

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 11, 2015

IN RE TELISHA B., ET AL.¹

**Appeal from the Chancery Court for Lawrence County
No. 1316443 Jim T. Hamilton, Judge**

No. M2014-02442-COA-R3-PT – Filed November 30, 2015

Three children were removed from their home as a result of a petition filed by the Department of Children’s Services, alleging that the stepfather was guilty of sexual abuse of the oldest child. After the children were removed from the home, it was found that the Mother knew of but had failed to report previous abuse. The children were subsequently adjudicated dependent and neglected; the Department later filed a petition for termination of the Mother’s parental rights. Her parental rights were terminated as to all three children on the grounds of severe child abuse and persistence of conditions. Mother appeals the court’s holding that termination of her parental rights was in her children’s best interests. Finding no error, we affirm the judgment.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and W. NEAL MCBRAYER, J. joined.

J. Daniel Freemon, Lawrenceburg, Tennessee, for the appellant, Delicia B.

Herbert H. Slatery, III, Attorney General and Reporter; and Alexander S. Rieger, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

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

OPINION

Delicia B. (“Mother”) is the mother of three children: Telisha B., born March 2007²; Ottis B., born September 2008, and Robert S. B., born August 2009. Robert B. (“Father”) is the father of Ottis B. and Robert S. B; he and Mother were married in March 2009. On April 10, 2012, Father was arrested for sexually abusing Telisha, and remained incarcerated until his death in June 2013. The Department of Children’s Services (“DCS”) filed a petition seeking temporary custody of the children, alleging that Mother “had been aware of the sexual abuse of the child [. . .] that had been occurring over the last year.” The children were taken into custody and placed in foster care on May 2, 2012; the children have remained in custody since that date. A dependency and neglect proceeding was subsequently initiated.

DCS developed two permanency plans, the first on May 30, 2012; the plan was ratified by the court on July 2. The plan listed goals of “return to parent” and “adoption” and required that Mother: maintain regular and positive visitation; provide a safe, stable environment free of domestic violence or substance use; provide and maintain safe, stable housing, transportation, and legal income; follow all recommendations of a mental health intake; ensure that any persons who came into contact with the children were safe and appropriate; and that Mother comply with the safety plan and all court orders. The second permanency plan was developed on November 28 and ratified on January 9, 2013; it listed the same goals and imposed the same requirements on Mother.

On January 24, 2013, the Juvenile Court of Lawrence County adjudicated all three children to be dependent and neglected “based on Robert B[.]’s sexually abusive actions; and that Telisha B[.] was severely abused as defined by Tenn. Code Ann. 37-1-102(b)(23)(C)[³], by Robert B[.]’s sexual abuse of her and Delisia [sic] B[.]’s knowing failure to protect her from that sexual abuse.” In its order, the court relieved DCS from

² Chad. C., who is identified as Telisha’s father, is not a party to this action.

³ At the time the order was entered, the statutory provision cited by the court read as follows:

“Severe child abuse” means:

(C) The commission of any act towards the child prohibited by §§ 39-13-502 – 39-13-504 [aggravated rape, rape, and aggravated sexual battery, respectively], 39-13-522 [rape of a child], 39-15-302 [incest], 39-15-402 [aggravated child abuse and neglect; aggravated child endangerment], and 39-17-1005 [especially aggravated sexual exploitation] or the knowing failure to protect the child from the commission of any such act towards the child.

making reasonable efforts to reunify the family. On January 28, the court ordered Mother to pay child support in the amount of \$216.66 per month.

Mother appealed the adjudicatory order to the Lawrence County Circuit Court. Following a trial *de novo*, that court entered an order on May 28, 2013: finding that Telisha had been severely abused and that Delicia knowingly failed to protect her from that abuse; holding that Mother and Father committed severe child abuse; and adjudicating the children to be dependent and neglected. On the basis of the determination that the children were “subjected to aggravated circumstances including but not limited to the severe child abuse of Telisha B[.],” the court relieved DCS of the requirement to make reasonable efforts to reunify the family to Mother required by Tenn. Code Ann § 37-1-166(g)(2).⁴

On August 15, DCS filed a petition to terminate Mother’s parental rights to the children on the grounds of persistence of conditions and severe child abuse; the petition also alleged that termination would be in the children’s best interest. A hearing was held

⁴ Tenn. Code Ann. §37-1-166 governs proceedings in which children have come into the custody of DCS; the statute uses the term “reasonable efforts” in several contexts. Section (g)(1) defines “reasonable efforts” as “the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family.”

