

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 28, 2015 Session

IN RE KIM C., ET AL.

**Appeal from the Juvenile Court for Rutherford County
No. TC1716T Donna Scott Davenport, Judge**

No. M2014-00215-COA-R3-PT - Filed March 6, 2015

This is a termination of parental rights case. The trial court terminated Appellants/Parents' parental rights on the grounds of: (1) abandonment by failure to provide suitable housing; (2) substantial non-compliance with the permanency plans; and (3) persistence of conditions. Because the grounds for termination of Appellants' parental rights are met by clear and convincing evidence, and there is also clear and convincing evidence that termination of parental rights is in the best interests of the Children, we affirm and remand.

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

KENNY ARMSTRONG, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Mark J. Downton, Nashville, Tennessee, for the appellant/father, F.C..

Carl Moore, Murfreesboro, Tennessee, for the appellant/mother, J.C..

Mary Byrd Ferrara, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children's Services.

OPINION

I. Background

This case involves three minor children, K.C. (born November 2001), M.C. (born May 2006), and J.C. (born August 2007) (collectively, the “Children”). Mother, J.C., and Father, F.C. (together, “Parents,” or “Appellants”) moved to Tennessee in April 2010.¹ The family first came to the attention of the Tennessee Department of Children’s Services (“DCS,” or “Appellee”) by referral from New York. It was reported that Mother had moved from New York to Tennessee to be with Father, who allegedly had sex offender status. In addition, DCS received a local referral that the Children were not properly clothed, and were not clean. In response to these referrals, DCS conducted a courtesy visit to the home.

On April 14, 2010, DCS received another referral concerning allegations of physical abuse by the Mother against the middle child, M.C.. Specifically, the referring party indicated that Mother had punched the child in the stomach. The next referral was received on August 9, 2010 and involved a claim of lack of supervision. The August 9th referral reported that the Children were outside without adult supervision, and that the youngest child, J.C., was outside crying wearing no diaper while the other children were playing, unsupervised, in a parking lot. DCS received another referral on August 20, 2010. Again, it was reported that the Children lacked supervision and were suffering abuse by Mother. The Children were reportedly screaming and crying as a result of Mother’s abuse, which had left marks on the Children’s bodies. The referral noted that bruising and swelling were observed on J.C.’s face due to Mother allegedly hitting him for spilling milk. This referral also questioned Mother’s mental capacity. On August 30, 2010, DCS received yet another referral, claiming that the Children would come to church filthy, with their clothing stained with urine and fecal matter. The Children were also reported to be hungry. The August 30, 2010 referral also reported that Father had been arrested the weekend before this referral was made.

In August 2010, DCS made contact with the family to begin providing in-home services. The Parents and DCS established a non-custodial plan, and the in-home family support services began on August 31, 2010. DCS made in-home visits on October 6 and 13, 2010. The Parents were resistant to the services offered by DCS.

Through DCS’s contract agency, Continuity of Care, Cheryl McAdams, a clinical psychologist, was retained to provide parenting education and training from August 2010

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

until March 24, 2012. Dr. McAdams first went to the Parents' home on September 13, 2010. When she arrived, Mother was the only person at home. Father arrived shortly thereafter, and he informed Dr. McAdams that the only way he would participate in parenting classes would be if he was instructing the class. He advised Dr. McAdams that she was not welcome in their home, and she left. Dr. McAdams attempted to schedule another in-home meeting but was advised the Parents were not willing to work with her. Dr. McAdams testified that she next saw the Parents at a Child and Family Team Meeting on September 23, 2010. At that meeting, the Parents reluctantly agreed to accept her services. Dr. McAdams arranged to provide parenting education services in the home once per week; however, according to her testimony, she met with much resistance from the Parents, especially Father.

On September 29, 2010, Dr. McAdams visited the home and observed that it was extremely cluttered, "hoarding-like," with piles of dirty laundry and an overwhelming smell of urine. Dr. McAdams counseled the Parents about washing urine soaked clothing promptly. At that time, Dr. McAdams also observed black mold in both bathroom toilets, indicating that they had not been cleaned for some time. Dr. McAdams returned to the home on October 6, 2010; at that time, the Children were home because they were on fall break from school. The boys were observed being disrespectful to Mother and were running all over the house, not following her direction. Father did not intervene to assist Mother; instead, he became angry and left the house. Dr. McAdams testified that she did observe some improvement with the smell and housekeeping issues between the time of her last in-home visit and her return on September 29th. However, on October 13, 2010, Dr. McAdams returned to the home and found that it was not as clean as it had been during her last visit.

On October 17, 2010, DCS received another referral, claiming that the Children were unsupervised and did not know their Parents' whereabouts. DCS arrived at the family's apartment after dark on October 17th. As DCS arrived, Mother returned home and reported that she had been to church and had left the Children with a neighbor. Father reported that he had been in the back room with J.C.. At the time of this visit, DCS observed that the home was very dirty, smelling of urine, rotten food, and other foul odors. The home was also extremely cluttered. DCS observed molding food on the stove, old food in the living room, an open refrigerator with old and fresh food, food next to clothes and shoes, and a general state of disarray. The Parents were agitated and made inconsistent reports to DCS. The Children were at a neighbor's home, and two of them had no shoes and were being bathed by the neighbor. In light of the circumstances, DCS removed the Children from the home that night. The following day, on October 18, 2010, DCS filed a petition to declare the Children dependent and neglected and requested emergency temporary legal custody, which the trial court granted in favor of DCS.

