RIN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 10, 2016

IN RE MATTHEW T.

Appeal from the Juvenile Court for Smith County
No. 2014CV201 Michael W. Collins, Judge

No. M2015-00486-COA-R3-PT – Filed April 20, 2016

The parents of a son born in May 2013 appeal the termination of their parental rights. In December 2013, the son was removed from his parents' custody after law enforcement discovered that he was living in a home with two methamphetamine labs. After a hearing, the juvenile court entered an order finding that the son was dependent and neglected and that the parents had committed severe abuse as defined in Tenn. Code Ann. § 37-1-102(b)(21). Parents did not appeal this order. Three permanency plans were created, all of which required the parents to maintain contact with the Department of Children's Services, notify the Department of changes in their address or phone number, submit to and test negative on unannounced drug screens, and pay child support. In August 2014, the Department filed a petition for termination of parental rights. The trial court conducted a hearing, which the parents did not attend even though they knew of the date. An employee of the Department was the only witness to testify. She testified that the parents had not updated their contact information, maintained contact with the Department, or engaged in much visitation with their son. In addition, the father did not complete a drug treatment plan, admitted to using illegal drugs, and tested positive for drugs. After the hearing, the court found that the following grounds for termination had been established by clear and convincing evidence: abandonment, substantial noncompliance with a permanency plan, persistence of conditions, and severe abuse. The court also found that termination of parental rights was in the son's best interest. Parents appealed. In accordance with *In re Carrington H.*, --- S.W.3d ---, No. M2014-00453-SC-R11-PT, 2016 WL 819593, at *12-13 (Tenn. Jan. 29, 2016), we have reviewed the trial court's findings related to all of the grounds for termination and the best interest of the child and conclude that termination is appropriate based on abandonment, substantial noncompliance, severe abuse, and persistence of conditions. We also hold that termination is in the son's best interest. Accordingly, we affirm.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Brandon J. Cox, Smithville, Tennessee, for the appellant, Matthew T.[1]

Gayla C. Hendrix, Smithville, Tennessee, for the appellant, Erica T.

Herbert H. Slatery III, Attorney General and Reporter, and Rebekah A. Baker, Senior Counsel, Nashville, Tennessee, for the appellee, State of Tennessee Department of Children's Services.

Jean Ann Hall, Hartsville, Tennessee, guardian *ad litem* for the minor, Matthew T.

OPINION

Matthew T. ("Father") and Erica T. ("Mother") are the parents of a son, Matthew ("Son"), who was born in May 2013. The Tennessee Department of Children's Services (the "Department") removed Son from Parents' custody and placed him in foster care on December 10, 2013, after law enforcement agents discovered two methamphetamine labs in the residence that Parents and Son shared.

On April 21, 2014, the juvenile court entered an "Adjudicatory and Dispositional Hearing Order," in which it determined that Son was dependent and neglected.[2] The trial court based this determination on the following findings:

> [The Department] received a referral of abuse or neglect of a child based upon drug exposed child. The referral was assigned to [a case manager] for purpose of investigation. The investigation revealed that there was drug use in the home which is unsuitable for children. [The Department] placed [Son] in foster care on December 10, 2013.

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

[2] Generally, there are three types of hearings in dependency and neglect cases: preliminary hearings, adjudicatory hearings, and dispositional hearings. *See In re Audrey S.*, 182 S.W.3d 838, 874 (Tenn. Ct. App. 2005); Tenn. R. Juv. P. 16, 28, 32. In adjudicatory hearings, the court must determine whether the factual allegations of the petition are true and whether the evidence supports a finding that a child is dependent or neglected. *See* Tenn. R. Juv. P. 28(a). In a dispositional hearing, the court is to "design an appropriate plan to meet the needs of the child and to achieve the objectives of the state in exercising jurisdiction." Tenn. R. Juv. P. 32. Dispositional hearings must be "separate and distinct" from adjudicatory hearings, but a dispositional hearing may be held immediately following an adjudicatory hearing at the discretion of the court. *See* Tenn. R. Juv. P. 32(a).

. . . .

> Upon [the case manager and a law enforcement agent] entering the back bedroom, [Parents and Son] were coming down the stairs from the upstairs bedroom. Everyone at the residence consented to taking a urine drug screen. [Mother] tested positive for THC and admitted approximately a week ago she took two hits off a joint. She was negative for all other drugs. [Father] admitted that he used methamphetamines approximately five to six days prior. [Father] tested positive for amphetamines and methamphetamines on a urine drug screen.
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> . . . .
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> [Father] gave law enforcement consent to search the upstairs of the residence. Law enforcement searched the residence and located two meth labs in an upstairs room. There were numerous items also located upstairs which are used to manufacture methamphetamine. [The case manager] received a copy of the incident report and pictures listing all items found . . . .

The court also found that Son was a victim "of severe child abuse as defined at T.C.A. 37-1-102(21) [sic], perpetrated by [Mother and Father]." *See* Tenn. Code Ann. § 37-1-129(a)(2) (providing that if the court finds that a child was dependent and neglected, it must "determine whether the parents . . . or another person who had custody of the child committed severe child abuse."). Further, the Adjudicatory and Dispositional Hearing Order stated that it "is a final order as to [Parents], and any appeal from this order must be made to the Circuit Court within ten days, excluding non-judicial days, of the entry of this order." Parents did not appeal that order.

Three permanency plans were developed, all of which were ratified by the court. The first plan was developed on December 12, 2013, and ratified on March 17, 2014. Both Mother and Father signed the first plan and participated in its development. The second plan was developed on April 7, 2014, and ratified on July 21, 2014. Mother participated in developing the second plan, but Father did not. The third plan was developed on August 7, 2014, and ratified on August 18, 2014.

All three plans required Father and Mother to submit to an alcohol and drug assessment and to follow all the recommendations that resulted from the assessment. Each plan also required that Parents submit to and test negative on announced and unannounced drug screens, undergo announced and unannounced home visits, notify their case manager of any change in their phone number or address within three days, maintain weekly contact with their case manager, pay child support, and show proof of legal means of income.