Section 166(g)(2) provides:

- (2) Except as provided in subdivision (g)(4), reasonable efforts shall be made to preserve and reunify families:
 - (A) Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home; and
 - (B) To make it possible for a child to safely return to the child’s home.

Section 166(g)(4) provides:

- Reasonable efforts of the type described in subdivision (g)(2) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:
- (A) The parent has subjected the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in § 36-1-102[.]

Tenn. Code Ann. § 36-1-102 defines “aggravated circumstances” as “abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse, as defined at § 37-1-102[.]”

on April 10, 14, and October 1, 2014. On November 7, the court terminated Mother's rights on the grounds of persistence of conditions and severe child abuse and upon a determination that it was in the best interest of the children that her rights be terminated.

Mother appeals the holding that termination of her rights was in the children's best interest.

I. STANDARD OF REVIEW

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007), *cert. den.*, 551 U.S. 1146 (2007). However, that right is not absolute and may be terminated in certain circumstances. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *State Dep't of Children's Services v. C.H.K.*, 154 S.W3d 586, 589 (Tenn. Ct. App. 2004). A court may terminate a person's parental rights only if (1) the existence of at least one statutory ground is proven by clear and convincing evidence and (2) it is shown, also by clear and convincing evidence that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d at 808-09; *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "This heightened standard [of clear and convincing evidence] . . . serves to prevent the unwarranted termination or interference with the biological parents' rights to their children." *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

In light of the heightened standard of proof in these cases, a reviewing court must adapt the customary standard of review set forth in Tenn. R. App. P. 13(d). *In re M.J.B.*, 140 S.W.3d 643, 654 (Tenn. Ct. App. 2004). As to the court's findings of fact, our review is *de novo* with a presumption of correctness unless the evidence preponderates otherwise, in accordance with Tenn. R. App. P. 13(d). *Id.* 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. *Id.*

Mother does not contest the grounds for termination. Notwithstanding this, we have reviewed the record and find that the grounds of persistence of conditions and severe child abuse are supported by clear and convincing evidence. Consequently, we address whether termination of Mother's rights was in the best interests of the children.

II. BEST INTEREST

The legislature has set out nine factors at Tenn. Code Ann. § 36-1-113(i) for courts to follow in determining whether termination of a parent's rights is in 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;

(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.

The list of factors in the statute is not exhaustive, and the statute does not require every factor to appear before a court can find that termination is in a child's best interest. *See In re S.L.A.*, 223 S.W.3d 295, 301 (Tenn. Ct. App. 2006) (citing *Tenn. Dep't of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. May 10, 2002); *In re I.C.G.*, No. E2006-00746-COA-R3-PT, 2006 WL 3077510, at *4 (Tenn. Ct. App. Oct. 31, 2006)).

The court held that factors (1), (2), (5), (6), (8), and (9) militated in favor of termination of Mother's rights.⁵ On appeal, Mother contends that the court's conclusions were not supported by clear and convincing evidence.

⁵ As to factor (1), the court held:

Under Tenn. Code Ann. §36-1-113(i)(1), it is in the children's best interest for termination to be granted as to Delicia B[.] because she has not made such an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to be in her home.

As to factor (2), the court held:

Under Tenn. Code Ann. §36-1-113(i)(2), it is in the children's best interest for termination to be granted as to Delicia B[.] because she has failed to effect a lasting adjustment after reasonable efforts by available social service agencies for such duration of time that lasting adjustment does not reasonably appear possible.

As to factor (5), the court held:

The children have been placed by the Department in a foster home where the foster parents and children love each other and emotionally are bonded. The foster parents are able to and are, in fact, taking good care of the children and want to adopt them. It would be in the children's best interest to remain with this family under Tenn. Code Ann. §36-1-113(i)(5) as changing the children's caretakers and physical environment would likely have a detrimental effect on the children's emotional and psychological condition.

As to factor (6), the court held:

Under Tenn. Code Ann. §36-1-113(i)(6), it is in the children's best interest for termination to be granted because Robert B[.], who was residing with Delicia B[.], showed brutality, physical, sexual, emotional and psychological abuse or neglect toward Telisha B[.], and Delicia B[.] abused and neglected the child, Telisha B[.], by knowingly failing to protect her from the sexual abuse perpetrated by her husband, Robert B[.]

As to factor (8), the court held: "Under Tenn. Code Ann. §36-1-113(i)(8), termination would be in the best interests of the children because Delicia B[.]'s mental or emotional status would be detrimental to the children or prevent her from effectively providing safe and stable care and supervision for the children."