On October 20, 2010, Dr. McAdams visited the home to help the Parents gather the

Children's clothing and items. Shortly thereafter, DCS added additional services to help the Parents with their parenting skills. On November 1, 2010, DCS and the Parents entered into a Family Permanency Plan. The plan outlined actions steps for the Parents, which included: (1) develop and maintain a budget plan to provide for the Children; (2) present a lease to DCS by February 2, 2011, evidencing appropriate housing that is 1,000 feet from churches, schools, and daycare centers; (3) maintain a clean household and cooperate with Dr. McAdams to learn new housekeeping skills; (4) develop and demonstrate parenting skills; (5) cooperate with Continuity of Care Services; (6) attend regular visits with the Children; (7) demonstrate skills learned from Continuity of Care and use effective disciplining strategies; (8) demonstrate positive parenting skills; (9) ensure that the Children are clean, appropriately dressed, and provide them with adequate food; (10) complete psychological evaluations with an IQ score by December 31, 2010 and follow all recommendations thereof; (11) complete anger management sessions; (12) attend the Children's medical appointments to remain updated on their health. In addition to these joint requirements, Father was required to be law abiding and to comply with his sex offender status. At the time the plan was executed, DCS provided the Parents with a copy of the criteria and procedures for termination of parental rights and reviewed the contents of the document with them. The Parents acknowledged receipt of the document by signing it.

In November 2010, the Parents moved into a new home, which was cleaner and less cluttered than the first. Dr. McAdams first met with the Parents at the new home on November 10, 2010. At that time, DCS was supervising their visitations with the Children. On November 13, 2010, Dr. McAdams testified that she attended a parent visitation to observe the Parents' interaction with the Children. On November 18, 2010, Dr. McAdams returned to the home again and counseled the Parents about domestic violence. At that time, Dr. McAdams stated that the Parents admitted that they paid less attention to the older child, K.C., a girl, than they did to the younger boys.

In addition to Dr. McAdams's assistance, beginning in December 2010, the Parents were provided home assistance by Family Service Worker Ebony Pass Lott. Ms. Pass Lott holds a master's degree in social work. Other than a two month period when she was out on maternity leave, Ms. Pass Lott worked continuously with the Parents throughout these proceedings. Social worker Charity Lynch was also assigned to the case. Ms. Lynch testified that she works for Dr. Kaforey, who conducted the Parents' assessments. Mother was assessed on December 10, 2010, at which time she presented with anxiety and depression. However, Mother was found to have above average intelligence and no cognitive deficits. Ms. Lynch recommended that Mother undergo psychiatric evaluation to address depression and anxiety, and that she attend parenting classes. Due to his resistance, Father's assessment was not conducted until February 21, 2012. Ms. Lynch testified that she suspected possible untreated mental health issues such as effective bipolar disorder and recommended Father

undergo thorough mental health and psychiatric evaluations.

In January 2011, Ms. Amanda Pruitt, a licensed social worker with the Rutherford County Child Advocacy Center, received a referral by DCS to provide services to the family. Ms. Pruitt testified that she immediately began working with the family, teaching them cleaning and parenting skills. Ms. Pruitt also counseled the Parents about employment applications and places to find jobs. In February 2011, Ms. Pruitt observed that the Children's visits were chaotic, and the Parents had no control or ability to discipline the Children. Ms. Pruitt testified that she observed the Parents in the parking lot with the Children, and they did not demonstrate mastery of the basics of holding the small children's hands to protect them. Ms. Pruitt further testified that she observed no lasting significant improvement in their parenting skills over her multi-year assignment working with this couple.

Dr. McAdams next visited the home on March 7, 2011, but Father did not attend because he did not think he needed help with domestic violence issues. Dr. McAdams met with Mother again on March 15, 2011 to discuss her progress. On March 25, 2011, Dr. McAdams observed Mother's visitation with the Children, and noted that Mother had made some progress. On April 8, 2011, Dr. McAdams attended a Child and Family Team Meeting, which she testified was interrupted by Father's refusal to cooperate. On or about April 8, 2011, a second Family Permanency Plan was developed and agreed to by the Parents. This plan required essentially the same action steps as the initial plan, but added an additional condition for Mother to be compliant with individual therapeutic services focusing on trauma and abuse. In addition, Father was not to be alone with the Children and was to participate in therapeutic visitation with them. Father was also required to complete domestic violence classes, and complete a follow-up interview to address possible untruths reported in his assessment. Both parents acknowledged receipt of this second plan, and both also received a second copy of the criteria for termination of parental rights. On April 9, 2011, Dr. McAdams supervised a therapeutic visitation session, focusing on parenting and the Parents' interaction with the Children. On April 20, 2011, Dr. McAdams met with the Parents to discuss the pros and cons of the therapeutic visitation, as well as Mother's new pregnancy. On April 23, 2011, Dr. McAdams attended another visitation. She testified that when she arrived for the visitation, Mother was not ready for the Children. At that visit, Dr. McAdams testified that the Parents allowed the Children to play outside while the yard was being mowed until Dr. McAdams instructed the Parents to bring the Children inside.

On April 26, 2011, the trial court heard DCS's dependency and neglect petition in this case. Both Parents attended the hearing, and both were represented by counsel. By adjudicatory order entered August 23, 2011, the trial court found the Children to be dependent and neglected based upon its finding that the Children were subjected to a "lack of proper supervision and . . . environmental neglect." The trial court entered a clarification and

dispositional order on August 31, 2011, wherein it ordered that the Children would remain in DCS custody.

