

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 21, 2015

IN RE: ANALILIA R.

**Appeal from the Juvenile Court for Hamblen County
No. 16034J Janice Hope Snider, Judge**

No. E2015-00479-COA-R3-PT – Filed November 24, 2015

This appeal concerns the termination of a father’s parental rights. The Tennessee Department of Children’s Services (“DCS”) filed a petition in the Juvenile Court for Hamblen County (“the Juvenile Court”) seeking to terminate the parental rights of Luis M. (“Father”) to the minor child Analilia R. (“the Child”). After a trial, the Juvenile Court found that clear and convincing evidence established the ground of persistent conditions against Father, and that the evidence was clear and convincing that termination of Father’s parental rights was in the Child’s best interest. Father appeals, arguing DCS failed to meet its burden of proof on the ground of persistent conditions. DCS raises its own issue of whether the Juvenile Court erred in failing to find the ground of substantial noncompliance with the permanency plan. We affirm the judgment of the Juvenile Court in its entirety.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., C.J., and JOHN W. MCCLARTY, J., joined.

W. Joe Bell, Knoxville, Tennessee, for the appellant, Luis M.

Herbert H. Slatery, III, Attorney General and Reporter, Andrée S. Blumstein, Solicitor General, and, Jason I. Coleman, Assistant Attorney General, for the appellee, the Tennessee Department of Children’s Services.

Whittney N. L. Good, Guardian ad Litem.

OPINION

Background

The background facts of this case are unfortunate. The Child, born in June 2007, suffers from serious medical problems. In mid-2009, the Child entered a battered women's shelter with her mother and three siblings following a domestic assault committed by Father against the mother.¹ Father was arrested and later pled guilty to the assault. The Child entered state custody. The Child was adjudicated dependent and neglected in April 2010. DCS developed permanency plans for the Child containing a statement of Father's responsibilities. In March 2012, DCS filed a petition to terminate Father's parental rights to the Child. DCS later filed an amended petition to terminate Father's parental rights in June 2014. This case was tried in January 2015. We will summarize the pertinent testimony.

Father testified. Father, now living in Mexico, had lived only in Morristown while he lived in Tennessee. Father testified to his criminal background. Father had negotiated a plea agreement concerning three DUI offenses in 2008. Father also was convicted of theft. Father acknowledged slapping the Child's mother in 2009 in an effort to, as he put it, "control her" when she got upset. Father was arrested and stayed in jail in Morristown for a month and a half because of an immigration hold. Father was relocated by the authorities several times before ending up in "Louisiana, Texas." Father went before an immigration judge. Father subsequently was deported to Mexico.

During Father's time in Louisiana and Texas, he communicated with a DCS worker. Father testified that the DCS worker did not explain to him the risk that his parental rights could be terminated forever. When Father was sent back to Mexico, DCS sent him paperwork in Mexico in English, a language in which Father is not fluent. Father later attempted to cross the border illegally to reenter the United States. He made several such attempts before he wound up in California and received five years of probation. In 2013, Father was incarcerated in Mexico for extortion. Father then attempted to obtain a special visa to enter the United States legally. When this did not work, Father tried to cross the border illegally yet again. Father was incarcerated and deported to Mexico.

Father attended psychological therapy in jail and signed up for Alcoholics Anonymous. Father did not complete these efforts as he later was transferred. Father testified that DCS finally sent him additional documents in Spanish while he was in

¹ The status of Father's parental rights regarding his other children are not at issue on this appeal. The Child's mother's parental rights also are not at issue on this appeal. In sum, this appeal addresses only Father's parental rights to the Child.

Mexico. Father never sent any child support, toys or clothes to the Child, save for a \$500 payment in late 2013 to the mother. Father testified that he was not aware of the exact nature of the Child's illness, but he knew that she had problems with mobility.

Father testified that he lives at Ranch el Jano where he is the foreman. Father stated that the Child would have a home to live in should the Child join him in Mexico. While in Mexico, Father also had helped in a church and performed social work. Father earns the equivalent of about \$230.00 per week. Father stated that a Mexican social program, Seguro Popular, would provide insurance for the Child. Father stated that his aunt could be an in-home caregiver for the Child. Father testified that he does not drink alcohol anymore.