The Department filed a petition for termination of parental rights on August 14, 2014. The termination hearing occurred on January 27, 2015. Although the attorneys for Mother and Father stated that their clients had been notified of the hearing date, Mother and Father were not present at the proceedings. At the beginning of the hearing, all three permanency plans and several prior court orders were introduced into evidence. Danielle Hess, a family service worker for the Department, was the only witness who testified.

Ms. Hess testified that Parents had not maintained weekly contact with her or updated their contact information as required by the permanency plans. She described the difficulty she had when trying to contact Parents as follows:

> [Parents] had 12 different phone numbers over the course of the year that I had them. . . . They had different addresses, and when I would go to the address, the people would say [Parents] weren't living there. At one point in July, [Father] said he wasn't going to give me his address.

Ms. Hess testified that Mother and Father were incarcerated from late-July 2014 to late-December 2014. In the four months prior to their incarceration—the end of March 2014 to July 2014—Parents had visited Son three times: on April 1 for one-and-a-half hours; on April 21 for one-and-a-half hours; and on July 7 for an unknown amount of time. In addition, Mother visited Son by herself on July 21, 2014, for "a short visit after court." Ms. Hess stated that Parents "have always had open visitation at the foster home." However, according to Ms. Hess, Parents said it was difficult for them to visit Son because of "some transportation issues." In response, the Department established a plan allowing visitation to occur at a more convenient location for Parents, but "the visitations still weren't able to occur."

When asked whether Parents contributed to Son's support during the four months prior to their incarceration, Ms. Hess responded: "To my knowledge, they didn't. I know they didn't bring anything for the child, but as far as paying child support, not to my knowledge." Ms. Hess also stated that Parents knew of their obligation to pay child support and did not offer any excuse as to why they could not pay support.

Ms. Hess testified that Mother quit her job "at the end of February, early March" and that she did not remember why Mother did so. Ms. Hess also testified that Father had said that "he was traveling all over the state doing flooring . . . but there was no proof of income or anything provided." Ms. Hess agreed that Mother was unemployed during the relevant time period and that she did not have any proof that Father was working during that period. Ms. Hess stated that Parents had the ability to pay support because: "It appeared they always had new clothes and very nice clothes. They were going somewhere, because I have several phone numbers that [Father] had used. And several of them were land lines that were out of state. So he had money to go somewhere."

Although unannounced drugs screens were a requirement of all three permanency plans, Ms. Hess testified that she was never able to perform an unannounced drug screen on Father. However, a number of drug screens did occur "on [Father's] terms." Parents were initially screened when Son was removed from their custody on December 10, 2013. Both of their tests were positive, Mother's for marijuana and Father's for amphetamine and methamphetamine. All of Mother's subsequent drug screens were negative.

Father admitted to using methamphetamine in January 2014. In addition, Father was screened in March, July, and August of 2014. Father's March 2014 screen was negative, but he admitted that he had used marijuana. In his most recent drug screen, conducted on August 20, 2014, Father tested positive for methamphetamine, amphetamine, and cocaine.

Ms. Hess testified that Mother and Father were living in Arkansas at the time of the hearing. Although Parents were on probation for charges related to the December 2013 search of their residence, Mother and Father had not notified their probation officer that they had moved to Arkansas. Ms. Hess stated that Parents' failure to notify their probation officer could result in additional incarceration.

According to Ms. Hess, Mother stated that she was living with her parents separately from Father. Mother had also obtained employment and provided proof of income. However, Ms. Hess also testified that Mother "reported her mother and father used to use pills and alcohol" and that Mother was "pretty sure they still do pills." Further, Ms. Hess stated that Mother and Father "were separate only by address. They are not claiming that they are separate in lifestyle or marriage or anything." Ms. Hess also stated that Parents had lied about living separately before:

> [Father and Mother] had told me during the case that they were no longer together. However, once [Father] became incarcerated, then he said that they just told me that, hoping that I would be gullible enough to return the child to [Mother] and that they could go on their merry way.

After the hearing, the trial court issued an order finding that termination of parental rights was appropriate based on abandonment, substantial noncompliance with the permanency plan, persistence of the conditions that led to the child's removal, and severe abuse. The court also found that termination was in the best interest of the child, terminated Mother and Father's parental rights, and awarded custody of Son to the Department. Mother and Father appealed.

STANDARD OF REVIEW

"Parents have a fundamental constitutional interest in the care and custody of their children under both the United States and Tennessee constitutions." *Keisling v. Keisling*, 92 S.W.3d 374, 378 (Tenn. 2002) (citing *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972)). This interest is not absolute, and "parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982)); *see* Tenn. Code Ann. § 36-1-113(c). Clear and convincing evidence "enables the fact finder to form a firm belief or conviction regarding the truth of the facts and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (internal citations omitted).

When reviewing cases involving the termination of parental rights, this court must determine "whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence." *In re B.A.C.*, 317 S.W.3d 718, 724 (Tenn. Ct. App. 2009) (quoting *In re F.R.R. III*, 193 S.W.3d 528, 530 (Tenn. 2006)). Accordingly, we 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." *In re F.R.R., III*, 193 S.W.3d at 530 (quoting Tenn. R. App. P. 13(d)). In contrast, we review the trial court's conclusions of law de novo, without a presumption of correctness. *In re Bernard T.*, 319 S.W.3d at 597.

After reviewing the trial court's findings of fact, this court "must then make its own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim." *Id.* at 596-97.

ANALYSIS

In order to terminate the parental rights of a biological parent, "a petitioner must prove two elements by clear and convincing evidence: (1) at least one of the listed grounds for termination, and (2) that termination of parental rights is in the child's best interest." *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (citing Tenn. Code Ann. § 36-1-113(c)).