Dr. McAdams next met with the Parents on May 27, 2011, at which time they discussed the upcoming birth of their baby, healthy eating habits, and M.C.'s upcoming birthday. Dr. McAdams also discussed disability benefits with Mother. At that visit, Father reported that he had been receiving counseling at the Veteran's Administration Hospital ("VA") and did not need any more treatment. Dr. McAdams asked Father to provide a medical release for the VA records, and this release was not provided in a timely manner.

On June 4, 2011, Dr. McAdams met with the Parents for another therapeutic visitation. It was M.C.'s birthday, and the parents kept arguing in front of the Children. Dr. McAdams met with the Parents again on June 24, 2011, and advised them that the Children were not likely to be returned to the home before the birth of the new baby. The next visit was scheduled for July 21, 2011; at that time, Dr. McAdams observed "black kernels of corn" in the meal that was served to the Children. Dr. McAdams also observed that the Mother sat at a child-toddler table for dinner rather than sitting with the Children.

On October 3, 2011, a third Family Permanency Plan was developed. At this time, the goal of adoption was added to the plan as a result of the Parents' limited progress on completing the required tasks. The Parents' action steps did not change in this plan.

Dr. McAdams visited the Parents again on November 18th, 26th, and 29th, 2011. In February 2012, the Parents petitioned the court for unsupervised visitation. Dr. McAdams opposed the unsupervised visitation requested by the Parents, and the petition was ultimately denied. On February 18, 2012, Dr. McAdams conducted a visitation and observed the Children playing outside, riding scooters while not wearing helmets. Dr. McAdams advised them to wear their helmets, but Father told them that they did not need them.

In March 2012, Dr. McAdams attended a foster review and last saw the Parents on March 24, 2012. On March 24, Father wanted to take the Children outside, but since it was raining, Dr. McAdams would not agree to that request. According to Dr. McAdams, Father was especially argumentative that day. Mother prepared lunch for the Children the day of this visit. The lunch consisted of chocolate milk, strawberries with sugar, sherbet, and ice cream cones. A salad was also served, but there was an argument between the Parents concerning whether cucumber should be added. During this visit at the Parents' home, Dr. McAdams noticed red welts on her arms, which began to itch. Dr. McAdams testified that she never returned again due to the lack of sanitary conditions in the home.

On April 13, 2012, Dr. McAdams attended a Child Family Team Meeting. The fourth

Family Permanency Plan was developed at this meeting. In addition, Dr. McAdams was removed from the case and a different provider was placed with the family. At the trial, Dr. McAdams testified that during the time she spent with the family, the new home environment deteriorated, and hoarding behavior increased. Dr. McAdams characterized the overall picture as a “lack of progress” and/or “refusal of Mother and Father to change.” She opined that the Children would be at risk if left with the Parents for even a two-hour, unsupervised visit. Dr. McAdams believed that the only reason the Children were unharmed during the Parents’ visitations was because a DCS worker was always present for those visits. She further stated that, since being removed from the Parents’ home, the Children had formed a bond with their foster parents and had made improvements in their behavior.

After Dr. McAdams’ departure, the Parents continued to receive in-home and personal assistance from Amanda Pruitt, who had worked to provide intense in-home services for the family since January 2011. Throughout her assignment, Ms. Pruitt continued to observe hygiene problems with Mother (i.e., body odor, dirty hair and lice, underclothes exposed in public). Ms. Pruitt testified that she worked through a bed bug infestation with the family in July 2012. She also testified that during her time with the family, she observed such things as expired milk being served to the Children, furniture and electronics hoarding both inside and outside the house, and numerous other environmental concerns in the home. In addition, Ms. Pruitt observed Father’s controlling, argumentative, and aggressive behaviors throughout her assignment. For example, rather than accepting her help to eradicate the bed bug infestation, Father’s solution was to throw the furniture into the yard. Ms. Pruitt testified that, at no time, was she comfortable with unsupervised visitation by the Parents because they never met their goals and did not provide sufficient supervision and attention to the Children.

Ms. Pass Lott, the Family Service worker, testified that Father never received the mental health treatment that was recommended by Ms. Lynch’s assessment. After repeated requests, Father finally brought his VA records to Ms. Pass Lott. The records revealed that Father suffered from panic attacks, anxiety, personality changes, hallucinations, and mild bipolar-manic disorder. Although Father acknowledged these were his diagnoses, he disputed that he actually had these conditions. Father further acknowledged his doctors’ recommendations of therapy and prescription psychotropic medication, but refused both the therapy and the prescription medications. Father did complete several requested anger management and parenting classes. Likewise, Mother received outside counseling until her insurance benefits ran out. Thereafter, DCS continued to provide her with in-home counseling without charge, and offered to provide her with outside counseling at Centerstone. Mother, however, refused to go to Centerstone due to alleged conflicts with her school schedule and transportation issues.

The record shows that Father did not attend any medical or dental appointments with the

Children during the two years prior to the termination hearing. Likewise, Mother did not attend any of the Children's appointments in the year leading up to the termination hearing. Since their removal from the Parents' home, the Children have remained together in a pre-adoptive foster home. Although not at issue in this appeal, we note that the Children's youngest sibling, who was born after the Children came into protective custody, has also been placed in the foster home with the Children.

