

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs March 1, 2023

<b>FILED</b> 05/15/2023 Clerk of the Appellate Courts
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**IN RE CHAYSON D.**

**Appeal from the Juvenile Court for Sevier County**  
**No. 21-000999      Jeffrey D. Rader, Judge**

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**No. E2022-00718-COA-R3-PT**

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Mother was not present when the trial court found that four grounds for termination were proven by clear and convincing evidence, and that termination was in the best interest of the child. The trial court denied the oral motion to continue made by Mother’s counsel. Mother appeals the denial of the continuance, as well as the findings of grounds and best interests. Discerning no reversible error, we affirm (1) the trial court’s denial of Mother’s motion for a continuance; (2) the finding that there was clear and convincing evidence of abandonment by failure to visit, abandonment by failure to establish a suitable home, and persistence of conditions; and (3) the finding that terminating Mother’s parental rights was in the best interest of the child. We conclude that the trial court failed to make appropriate findings of fact and conclusions of law with regard to the ground of failure to manifest an ability and willingness to assume custody of the child and vacate that ground. Accordingly, we vacate in part and affirm in part.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JEFFREY USMAN, J., joined.

James R. Hickman, Jr., Sevierville, Tennessee, for the appellant, Robin D.

Jonathan Skrmetti, Attorney General and Reporter; Carrie Perras, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children’s Services.

**OPINION**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This appeal stems from the termination of the parental rights of Robin D.<sup>1</sup> (“Mother”) to the minor child, Chayson D., born in 2011. The Department of Children’s Services (“DCS”) became involved with Mother and the child in 2019.<sup>2</sup> After receiving a report of a lack of supervision and drug exposure, DCS filed a petition in the Sevier County Juvenile Court (“the trial court”) for temporary custody of the child on September 12, 2019.<sup>3</sup> In the petition, DCS stated that Mother was then incarcerated in the Sevier County Jail after her arrest for public intoxication. Mother also agreed to a drug screening that was positive for tetrahydrocannabinol (“THC”),<sup>4</sup> and cocaine. The petition indicated that, after meeting with the child’s maternal grandmother and aunt, who both lived in the home, as well as the next-door neighbor, it was reasonable to make no further effort to maintain the child in the home. The trial court granted DCS temporary custody of the child that day.

Mother was present at the September 16, 2019, preliminary hearing, which was continued to allow Mother time to obtain counsel. DCS retained custody of the child, and Mother was allowed supervised visitation. Counsel for Mother entered a notice of appearance on November 23, 2021.

Another hearing was held December 11, 2019. The trial court found that the child was dependent and neglected due to Mother’s incarceration, and that there was no less drastic alternative to removing the child from Mother’s custody. After a hearing in January 2020, the trial court granted Mother unsupervised daytime visits with the child, and indicated that the visits were to be moved closer to Mother’s location. On August 4, 2020, the child’s appointed guardian ad litem (“the GAL”), joined by DCS, moved to modify Mother’s visitation. The GAL alleged that Mother had been arrested in April 2020 for public intoxication and did not immediately report the arrest to DCS or the GAL. The motion further stated that the child had indicated that he did not want to visit with Mother because “she treats him like a baby” and because “he does not feel safe around her[.]” Moreover, for in-person visits, the child was required to travel a total of five hours from his placement in Chattanooga, Tennessee to Mother’s location in Sevier County and back. The GAL alleged that, despite this travel time, Mother had ended one visit early to accommodate personal plans and had failed to show for another visit, even after the child

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<sup>1</sup> In cases involving the termination of parental rights, it is this Court’s policy to remove the full names of children and other parties, to protect their identities.

<sup>2</sup> Mother has another child who was taken into DCS custody at the same time as Chayson. That child was eventually placed into the custody of his father, and is not related to this appeal.

<sup>3</sup> The petition also implicated the parental rights of Cledio D., the child’s father (“Father”), although he was unknown and unnamed at the time. The record indicates that Father was eventually located and served in Brazil but did not participate in the termination proceedings. Father’s rights were later terminated but he has not appealed the termination of his rights and so we recite the allegations in the petition only as they relate to Mother’s rights.

<sup>4</sup> “THC is a marijuana metabolite that is stored in fat cells and can be detected in the body up to thirty days after smoking marijuana.” *Interstate Mech. Contractors, Inc. v. McIntosh*, 229 S.W.3d 674, 677 (Tenn. 2007).

had been transported. Thus, the GAL requested that Mother's visitation be modified to therapeutic visitation held in Knoxville. The trial court granted the motion by order of August 26, 2020, after a hearing at which Mother appeared pro se.