After the parties submitted briefs in this case, the Tennessee Supreme Court clarified the scope of review in appeals from orders terminating parental rights. *See In re Carrington H.*, --- S.W.3d ---, No. M2014-00453-SC-R11-PT, 2016 WL 819593, at *12-13 (Tenn. Jan. 29, 2016). The Supreme Court held that "the Court of Appeals must review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges

these findings on appeal." *Id.* at *13 (citing *In re Angela E.*, 303 S.W.3d 240, 251 n.14 (Tenn. 2010)). Accordingly, we will review the trial court's findings as to each ground for termination and its best interest determination, whether those findings were challenged or not. *See id.*

Parents contend that this case should be remanded because the trial court failed to make specific findings of fact and conclusions of law as required by Tenn. Code Ann. § 36-1-113(k). They also challenge the existence of grounds for termination and the trial court's best interest determination.

I. SUFFICIENCY OF THE TRIAL COURT'S ORDER

In proceedings to terminate parental rights, trial courts must "enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing." Tenn. Code Ann. § 36-1-113(k). Specific findings of fact and conclusions of law "facilitate appellate review and promote just and speedy resolution of appeals." *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). When a trial court fails to comply with this requirement, appellate courts "must remand the case with directions to prepare the required findings of fact and conclusions of law." *Id.*

"[F]indings of fact, conclusions of law, opinions, and orders prepared by trial judges themselves are preferable to those prepared by counsel." *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 314 (Tenn. 2014) (discussing findings of fact and conclusions of law in the context of Tenn. R. Civ. P. 56.04). Notwithstanding this preference, the filing of proposed orders by counsel for the parties is still permitted. *See id.* at 315.

> There are, to be sure, acceptable reasons for permitting trial courts to request the preparation of proposed findings of fact, conclusions of law, and orders. They can promote the expeditious disposition of cases, and they may, when used properly, assist the trial court in placing the litigants' factual and legal disputes in sharper focus. In the final analysis, *the ultimate concern is the fairness and independence of the trial court's judgment.*

Id. at 316 (footnote omitted and emphasis added). When a trial court accepts party-prepared findings of fact and conclusions of law, it must take care that two conditions are met. *Id.* at 315-16. "First, the findings and conclusions must accurately reflect the decision of the trial court. Second, the record must not create doubt that the decision represents the trial court's own deliberations and decision." *Id.* at 316.

At the end of the hearing, the trial court reviewed the petition, made oral findings about which grounds had been proven, and signed a written order. Parents argue that the trial court's oral ruling does not contain specific findings of fact and conclusions of law.

Parents also note that the written order was "drafted and submitted unilaterally by counsel for [the Department]" and contend that it does not reflect the trial court's own ruling. Both of these arguments are unavailing.

It is well-settled that a court speaks only through its written judgments. *See Green v. Moore*, 101 S.W.3d 415, 420 (Tenn. 2003). Thus, when this court reviews a case involving the termination of parental rights, it is concerned with whether the trial court's final written order satisfies Tenn. Code Ann. § 36-1-113(k). *See In re Adoption of M.P.J.*, No. W2007-00379-COA-R3-PT, 2007 WL 4181413, at *9 (Tenn. Ct. App. Nov. 28, 2007); *In re B.L.R.*, No. W2004-02636-COA-R3-PT, 2005 WL 1842502, at *11 (Tenn. Ct. App. Aug. 4, 2005). Consequently, the specificity of the trial court's oral ruling is not directly at issue here, and Parents' argument that the trial court's oral statements were not sufficiently specific cannot be the basis for reversal.

Instead, we focus on the trial court's written order, which we have determined satisfies the statutory requirements. The record indicates that the trial court deliberated and made its own decision. At the end of the termination hearing, the trial court examined the petition for termination and made oral findings that several of the grounds alleged in the petition had been proven by clear and convincing evidence and that termination of parental rights was in the best interest of the child. The court then signed and entered a written order containing more specific findings of fact and conclusions of law about the grounds for termination and the best-interest factors. Having reviewed the court's oral findings and those set forth in the final order, we find the differences minor and no basis for reversal. *See In re Adoption of M.P.J.*, 2007 WL 4181413, at *9 n.8 (rejecting the parent's argument that the trial court failed to make findings of fact because the order at issue was drafted by the attorney for another party).

Based on the foregoing, we have concluded that the trial court complied with the requirements of Tenn. Code Ann. § 36-1-113(k).

II. GROUNDS FOR TERMINATION

Tenn. Code Ann. § 36-1-113(c) requires the party seeking termination of parental rights to establish that at least one of the statutorily-enumerated grounds for termination exists by clear and convincing evidence. *See In re Angela E.*, 303 S.W.3d at 250-51. The petitioner need only establish one ground for termination, after which the trial court will determine whether termination is in the child's best interest. *See id.* at 251.

Here, the trial court found that the following grounds for termination had been established by clear and convincing evidence: abandonment, substantial noncompliance with the responsibilities of the permanency plan, persistence of the conditions that led to the child's removal, and severe abuse. *See* Tenn. Code Ann. § 36-1-113(g)(1)-(4). We

will address each of these grounds in turn. *See In re Carrington H.*, --- S.W.3d ---, 2016 WL 819593, at *13.

A. Abandonment

The trial court found that the parents had abandoned Son as defined in Tenn. Code Ann. §§ 36-1-102(1)(A)(ii) and (iv). Parents contend that both findings are erroneous.

1. Abandonment by Failure to Provide a Suitable Home

The trial court found that Parents had abandoned Son by failing to provide him with a suitable home. Under this definition, abandonment occurs when:

> The child has been removed from the home of the parent or parents . . . as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child . . . and the child was placed in the custody of the department or a licensed child-placing agency . . . and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent or parents . . . to establish a suitable home for the child, but that the parent or parents . . . 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[.]

Tenn. Code Ann. § 36-1-102(1)(A)(ii).

This section explicitly requires the Department to make "reasonable efforts" to assist a parent in establishing a suitable home. *Id.* "Reasonable efforts entail more than simply providing parents with a list of service providers and sending them on their way." *State, Dep't of Children's Servs. v. Estes*, 284 S.W.3d 790, 800-01 (Tenn. Ct. App. 2008). Instead, the Department's employees "must use their superior insight and training to assist parents with the problems the Department has identified in the permanency plan, whether the parents ask for assistance or not." *Id.* at 801.