As to factor (9), the court held: "Under Tenn. Code Ann. §36-1-113(i)(9), termination would be in the best interests of the children because Delicia B[.] has not paid child support consistent with the child support guidelines."

With respect to factor (1), the court found:

11. Although [Mother] went to Centerstone, a mental health facility, in May 2012, for a mental health intake, she did not follow through with the recommended mental health therapy. Despite the Department informing [Mother] on multiple occasions that she needed to follow through with mental health therapy, [Mother] did not follow through with any mental health therapy during 2012. Not until January 22, 2013, did [Mother] undergo another mental health intake/assessment, this time at LifeCare, another mental health facility. Although LifeCare diagnosed [Mother] with Major Depression and recommended she undergo individual therapy and medication management, [Mother] only went for a few therapy appointments, (her last appointment being on April 5, 2013), and either canceled or did not show for most of her appointments. In August 2013, LifeCare notified [Mother] they were ceasing their mental health services due to her noncompliance.

12. After the Department filed its Petition to Terminate Parental Rights on August 15, 2013, [Mother] underwent a psychological evaluation by Senior Psychological Examiner Lucinda Pincince on October 23, 2013⁶. Pincince determined [Mother] needed: therapy to address her personal history of victimization, learn assertiveness and improve her parenting skills; non-offending, parent specific mental health treatment by a treating professional with training and experience in child abuse issues; and parenting skills development to include education on developmental stages, age-appropriate sexual and social development of children, and appropriate discipline based upon the developmental stages. Pincince further opined that if [Mother] did not follow through with the recommendations, there would be a much higher risk that [Mother] may not be able to protect either herself or her children from future abusive situations.

⁶ After the termination proceedings were instituted, Mother filed a motion seeking funds to hire a psychologist to perform an evaluation of her; the trial court authorized the expenditure. Dr. Lucinda Pincince performed a psychological examination and recommended mental health therapy to address issues Dr. Pincince identified, including Mother's personal history of victimization, depression, and her need to develop parenting skills. Mother did not undergo such therapy until after the hearing on DCS' petition to terminate her rights had begun; on oral motion by Mother's counsel on the first day of the hearing, the court issued an interim order, postponing the hearing "to allow [Mother] one more opportunity to complete recommended mental health therapy." Mother subsequently attended five thirty-minute therapy sessions at Centerstone with counselor Betsy Harris.

13. Despite Senior Psychological Examiner Pincince issuing her recommendations in October 2013, [Mother] did not seek any mental health therapy of any sort prior to the first day of hearing on the termination of parental rights petition on April 10, 2014. Only after the hearing was scheduled to resume at a later date and the Court noted her failure to obtain mental health therapy did [Mother] begin the recommended mental health therapy. She, however, only went to a few therapy sessions (at Centerstone) and even quit prior to the resumption of the termination of parental rights hearing on October 1, 2014. . . . [Mother] has not taken seriously her need for the recommended mental health therapy. Although she went for a few sessions between the two hearings in the present case, she obviously did so only for the sake of litigation, and has not diligently participated in the needed mental health therapy.

We have reviewed the evidence and conclude that it does not preponderate against the foregoing.

On appeal, Mother asserts that the trial court erred in determining that she had not made an adjustment of circumstances despite the fact that “once she was properly diagnosed, and proper treatment afforded her, she participated in the treatment and met all the goals suggested by the examiner, Dr. Pincince.” In support of these contentions, Mother relies on the testimony of herself, Allison Battles, a therapist at LifeCare, Dr. Pincince, and Betsy Harris, the therapist at Centerstone. We have reviewed the testimony and exhibits to which we have been cited; the testimony is not inconsistent with the court’s findings quoted above.⁷ The testimony does not support a determination that

⁷ Mother testified that she underwent a mental health evaluation at Centerstone in May 2012, where she was told she needed mental health therapy and medication management, but testified that she did not go back for treatment there because she could not afford it; that a DCS caseworker told her about a program at Centerstone, known as Safety Net, which would provide reduced rates for therapy; that she applied for the program but was denied assistance because her income was too high; and that she had a mental health assessment at LifeCare in January 2013, where she qualified for reduced rates.

Mother’s therapist at LifeCare, Allison Battles, testified that Mother attended four therapy sessions and two medication management appointments; that several more appointments were made but Mother canceled them; that Mother’s therapy services were terminated in August 2013 because Mother had been “noncompliant”; and that Mother “had a good prognosis for recovery from the diagnosis of her major depression . . . if she had continued [the mental health therapy].”