Mother was appointed new counsel on September 25, 2020. At a hearing that same day, the trial court indicated that "Mother did well at [the] beginning of [the] case but has gone backwards recently," based on her recent incarceration as well as her tendency to become overly emotional during visits with the child. Mother was directed to complete a new alcohol and drug assessment and to maintain her sobriety.

The next hearing was held July 7, 2021. The trial court noted that Mother had not made progress toward resolving the reasons the child was in state custody. Specifically, the trial court indicated that while Mother had income, she had provided no proof of completion regarding the other permanency plan responsibilities, including the updated alcohol and drug assessment Mother claimed to have completed. The trial court also noted that Mother had been arrested three times in the prior year and had recently been evicted.

DCS filed its petition to terminate Mother's parental rights to the child on September 15, 2021. Therein, DCS alleged five grounds existed to terminate Mother's rights: failure to manifest an ability and willingness to parent, abandonment by failure to provide a suitable home, substantial noncompliance with a permanency plan, persistence of conditions, and abandonment by failure to visit. Key allegations made by DCS include that Mother has untreated mental health issues, inconsistent and overly emotional visitation with the child, and a history of substance abuse issues, including at least four convictions for public intoxication in the prior two years. DCS also alleged that terminating Mother's rights was in the best interest of the child.

After a November 19, 2021 hearing, the trial court granted DCS's request to change its goal from "return to parent" to adoption, noted as being over Mother's objection. The trial court also found that Mother needed to set up a transportation plan and attend mental health treatment. The trial court noted that Mother had had three visits with the child since June 2021, but that they had not gone well, with the child "having issues" after the visits.

Mother was appointed new counsel for the termination hearing on January 10, 2022. A hearing at which Mother was present and represented by counsel was held January 19, 2022, and trial was set for April 27, 2022. After the matter was called on April 27, counsel for Mother orally moved for a continuance on the ground that Mother was not present. Counsel indicated that he had spoken with Mother by phone, although she had not been in contact with DCS that week. Mother's counsel stated that it was "incumbent on [DCS] and good ethics to continue," but noted that "this date was set in open court when last we were here and [Mother] was present." Counsel did not provide a reason for Mother's absence from court. The trial court found no basis to continue the hearing because Mother was "obviously on notice of the court's hearing[.]" and denied the motion to continue.

Prior to presenting its proof, DCS nonsuited the ground of substantial noncompliance with a permanency plan.<sup>5</sup> DCS also entered several exhibits into the record. These included numerous arrests for public intoxication, including four convictions dated August 29, 2020, December 1, 2020, December 26, 2020, and January 31, 2021, as well as two convictions for assault on a law enforcement/peace officer<sup>6</sup> dated January 31, 2021. Mother was later convicted of contempt based on a violation of pretrial/bond supervision conditions for incurring additional convictions while on probation. DCS also included as exhibits the reports from Mother's drug screenings. On June 30, 2021, Mother tested positive for amphetamine, methamphetamine, and THC. On July 21, 2021, Mother tested positive for cocaine. Mother refused a drug screen on November 11, 2021, but admitted to THC use. On March 8, 2022, Mother tested positive for amphetamine, morphine, and THC. No negative drug screens were submitted as proof.

The child's DCS case worker, Christina Carol, provided the majority of the testimony. She explained that when she began working on the case in March 2020, she was told things were going well, but by July 2020 things began to decline. According to Ms. Carol, Mother became difficult to contact, evasive with drug screenings, and inconsistent with visitation around that time. Ms. Carol also described how the child required a "therapeutic calm down sequence after visitation or contact with [Mother] to get regulated again." During visits, the child would start excited and happy but slowly become less engaged, which would cause Mother to get emotional, requiring Ms. Carol to remove either Mother or the child from the visit to de-escalate the situation. Ms. Carol testified that the last visit Mother had with the child was in August 2021. Mother was crying in the DCS waiting room prior to the visit and needed to be de-escalated. Then, once the visit started, Mother began crying again after approximately ten minutes and left the visit. The prior visit occurred in July 2021, and lasted approximately ninety minutes. Ms. Carol testified that during that visit she had to bring both Mother and the child out of the visit at separate times to de-escalate emotionally. Mother had requested further visitation after August 2021, but could not be contacted to confirm the timing once a visit was set up. Ms. Carol testified that Mother's phone would regularly be disconnected or lost and so she would call five different phone numbers when attempting to contact Mother.

Ms. Carol also testified regarding Mother's failed or declined drug screenings and Mother's failure to provide proof of a completed alcohol and drug assessment subsequent to the positive screenings. Mother failed to attend any of the four assessments DCS had arranged in January 2021. Mother had expressed to Ms. Carol that she was not taking the medication required for her mental health conditions, including "generalized anxiety and

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<sup>5</sup> Our review indicates that four permanency plans were developed in this case, in October 2019, September 2020, February 2021, and August 2021. Only the October 2019 plan is in the record.