However, the Department does not bear the obligation to establish a suitable home alone, and parents must make their own efforts at reunification. *See In re C.L.M.*, M2005-00696-COA-R3-PT, 2005 WL 2051285, at *9 (Tenn. Ct. App. Aug. 25, 2005) (noting that "reunification is a 'two-way street'"). Indeed, the statute itself states that when a parent is aware that his or her child is in the Department's custody, the Department's

efforts may be found reasonable "if such efforts exceed the efforts of the parent . . . toward the same goal . . . ." *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). Consequently, in most cases a parent's efforts to establish a suitable home must be at least as great as the Department's. *See id.*

A suitable home requires more than an adequate physical space. *See In re A.D.A.*, 84 S.W.3d 592, 599 (Tenn. Ct. App. 2002). Appropriate care and attention must be given to the child. *See id.* Accordingly, a parent's compliance with counseling requirements is "directly related to the establishment and maintenance of a suitable home." *See In re M.F.O.*, No. M2008-01322-COA-R3-PT, 2009 WL 1456319, at *5 (Tenn. Ct. App. May 21, 2009). In addition, a suitable home must be free from drugs. *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *9 (Tenn. Ct. App. June 10, 2014) (citing *State, Dep't of Children's Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at *3 (Tenn. Ct. App. Nov. 29, 2007)).

Parents argue that the Department failed to make reasonable efforts to help them provide a suitable home, and they correctly note that the affidavit of reasonable efforts is not contained in the record. However, the failure to file an affidavit of reasonable efforts "is not fatal if the Department introduces competent evidence specifically identifying the services required in the permanency plan, the services actually provided to the parents, and the outcomes of these services." *In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at *8 (Tenn. Ct. App. Mar. 9, 2004).

Here, Ms. Hess testified that the Department made reasonable efforts to assist Parents and that Parents did not make their own reasonable efforts to establish a suitable home for four months following removal. She also described specific efforts that the Department made to assist Parents. The Department held "child and family team meetings," arranged for an alcohol and drug assessment to take place in Parents' home, arranged for Parents to have mental health assessments, and moved visitation to a more convenient location when Parents said that they were having difficulty with transportation. The Department acquired funding for a psychological assessment of Father and arranged for him to have grief counseling sessions while he was incarcerated. Ms. Hess also drove Father to an inpatient drug treatment facility so that he could complete the counseling recommended by his alcohol and drug assessment.

The Department was able to make these efforts despite the communication difficulties that Parents themselves created. Parents did not maintain weekly contact with Ms. Hess or notify the Department when their addresses or phone numbers changed. Parents had twelve different phone numbers during the year that Ms. Hess was their case manager, and their addresses changed as well. At one point, Father refused to give Ms. Hess his current address. Under these circumstances, the evidence supports the finding that the Department made reasonable efforts to assist Parents in establishing a suitable home.

The evidence also supports the findings that Parents "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." *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). At the time of the termination hearing, Son had been in the Department's custody for over one year. Father had failed his most recent drug screen, admitted to drug use, and had not completed the recommendations of his alcohol and drug assessment.[3] The evidence showed that Father continues to use illegal drugs, and as long as that is the case, he cannot establish a suitable home for Son. *See In re Hannah H.*, 2014 WL 2587397, at *9.

Mother clearly made greater efforts than Father. She tested negative on all the drug screens administered after December 10, 2013, completed her alcohol and drug assessment, and did not have any recommendations from that assessment. Further, Ms. Hess agreed that Mother did not appear to have a drug problem.

However, Mother did not maintain weekly contact with the Department or update her address and phone number when necessary as required in the permanency plans. Consequently, she effectively prevented the Department from determining whether she established a suitable home. *See In re Nicholas G.*, No. W2014-00309-COA-R3-PT, 2014 WL 3778813, at *6 (Tenn. Ct. App. July 31, 2014) (holding that the parent's failure to cooperate with the Department's attempt to conduct a home study, in conjunction with other circumstances, provided clear and convincing evidence to support the ground of abandonment as defined in Tenn. Code Ann. § 36-1-102(1)(A)(ii)); *In re Hannah H.*, 2014 WL 2587397, at *9 (concluding that failure to provide a suitable home was established in part because the parent "did not provide documentation of housing or employment on a regular basis."); *State, Dept. of Children's Servs. v. V.E.F.*, No. M2008-01514-COA-R3-PT, 2009 WL 605146, at *4 (Tenn. Ct. App. Mar. 9, 2009) ("[T]he parent has a corresponding duty to communicate with the Department and to actively cooperate in [the efforts to establish a suitable home]."). A suitable home is more than a physical space, but an appropriate physical space is necessary nonetheless, and it is important for the Department to know the location of that space in order to determine if it is adequate.

[3] Father notes that his August 20, 2014, drug screen came from body hair rather than hair from his head. Ms. Hess testified that drug tests using body hair can detect drugs from one year prior to the test. Based on this testimony, Father contends that the August 2014 drug test detected his drug use on December 10, 2013, and does not demonstrate that he continued using drugs after that date. However, the record reveals that a body-hair sample was required because Father kept shaving his head in violation of court order requiring him to allow the hair on his head to grow so that a sample could be obtained. Thus, the only reason that a body-hair sample was used was because of Father's own non-compliance with a court order. Further, Father admitted to using illegal drugs on at least two occasions after December 2013: January and March of 2014. Consequently, the evidence supports the finding that Father has continued using illegal drugs.

Based on the foregoing, the record supports the finding that the Department made reasonable efforts to help Parents establish a suitable home after Son's removal. The evidence also supports the findings that Parents made no reasonable efforts to provide a suitable home and demonstrated a lack of concern for the child. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). Therefore, we have determined that the Department established this ground for termination by clear and convincing evidence.

2. Abandonment by Willful Failure to Support or Visit

The trial court also found that Parents had abandoned Son as defined in Tenn. Code Ann. § 36-1-102(1)(A)(iv). Under this definition, abandonment occurs when:

> A parent . . . has been incarcerated during all or part of the four (4) months immediately preceding the institution of [an action to terminate parental rights], and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(iv).