A DCS caseworker, Erica Owens, testified that she spoke with Mother several times about mental health therapy; that she spoke with DCS regional office about funding for intake or some therapy sessions after Mother was denied Safety Net assistance because she made too much money; that because Mother did not qualify for Safety Net, DCS could not assist her; that she called AGAPE, another mental health treatment provider, to see if that organization had a program similar to Safety Net, but that she was not sure if

Mother had made an adjustment of circumstances, conduct, or conditions that would make it safe and in the children's best interest to be in her home.⁸

In light of the above, we conclude that the record contains clear and convincing evidence supporting the trial court's holding as to factor (1).

Regarding factor (2), Mother contends that DCS failed to use reasonable efforts to assist her in reunification; provided no assistance to help obtain a divorce; and that DCS did little to assist her in obtaining mental health therapy or alternative treatment.

In its order, the court found as follows with respect to factor (2):

From the time the children were removed from Robert and Delicia B[.]'s custody in May 2012, and for a period of approximately seven months when the Department was relieved by the Juvenile Court, and then the Circuit Court, from using reasonable efforts to reunite the children with [Mother], the Department did use reasonable efforts to reunite the children with [Mother] and help [Mother] remedy the conditions referred to above. The Department arranged for parenting instruction for [Mother], therapeutic visitation with the children, case management services, medical and dental care, and transportation assistance to [Mother] for visitation with the children. The Department had contacted Agape, a mental health agency, to see if they could assist [Mother] with mental health therapy and informed [Mother] of the SafetyNet program to assist [Mother] financially in obtaining mental health therapy. The Department had requested a home study through the Interstate Compact on the Placement of Children on the home of [Mother's] brother in an effort to place the children with [Mother's] family, but the child welfare agency in the state where her

Mother followed through on the inquiry. Ms. Owens also testified that she spoke with Mother in November and December of 2012 regarding DCS paying a utility bill so that Mother could pay for a mental health assessment or a therapy session, but Mother did not apply to see if she qualified; Ms. Owens testified, "we can't pay for something if she hasn't made the effort to see if she was going to qualify or not."

⁸ For instance, Mother's therapist at Centerstone, Betsy Harris, testified that the therapy "went specifically by the recommendations of Dr. Pincince," and that she "provided information that I was told to educate [Mother] on as far as development stages and the sexual development of the children." When asked whether Mother complied with those suggestions and recommendations, Ms. Harris testified, "I was reading through the material that I was educating her on with regards to the development. I gave her a bunch of handouts, and I don't know where — as far as practicing that in her life — I don't know where that went . . ."

brother lived denied placement approval of his home. In addition, the Department has been using reasonable efforts toward meeting the permanency goals for the children, including providing appropriate foster care placement for the children; locating and placement with a pre-adoptive home; providing sex abuse and individual therapy for Telisha B[.]; and providing visitation with the children's parents.

These findings are supported by the testimony and exhibits.

The record shows that Mother participated in the development of the permanency plans, both of which were approved by the court. To the extent Mother asserts that the plans were inadequate to address her needs or that DCS failed to help her with matters that were not a part of the permanency plan, the record does not show that she raised these concerns during the time that the plans were being developed or when it was ratified, that the plans were inadequate. With respect to Mother's objection to DCS's efforts in obtaining mental health treatment for her, the trial court determined that DCS's efforts were adequate, and we have not been cited to evidence that proves otherwise. The record contains substantial evidence that DCS did expend reasonable efforts to achieve the goals of the permanency plan. Further, we note that DCS was ultimately relieved of making reasonable efforts as to Mother, pursuant to Tenn. Code Ann. §36-1-166(g)(4) pursuant to the determination that Mother had subjected Telisha to severe child abuse.

We have carefully reviewed the record and conclude that it clearly and convincingly supports the holding of the Chancery Court that DCS made reasonable efforts to reunite the children with Mother and help her remedy the conditions until the time that DCS was relieved from making reasonable efforts to reunite the family.

As to factor (6), Mother contends that:

In regard to continued association with individuals that could pose a danger[,] there is absolutely no evidence of this. A good deal is made of the fact that Delicia B[,] did not divorce Robert B[,] after his criminal charges. This had no effect on protecting the children if they were returned to the home as he was incarcerated throughout the period of time from his charge until his death [on] June 14, 2013. [The r]ecord clearly establishes that the Appellant was a lady of limited means and the necessities of her situation compelled that she use what limited resources she had to survive and try to obtain appropriate therapy rather than spending money for a divorce at that particular time.