<sup>6</sup> The arrest warrants indicated that while Mother was being arrested for public intoxication, she stated that she was positive for Covid-19 and intentionally coughed and spit in the faces of two police officers.

bipolar type symptoms,” but instead self-medicated with THC. Ms. Carol described Mother as “very lucid” on some occasions and “combative” or “tearful and just feeling very victimized by society” on others. Ms. Carol explained that Mother had lived in at least four different places since the beginning of DCS’s involvement: Sevier County public housing, a Knoxville homeless shelter, with a friend Mother reported to Ms. Carol was physically and sexually abusive, and, most recently, with a male roommate in a resort in Pigeon Forge.<sup>7</sup> Ms. Carol testified that when offered help finding housing, Mother “always said that she had everything taken care of and didn’t need any help.”

Finally, Ms. Carol testified that the child was doing “amazing” in the Chattanooga foster home he had been in since May 2021. Further, the child believed he had already been adopted after feeling like the August 2021 visit was Mother saying goodbye. The child’s foster mother, Maxine T. (“Foster Mother”), agreed that the child was doing wonderfully in her home. Foster Mother testified that the child struggles with controlling his anger, that he only talks about Mother when he is angry, and that sometimes he will become destructive when talking about Mother while angry. The child was attending weekly and biweekly therapy with two providers, and was taking medications for anxiety and depression. Foster Mother has three adult children and testified that she would like to adopt the child if he became available.

At the conclusion of the proof, the trial court made detailed oral findings regarding the grounds and best interest factors in support of termination. The trial court emphasized that Mother was not in attendance and “clearly ha[d] no interest whatsoever in parenting this child,” and “no ability whatsoever to create or maintain a home[.]” Mother’s rights were terminated by the trial court by written order entered May 2, 2022. The trial court noted that Mother had been properly personally served but did not appear, and so the motion for a continuance made by Mother’s counsel was denied. The trial court found that DCS had proven by clear and convincing evidence the grounds of failure to manifest an ability and willingness to assume custody, abandonment by failure to provide a suitable home, persistent conditions, and abandonment by failure to visit, as well as that termination of Mother’s rights was in the child’s best interest. This appeal followed.

## **II. ISSUES PRESENTED**

Mother raises the following issues on appeal, which are taken from her brief with minor alterations:

1. The trial court erred by failing to grant the motion for continuance made by counsel for Mother on the day of trial.

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<sup>7</sup> Ms. Carol testified that Mother had provided a room number to this last home at one point, but that she, Ms. Carol, had forgotten the number and so could not locate Mother there.

2. The trial court erred in finding that DCS had proven that grounds existed to terminate Mother's parental rights.
3. The trial court erred in finding that DCS had proven that it was in the best interest of the child to terminate Mother's parental rights.

### III. STANDARD OF REVIEW

Parental rights are “among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016) (collecting cases). In Tennessee, termination of parental rights is governed by statute, which identifies “situations in which the state’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth grounds on which termination proceedings can be brought.” *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (quoting *In re W.B.*, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at \*7 (Tenn. Ct. App. Apr. 29, 2005)). “[P]arents are constitutionally entitled to fundamentally fair procedures in parental termination proceedings.” *In re Carrington H.*, 483 S.W.3d at 511. These procedures include “a heightened standard of proof—clear and convincing evidence.” *Id.* at 522 (citation omitted); accord *In re Addalyne S.*, 556 S.W.3d 774, 782 (Tenn. Ct. App. 2018) (“Considering the fundamental nature of a parent’s rights, and the serious consequences that stem from termination of those rights, a higher standard of proof is required in determining termination cases.”).

Thus, a party seeking to terminate a parent’s rights must prove by clear and convincing evidence (1) the existence of at least one of the statutory grounds in section 36-1-113(g), and (2) that termination is in the child’s best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “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 Carrington H.*, 483 S.W.3d at 522. The standard “ensures that the facts are established as highly probable, rather than as simply more probable than not.” *Id.* (citing *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005)).

In termination cases, appellate courts review a trial court’s factual findings de novo and accord these findings a presumption of correctness unless the evidence preponderates otherwise. See Tenn. R. App. P. 13(d); *In re Carrington H.*, 483 S.W.3d at 523–24. “The trial court’s ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review de novo with no presumption of correctness.” *In re Carrington H.*, 483 S.W.3d at 524 (citation omitted).