This form of abandonment "can be established by showing that a parent *either* willfully failed to visit *or* willfully failed to provide support." *In re Karma S.C.*, No. E2013-02198-COA-R3-PT, 2014 WL 879155, at *4 (Tenn. Ct. App. Mar. 5, 2014) (citing *In re Audrey S.*, 182 S.W.3d at 863) (emphasis added). Whether a parent has failed to visit or support a child is question of fact. *In re Adoption of Angela E.*, 402 S.W.3d 636, 640 (Tenn. 2013). Whether that failure to visit or support constitutes willful abandonment is a question of law. *Id.*

The willfulness of a parent's conduct depends on that parent's intent, which is seldom capable of being established with direct evidence. *In re Noah B.B.*, No. E2014-01676-COA-R3-PT, 2015 WL 1186018, at *5 (Tenn. Ct. App. Mar. 12, 2015), *no perm. app. filed*. Instead, willfulness must often be inferred from circumstantial evidence. *Id.* Thus, in order to demonstrate that a parent's failure to visit or support was "willful," petitioners must prove that the parent was aware of his or her duty to visit or support, had the capacity to do so, made no attempt to do so, and had no justifiable excuse for not doing so. *See In re Adoption of Angela E.*, 402 S.W.3d at 640; *In re Audrey S.*, 182 S.W.3d at 864.

Important factors that bear upon capacity to support include a parent's "employability, earning history, assets, or disposable income . . . ." *See In re Aaron E.*, No. M2014-00125-COA-R3-PT, 2014 WL 3844784, at *6 (Tenn. Ct. App. Aug. 4, 2014). When such evidence is not adduced at trial, this court may not be able to determine whether the failure to support a child was willful. *See In re Noah B.B.*, 2015 WL 1186018, at *9 (noting that the reviewing court was unable to determine whether the mother had the capacity to support her child when "[t]he record contain[ed] no evidence regarding [the mother's] financial means, expenses, or obligations during the relevant four month period."). In addition, a parent's unemployment does not necessarily mean that his or her failure to pay support was willful. *See In re M.P.J.*, No. E2008-00174-COA-R3-PT, 2008 WL 3982912, at *10 (Tenn. Ct. App. Aug. 27, 2008). When parents are unemployed, the question becomes whether that unemployment is involuntary. *Id.*

In the child support context, a determination of voluntary unemployment "*may be* based on any intentional choice or act that adversely affects a parent's income." Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I) (emphasis added). This language is permissive and indicates that not every intentional choice must be considered voluntary unemployment. *See id.*; *State ex rel. C.M. v. L.J.*, No. M2005-02401-COA-R3-JV, 2007 WL 1585170, at *2 (Tenn. Ct. App. May 31, 2007).[4] For example, parents may not be willfully underemployed when they work at a lower-paying job if their reasons for working at that job are reasonable and in good faith. *Richardson v. Spanos*, 189 S.W.3d 720, 726 (Tenn. Ct. App. 2005). Thus, the reasons motivating a parent's employment decision have some bearing on the determination of whether they are voluntarily unemployed. *See id.*

At trial, Ms. Hess testified that, to her knowledge, Parents had not paid any child support. Ms. Hess also testified that Father "was traveling all over the state doing flooring" but did not provide proof of income. Ms. Hess agreed that Mother was unemployed during the relevant time period. She also stated that she had no proof that Father was employed during that period. Ms. Hess testified that Parents had the ability to

[4] Like a few other cases, *State ex rel. C.M. v. L.J.* held that "the mere fact a parent is incarcerated for committing a crime is insufficient to sustain a finding that the commission of the crime constitutes a willful or voluntary attempt to be underemployed or unemployed for purposes of child support." *State ex rel. C.M. v. L.J.*, 2007 WL 1585170, at *3. Subsequently, the Child Support Guidelines were revised to state that "criminal activity and/or incarceration *shall* result in a finding of voluntary underemployment or unemployment under this section . . . ." Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I) (emphasis added); *see State ex rel. Laxton v. Biggerstaff*, No. E2009-01707-COA-R3-JV, 2010 WL 759842, at *5 (Tenn. Ct. App. Mar. 5, 2010). However, with respect to non-criminal activity, the Child Support Guidelines still contain permissive language stating that any intentional choice "may be" the basis for a finding of voluntary unemployment. *See* Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I). Consequently, unless it is a decision to engage in criminal activity, not every intentional choice a parent makes must necessarily be the basis for a finding of voluntary unemployment. *See id.*

pay support because "they always had new clothes and very nice clothes" and because several of the phone numbers that Father provided were for out-of-state landlines.

The evidence preponderates in favor of the trial court's findings that Mother and Father failed to provide Son with financial support. However, the evidence adduced at trial does not leave this court with a definite and firm conviction that this failure was willful. The evidence at trial was that Mother was unemployed because she quit her job, but there was no evidence presented about why Mother quit her job. Without any evidence about Mother's reason for stopping work, we cannot determine whether she was voluntarily unemployed.[5] *See In re M.P.J.*, 2008 WL 3982912, at *10; *Richardson*, 189 S.W.3d at 726; Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(a)(2)(ii)(I).