After working with the Parents for two years, on May 11, 2012, DCS filed a petition to terminate their parental rights. DCS asserted the same grounds for both Parents, namely: (1) abandonment by failure to provide a suitable home; (2) substantial noncompliance with the permanency plans; and (3) persistence of the conditions that necessitated removal of the Children from Parents' home. A fifth and final permanency plan was developed and ratified on September 24, 2012. The Parents' respective responsibilities under the revised plans did not substantially change throughout these proceedings.

The hearing on the petition to terminate parental rights took place over thirteen days, from December 5, 2012 through November 5, 2013. On January 2, 2014, the trial court entered an order, terminating the Parents' rights on the grounds asserted by DCS in its petition. Father filed a notice of appeal on January 22, 2014; Mother filed a notice of appeal on January 29, 2014. Thereafter, the Appellants filed a joint motion in this Court for the case to be remanded to the trial court for the limited purpose of supplementing the final order to include specific findings of fact sufficient to satisfy Tennessee Code Annotated Section §36-1-113(k). By order of July 1, 2014, this Court granted the motion, and the case was remanded to the trial court. Pursuant to our order, the trial court filed a supplemental technical record on November 17, 2014, containing its amended order terminating parental rights, which was entered in the trial court on October 29, 2014.

II. Issues

We note that Mother and Father are represented by different lawyers in this appeal, and both have filed separate appellate briefs. However, the issues raised in their respective briefs are essentially the same. We restate the dispositive issues as follows:

1. Whether there is clear and convincing evidence to support the trial court's termination of the Parents' parental rights on the grounds of: (1) abandonment by failure to provide suitable housing; (2) failure to substantially comply with the permanency plans; or (3) persistence of conditions.
2. Whether there is clear and convincing evidence to support

the trial court's finding that termination of the Parents' rights is in the Children's best interests.

3. Whether the trial court applied an incorrect legal standard, or otherwise erred in considering evidence and findings from the dependency and neglect hearing.

III. Standard of Review

Under both the United States and Tennessee Constitutions, a parent has a fundamental right to the care, custody, and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Nash–Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996). Thus, the state may interfere with parental rights only when a compelling interest exists. *Nash–Putnam*, 921 S.W.2d at 174–75 (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). Our termination 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 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)). A person seeking to terminate parental rights must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Because of the fundamental nature of the parent’s rights and the grave consequences of the termination of those rights, courts must require a higher standard of proof in deciding termination cases. *Santosky*, 455 U.S. at 769. Accordingly, both the grounds for termination and that termination of parental rights is in the child’s best interest must be established by clear and convincing evidence. Tenn. Code Ann. § 36-3-113(c)(1); *In re Valentine*, 79 S.W.3d at 546. Clear and convincing evidence “establishes that the truth of the facts asserted is highly probable . . . and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). Such evidence “produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established.” *Id.* at 653.

In light of the heightened standard of proof in termination of parental rights cases, a reviewing court must modify the customary standard of review in Tennessee Rule of Appellate Procedure 13(d). As to the trial court’s findings of fact, our review is *de novo* with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). We must then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements

necessary to terminate parental rights. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002).

We noted at the outset that the trial court made a specific finding (in its October 29, 2014 order) that “Father was evasive and uncooperative while providing testimony before this Court.” Accordingly, the trial court found that “Father was less than credible.” It is well settled that, when the resolution of an issue in a case depends on the truthfulness of witnesses, the trial judge who has had the opportunity to observe the witnesses and their manner and demeanor while testifying is in a far better position than this Court to decide those issues. See *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997); *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn.1995). The weight, faith, and credit to be given to any witness’s testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. See *Whitaker*, 957 S.W.2d at 837; *McCaleb*, 910 S.W.2d at 415; *Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997).

IV. Grounds for Termination of Parental Rights

A. Abandonment by Failure to Provide Suitable Housing

Pursuant to Tennessee Code Annotated Section 36-1-113(g)(1), as further defined in Section 36-1-102(1)(A)(ii), abandonment by failure to provide a suitable home means that:

The child has been removed from the home of ... a parent or parents or a guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist [] a parent or parents or a guardian or guardians to establish a suitable home for the child, but that the parent or parents or a guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to

provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department[.]

Concerning this ground for termination of parental rights, the trial court made the following, relevant findings in its October 29, 2014 order:

[T]he record reflects that the Department’s objective was to properly provide the parents with parenting education, proper supervision, and homemaker services.

* * *

Detailed testimony from [Dr.] McAdams showed that she diligently worked with the Parents with providing in home services. She instructed the parents as to the types of cleaning products to use in order to properly remedy the urine smell emanating from the [C]hildren’s clothes that were piled up in the home and she showed them how to clean the commodes in the home, among teaching the parents how to perform many other types of cleaning methods.

Ultimately the [C]hildren were removed from the home [Parents] moved into a new residence and [Dr.] McAdams continued to work with the family and observed the home to be cleaner, however, clutter began to accumulate. She testified that she did not observe the parents properly incorporating any of the skills the[y] were taught. [Father] continued to insist that he and his wife did not need any services. . . .

* * *

Amanda Pruitt . . . testified that Mother’s hygiene continued to pose a problem in that it was inappropriate or unclean and both parents sometimes wore the same clothing if visits were back to back. Overall, the testimony given by Ms. Pruitt identified Father as completely resistant and unwilling to cooperate . . .

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Based upon the entire record in this cause, the Court finds by clear and convincing evidence that the Department has met its burden [of] showing that each parent's rights should be terminated [because] both parents have abandoned the [C]hildren by failing to establish a suitable home for these [C]hildren.