### IV. ANALYSIS

## A. Motion to Continue

Mother's first issue on appeal concerns the trial court's denial of her motion to continue. Regarding continuances, this Court has previously stated as follows in the context of a termination proceeding:

"The granting or denial of a motion for a continuance lies in the sound discretion of the court. The ruling on the motion will not be disturbed unless the record clearly shows abuse of discretion and prejudice to the party seeking a continuance." *State Dep't of Child.'s Servs. v. V.N.*, 279 S.W.3d 306, 317 (Tenn. Ct. App. 2008) (quoting *Blake v. Plus Mark Inc.*, 952 S.W.2d 413, 415 (Tenn. 1997)). In requesting a continuance, Mother bears the burden to "establish[ ] the circumstances that justif[ied] the continuance." *In re Paetyn M.*, No. W2017-02444-COA-R3-PT, 2019 WL 630124, at \*5 (Tenn. Ct. App. Feb. 14, 2019) (citing *Osagie v. Peakload Temp. Servs.*, 91 S.W.3d 326, 329 (Tenn. Ct. App. 2002)). "Decisions regarding the grant or denial of a continuance are fact-specific and 'should be viewed in the context of all the circumstances existing' at the time of the request." *Id.* (quoting *Nagarajan v. Terry*, 151 S.W.3d 166, 172 (Tenn. Ct. App. 2003)). These circumstances include: "(1) the length of time the proceeding has been pending, (2) the reason for the continuance, (3) the diligence of the party seeking the continuance, and (4) the prejudice to the requesting party if the continuance is not granted." *Id.* (quoting *Nagarajan*, 151 S.W.3d at 172).

*In re Azhianne G.*, No. E2022-00223-COA-R3-PT, 2023 WL 2487390, at \*2 (Tenn. Ct. App. Mar. 14, 2023); *see also In re Ashanti P.*, No. M2021-00039-COA-R3-PT, 2021 WL 5549590, at \*7 (Tenn. Ct. App. Nov. 29, 2021) (noting that the trial court retains its discretion regarding continuances, "even when the question before it is one of termination of parental rights" (quoting *State, Dep't of Child.'s Servs. v. Fineout*, No. 01A01-9710-JV-00582, 1998 WL 792052, at \*2 (Tenn. Ct. App. Nov. 16, 1998))).

Mother's counsel made an oral motion for a continuance on the morning of the termination hearing, indicating that he had spoken with Mother by phone that morning but did not have an explanation for her absence. No written motion or documentation pertaining to the request for the continuance is present in the record. On appeal, Mother alleges that the trial court's decision to deny the motion to continue "likely doomed [M]other's parental rights." Mother's argument centers on the difficulty of defending an action to terminate parental rights when the parent is not present and thus the only evidence offered at trial is provided by DCS.

Applying the relevant circumstances to this record, we are unable to conclude that the trial court abused its discretion in denying Mother's request for a continuance. As is relevant to the first factor, Tennessee Code Annotated § 36-1-113(k) provides that the

hearing on a petition for parental termination shall take place within six months from the date the petition was filed, unless granting an extension is in a child's best interest. Here, the petition was filed on September 15, 2021, seven months prior to the April 27, 2022 hearing. And even on appeal, no argument has been made that granting the continuance would have been in the child's best interest. Regarding the reason for the continuance, no explanation has been offered for Mother's absence, despite her counsel having spoken to her the morning of the hearing.

Next, we consider the diligence of the party seeking a continuance. Mother's counsel acknowledged that she was present at the January 19, 2022 hearing when the April hearing date was set. Mother had more than three months to make arrangements to ensure her presence in court, and yet the motion was not presented to the court until the day of trial. She has offered no evidence indicating that her nonappearance was due to something unforeseeable or due to an emergency. Finally, Mother argues that requiring her attorney to proceed with the termination hearing without her, and thus without "the ability to defend the matter[,] is ultimate prejudice[.]" We, too, acknowledge the difficult position Mother's attorney was placed in due to Mother's failure to appear. That does not, however, neutralize the preceding circumstances supporting denial of the continuance. Nor is it lost on this Court that Mother's counsel was placed in the position of defending against a termination petition without the ability to confer with his client based on Mother's own action in failing to appear. In light of the foregoing, we determine that the trial court did not abuse its discretion in denying Mother's motion for a continuance.

## **B. Grounds**

The trial court found that four grounds existed for terminating Mother's parental rights: abandonment by failure to visit, abandonment by failure to provide a suitable home, persistent conditions, and failure to manifest an ability and willingness to assume custody. Although only one ground need be proven by clear and convincing evidence for a parent's rights to be subject to termination, "the Tennessee Supreme Court has instructed this Court to review each ground relied upon by the trial court to terminate parental rights in order to prevent 'unnecessary remands of cases.'" *In re Bobby G.*, No. E2021-01381-COA-R3-PT, 2022 WL 2915535 (Tenn. Ct. App. July 25, 2022) (quoting *In re Angela E.*, 303 S.W.3d 240, 251 n.14 (Tenn. 2010)); *see also In re Carrington H.*, 483 S.W.3d at 525–26 (holding that "in an appeal from an order terminating parental rights 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"). We therefore review each ground in turn.