Brooke Barrett ("Barrett"), a DCS worker in this case from around 2007 through 2013, testified. Barrett testified that the main issues regarding Father were violence, anger, mental health, and criminal issues. Barrett testified to a conversation she had with Father. Barrett explained to Father what he must do to regain custody of the Child. According to Barrett, when she left the department: "[Father] had not completed the requirements of the Perm Plan. He had not made any efforts to re-establish the bond or to establish a bond."

Julbania Pressley ("Pressley"), a DCS case manager who worked the Child's case from September 2013 through July 2014, testified. Pressley speaks "95%" fluent Spanish and spoke Spanish with Father. Pressley testified that Father never objected to any requirements of the permanency plans. Pressley maintained sporadic phone contact with Father through his times in and out of jail. Pressley testified that the reason the children had been removed from Father's home originally was his domestic violence episode. Pressley testified also to Father's pattern of criminality.

Rebecca C. ("Foster Mother") testified. Foster Mother testified that the Child has cerebral palsy and a seizure disorder. The Child has up to three doctor appointments per week. The Child sees a number of specialists. A nurse delivers in-home treatment for the Child. The Child has her own bedroom at Foster Mother's home. Foster Mother testified she has sufficient income to care for the Child. Foster Mother stated that she wishes to adopt the Child. The Child was placed in Foster Mother's home in April 2014 and has lived with her continuously since then. Foster Mother has two grown children. Foster Mother has never adopted a child before.

In February 2015, the Juvenile Court entered its order terminating Father's parental rights to the Child. The Juvenile Court found that clear and convincing evidence established the ground of persistent conditions against Father, and that the evidence was clear and convincing that termination of Father's parental rights was in the Child's best

interest. The Juvenile Court found that DCS failed to meet its burden with respect to the grounds alleged of wanton disregard, abandonment by failure to support, and substantial noncompliance with the permanency plan. We quote from the Juvenile Court's findings regarding the one ground that was found to be established against Father, persistent conditions:

Analilia is currently 7 years old. She weighs 42 pounds. This child is afflicted with cerebral palsy and a seizure disorder.² She is unable to stand, walk or perform the necessary functions of daily living. She can't swallow, so Analilia requires a permanent feeding tube. She is intellectually delayed and cannot verbalize words, although she is vocal and can project sounds. She has difficulty with her eyesight and often wears an eye patch to strengthen her weak eye.

The foster mother does not work outside her home and cares for Analilia with the help of a daily home health nurse. She attends as many as 3 doctors appointments weekly, and sees the following specialists: a pulmonologist, neurologist, endocrinologist, gastrologist, orthopedic, pediatric eye specialist, allergist, and a psychiatrist. Analilia receives physical therapy on a regular basis.

Analilia requires a wheel chair, a "stander" to help her bear weight, a bed with side rails, a hooyer lift, a shower chair, a vibrating vest to keep her lungs free of fluid, and an exercise mat for daily assisted therapy.

The child's medical condition has not improved substantially since she entered state custody in 2009. She will always need constant, round the clock 24/7 care, special medical equipment to aid her and her custodians, and frequent medical care by a number of physicians and medical specialists.

Although the Father insists he understands the nature of this child's disability and is willing to learn how to care for her, he has failed to introduce adequate evidence of his past or present ability to adequately provide for this child's medical needs. He is now employed full time and would have to rely upon the untrained, unskilled assistance of relatives. These relatives did not testify at trial or affirm their commitment to the constant level of care required by this child. Father introduced no proof

² The Juvenile Court observed that "No medical records or first-hand documentation of the child's actual medical diagnosis was introduced at trial, but several parties testified (without objection) to hearsay knowledge of the child's medical diagnosis and conditions."

that the medical and therapeutic services required by this child are available or accessible in his locality. He is not been able to provide the skilled services or even the medical equipment and supplies that are necessary to the quality of this child's daily life. There is no indication these deficiencies can or will be resolved by the Father within the near future.

Analilia has been placed with a family who provides a safe, nurturing and loving environment. It would be intensely traumatic for this child to be uprooted from the home and family she has become accustomed to. Continuation of the relationship with her Father and this litigation greatly diminishes Analilia's chances of early integration into a safe, stable and permanent home.

Thus, there is no competent evidence on the part of the Father to refute the State's allegations of the persistence of conditions as they relate to this child.