The record clearly and convincingly supports the trial court's conclusion that, despite myriad services, in-home counseling, and ample opportunity, the Parents "have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child[ren] to such a degree that it appears unlikely that they will be able to provide a suitable home for the child[ren] at an early date." We have reviewed the testimony and exhibits in this case and conclude that the record shows a general lack of progress on the part of Parents toward establishing a clean, hygienic, and appropriate home environment for these Children. The evidence shows that, even after moving to a new home, which could have provided Parents' a fresh start, their hoarding behaviors immediately resurfaced, and the same hygiene issues soon took root in the new residence.

The record not only shows that the Parents have made no progress in the areas of housekeeping and personal hygiene, but it also reveals that the Parents continue to struggle with basic parenting skills. The respective testimony of Dr. McAdams and other DCS liaisons clearly and convincingly show that the Parents' ability to properly control, discipline, and supervise the Children has not improved over the course of many supervised visitations. From the record, there is no reason to believe that, if the Children were returned to them, the Parents would be able to properly care for them. In fact, the evidence supports the opposite conclusion that the Parents' housing situation and lack of parenting skills is an ongoing issue. Sadly, it appears that the Parents are unwilling to resolve these issues despite DCS's efforts to assist them. Accordingly, we conclude that the evidence clearly and convincingly supports the trial court's termination of parental rights on the ground of abandonment by failure to provide suitable housing.

B. Substantial Non-Compliance with the Permanency Plans

Appellants' parental rights were also terminated on the ground of failure to substantially comply with the responsibilities as set out in the permanency plans pursuant to Tennessee Code Annotated section 36-1-113(g)(2). As discussed by this Court in *In re M.J.B.*, 140 S.W.3d 643 (Tenn. Ct. App.2004):

Terminating parental rights based on Tenn. Code Ann. § 36-1-113(g)(2) requires more proof than that a parent has not complied with every jot and tittle of the permanency plan. To succeed under Tenn. Code Ann. § 36-1-113(g)(2), the Department must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, and second that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance.

Id. at 656-57 (citations omitted).

As discussed above, the trial court entered and ratified permanency plans on five different occasions. In ratifying each of these plans, the trial court specifically found that the goals contained therein were reasonable, and the tasks were reasonably related to the reasons for removal of the Children from Parents' home. Here, the plans for Mother and Father were the same in terms of the following requirements: (1) develop and maintain a budget plan; (2) demonstrate housing stability; (3) maintain a clean house and cooperate with Dr. McAdams to learn housekeeping skills; (4) attend regular visitation with the Children; (5) demonstrate skills learned from Continuity of Care and use effective discipline strategies; (6) demonstrate positive parenting skills; (7) ensure that the Children are clean and appropriately dressed and have adequate food; (8) complete psychological evaluations and follow all recommendations; (9) complete anger management sessions; and (10) attend the Children's medical appointments. In addition to the foregoing requirements, Father was also required to be law abiding and to comply with his sex offender status. Mother was also required to be compliant with individual therapeutic services focusing on trauma and abuse, and placing blame on others and failing to take ownership of her actions. She was further prohibited from allowing Father to be alone with the Children.

In its October 29, 2014 order, the trial court made the following, relevant findings concerning this ground for termination of Mother's parental rights:

The overall record reflects that intensive in home services were included in the plan and the Department took great strides in assisting the parents. . . . Although the Mother adamantly testified that she completely complied with all of the services

offered, the Court finds that other evidence preponderates against her testimony.

Ms. Lynch, an employee of Continuity [of] Care program (C3) under the supervision of Dr. Kaforey, made available, and performed two psychological evaluations and a parenting assessment [of] Mother and Father. The first evaluation performed on both parents occurred in November 2011. Ms. Lynch opined that no concerns were identified by the psychological and parenting assessments that suggested the parents had any issues with their cognitive abilities.

As to Mother's psychological and parenting evaluations, she received the following recommendations: Psychiatric evaluation to determine her need for medication and to address issues with depression and anxiety; Individual counseling for depression and anxiety and to address past trauma; Individual parenting education, separate from [Father]; and some individual supervised visitation with the [C]hildren which did not include [Father] so that she could demonstrate her own independent parenting skills. Mother received a medication management evaluation and individual therapy. . .however, Mother testified that she lost her TennCare benefits. Upon Mother losing her medical benefits, Ebony Pass Lott referred Mother to Centerstone where she could continue with these same services either free of charge or on a sliding fee based upon her income. According to Mother, she did initiate contact with Centerstone to inquire about needed services, and was asked to complete and return some paperwork. Mother testified that she was focused on school and therefore never followed through with the services.

Concerning termination of Father's parental rights on this ground, the trial court found, in relevant part:

As to the Father's psychological and parenting evaluations, he received the following recommendations: Complete domestic violence classes, undergo a psychiatric evaluation to determine if there are any underlying mental health issues and if any medication would be required for treatment, continue parenting education and supervised visit[s], and upon discovery that Father has not been truthful about his past

relationships and the existence of other [C]hildren, then he should have a follow-up psychological evaluation. After much resistance by Father, he elected to have his recommended psychiatric evaluation at the Veteran's Administration Medical Center on or about April 27, 2011, at which time he was diagnosed with mood disorder/bi-polar and personality disorder, along with a recommendation made for further evaluation to rule out schizoaffective disorder. Father refused to follow the treatment plan to address his diagnoses which included medication management and therapy. Father consistently maintained that the Veteran's Administration medical Center had given him a clean bill of health and that he did not need any medication or any services. Then the inconsistencies were pointed out to Father. . . Father would consistently maintain that the VA was incorrect.