### **1. Abandonment by Failure to Visit**

Tennessee Code Annotated section 36-1-113(g)(1) provides abandonment by a parent as a ground for the termination of parental rights and, in turn, Tennessee Code



Annotated section 36-1-102 defines the term “abandonment.” Abandonment is defined, in pertinent part, as follows:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent . . . of the child who is the subject of the petition for termination of parental rights or adoption, that the parent . . . either [has] failed to visit or [has] failed to support or [has] failed to make reasonable payments toward the support of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(i). That section further provides that a failure to visit consists of “the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation[.]” Tenn. Code Ann. § 36-1-102(1)(E). “Token visitation” is defined as visitation that, “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). The parent’s failure to conduct more than token visitation within the relevant four-month period may not be rectified by resuming visitation subsequent to the filing of a termination petition. Tenn. Code Ann. § 36-1-102(1)(F). A parent may raise as an affirmative defense that the failure to perform more than token visitation was not willful. Tenn. Code Ann. § 36-1-102(1)(I). In that case, the parent bears the burden of proving the absence of willfulness by a preponderance of the evidence. *Id.* Here, the four-month period at issue spans from May 15, 2021 through September 14, 2021. The trial court found that Mother visited only twice during this period, which the trial court considered token visitation.

Mother appears to argue that the trial court erred in finding a failure to visit either because DCS failed to make reasonable efforts to reunite Mother with the child or because Mother’s failure to visit was not intentional. However, unless specifically included in the definition of a ground for termination, “proof of reasonable efforts is not a precondition to termination of the parental rights of the respondent parent.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015).<sup>8</sup> So this argument is, respectfully, without merit. And an absence of willfulness must be raised as an affirmative defense pursuant to Tennessee Rule of Civil Procedure 8.03. *In re Brylan S.*, No. W2021-01446-COA-R3-PT, 2022 WL 16646596, at \*6 (Tenn. Ct. App. Nov. 3, 2022) (citing Tenn. Code Ann. § 36-1-102(1)(I)). This issue was not raised in a responsive pleading or at trial, and as such, has been waived. *Id.* (citing *Pratcher v. Methodist Healthcare Memphis Hosps.*, 407 S.W.3d 727, 735 (Tenn. 2013) (stating that “[a]s a general rule, a party waives an affirmative defense if it does not include

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<sup>8</sup> See *id.* at 523–24 n.29, 31 (noting that the ground for termination of abandonment by failure to provide a suitable home does include a requirement that DCS make reasonable efforts to assist the parent to establish such a home).

the defense in an answer or responsive pleading”); *In re Imerald W.*, No. W2019-00490-COA-R3-PT, 2020 WL 504991, at \*4 n.5 (Tenn. Ct. App. Jan. 31, 2020) (stating that a parent waives a lack of willfulness as an affirmative defense when the parent fails to raise the defense at trial)).

Instead, the testimony provided by the child’s DCS case worker, Ms. Carol, supports the trial court’s finding of token visitation. Ms. Carol testified that Mother’s last visit was in August 2021 and that Mother had only one other visit during the relevant four-month period. Ms. Carol further testified that Mother was overly emotional during both visits. Both Mother and the child had to be removed from the July 2021 visit to regulate their emotions. That visit lasted approximately ninety minutes. The August 2021 visit lasted only approximately ten minutes, with Mother arriving to and leaving from the visit crying. A third visit during the relevant period was mentioned in a November 2021 hearing report but was not discussed at trial. Together, these two or even three visits cannot be said to have established more than “minimal or insubstantial contact with the child,” Tenn. Code Ann. § 36-1-102(1)(C), and thus constitute no more than token visitation. *See In re Audrey S.*, 182 S.W.3d at 867 (determining that visiting no more than once or twice during a four-month period “amounts to nothing more than token visitation”). We therefore conclude that there is clear and convincing evidence to support the trial court’s termination of Mother’s parental rights on the ground of abandonment by failure to visit.

## **2. Abandonment by Failure to Provide a Suitable Home**

Abandonment is further defined by statute as including the following circumstances:

- (a) The child has been removed from the home or the physical or legal custody of a parent . . . by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;
- (b) The juvenile court found . . . that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and
- (c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent . . . to establish a suitable home for the child, but that the parent . . . [has] not made reciprocal reasonable efforts to provide a suitable home and [has] 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 shall be found to be

reasonable if such efforts equal or 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). Thus, a court applying this ground must consider both “whether a child has a suitable home to return to after the child’s court-ordered removal from the parent” and whether DCS has provided reasonable efforts to “assist[] the parent in his or her attempt to establish a suitable home.” *In re Lucca M.*, No. M2021-01534-COA-R3-PT, 2023 WL 2703706, at \*10 (Tenn. Ct. App. Mar. 30, 2023) (first quoting *In re Adaleigh M.*, No. E2019-01955-COA-R3-PT, 2021 WL 1219818, at \*3 (Tenn. Ct. App. Mar. 31, 2021); then quoting *In re Jamel H.*, No. E2014-02539-COA-R3-PT, 2015 WL 4197220, at \*6 (Tenn. Ct. App. July 13, 2015)).