Furthermore, the record is almost completely devoid of any evidence of either Mother or Father's "employability, earning history, assets, or disposable income." *See In re Aaron E.*, 2014 WL 3844784, at *6. The only evidence that Parents had the ability to support Son was Ms. Hess's testimony that Parents always had nice, new clothes and provided phone numbers to phones located outside of Tennessee. This evidence does not leave this court with a definite and firm conviction that Parents' failure to pay child support was willful. Accordingly, the Department did not establish by clear and convincing evidence that Parents abandoned Son by willfully failing to support him.[6]

The trial court also found that Parents had abandoned Son by willfully failing to visit him. Willful failure to visit a child occurs when parents fail to visit or engage in more than "token visitation." *See* Tenn. Code Ann. § 36-1-102(1)(E) (defining "[w]illfully failed to visit"). "Token visitation" means "that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or *visitation of such an infrequent nature or of such short duration* as to merely establish minimal or insubstantial contact with the child." Tenn. Code Ann. § 36-1-102(1)(C) (emphasis added). This court has held that "two hour-long visits over four months" constitute token visitation. *In re T.L.*, No. E2004-02615-COA-R3-PT, 2005 WL 2860202, at *10 (Tenn. Ct. App. Oct. 31, 2005); *see also In re Jamontez S.*, M2013-00796-COA-R3-PT, 2013 WL 5302503, at *5 (Tenn. Ct. App. Sept. 17, 2013) (concluding that the evidence supported the trial court's finding that two visits in the

[5] Although the failure to support may be willful when a parent is able to work and not actively pursuing steady work or other legal income during a period of unemployment, *see In re Aaron E.*, No. M2014-00125-COA-R3-PT, 2014 WL 3844784, at *6 (Tenn. Ct. App. Aug. 4, 2014), there was no evidence presented about whether Mother was seeking work or not.

[6] We note that the Department's brief does not raise any argument in support of the finding that Parents willfully failed to support Son. Instead, the Department has confined its argument on this ground to the finding that Parents willfully failed to visit Son by engaging in only token visitation.

four-month period preceding the filing of a petition to terminate parental rights was token visitation).

Here, the evidence demonstrates that Parents visited Son three times in the four months before they were incarcerated. Two of these visits were for less than two hours, and the third was for an unknown amount of time. In addition, Mother visited Son one additional time for "a short visit after court." No visitation occurred at all in May and June of 2014. Ms. Hess testified that there was "open visitation" and that the Department moved visitation to a more convenient location for Parents after they complained of transportation difficulties.

After reviewing the record, we are left with a definite and firm conviction that Parents' visits were so infrequent and of such short duration that they represent token visitation. *See* Tenn. Code Ann. §§ 36-1-102(1)(C) and (E); *In re T.L.*, 2005 WL 2860202, at *10; *see also In re Jamontez S.*, 2013 WL 5302503, at *5. Accordingly, the trial court did not err when it concluded that Parents had abandoned Son by willfully failing to visit him during the relevant period. This ground for termination was established by clear and convincing evidence.

B. Substantial Noncompliance with Permanency Plan

The trial court found that termination was appropriate because parents were substantially noncompliant with the permanency plans. *See* Tenn. Code Ann. § 36-1-113(g)(2).

In order to succeed on this ground, the Department must make two showings. First, it must demonstrate that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parents' custody initially. *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004); *see* Tenn. Code Ann. § 37-2-403(a)(2)(C). In order to satisfy this requirement, the trial court must make a finding that the plan's requirements are reasonable "in conjunction with the determination of substantial noncompliance under [Tenn. Code Ann.] § 36-1-113(g)(2)." *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002).

Second, the Department must demonstrate that the "noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met." *In re M.J.B.*, 140 S.W.3d at 656. "Substantial" means "[o]f real worth and importance." *In re Valentine*, 79 S.W.3d at 548 (quoting *Black's Law Dictionary* 1428 (6th ed. 1990)). Thus, "[t]rivial, minor, or technical deviations" from the requirements of a permanency plan do not amount to substantial noncompliance. *In re M.J.B.*, 140 S.W.3d at 656. Terminating parental rights based on substantial noncompliance "requires more proof than that a parent has not complied with every jot and tittle of the permanency plan." *Id.*

Here, the child's removal from Parents' custody was necessitated by the unsafe living conditions and illicit drugs to which the child was exposed. The permanency plans attempted to remedy these conditions by requiring Parents to follow the recommendations of their alcohol and drug assessments and submit to, and test negative on, announced and unannounced drug screens. In addition, Parents were required to maintain weekly contact with the Department, update the Department when their phone numbers or addresses changed, an0d submit to announced and unannounced home visits. We conclude that these requirements were reasonable and appropriate.

Additionally, the evidence supports the trial court's finding that Father was substantially noncompliant with the permanency plans. Ms. Hess testified that Father attended an alcohol and drug assessment and received recommendations as a result. According to Ms. Hess, Father's recommendations included "[a]n intensive outpatient program, no less than 30 days, in a group setting. And the provider needed to be versed in co-occurring disorders." Father did not complete the treatment recommended by the assessment. Further, the evidence at trial was that Father continued to use illegal drugs. He admitted to taking drugs on two different occasions and tested positive for methamphetamine, amphetamine, and cocaine on August 20, 2014.

Father's noncompliance is substantial in light of the importance of these requirements. *In re Valentine*, 79 S.W.3d at 548; *In re M.J.B.*, 140 S.W.3d at 656. Son was removed from Parents' care because of his exposure to drugs, Parents' use of drugs, and the presence of two methamphetamine labs in the home. Consequently, the requirements that Father submit to unannounced drug screens and follow the recommendations of an alcohol and drug assessment go to the heart of the permanency plans.

Although Mother's drug screens were negative and her alcohol and drug assessment did not result in any recommendations, she was substantially noncompliant with the permanency plans as well. Each plan required Mother to maintain weekly contact with the Department, update the Department when her address or phone number changed, and submit to home visits. She did not comply with these requirements. This noncompliance is substantial because Mother was required to establish a suitable home in order to recover custody of Son. The Department cannot determine whether a parent's home is suitable if it does not know where the parent lives and cannot visit the home. *See In re Nicholas G.*, 2014 WL 3778813, at *6; *In re Hannah H.*, 2014 WL 2587397, at *9; *V.E.F.*, 2009 WL 605146, at *4. Accordingly, Mother's failure to notify the Department of changes to her phone and address as well as her failure to submit to home inspections are not "trivial, minor, or technical." *See In re M.J.B.*, 140 S.W.3d at 656.

The evidence supports the finding that Mother and Father were not compliant with the permanency plans, and we have concluded their noncompliance was substantial in

light of the requirements that they failed to meet. Accordingly, this ground for termination was established by clear and convincing evidence.