We disagree with Mother's contention that the court's determination was based on her failure to divorce her husband. The court made the following finding pertinent to factor (6):

In addition to remaining married to Robert B[.] until his death in June 2013, Delicia B[.] has continued to associate with, and even expose the children to, persons who have been physically or sexually abusive. She testified her maternal grandfather had sexually molested her as a child, and yet she allowed him to, and even requested that he, visit with the children. In 2013, she began dating a man, Albert M[.], who was divorced from his first wife after an altercation with her and whose physical violence toward his second wife also led to divorce. Ms. B[.] has not only continued her relationship with Mr. M[.], but also had the children take pictures with her and Mr. M[.] at Christmas 2013 and has allowed him to attend visits with the children.

With respect to factor (6), the statute requires the court to consider whether a person residing with Mother "has shown brutality, physical, sexual, emotional, or psychological abuse, or neglect toward the child, or another child or adult in the family or household." In concluding that factor (6) militated in favor of termination, the court took into account the fact that Mother resided with Father until he was jailed. The record makes clear that Father showed brutality and physical abuse toward Mother during the course of their four-year marriage and that he sexually abused Telisha; thus, there is clear and convincing evidence to support the trial court's conclusion.

As to factor (8), whether Mother's mental or emotional status would be detrimental to her children or prevent her from effectively providing safe and stable care and supervision, the following findings of the court are pertinent:

10. On May 4, 2012, Delicia B[.] threatened to commit suicide, but a police detective intervened and she did not complete her threat. It was recommended by the Department and as early as the initial, May 30, 2012, Family Permanency Plan that Delicia B[.] undergo a mental health intake/assessment and follow recommendations from the assessment.

12. After the Department filed its Petition to Terminate Parental Rights on August 15, 2013, Ms. B[.] underwent a psychological evaluation by Senior Psychological Examiner Lucinda Pincince on October 23, 2013. Pincince determined Ms. B[.] needed: therapy to address her personal history of victimization, learn assertiveness and improve her parenting skills; non-offending, parent specific mental health treatment by a treating professional

with training and experience in child abuse issues; and parenting skills development to include education on developmental stages, age-appropriate sexual and social development of children, and appropriate discipline based upon the developmental stages. Pincince further opined that if Ms. B[.] did not follow through with the recommendations, there would be a much higher risk that Ms. B[.] may not be able to protect either herself or her children from future abusive situations.

13. Despite Senior Psychological Examiner Pincince issuing her recommendations in October 2013, Ms. B[.] did not seek any mental health therapy of any sort prior to the first day of hearing on the termination of parental rights petition on April 10, 2014. . . . Ms. B[.] has not taken seriously her need for the recommended mental health therapy. Although she went for a few sessions between the two hearings in the present case, she obviously did so only for the sake of litigation, and has not diligently participated in the needed mental health therapy.

15. In addition to remaining married to Robert B[.] until his death in June 2013, Delicia B[.] has continued to associate with, and even expose the children to, persons who have been physically or sexually abusive. . . .

On appeal, Mother contends the court's finding was not based on clear and convincing evidence, arguing as follows:

[Mother's] lack of progress during the initial period prior to the finding of severe abuse was limited by virtue of the lack of reasonable efforts by [DCS] or the resources available for treatment. When [she] succeeded in obtaining appropriate treatment and a proper evaluation[,] she responded and met all her goals and there was nothing in her psychological profile at that time that would suggest that she could not be an appropriate care taker for her children.

Mother cites to no portion of the record in support of these contentions. From our review of the record and our discussion of factors (1) and (2), *supra*, we conclude that the record contains clear and convincing evidence detailed in the court's findings in support of the court's holding that "Delicia B[.]'s mental or emotional status would be detrimental to the children or prevent her from effectively providing safe and stable care and supervision for the children."

As to factor (9), the court found as follows:

[Mother] lacks sufficient income to support herself and three children. She was unemployed when the children were placed into the Department's custody in May 2012. She began working part-time, at minimum wage, at Hardees [restaurant] thereafter, but was fired from that job in 2013. She was unemployed until January 2014, when she began working, part-time and at minimum wage, as a cashier at a convenience store. Her hours of work had been reduced substantially at the time of the October 1, 2014, hearing. [Mother], in fact, has not even been paying her court-ordered child support obligations. In mid-January 2013, she was ordered, again, to pay \$216.66 per month in child support. [Mother], however, did not pay the court ordered child support and, consequently, was incarcerated in the spring of 2014 for contempt due to not paying her court-ordered child support.

