*, No. E2016-00081-COA-R3-PT, 2016 WL 4069288, at *3 (Tenn. Ct. App. July 28, 2016), no perm. app. filed; *In re Alleyanna S.*, No. M2015-00544-COA-R3-PT, 2016 WL 697359, at *7 (Tenn. Ct. App. Feb. 19, 2016); *In re Benjamin M.*, 310 S.W.3d 844, 850 (Tenn. Ct. App. 2009).

At trial, Mother admitted to abusing drugs while pregnant with Samuel. Further, the record established that Samuel tested positive for oxycodone at the time of his birth, which placed Samuel at a risk for serious birth defects and death. Accordingly, Mother knowingly exposed Samuel to abuse that was likely to cause serious bodily injury or death, which constitutes severe child abuse. *See* Tenn. Code Ann. § 37-1-102(b)(21)(A)(i). Therefore, the evidence clearly and convincingly supports termination

of Mother's parental rights with regard to all of her children on the grounds of severe abuse. *See* Tenn. Code Ann. § 36-1-113(g)(4) (stating that a ground for termination exists when the parent has committed severe abuse against a child "or against any sibling or half-sibling of such child"); *In re Keara J.*, 376 S.W.3d 86, 107 (Tenn. Ct. App. 2012) (holding that a finding that a parent committed severe abuse against one child also served as a ground for termination for the victimized child's siblings, even those that did not suffer from the abuse).

Moreover, prior to the termination hearing, the juvenile court adjudicated Samuel to be dependent and neglected based upon a finding that Mother committed severe child abuse. Mother did not appeal from the dependency and neglect order; therefore, this adjudication constitutes a final order. *See In re Serenity S.*, No. W2014-00080-COA-R3-PT, 2014 WL 6612571, at *6 (Tenn. Ct. App. Nov. 24, 2014). "Once there has been a finding of severe child abuse in a final order, the doctrine of res judicata prevents parents from re-litigating the issue of whether they committed severe child abuse in a subsequent proceeding to terminate their parental rights." *In re Joshua C.*, 2016 WL 4069288, at *3 (citing *In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012); *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *15 (Tenn. Ct. App. April 20, 2016), no perm. app. filed).⁶ Therefore, the finding of severe child abuse is res judicata.⁷

Based on the foregoing, we affirm the juvenile court's conclusion that DCS proved the ground of severe abuse by clear and convincing evidence.

B. Abandonment

The juvenile court also found that termination of Mother's parental rights was warranted on the grounds of abandonment. *See* Tenn. Code Ann. § 36-1-113(g)(1). Specifically, the court found that Mother abandoned Sophie, Micah, and Samuel by engaging in conduct amounting to a wanton disregard for the children's welfare. Additionally, the court found that mother abandoned Sophie by failing to provide her with adequate support. Mother contends that these findings were in error.

⁶ Under the doctrine of res judicata, "an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." *In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012).

⁷ The foregoing notwithstanding, Mother also contends the juvenile court's finding of severe abuse should not be considered res judicata because she did not attend the dependency and neglect hearings. We find no merit to this argument. The record indicates that Mother received notice of both dependency and neglect hearings. Further, although Mother failed to appear, her attorney was present and presented arguments to the court on her behalf. Moreover, the evidence in this record clearly and convincingly proved this ground without the benefit of the judgment in the dependency and neglect action.

1. Wanton Disregard

A parent who is incarcerated during all or part of the four months preceding the institution of a proceeding to terminate parental rights may be deemed to have abandoned his or her child when, *inter alia*, the parent “engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child.” Tenn. Code Ann. § 36-1-102(1)(A)(iv). “We have repeatedly held that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *In re Audrey S.*, 182 S.W.3d 838, 867-68 (Tenn. Ct. App. 2005).

Throughout the course of this case, Mother has been incarcerated on several occasions. In December 2010, Mother was convicted of prescription drug fraud and pled guilty to violating her probation in October 2012, March 2014, and August 2014. Most recently, Mother was incarcerated in October 2015 for possession of drugs and drug paraphernalia. Moreover, Mother admitted at trial that she habitually used drugs from March through October 2015. Further, Mother acknowledged that she abused drugs while pregnant with Samuel and stated that she has failed to complete treatment for her drug abuse.

Therefore, we affirm the juvenile court’s conclusion that DCS proved the ground of abandonment by wanton disregard.