We next quote from the Juvenile Court regarding its finding that DCS failed to prove substantial noncompliance with the permanency plan:

Case manager Julbiana Pressley testified concerning the Father's progress in completing the important plan action steps in the various permanency plans. This case manager is proficient in Spanish and was able to have more meaningful conversations with the Respondent. She outlined the following as being the most important permanency plan action steps for Father to complete:

1. Complete an A/D assessment;
2. Attend domestic violence classes;
3. Receive anger management counseling;
4. Resolve his legal issues and pay fines and costs;
5. Obtain no new criminal charges;
6. Maintain safe and stable housing; and
7. Legitimate Karla. [another child, not subject to this appeal]

She did not recall ever telling the Father he needed to send child support.

Ms. Pressley made no mention of whether she ever sent the Respondent a copy of the information/criteria for termination of his parental rights either in English or Spanish.

This Court specifically finds the following requirements of the various permanency plans filed in this case as they pertain to Analilia to be reasonable and related to remedying the conditions which necessitate foster care placement:

1. Luis must maintain clean and appropriate housing free from dirt, roaches and debris.
2. Luis must have a court ordered A/D assessment.
3. Luis must have domestic violence and anger management counseling
4. Luis will resolve all legal issues.
5. Luis will participate in family counseling to address domestic violence issues.

This Judge believes there are other requirements related to Analilia that could or should have been made a part of the previous permanency plans, but that is not the issue here to [sic] today.

1. Luis must maintain clean and appropriate housing free from dirt, roaches and debris.

The Father testified that he now has stable housing on the ranch where he is employed. His home has 4 bedrooms and enough space for all the children. He stated his home is safe. The local school is 2 blocks away. His parents will help with the children and he has their support to help see “my children succeed.” He currently has a dependable vehicle for transportation.

No home study has been conducted of the Father’s current home and living arrangements, so it’s fitness remains inconclusive, but it initially appears that father has made improvements towards compliance with this requirement.

2. Luis must have a court ordered A/D assessment.
3. Luis must have domestic violence and anger management counseling
5. Luis will participate in family counseling to address domestic violence issues.

Requirements 2, 3 and 5 are related.

Late in 2013, case manager Pressley received the letter from D.I.F. in Mexico (Exhibit 28) which detailed the counseling services that Respondent had received from them. Ms. Pressley was able to read and comprehend the Spanish letter and reviewed it with her supervisor. This letter was never presented to the Court in connection with any review of the Respondent's progress on the permanency plans. When she next spoke to the Father they discussed what he needed to do, and she acknowledged he had begun doing what was required. She emphasized the need for continued treatment.

No one from D.C.S. ever attempted to request information from D.I.F. or communicate with them to set up further counseling services for the Respondent. Ms. Pressley felt strongly that Respondent should have a psychological evaluation but this Judge cannot find where that requirement is listed on any of the Permanency Plans aside from an A & D Assessment. She attempted to obtain funding for such an evaluation within the United States, but no case manager ever attempted to obtain funding or schedule any form of evaluation or treatment with D.I.F or any other provider inside Mexico. The Respondent was left entirely up to his own resources in securing any counseling or treatment available within the perimeters of his home country.

However, Respondent did obtain counseling on his own for alcohol, drugs, domestic violence and parenting. Respondent testified that he had some form of psychological evaluation while he was in jail in Sierra Blanca, New Mexico, during his deportation process. His first treatment was at "Lagos de Morelos" where he was in a "rehab hospital" for 6 months. Following his discharge, Respondent received counseling through the local D.I.F. , i.e. the Mexican National System for Integral Family Development. Simple online research indicates this is a Mexican public institution of social assistance that provides counseling services and focuses on strengthening and developing the welfare of the Mexican families. Wikipedia.³ Father stated he began outpatient therapy at the local D.I.F. in Encarnacia de Diaz, where he attended approximately 18 to 20 sessions. He was initially seen two times weekly and then once per week after the doctor said he had improved. He initially was seen two times weekly and

³ We have reservations about trial courts citing Wikipedia. Though perhaps an adequate resource in some contexts, Wikipedia's more or less open-editing format makes its reliability rather inconsistent, especially for purposes of a judicial order. It, however, appears the citation here is tangential to the Juvenile Court's ultimate decision on this issue.

then once per week after the doctor said he had improved. He has been to AA meetings and drug addiction classes. Father introduced evidence that he participated in counseling that addressed domestic violence issues. He testified that he did participate in some form of domestic violence class in which the therapist told him he was almost ready but further follow up was still needed. Then he went to Ciudad Juarez to try to secure his VISA and did not finish these sessions.