The trial court further noted that Father had lied to Dr. Kaforey concerning Father's previous marriages and the fact that he had multiple children by one or more of his former wives. In fact, it was not until he was examined on the witness stand that Father finally admitted to his past relationships and the existence of other children. The court noted that "Father's refusal to be honest about his past relationships hampered Dr. Kaforey from accurately evaluating Father's issues and the means necessary to resolve same." The court stated that because Father had withheld this pertinent information until the trial, there was no time for Dr. Kaforey to conduct a follow-up evaluation. The court went on to find that "Father insisted that he did not need to complete a domestic violence program because there were never any issues of domestic violence within the family." However, the record reveals that Mother had previously reported issues of domestic violence to DCS and the in-home service providers. In fact, in their respective testimonies, both parents acknowledged that each had been arrested on domestic violence related issues. The trial court found that "Father has consistently blamed everyone else for the [C]hildren being placed in and remaining in state custody, he blames the Mother for the Department becoming involved in their lives. . . ."

Based upon the foregoing findings, the court concluded that there was "clear and convincing evidence that neither parent has [] substantially complied with the permanency plans because each ha[s] failed to demonstrate that they can effectively and safely parent these [C]hildren, still being unable to advance from supervised to unsupervised visits after all this time."

From our review of the record, we agree that there has been little progress on the part of both Parents to comply with the parenting plans. There is no indication in the record that the Parents did not understand their respective responsibilities under these plans. However, we

glean from the testimony that Parents' efforts were, at most, half-hearted. Father, in particular, failed to comply with the majority of his action steps. His denial of his problems is palpable in the record. Father failed to follow medical advice, disputed his diagnoses, and continued to insist that he did not need any assistance. Yet, the evidence clearly shows that Father has failed to master the most basic parenting skills so as to properly supervise the Children and keep them out of harm's way. He has shown no concern for the condition of his home, or the hygiene of his Children. He has allowed the Children to be unsupervised and has exposed them to dangerous conditions.

While we concede that Mother has made more effort toward compliance with the plans than Father, there is no evidence to suggest that she ever fully appreciated the ultimate goal of the plans, which was to ensure a clean, healthy environment, and to give her sufficient parenting skills so that the Children can be safe in her care. She also failed to avail herself of all resources DCS made available to her. We concede that Mother, like the Children, is dominated by Father; however, she has made no effort to remove herself from the situation even in the face of losing her Children. What we glean from the record is that Mother tries for some period of time, but then reverts to old habits. The purpose of the permanency plans was to help the Parents make permanent adjustments, which they have not done due, in large part, to their own lack of effort.

From the totality of the circumstance, we conclude that there is clear and convincing evidence in the record to support the trial court's termination of the Parents' parental rights on the ground of failure to substantially comply with the permanency plans.

C. Persistence of Conditions

Tennessee Code Annotated Section 36-1-113(g)(3) provides that termination of parental rights may be based upon persistence of conditions:

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months 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(s) or guardian(s), 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(s) or guardian(s) 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;

Id.; see also *In re S.Y.*, 121 S.W.3d 358, 369 (Tenn. Ct. App. 2003).

In the case of *In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005), this Court held that, based upon the statutory text and its historical development, the ground of persistence of conditions found in Tennessee Code Annotated Section 36-1-113(g)(3) provides a ground for termination of parental rights only where the prior court order removing the child from the parent's home was based on a judicial finding of dependency, neglect, or abuse. *Id.* at 872. As set out above, by adjudicatory order entered August 23, 2011, the Children were found to be dependent and neglected based upon the trial court's finding that the Children were subjected to a "lack of proper supervision and [] environmental neglect."

The purpose behind the "persistence of conditions" ground for terminating parental rights is "to prevent the child's lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child." *In re Arteria H.*, 326 S.W.3d 167, 178 (Tenn. Ct. App. 2010), *overruled on other grounds In re Kaliyah*, ___ S.W.3d ___, No. E2013-01352-SC-R11-PT, 2015 WL 273659 (Tenn. Jan. 22, 2015). In its amended order terminating Parents' parental rights, the trial court made the following, relevant findings concerning this ground for termination of parental rights:

The [] Children were removed for a period of more than (6) six months, and the predominant condition leading to removal still persists. . . .

The Court acknowledges that the Parents moved into a new home in November, 2010, but, unfortunately, the conditions that contributed to the removal of the [C]hildren consequently resurfaced. Maintaining a clean residence was a significant challenge for the parents and issues with hoarding tendencies progressively worsened throughout the pendency of this case. The home was cluttered with unused electronics, over (20) twenty separate pieces of furniture in the living room and dining room, furniture was stacked, present on the front and back porches, and in the backyard. . . . This was acceptable by Father as he claimed these locations served as his personal "library." The testimony from a number of witnesses in Court revealed that numerous articles of clothing, belonging to both parents and

the [C]hildren, were collected and maintained within the home, despite the fact that the majority of these items were not the correct size for either party. The home was met with an infestation of bed bugs which was discovered in June 2012 and continued through September 2012. In fact, the issue was met with resistance from the Parents as to the need for immediate and effective treatment of the home. The parents did not appear to appreciate the significant risks the infestations would have as to the entire family. . . .