2. Failure to Support

When a parent has been incarcerated for all or part of the four months preceding the filing of a petition to terminate parental rights, the parent may be deemed to have abandoned his or her child if the parent “has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding [the parent’s] incarceration.” Tenn. Code Ann. § 36-1-102(1)(A)(iv).

To find that a parent has abandoned his or her child by failing to support them financially, it must be established that the failure to support was “willful.” *In re Riley C.*, No. M2015-00541-COA-R3-PT, 2016 WL 626058, at *5 (Tenn. Ct. App. Feb. 12, 2016) (citing *In re R.L.F.*, 278 S.W.3d 305, 320 (Tenn. Ct. App. 2008), *overruled on other grounds by In re Kaliyah S.*, 455 S.W.3d at 555). Failure to pay support is “willful” if the parent is “aware of his or her duty to support, has the capacity to provide the support, makes no attempt to provide support, and has no justifiable excuse for not providing the support.” *Id.* (quoting *In re J.J.F.*, 148 S.W.3d 919, 926 (Tenn. Ct. App. 2004)). A parent’s unemployment does not necessarily mean that his or her failure to pay support was willful. *In re Matthew T.*, 2016 WL 1621076, at *10. “When parents are

unemployed, the question becomes whether that unemployment is involuntary.” *Id.*; see also *In re Austin D.*, No. E2012-00579-COA-R3-PT, 2013 WL 357605, at *11-12 (Tenn. Ct. App. Jan. 30, 2013) (reasoning that the mother’s personal choice not to work contributed to the conclusion that she willfully failed to pay child support).

In this case, DCS filed its petition to terminate Mother’s parental rights on October 30, 2015; however, Mother was incarcerated on October 18, 2015. Therefore, the relevant four-month period began on June 18, 2015.

At trial, Mother testified that she was aware of her duty to support her children and that her child support obligations had been fully explained to her. Nevertheless, Mother admitted that she provided “very little” support for her children and stated that the last time she paid child support for any of her children was in March 2015. Mother testified that she is able bodied, intelligent, and capable of holding a job. In fact, prior to March 2015, Mother was employed at a restaurant, working around 30 hours a week. However, Mother stopped working due to her drug relapse and because she “didn’t care about anything at that point.” Mother stated that, although nothing prevented her from doing so, she did not seek employment from March to October of 2015.

Based on these facts, it is evident that Mother was aware of her duty to provide the children with support and had the capacity to do so. Nevertheless, Mother was voluntarily unemployed and made no attempt to provide support during the relevant four month period in this case. Thus, the evidence clearly and convincingly supports the conclusion that Mother abandoned Sophie by willfully failing to provide her with support.

C. Substantial Non-Compliance with a Permanency Plan

The juvenile court concluded that termination was appropriate because Mother was substantially noncompliant with the permanency plans established by DCS. Mother contends that this finding was in error.

Tennessee law requires the development of a plan of care for each foster child and requires that the plan include parental responsibilities that are reasonably related to the plan’s goal. *In re Riley C.*, 2016 WL 626058, at *4. A court may terminate parental rights when a parent is in “substantial noncompliance . . . with the statement of responsibilities in a permanency plan.” Tenn. Code Ann. § 36-1-113(g)(2). To succeed on this ground, DCS must first demonstrate that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parents’ custody initially. *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004). DCS must then demonstrate that the “noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. *Id.* “Trivial, minor, or technical deviations from a permanency plan’s requirements will not be deemed to amount to substantial noncompliance.” *Id.* (citing *In re Valentine*, 79

S.W.3d at 548-49; *Department of Children's Servs. v. C.L.*, No. M2001-02729-COA-R3-JV, 2003 WL 22037399, at *18 (Tenn. Ct. App. Aug. 29, 2003)).

Here, the children were removed from Mother's custody because of her drug abuse, lack of stable housing, unemployment, and failure to follow the court's orders. The permanency plans attempted to remedy these conditions by requiring, *inter alia*, that Mother complete substance abuse treatment; submit to random drug screenings; pay child support; maintain transportation and suitable housing; provide proof of employment; follow all court orders; and comply with all probation requirements and avoid incurring new criminal charges. We conclude that these requirements were reasonable and appropriate.

Further, the evidence supports the juvenile court's finding that Mother was substantially noncompliant with the permanency plans. The record indicates that Mother failed to complete substance abuse treatment and actively abused drugs from March to October 2015. Additionally, she failed to provide DCS with proof of employment, transportation, or suitable housing. Mother also paid very little support for her children, with her last support payment being in March 2015. Further, Mother was unable to refrain from incurring new criminal charges and was incarcerated in October 2015 for charges of possession of drugs.