During these classes, he also received anger counseling and parenting classes. [Father] provided details on the advice he was given by his therapists, such as to keep his mind busy or leave the house when dealing with anger. He was told by the psychologist to have a calm life with his children, don't hit them or call attention to what they have done wrong.

He testified that when he related this to his case manager, she advised he needed to follow-up with more counseling and he needed a psychological evaluation when he arrived back in the U.S. At that point discussions between the Respondent and his case manager(s) seemed to change focus to his attempts to obtain a "humanitarian VISA," and the upcoming termination of parental rights.

The parents no longer live together, and there have been no further reported incidents of domestic violence between them. The children's mother lives with her mother in the same city. Father told the Court that, while the child's mother cannot see the children without supervision, he would work out for her to have some visitation in spite of the termination of her rights if he had the children.

There were never any substantiated allegations of violence or abuse by the Father toward the children.

Although he has not completed all counseling required by the permanency plans, the Court finds that Respondent has made substantial progress toward his compliance and completion.

4. Luis will resolve all legal issues.

Respondent has not had further criminal violations or arrests since 2013, with the exception of his repeated attempts to illegally cross into the United States to participate in this case and seek reunification with his children. This Court does not condone [Father's] intentional disregard of

the immigration laws of our country, but his presence within the confines of the United States is not required for reunification with his children if he is able to complete the remaining steps on his permanency plan. It would therefore appear that resolution of his status with the U.S. Immigration authorities is not an issue if he does not intend to return to the states. Father otherwise has resolved all other legal issues that have a bearing on this case.

Based upon the foregoing evidence in this case, the Court finds by clear and convincing evidence that the Father has NOT failed to substantially comply with the Permanency Plans in this case. The State has failed to prove the Father's substantial noncompliance and this ground for termination by clear and convincing evidence.

We quote finally from the Juvenile Court's order as it pertains to the Child's best interest:

(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;

Although the Father has made adjustments in his life and now appears to have a more stable home for the children, he is uneducated concerning this child's needs. While that may not be entirely the Father's "fault", it still remains that he does not have the resources necessary to provide the lifestyle and level of care required to maintain Analilia. The current foster parents are able to provide an exceptional home environment. They go above and beyond to provide care for this child.

(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;

No education concerning the child's care regimen or medical information has ever been provided to Respondent concerning Analilia, even though the Court (belately) entered an order on August 20, 2014, requiring D.C.S. to "contact the facility to permit Father's attendance at medical appointments by telephone." D.C.S. has made no efforts to assist [Father] in providing a home or services that would enable him to care for Analilia. The Court specifically finds a lack of reasonable efforts in this regard by the Department.

Reasonable efforts or not, the Father has not been able to make a lasting adjustment in his own situation that will enable him to provide the level of care needed by Analilia.

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child and the nature of the parent child relationship;

Father has never visited with this child. Due to the child's physical handicaps and inability to speak, long distance telephonic visitation simply has never been or will be an option. Lack of visitation and the child's very young age at the time she was removed from her parents has not enabled the growth of any meaningful relationship between the Father and this child. There is no way to know under the circumstances if this child even still remembers her Father. In contrast, the pre-adoptive foster parents are firmly bonded with this little girl. They appear to have a deep and meaningful relationship with Analilia. [The foster parents] are committed to adopting Analilia and providing for this child for the rest of their lives.

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

The change of caretakers and the child's environment could be devastating to Analilia. It is extremely doubtful that this child is physically or emotionally able to make the journey to Mexico without suffering severe or irreparable physical and emotional trauma, or that she is capable of establishing a new life with family who are essentially strangers to her.

(5) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

There is evidence of physical violence by the Father against the Mother on one occasion in 2009. There is no evidence that the Father was ever violent or used excessive discipline against the children. Since that time the Father has engaged in some counseling to assist him in resolving anger and domestic violence issues.

(6) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled

substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

Father has engaged in substance abuse counseling and parenting classes to help him provide a proper environment for his children. Even though the Father testified he has a safe and proper home for the children, the exact conditions of the Father's home are unknown. No home study of his present circumstances has been completed. As to Analilia, this facts are overshadowed by the undeniable truth that the Father has not demonstrated he has the skills, family or nursing assistance, or medical resources to provide the level of care needed by this child.