C. Persistence of Conditions

Tenn. Code Ann. § 36-1-113(g)(3) defines a ground for termination commonly called "persistence of conditions." *In re B.P.C.*, No. M2006-02084-COA-R3-PT, 2007 WL 1159199, at *7 (Tenn. Ct. App. Apr. 18, 2007). This ground applies when a child has been removed from the home of a parent by order of the court for six 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).

The purpose behind this ground for terminating parental rights is to prevent the child from lingering "in the uncertain status of foster child" when a parent cannot demonstrate an ability to provide a safe and caring environment for the child within a reasonable time. *In re Arteria H.*, 326 S.W.3d 167, 178 (Tenn. Ct. App. 2010) (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008)). The conditions at issue "need not be only those conditions that led to the initial removal from the home." *In re D.C.C.*, No. M2007-01094-COA-R3-PT, 2008 WL 588535, at *9 (Tenn. Ct. App. Mar. 3, 2008). Instead, "either those initial conditions or other conditions that would probably cause the child to be subjected to neglect should the child be returned to the parent" can support for this ground for termination. *Id.*

A parent's failure to remedy these conditions need not be willful. *In re Arteria H.*, 326 S.W.3d at 177 (citing *In re T.S.*, No. 1999-01286-COA-R3-CV, 2000 WL 964775, at *6 (Tenn. Ct. App. July 13, 2000)). Further, "it is not necessary to prove that a parent-child relationship cannot be salvaged, nor is it necessary to show that a parent is 'currently harmful' to a child's safety or future emotional stability." *In re Christopher M.*, No. W2014-02520-COA-R3-PT, 2015 WL 5011702, at *3 (Tenn. Ct. App. Aug. 24,

2015) (quoting *In re K.A.H.*, No. M1999-02079-COA-R3-CV, 2000 WL 1006959, at *5 (Tenn. Ct. App. July 21, 2000)), *no perm. app. filed*.

Here, it is undisputed that Son has been removed from Parents' custody for more than six months based on a finding of abuse and neglect. The April 2014 Adjudicatory and Dispositional Hearing Order indicates that Son was a "drug exposed child," that Parents tested positive for illegal drugs, and that Son was sharing the residence with two methamphetamine labs. Thus, the conditions that led to Son's removal from Parents' custody were his exposure to drugs, Parents' own drug use, and the presence of methamphetamine labs in the home.

Based on the results of his drug screens and his own admissions, Father has continued to use drugs. He also failed to comply with drug treatment program recommended by his alcohol and drug assessment. Consequently, Father has allowed the conditions that led to Son's removal to persist, and there is little likelihood that Father will remedy these conditions in the near future. *See In re M.J.J.*, M2004-02759-COA-R3-PT, 2005 WL 873305, at *7 (Tenn. Ct. App. Apr. 14, 2005) ("[I]t is clear to us that the persistence of Mother's continued drug use prevents the safe return of M.J.J. to the custody of Mother . . . ."). Because Father continues to use drugs, a continued relationship with him greatly diminishes Son's chances of early integration into a safe, stable, and permanent home. *See* Tenn. Code Ann. § 36-1-113(g)(3)(C). As a result, this ground for termination has been established by clear and convincing evidence as to Father.

In contrast, it is apparent that Mother has attempted to make some changes. All of Mother's post-December 2013 drug screens were negative, and Ms. Hess agreed that Mother does not appear to have a drug problem. Mother has also obtained lawful employment and is living with her parents, apparently apart from Father. Ms. Hess testified that Parents were "separate only by address" and that Parents had previously lied to her about living separately. To the extent that Father still resides with Mother, Mother has allowed the conditions that led to Son's removal to persist. *See In re Morgan S.*, No. E2009-00318-COA-R3-PT, 2010 WL 520972, at *9-10 (Tenn. Ct. App. Feb. 12, 2010) (the father failed to establish a suitable home even though he had completed a drug rehabilitation program because the mother, who continued to test positive for and sell drugs, still resided in the home with the father).

Moreover, even assuming that Mother is actually living separately from Father, the proof at trial demonstrated that Son would be exposed to drugs at her parents' house. According to Ms. Hess, Mother herself reported that her parents abused prescription medication. Based on the foregoing, neither Mother nor Father has remedied the conditions that led to Son's removal. Accordingly, this ground for termination has been established by clear and convincing evidence.

D. Severe Abuse

The trial court found that termination of parental rights was appropriate because Parents committed severe child abuse as defined in Tenn. Code Ann. § 37-1-102. *See* Tenn. Code Ann. § 36-1-113(g)(4). "Severe child abuse" includes "[k]nowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring." Tenn. Code Ann. § 37-1-102(b)(21)(D).

Parents argue that the trial court erred by basing its finding of severe abuse on the findings contained in the April 21, 2014 Adjudicatory and Dispositional Hearing Order. This argument is not convincing.

Under the doctrine of res judicata, "an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." *In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012) (quoting *Galbreath v. Harris*, 811 S.W.2d 88, 90 (Tenn. Ct. App. 1990)). This court has previously held that the doctrine of res judicata prevents parents from re-litigating the issue of whether they committed severe child abuse in a subsequent proceeding to terminate their parental rights. *Id.*; *see In re Serenity S.*, No. W2014-00080-COA-R3-PT, 2014 WL 6612571, at *5-6 (Tenn. Ct. App. Nov. 24, 2014), *no perm. app. filed*; *In re Austin A.*, No. E2014-00910-COA-R3-PT, 2014 WL 6176544, at *8 (Tenn. Ct. App. Nov. 17, 2014), *perm. app. denied* (Tenn. Feb. 13, 2015); *In re Jayden G.*, No. W2014-00881-COA-R3-PT, 2014 WL 4922638, at *6 (Tenn. Ct. App. Sept. 30, 2014).