In addition to the clutter and hoarding throughout the inside and outside portions of the home, it was evident that cleanliness was not being maintained when the DCS Family Service Worker would do unannounced home visits. . . . Ebony Pass Lott observed the home to be unclean and contain[ing] expired food in the cupboards. Amanda Pruitt's testimony showed that personal odor and hygiene issues with the parents have persisted. The parents were observed by service providers wearing the same articles of clothing over and over which were soiled and dirty. Continued instruction and direction was necessary concerning bathing habits. Mother presented herself in public on more than one occasion with blood on her clothing and had to be directed to go clean up.

The purchase of unnecessary household items, including a dog, contributed to ongoing budgeting issues which prevented the parents from providing for their own basic needs while the [C]hildren were in foster care. When the parents had an operable vehicle, they often drove on expired tags. The parents have often been without phone service which has contributed to consistent issues. . . .

The inability to co-parent prior to removal of the [C]hildren was a contributing factor to the overall removal of the [C]hildren from the home based upon Father's refusal to supervise the [C]hildren and a lack of communication between the parents to ensure that the [C]hildren were properly supervised at all times. This co-parenting inability continued to be a persistent issue throughout this case. . . . There was no agreement as to when discipline should be imposed or how it should be imposed. There was no identified division of parental responsibility. . . . Father continued to be overbearing as to the Mother and undermine Mother's efforts to parent. Further, the

parents resorted to physical violence in the form of pushing in front of the [C]hildren during one visit.

According to the testimony of both in-home providers, the posture of the situation was very confusing to the [C]hildren. The mother had continued issues with properly supervising the [C]hildren and creating needed boundaries during her own individual time with the [C]hildren. . . . Mother failed to know the whereabouts of the [C]hildren at the swimming pool and the park with the passage of a substantial amount of time before she realized that one of the [C]hildren was missing. Mother also left [J.C.] by himself at a table at the bowling alley while she went to another section within the building with the other children to engage in activities in the arcade.

After almost three years in[] custody, the parents continue to have supervision issues. The parents have failed to provide necessities for the [C]hildren during visitation. In fact, on more than one occasion, the parents have offered to feed the [C]hildren undercooked meat, and expired or rotten food which the parents prepared for the purpose of providing a meal for the [C]hildren during visitation. Over time, with therapeutic intervention, Ms. Pruitt has not observed a long lasting improvement so that the visits are no longer chaotic.

Two conditions led to the removal of these Children from the Parents' custody: lack of proper hygiene in the home, and lack of supervision. Unfortunately, the record clearly and convincingly shows that neither of these two conditions has been remedied.

We have previously discussed the fact that the Parents have made no headway toward correcting their living conditions. Even after moving into a new home, old behaviors resurfaced almost immediately. Every worker that visited the home testified that the conditions were deplorable. Without taxing the length of this opinion to enumerate every aspect of the home's condition, suffice it to say that the problems ran the proverbial gamut from spoiled food to insect infestation. There is no evidence to suggest that the Parents are willing to put forth the effort to correct these conditions at any early date such that the Children can safely be returned to them.

In addition to the conditions in the home, the evidence also clearly and convincingly indicates that the Parents have not gained sufficient parenting skills during the course of these proceedings despite DCS's best efforts. Even as late as the hearing, Father continued to dispute any problem with his housekeeping or his parenting skills. Instead, he blamed others,

including the Mother. Likewise, Mother has failed to take responsibility for her Children by ensuring that the household is clean, that appropriate food is stocked, and that the Children are properly supervised. Moreover, there is also no evidence to suggest that the Parents have learned to co-parent during this lengthy process. Rather, the evidence suggests that Father is in denial, is controlling, and that Mother cannot or will not override Father's protestations to take the necessary steps for the safe return of her Children.

From the totality of the circumstances, we conclude that there is clear and convincing evidence in the record to support the trial court's termination of Parents' parental rights on the ground of persistence of the conditions.

V. Best Interests

When at least one ground for termination of parental rights has been established, the petitioner must then prove by clear and convincing evidence that termination of the parent's rights is in the child's best interest. *White v. Moody*, 171 S.W.3d 187, 192 (Tenn. Ct. App.1994). When a parent has been found to be unfit (upon establishment of ground(s) for termination of parental rights), the interests of parent and child diverge. *In re Audrey S.*, 182 S.W.3d at 877. The focus shifts to the child's best interest. *Id.* at 877. Because not all parental conduct is irredeemable, Tennessee's termination of parental rights statutes recognize the possibility that terminating an unfit parent's parental rights is not always in the child's best interest. *Id.* However, when the interests of the parent and the child conflict, courts are to resolve the conflict in favor of the rights and best interest of the child. Tenn. Code Ann. § 36-1-101(d). Further, "[t]he child's best interest must be viewed from the child's, rather than the parent's, perspective." *Moody*, 171 S.W.3d at 194.

The Tennessee Legislature has codified certain factors that courts should consider in ascertaining the best interest of the child in a termination of parental rights case. These factors include, but are not limited to, the following:

- (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;

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(5) 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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(7) Whether the physical environment of the parent's or guardian's home is healthy and safe. . . .

(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

Tenn. Code Ann. § 36-1-113(i). This Court has noted that “this list [of factors] is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent's rights is in the best interest of a child.” *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). Depending on the circumstances of an individual case, the consideration of a single factor or other facts outside the enumerated, statutory factors may dictate the outcome of the best interest analysis. *In re Audrey S.*, 182 S.W.3d at 877. As explained by this Court:

Ascertaining a child's best interests does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)'s nine factors and then a determination of whether the sum of the factors tips in favor of or against the parent. The relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.