A suitable home involves more than simply “a proper physical living location.” *In re Daniel B. Jr.*, No. E2019-01063-COA-R3-PT, 2020 WL 3955703, at \*4 (Tenn. Ct. App. July 10, 2020) (quoting *Tenn. Dep’t of Child. Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at \*3 (Tenn. Ct. App. Nov. 29, 2007)). A suitable home also entails “[a]ppropriate care and attention for the child, and must be free from drugs.” *In re Bentley J.*, No. E2022-00622-COA-R3-PT, 2023 WL 2380507, at \*4 (Tenn. Ct. App. Mar. 7, 2023) (internal quotation marks omitted) (quoting *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at \*5 (Tenn. Ct. App. Apr. 16, 2020)). As particularly relevant, “failure to address mental health issues can also lead to a finding that the parent has failed to establish a suitable home.” *In re Ashanti P.*, 2021 WL 5549590, at \*11.

Similarly, DCS’s reasonable efforts should go beyond the child’s physical environment. The requirement of reasonable efforts on the part of DCS implicates “the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family.” *In re C.L.M.*, No. M2005-00696-COA-R3-PT, 2005 WL 2051285, at \*9 (Tenn. Ct. App. Aug. 25, 2005). Indeed, “[w]e have long held that providing drug screens, maintaining consistent communication with a parent, coordinating alcohol and drug assessments, and offering counseling services constitute reasonable efforts to assist a parent in establishing a suitable home.” *In re H.S.*, No. M2019-00808-COA-R3-PT, 2020 WL 1428777, at \*7 (Tenn. Ct. App. Mar. 20, 2020). However, while DCS should utilize its “superior insight and training to assist parents with the problems DCS has identified in the permanency plan, whether the parents ask for assistance or not[,] DCS does not bear the sole responsibility.” *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at \*9 (Tenn. Ct. App. June 10, 2014) (citation omitted). Therefore, “DCS’s efforts do not need to be ‘Herculean.’” *Id.*

Here, the child was removed from Mother’s custody by a protective custody order entered September 12, 2019, based on DCS’s petition alleging that the child was dependent and neglected, filed the same day. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii)(a); *In re Khalil J.*, No. M2021-00908-COA-R3-PT, 2022 WL 1537396, at \*12 (Tenn. Ct. App. May

16, 2022) (noting that the persistence of conditions ground—containing identical applicability requirements to the instant ground—applies “only when a child has been removed by a court order ‘as a result of’ or ‘following’ a petition alleging a child is dependent and neglected” (citations omitted)); *see also In re River L.*, No. M2019-02049-COA-R3-PT, 2021 WL 830006, at \*13 (Tenn. Ct. App. Mar. 4, 2021) (finding a persistence of conditions where DCS filed a dependency and neglect petition and received custody of the child on the same day), *perm. app. denied* (May 17, 2021). The trial court later found that there was no less drastic alternative to removal. Tenn. Code Ann. § 36-1-102(1)(A)(ii)(b). When subsequently terminating Mother’s parental rights, the trial court found that DCS had made reasonable efforts to assist Mother in establishing a suitable home but that Mother failed to make reciprocal reasonable efforts.

Mother points to the fact that the DCS case worker forgot the room number Mother provided with her most current address as evidence that DCS did not provide reasonable efforts in establishing a suitable home. This does not take into consideration the other actions taken by DCS during its involvement with Mother and the child.<sup>9</sup> DCS offered Mother assistance in finding housing while she was living in a homeless shelter in Knoxville, which Mother declined. DCS provided visitation with the child throughout the course of this case. At one point, DCS facilitated five-hour round-trip transportation from the child’s foster placement to facilitate visitation closer to Mother. When attempting to contact Mother, DCS was often required to call five different phone numbers, to no avail. DCS administered three drug screenings, all of which Mother failed, and attempted a fourth, which Mother refused. DCS also arranged for four drug and alcohol assessments after Mother’s multiple convictions for public intoxication.