Here, the trial court's April 21, 2014, Adjudicatory and Dispositional Hearing Order states that "[t]he Court finds that the child . . . suffered from abuse and/or neglect and therefore pursuant to T.C.A. 37-1-129(a)(2) finds that this child is . . . victims [sic] of severe child abuse as defined at T.C.A. 37-1-102(21) [sic], perpetuated by [Mother and Father]." Mother, Father, and the Department were parties to those proceedings, and the juvenile court had jurisdiction over the case. Further, the April 2014 order clearly stated that it was "a final order as to [Mother and Father], and any appeal from this order must be made to the Circuit Court within ten days, excluding non-judicial days, of the entry of this order." Neither parent appealed. Consequently, the April 2014 order became a final order and the finding of severe child abuse is res judicata. *See In re Serenity S.*, 2014 WL 6612571, at *6.

Moreover, Ms. Hess testified at the termination hearing that Son was removed from Parents' custody because "[t]here was a meth lab found in the home, and the child was in the home with the meth lab." This testimony was not contradicted. Consequently, the evidence demonstrates that Parents knowingly allowed Son to be present in a

structure where the production of methamphetamine was occurring. *See* Tenn. Code Ann. § 37-1-102(b)(21)(D).

Based on the evidence from the termination hearing and the finding of severe child abuse at the April 21, 2014, hearing, the trial court did not err in determining that this ground for termination had been established by clear and convincing evidence.

III. Best Interest of the Child

"The ultimate goal of every proceeding involving the care and custody of a child is to ascertain and promote the child's best interests." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). Once one or more of the grounds for terminating parental rights have been established, our attention must turn to the best interest of the child. *See id.* This analysis is guided by the factors listed in the Tennessee Code. *See* Tenn. Code Ann. § 36-1-113(i).[7]

[7] These factors are:

> (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).

The statutory list of factors is not exhaustive, and the statute does not require a court to find the existence of each factor before it concludes that terminating a parent's rights is in the child's best interest. *In re Dominique L.H.*, 393 S.W.3d 710, 719 (Tenn. Ct. App. 2012) (quoting *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005)). Instead, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." *In re Audrey S.*, 182 S.W.3d at 878. Depending upon the circumstances of a particular case, "the consideration of one factor may very well dictate the outcome of the analysis." *Id.*

In this case, the trial court found that termination of parental rights was in Son's best interest because Mother and Father did not maintain regular visitation or contact with Son and had not established a meaningful relationship with him. In contrast, the court found that Son had bonded with his foster parents. The court also found that Parents had not paid child support or made an adjustment of circumstances to make it safe for Son to be in the home. In addition, the court found that Parents were not compliant with the terms of their probation.

The evidence supports these findings. Son was removed from Parents' custody when he was only seven months old. He is now nearly three years old and has lived in foster care for over two years. In the four months prior to their incarceration, Parents engaged in only token visitation. *See* Tenn. Code Ann. § 36-1-113(i)(3). Ms. Hess testified that after Parents' incarceration, Parents had visited "once a week, once every two weeks, for probation. . . . And they were doing a little better at maintaining contact with me during that time, but since then it's kind of dropped off." Despite the temporary increase in visitation, Ms. Hess testified that there was no meaningful relationship between Parents and Son. *See* Tenn. Code Ann. § 36-1-113(i)(4). During visitation, Son interacted well with Parents, but Ms. Hess testified that Son "would interact the same way with me if I were to start playing and being goofy." *See id.*

In contrast, Ms. Hess stated that Son had a strong bond with his foster family and that if Son's foster mother walked out of a room for a minute Son "was at that door. He wanted to go right after her." If Son needed anything, "he would go to [his foster mother]. He wouldn't go to [Parents]." Based on this testimony, Son has bonded with his foster parents, and removing him from their care would likely have a negative impact on his emotional and psychological condition. *See* Tenn. Code Ann. § 36-1-113(i)(5).

Furthermore, as discussed above, the evidence presented at the hearing indicated that Father has not made any adjustment to make the home safe for Son. *See* Tenn. Code Ann. § 36-1-113(i)(1). Father has not stopped using illegal drugs or completed the drug treatment program recommended by his alcohol and drug assessment. *See* Tenn. Code Ann. § 36-1-113(i)(7). Although Mother does not appear to have a drug problem herself and may be living separately from Father, Ms. Hess testified that Parents had lied about this arrangement previously. To the extent Mother and Father continue to reside together,

Father's continued use of illegal drugs impacts the safety and suitability of the home with respect to both Parents. *See In re Morgan S.*, 2010 WL 520972, at *9-10; Tenn. Code Ann. § 36-1-113(i)(1), (7). Moreover, even assuming that Mother is living separately from Father, the proof at trial demonstrated that Mother's parents have their own drug addiction issues. *See* Tenn. Code Ann. §§ 36-1-113(i)(1) and (7).

In addition, Mother and Father are not currently compliant with the terms of their probation. At the termination hearing, the evidence indicated that Parents had moved to Arkansas without notifying their probation officer. This probation violation places Parents at risk of further incarceration, which will greatly impede their ability to provide a safe and suitable home for Son. *See* Tenn. Code Ann. § 36-1-113(i)(7).

As discussed above in our analysis of abandonment, the evidence supports the finding that Father and Mother have not paid child support. *See* Tenn. Code Ann. § 36-1-113(i)(9). Although the Department did not carry its burden to prove that Parents' failure to support was willful, the best interest factors do not require willfulness. *See id.* ("[w]hether the parent or guardian has paid child support consistent with the child support guidelines . . . ."). Instead, the best interests of the child are determined from the child's perspective rather than the parents' perspective. *See In Re Marr,* 194 S. W.3d at 499. From Son's perspective, Parents' failure to pay support amounts to the same result whether that failure was willful or not. Child support payments are for the benefit of the child, *Hopkins v. Hopkins*, 152 S.W.3d 447, 449 (Tenn. 2004), and a parent's failure to support a child for whatever reason impacts the determination of the child's best interest. *See* Tenn. Code Ann. § 36-1-113(i)(9). Accordingly, Parents' failure to pay child support weighs in favor of the termination of parental rights.

Based on the foregoing, the Department carried its burden of proving by clear and convincing evidence that the termination of parental rights was in Son's best interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Parents, Matthew T. and Erica T.

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FRANK G. CLEMENT, JR., JUDGE