White v. Moody, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004).

Concerning factor one, in its October 29, 2014 order, the trial court found that “neither parent has made an adjustment of circumstance, conduct, or conditions as to make it safe and in the child[ren's] best interest[s] to be in the home of the parents.” Concerning factor two, the court held that “each parent has failed to effect a lasting adjustment after reasonable efforts. . . for such duration of time that lasting adjustment does not reasonably appear possible.” From our review of the record, the evidence clearly and convincingly shows that factors one and two weigh in favor of termination of the Parents' rights. As discussed in detail above,

the conditions of the Parents' home continue to be problematic despite DCS's best efforts to assist the Parents in learning how to clean and maintain their home. Although the Parents were provided every opportunity to improve their living conditions, they have failed to avail themselves of the help offered. As a result, the conditions that led to the Children's removal remain, largely, unchanged. Furthermore, it does not appear that the Parents will make an adjustment of circumstance at any time in the near future.

Although the trial court acknowledged that both Parents love their Children, the court ultimately found that the love was never "demonstrated through actions." We agree. As discussed earlier, the Parents have failed to provide a stable and clean home, and have failed to work toward obtaining sufficient parenting skills. Rather, the Parents have maintained the old behaviors that led to the Children's removal from their care.

Concerning factor eight, the trial court found that Father's refusal to address his diagnosed mental issues will likely result in detriment to the Children if they are returned to his care. Based on our review of the record, we agree. Furthermore, although the trial court made no such findings concerning Mother's mental health or emotional status, the record indicates that she, too, suffers from anxiety and depression that have largely gone untreated. Mother's refusal to address these issues has led to her acting out against the Children in physical ways, and her inability to control them through proper parenting and disciplining. Finally, as to whether removal of the Children from their foster home will have a negative emotional, psychological, or medical impact, the trial court found that the "relationship between the [C]hildren and their resource parents overshadows that of the one with their parents." The court noted that the Children "have established a strong bond with the foster parents." Accordingly, the court held that taking the Children out of this stable environment, which has allowed them to "grow emotionally, intellectually, and physically," would not be in their best interests. We agree. The testimony at trial clearly and convincingly show that, while in foster care, M.C. and K.C. have grown academically, and that K.C. has earned a place on the honor roll. She is also excelling in sports. J.C. has learned his alphabet and has developed interest in airplanes and cars. These academic achievements stand in stark contrast to the fact that, when they were first removed from the Parents' home, the Children demonstrated educational delays.

In light of the fact that the Parents have failed to achieve a clean, stable, and suitable home, and the fact that the Parents have failed to demonstrate their ability to properly supervise and care for the Children, we agree with the trial court that removal of the Children from their current environment would likely be detrimental to their progress. For these reasons, we conclude that there is clear and convincing proof to support the trial court's finding that termination of parental rights is in the best interests of the Children.

VI. Legal Standard and Consideration of Dependency and Neglect Findings

Parents allege that the trial court erred because its findings in support of the grounds for termination of parental rights, and its findings on the Children's best interest were predicated upon the court's "finding that the parents have failed to meet their burden, rather than that the state has met its burden as required by Tenn. Code Ann. 36-1-113(c)(1)." Parents cite findings such as "Neither of the parents, individually or as a married couple, have exhibited the ability to appropriately parent;" and "Mother has not substantially complied with the permanency plans because she has failed to demonstrate that she can effectively and safely parent these [C]hildren. . . ." as examples of the trial court's alleged shift of the burden of proof to the Parents. While the better practice may have been for the trial court to frame its findings in terms of what DCS has shown by clear and convincing evidence, i.e., "DCS has shown, by clear and convincing evidence, that Mother has not substantially complied with the permanency plans," the language employed by the trial court is not fatal to its ultimate determination. We have thoroughly reviewed the trial court's findings in this case, and, as discussed in great detail above, it is clear that those findings are supported by clear and convincing evidence in the record. Furthermore, there is no indication that the trial court relieved DCS of its statutory burden in this case. Rather, the evidence clearly and convincingly shows that DCS has met its burden to show both the grounds for termination of Parents' parental rights, and that termination of those rights is in the Children's best interests.

Parents also contend that the trial court erroneously relied on the findings made in the dependency and neglect hearing, using those findings as its grounds for termination of their parental rights. Although the trial court's initial order terminating parental rights appears to adopt the same reasoning as the court used in the dependency and neglect order, any error was corrected by the entry of the October 29, 2014 supplemental order, which was made part of our record. Our review of this order indicates that the trial court made specific, independent findings that correspond with the record produced during the termination proceedings. Mother's brief admits this fact, stating "[h]owever, the Supplemental Order's finding of fact. . . appear to be based upon evidence presented at trial." With the entry of the supplemental order, any issue concerning whether the trial court independently analyzed the proof presented in the termination proceedings was corrected.

VII. Conclusion

We affirm the order of the trial court, terminating the parental rights of both of the Appellants. The case is remanded for such further proceedings as may be necessary and are

consistent with this opinion. Costs of the appeal are assessed one-half to Appellant/Father, F.C., and his surety, and one-half to Appellant/Mother, J.C.. Because both Appellants are proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

KENNY ARMSTRONG, JUDGE