On the other hand, Mother exercised considerably less effort in this case. After the child was removed based on her incarceration for public intoxication, Mother has been convicted four times for public intoxication and twice for assault. Based on one such conviction, Mother became ineligible for the public housing she was living in when the child was first removed. Since then, Mother has not maintained stable housing, first moving into a homeless shelter in Knoxville, then into a situation with an allegedly abusive roommate, and most recently into housing with another male roommate DCS was unable to meet. When DCS offered Mother help with housing, she declined. Mother has also refused to attend consistent treatment and rejected medication for her mental health

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<sup>9</sup> Mother also seems to restrict the relevant period for showing DCS’s reasonable efforts to the four months prior to the filing of the termination petition. Yet, “[w]hile the statute requires DCS to make reasonable efforts towards the establishment of a suitable home ‘for a period of four (4) months following the physical removal’ of the child, ‘the statute does not limit the court’s inquiry to a period of fourth months immediately following the removal.’” *In re C.N.*, No. M2020-01021-COA-R3-PT, 2022 WL 94403, at \*13 (Tenn. Ct. App. Jan. 10, 2022) (quoting *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at \*13 (Tenn. Ct. App. Dec. 15, 2016)), *perm. app. denied* (Tenn. Apr. 8, 2022). In determining reasonableness, we therefore reference the respective efforts made by Mother and DCS during any four-month period in the more than two years following the child’s removal.

disorders. Instead, Mother self-medicates with THC. Physical housing aside, Mother was unable to offer the child a suitable home based on mental health, drug use, and potentially domestic violence issues. *In re Nevada N.*, 498 S.W.3d 579, 595 (Tenn. Ct. App. 2016) (“[A] suitable home requires more than a proper physical living location. It requires that the home be free of drugs and domestic violence.” (internal quotation marks and citation omitted)). These issues have persisted throughout the entire course of this case with the evidence tending to show that Mother made little effort to combat them. As such, Mother has “demonstrated a lack of concern for the child to such a degree that it appears unlikely that [Mother] will be able to establish a suitable home at an early date.” Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c). While the DCS caseworker’s carelessness in forgetting information given to her by Mother is somewhat troubling, DCS’s effort need only “equal or exceed the efforts of the parent” in order for reasonable efforts to be shown. Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c).

The record shows that the efforts of DCS were reasonable and often equaled, if not exceeded, those of Mother. At no point during the pendency of this matter has Mother maintained safe, stable, suitable housing for the child to return to after being removed from her custody. We therefore conclude that the record shows by clear and convincing evidence that Mother failed to provide a suitable home for the child.

### **3. Persistence of Conditions**

The trial court also terminated Mother’s parental rights on the ground commonly known as “persistent conditions.” This ground applies when:

The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

- (i) The conditions that led to the child’s removal still persist, preventing the child’s safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child’s safe return to the care of the parent or guardian;
- (ii) 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 guardian in the near future; and
- (iii) 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)(A). The six-month removal period “must accrue on or

before the first date the termination of parental rights petition is set to be heard.” Tenn. Code Ann. § 36-1-113(g)(3)(B).

Here, there is no question that the child was removed from Mother’s custody in the course of a dependency and neglect proceeding and had been removed for a period of longer than six months. See *In re Khalil J.*, 2022 WL 1537396, at \*12. Thus, the dispositive questions are whether conditions persist that prevent the safe return of the child, whether the conditions will likely be remedied at an early date, and whether the continued relationship prevents early integration of the child into a safe, stable, permanent home. As we have previously explained,

“A parent’s continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent’s care.” *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*20 (Tenn. Ct. App. Oct. 13, 2008) (citing *In re T.S. & M.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at \*7 (Tenn. Ct. App. July 13, 2000)). The failure to remedy the conditions which led to the removal need not be willful. *In re T.S. & M.S.*, 2000 WL 964775, at \*6 (citing *State Dep’t of Human Servs. v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990)). “Where . . . efforts to provide help to improve the parenting ability, offered over a long period of time, have proved ineffective, the conclusion [] that there is little likelihood of such improvement as would allow the safe return of the child to the parent in the near future is justified.” *Id.* The purpose behind the “persistence of conditions” ground for terminating parental rights is “to prevent the child’s lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.” *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*20 (Tenn. Ct. App. Oct. 13, 2008) (quoting *In re D.C.C.*, No. M2007-01094-COA-R3-PT, 2008 WL 588535, at \*9 (Tenn. Ct. App. Mar. 3, 2008)).

*In re Navada N.*, 498 S.W.3d at 605–06.

The record indicates that Mother has not remedied the conditions that prevent the return of the child and is unlikely to do so in the near future. The child was initially removed after a report of lack of supervision, drug exposure, and Mother’s incarceration. Since then, Mother has been arrested multiple times for public intoxication, resulting in four convictions, as well as two other convictions for assault. Mother tested positive for methamphetamine, amphetamine, and THC on June 30, 2021. Mother tested positive for cocaine on July 21, 2021. Mother refused an oral swab and admitted to using THC in November 2021. Mother tested positive for THC, amphetamine, and morphine on March 8, 2022. Clearly, Mother’s substance abuse issues persist. Mother has also indicated a resistance to taking prescription medication for her mental health disorders, choosing

instead to self-medicate with THC. This and Mother's failure to attend any of the four alcohol and drug assessments arranged by DCS in January 2021, indicate that these issues are unlikely to be remedied at an early date.