(7) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to T.C.A. §36-5-101.

Father has paid no child support whatsoever. He has provided nothing to assist with the care of this child. Even though Father's income and financial circumstances seem to have recently improved, there is no way to predict the cost of this child's care in Mexico or if the Father possesses the financial ability to adequately support her needs. It is well established that the current custodians are doing an excellent job of providing for Analilia's care both personally and financially.

(8) Most importantly, it is unlikely that this child could survive being transported to Mexico without serious medical and emotional trauma, even if there was any evidence that she would receive adequate care by her Father upon her arrival in his home. The success of integrating Analilia into a new home and unfamiliar surroundings with persons who are strangers to her is speculative at best. The Father cannot return to the United States to live and care for Analilia. The Court finds without any doubt that [Father] cannot provide the level of care this child needs. It is manifestly in the Analilia's [sic] best interests to remain in her current pre-adoptive placement.

Father timely appealed to this Court.

Discussion

Although not stated exactly as such, Father raises one issue on appeal: whether the Juvenile Court erred in finding that clear and convincing evidence existed to prove the ground of persistent conditions to terminate Father's parental rights to the Child. DCS raises the additional issue of whether the Juvenile Court erred in not finding

that the evidence was clear and convincing to establish the ground of substantial noncompliance with the permanency plan. Although Father does not raise the issue of whether the Juvenile Court erred in finding that termination of his parental rights is in the Child's best interest, we nevertheless review that issue as well.

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record “accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Department of Children's Services v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that “parents have a fundamental right to the care, custody, and control of their children.” *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). “However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute.” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not

terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 WL 1660838, at *6 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g.*, *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Two grounds for termination of parental rights are at issue on appeal. Tenn. Code Ann. § 36-1-113 (g)(2) (Supp. 2015) provides the first relevant ground of substantial noncompliance with the permanency plan as follows: "There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4." Regarding persistent conditions, the termination statute states:

(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 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) (Supp. 2015).

We first address whether the Juvenile Court erred in finding that clear and convincing evidence existed to prove the ground of persistent conditions to terminate Father's parental rights to the Child. This Court has stated the following in regard to persistent conditions:

The failure to remedy the conditions which led to the removal need not be willful. A parent's continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent's care. Where . . . efforts to provide help to improve the parenting abilities, offered over a long period of time, have proved ineffective, the conclusion that there is little likelihood of such improvement as would allow the safe return of the child to the parent in the near future is justified. The purpose behind the persistence of conditions ground for terminating parental rights is to prevent the child's lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.

In re Dakota C.R., 404 S.W.3d 484, 499 (Tenn. Ct. App. 2012) (internal citations and quotation marks omitted).

Initially, we note that it is undisputed that the Child has been removed from Father's home for more than six months per the statute. Father argues that the conditions that led to the Child's removal from Father's home—Father's incarceration and the mother's abandonment—are distinct from the Child's medical needs, and that these issues should not be conflated when considering persistent conditions. Father also argues that there are adequate medical resources available to him in Mexico such that he can care for the Child. Father points to his testimony reflecting that he had previously cared for the Child, that he has undergone various types of counseling, and that he is able and ready to resume his role as parent.

Father's argument is undermined by the fact that the relevant statute provides: "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 . . ." Tenn. Code Ann. § 36-1-113(g)(3)(A) (Supp. 2015) (emphasis added). Father's own testimony reflects that after the Child's removal, he spent the ensuing years facing one legal problem after another, often related to his immigration status. It certainly would be accurate to characterize one of the conditions that led to the Child's removal, and has continued to present a problem, is Father's pattern of instability and criminal activity. Perhaps most significant, however, is Father's apparent lack of ability to care for the Child's serious medical condition. Father argues that it is stereotypical to assume that Mexican social and health services are insufficient to meet the Child's needs. Father argues, in effect, that we instead should assume that Mexican social and health services are sufficient to meet the Child's needs. However, no such assumptions should or need be made as we instead must look to the evidence in the record. As noted by the Juvenile

Court, Father put on no proof, apart from his own testimony, that proper accommodations could be made for the Child should the Child go to live with Father in Mexico. Meanwhile, the testimony reflected that the Child has serious health problems that are being addressed in her current disposition with the foster family.