Based on the foregoing and other evidence in the record, we affirm the juvenile court's conclusion that DCS proved the ground of substantial noncompliance with the permanency plan by clear and convincing evidence.

D. Persistence of Conditions

Finally, the juvenile court found that termination of Mother's parental rights was warranted under Tenn. Code Ann. § 36-1-113(g)(3), a ground commonly referred to as "persistence of conditions." *See In re B.P.C.*, No. M2006-02084-COA-R3-PT, 2007 WL 1159199, at *7 (Tenn. Ct. App. Apr. 18, 2007). Mother contends that this conclusion was in error.

This ground for termination applies when a child has been removed from the home of a parent for six months by order of the court and:

(A) The 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 and that, therefore, prevent the child's safe return to the care of the parent or parents or the guardian or guardians, still persist;

(B) 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 parents or the guardian or guardians in the near future; and

(C) 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[.]

Tenn. Code Ann. § 36-1-113(g)(3).

Here, the children were removed from Mother's care in 2013 by court order based upon findings that the children were dependent and neglected due to Mother's drug abuse, unemployment, and lack of stable housing. After the children's removal, Mother's drug abuse persisted. The record indicates that, in the spring of 2015, Mother once again began using drugs regularly and at no time did she complete treatment for this issue. In October 2015, Mother was arrested for possession of drugs and drug paraphernalia. Further, Mother was unable to establish consistent employment and was voluntarily unemployed from March to October 2015. Mother also was unable to establish a stable home and was either incarcerated, "staying between places," or living on the streets for most of 2015.

Based on the foregoing, Mother has failed to remedy the conditions that led to the children's removal. Accordingly, this ground for termination was established.

II. BEST INTERESTS OF THE CHILDREN

If one of the statutory grounds for termination is proven by clear and convincing evidence, a parent's rights may be terminated if termination is in the best interests of the child. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

The legislature has identified nine statutory factors for the court to consider in conducting a best-interests analysis, *see* Tenn. Code Ann. § 36-1-113(i); however, this list is not exhaustive, and the court need not find the existence of every factor before it may conclude that terminating an individual's parental rights is in the best interests of a child. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). Instead, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." *In re Audrey S.*, 182 S.W.3d at 878. Further, in considering a petition to terminate parental rights, the court is called to make a determination of the child's best interests from the perspective of the child rather than the parent. *In re Heaven L.F.*, 311 S.W.3d at 441.

One of the statutory factors to be considered is whether the physical environment of the parent'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. *See* Tenn. Code Ann. § 36-1-113(i)(7). As discussed above, Mother has continuously struggled with substance abuse and admitted to using drugs while pregnant with Samuel from March to October 2015. Further, Mother has had multiple criminal convictions relating to this drug use and was incarcerated as recently as the time of trial. Additionally, the record shows that for much of 2015 Mother was either “staying between places” or was living on the street, and thus has been unable to establish a stable home environment. Based on these facts, we conclude that this factor favors termination of Mother’s parental rights.

Another statutory factor to be considered is whether the parent has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interests to be in the home of the parent. *See* Tenn. Code Ann. § 36-1-113(i)(1). The trial court found that Mother “has not made changes in her conduct or circumstances which would make it safe for [the] children” to be in Mother’s home. This conclusion is fully supported by the record. Since the beginning of this case, Mother has been charged, convicted, and incarcerated on several occasions. Further, Mother has failed to complete treatment for her substance abuse and was unable to fulfill the requirements of her permanency plans. Thus, this factor also favors termination of Mother’s parental rights.

Whether the parent has paid child support consistent with the child support guidelines is also a factor to be considered. *See* Tenn. Code Ann. § 36-1-113(i)(9). As discussed above, Mother was willfully unemployed during much of this case and admitted that she has provided “very little” support for her children. Further, Mother testified that the last time she paid child support for any of her children was in March 2015. Thus, we conclude that this factor favors termination of Mother’s parental rights.

Additionally, the effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition is a factor to be considered. *See* Tenn. Code Ann. § 36-1-113(i)(5). The juvenile court found that the children are in a safe, stable foster home, and that such an environment is clearly in the children’s best interests. We agree with this conclusion. The record indicates that the children have lived with their current foster family for two years and that they have bonded with their foster parents. The evidence shows that removing the children from this stable and predictable environment would be detrimental and harmful.

Therefore, we affirm the juvenile court’s ruling that termination of Mother’s parental rights is in the children’s best interests.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Erin M.

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