Mother contends that the court erred in concluding that factor (9) weighed in favor of terminating her parental rights because "she was making child support payment[s] in accordance with her ability to pay." As we perceive her argument on appeal, Mother addresses the court's finding that she lacks sufficient income to support herself and her three children by arguing in her brief that "two of the three children would be eligible for social security death benefits as a result of the suicide of their father, Robert B[.]"; that "she received assistance from family"; and that "she was eligible for receiving food stamps and, based on the number in her household, would receive greater food stamp benefits."⁹

In our review of the record, we note that Mother testified that she had gotten behind in her child support payments when she did not have a job; that after getting a job, she did not pay child support in the months of January or February 2014; that she was arrested and charged with contempt of court for not paying child support; that her grandfather paid \$1,000 on her behalf to purge the contempt. She also testified that she relied on her family for financial assistance and that she had let her food stamp benefits lapse.¹⁰

⁹ Mother does not make citations to the record in support of these contentions relating to the sufficiency of her income.

¹⁰ Mother's testimony included the following exchange:

Q. Okay. So your grandparents assist you financially?

A. Yes.

Q. And you can expect it that would continue if ever at some point in the future you [had]

Ms. Lamprecht, a DCS family services worker, testified that Mother was ordered to pay child support but had not been paying the full amount; that Mother's child support "payments have not come in consistently" during her time working with the family since March 2013. Ms. Lamprecht also testified that she thought Mother and the children could be eligible for social security benefits due to the death of Robert S. but could not state with certainty that they were eligible; that she did not know if those benefits had been applied for by or on behalf of Mother; and that their eligibility for food stamps would be up to the Department of Human Services.

Neither the testimony to which Mother cites nor any part of the record before us preponderates against the court's conclusion that "Delicia B[.] has not paid child support consistent with the child support guidelines." Mother was ordered to pay child support beginning in January 2013. During 2013 Mother did not consistently pay support, and the amount she paid in 2014 was less than she was ordered to pay. The testimony of Mother pertaining to food stamps and of Ms. Lamprecht pertaining to the death benefits and food stamps that Mother may be eligible to receive was speculative; neither witness could testify whether Mother would receive such benefits or in what amount. We therefore conclude that the evidence clearly and convincingly supports the trial court's holding as to factor (9).

Although not called into question by Mother on appeal, we have also reviewed the record in light of the court's finding as to factor (5), the effect a change of caretakers and physical environment will have on the children, and conclude that the record clearly and convincingly supports the trial court's holding that factor (5) weighed in favor of termination.

The court found that the children have been placed "in a foster home where the foster parents and children love each other and emotionally are bonded. The foster parents are able to and are, in fact, taking good care of the children and want to adopt them."

The record supports this finding, particularly the testimony of the current foster father, who testified that: he and his wife are both employed at full-time jobs and have sufficient income to pay their expenses as well as those of their two biological children ages 12 and 11, and the three foster children; that the foster children had been placed in his home in May 2014 and that all five children "get along real well"; that the foster

your children at home?

A. Yes, sir.

Q. And you receive food stamps?

A. Yes, sir. Well -- not yet, because I got to [go] back and redo that. I did let that lapse.

children had expressed to him that they did not want to visit their mother; that he and his wife have stopped telling the children when visitation with Mother would occur because they would appear “very on edge, very uneasy” and the two boys would wet the bed. The foster father testified that he and his wife love the children, who call him “Dad” and his wife “Mom,” and that they want to adopt the children.

Additionally, Ms. Lamprecht testified that the children are “very happy” in the foster parents’ home; are “very bonded” with the foster family; call the foster parents “mom” and “dad,” which “[t]hey picked that up on their own.” She also testified that “[i]t would be detrimental to the children if they have to be removed from the home, because that is their home and their family.” Mother testified that the children had not communicated any dissatisfaction with the foster home to her during visitation. We therefore conclude that the court’s holding as to factor (5) is supported by clear and convincing evidence.

III. CONCLUSION

Considering the evidence in its entirety, there is clear and convincing evidence in support of the court’s factual findings and the holding that termination of Mother’s parental rights was in the children’s best interest. The judgment of the trial court is, accordingly, affirmed.

RICHARD H. DINKINS, JUDGE