DCS has successfully proven, by the standard of clear and convincing evidence, the ground of persistent conditions against Father. While Father's testimony is that he has a job and has achieved a new stability in Mexico, the evidence simply does not support the proposition that the Child may safely return to the home of Father. On the contrary, given the Child's serious medical condition which requires both intensive physical and medical assistance and the tenuousness of Father's stability as shown by his record, the Child's welfare likely would be endangered were she to return to Father's care.

Having reviewed the evidence contained in the record in its entirety, we find that a preponderance of the evidence supports the Juvenile Court's findings made under the clear and convincing standard. We, therefore, find, as did the Juvenile Court, that clear and convincing evidence establishes the ground of persistent conditions against Father.

We next address whether the Juvenile Court erred in not finding that the evidence was clear and convincing to establish the ground against Father of substantial noncompliance with the permanency plan. Our Supreme Court has stated with respect to substantial noncompliance:

Substantial noncompliance is a question of law which we review de novo with no presumption of correctness. Substantial noncompliance is not defined in the termination statute. The statute is clear, however, that noncompliance is not enough to justify termination of parental rights; the noncompliance must be substantial. Black's Law Dictionary defines "substantial" as "[o]f real worth and importance." *Black's Law Dictionary* 1428 (6th ed. 1990). In the context of the requirements of a permanency plan, the real worth and importance of noncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement. Terms which are not reasonable and related are irrelevant, and substantial noncompliance with such terms is irrelevant.

In re Valentine, 79 S.W.3d at 548-49.

DCS argues that Father was aware of his responsibilities and simply never fulfilled them. In particular, DCS notes that Father never completed an alcohol and drug

assessment, domestic violence counseling, anger management counseling, or family counseling. The Juvenile Court made detailed findings as to this issue as quoted above, and the evidence does not preponderate against any of those findings. Significantly, the Juvenile Court stated in its order the following: “The Respondent was left entirely up to his own resources in securing any counseling or treatment available within the perimeters of his home country.” While not dispositive, we are mindful in the present case of the hardships facing Father in complying with the responsibilities required by the permanency plan: the language barrier, which has cropped up repeatedly in this case; the geographic and political barriers between two nations; and, Father’s record of inability to stay in one place for very long given, in large measure, his immigration legal woes. Despite these issues, the evidence in the record on appeal reflects both that Father at least sincerely attempted to meet his responsibilities under the permanency plan and that Father did make substantial steps such as obtaining counseling on his own. We find no error in the Juvenile Court’s finding that “[Father] has made substantial progress toward his compliance and completion.” Given all of these facts, we find, as did the Juvenile Court, that the evidence does not rise to the level of clear and convincing to establish the ground of substantial noncompliance with permanency plan against Father, and we affirm the Juvenile Court in its finding that this ground was not proven.

The final issue we address is whether the Juvenile Court erred in finding that the evidence was clear and convincing that termination of Father’s parental rights was in the Child’s best interest. The following statutory factors are to be considered by courts when determining whether termination of parental rights is in the child’s best interest:

- (i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is 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;
 - (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

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

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113 (i) (Supp. 2015).

The evidence does not preponderate against the detailed findings made by the Juvenile Court in connection with this issue. The Child has serious, debilitating health problems, and undergoes a complex regimen of treatment while living under the care of the foster family. Father has not interacted with the Child since 2009. A change in caretakers at this point could be not only damaging to the Child, but catastrophic. It is not in the Child's best interest to take this risk. Father testified strongly at trial to his love for the Child, and we do not discount or belittle his sentiments. However, Father has demonstrated no practical ability to parent the Child, a child who requires intensive physical and medical assistance. Instead, Father has been in and out of this country and Mexico for several years, has been in and out of jail, and has shown precious little stability in his own life. We find, as did the Juvenile Court, that termination of Father's parental rights is in the Child's best interest.

In summary, we find that clear and convincing evidence establishes the ground of persistent conditions against Father. On the other hand, we find that the ground of substantial noncompliance with permanency plan has not been proven by clear and convincing evidence. Finally, we find that the evidence is clear and convincing that termination of Father's parental rights is in the Child's best interest. We affirm the judgment of the Juvenile Court in its entirety.

Conclusion

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Luis M., and his surety, if any.

D. MICHAEL SWINEY, JUDGE