The DCS case worker testified that after contact with Mother, the child would need to do a therapeutic calm down sequence to de-escalate and regulate his feelings. Ms. Carol and Foster Mother agree that the child is doing very well in his current placement. The child is in therapy and on medication to work on controlling his emotions. Foster Mother and her family have bonded with the child and she would like to adopt the child if he becomes available. Continuing the relationship between Mother and the child would therefore prevent the early integration of the child into a safe, stable, permanent home.

On the whole, the evidence presented at trial was that conditions continue to exist that prevent the safe return of the child to Mother's care and that are unlikely to be remedied any time soon. In contrast, the child is in a loving pre-adoptive home. DCS proved this ground for termination by clear and convincing evidence.

#### **4. Failure to Manifest Ability and Willingness**

The trial court also determined that Mother failed to manifest an ability and willingness to assume custody or financial responsibility of the child under Tennessee Code Annotated section 36-1-113(g)(14). Parental rights may be terminated where:

A parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child[.]

Tenn. Code Ann. § 36-1-113(g)(14). The ground contains two distinct elements that must be proven by clear and convincing evidence. First, DCS must prove that the parent has not manifested *both* an ability and a willingness to personally assume legal and physical custody of the child—thus, if DCS can show that Mother has failed to evince either her ability *or* her willingness to assume custody of the child, this prong is met. *In re Brylan S.*, No. W2021-01446-COA-R3-PT, 2022 WL 16646596 (Tenn. Ct. App. Nov. 3, 2022) (citing *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020) (“If a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied.”)). “Ability focuses on the parent's lifestyle and circumstances,” while willingness revolves around a parent's attempts “to overcome the obstacles” preventing the parent from assuming custody. *In re Serenity W.*, No. E2018-00460-COA-R3-PT, 2019 WL 511387, at \*6 (Tenn. Ct. App. Feb. 8, 2019).

Second, DCS must prove that placing the child in the parent's custody poses “a risk

of substantial harm to the physical or psychological welfare of the child.” Tenn. Code Ann. § 36-1-113(g)(14). We have previously explained that the circumstances that pose a risk of substantial harm “are not amenable to precise definition because of the variability of human conduct.” *In re Greyson D.*, No. E2020-00988-COA-R3-PT, 2021 WL 1292412, at \*8 (Tenn. Ct. App. Apr. 7, 2021) (quoting *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)). But the modifier “substantial” indicates that the risk must be both “a real hazard or danger that is not minor, trivial, or insignificant[,]” and “more than a theoretical possibility.” *Id.* (quoting *Ray*, 83 S.W.3d at 732).

Mother argues that even if the trial court properly found that she failed to manifest an ability and willingness to assume custody of the child, there was no indication that placing the child in her custody would pose a risk of substantial harm. We agree that the trial court’s treatment of the second prong of this ground proves dispositive. Although the trial court describes Mother’s lifestyle, circumstances, and efforts to overcome the obstacles preventing her from assuming custody of the child, the termination order does not contain a finding regarding any substantial harm faced by the child upon returning to Mother’s custody. And the termination statute explicitly requires courts terminating parental rights to “enter an order that makes specific *findings of fact* and conclusions of law[.]” Tenn. Code Ann. § 36-1-113(k) (emphasis added); *see also* Tenn. R. Civ. P. 52.01 (“In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.”). Making appropriate findings of fact and conclusions of law “facilitate[s] appellate review and promote[s] just and speedy resolution of appeals.” *In re Audrey S.*, 182 S.W.3d at 861.

In termination cases, a trial court’s failure to comply with section 36-1-113(k) and provide proper findings and conclusions not only affects the standard of review, “[i]t affects the viability of the appeal.” *In re Disnie P.*, No. E2022-00662-COA-R3-PT, 2023 WL 2396557, at \*13 (Tenn. Ct. App. Mar. 8, 2023) (quoting *In re Zoey L.*, No. E2019-01702-COA-R3-PT, 2020 WL 2950549, at \*2 (Tenn. Ct. App. June 3, 2020)). Indeed, appellate courts “may not conduct de novo review of the termination decision in the absence of such findings.” *In re Charles B.*, No. W2020-01718-COA-R3-PT, 2021 WL 5292087, at \*9 (Tenn. Ct. App. Nov. 15, 2021) (quoting *In re Carrington H.*, 483 S.W.3d at 523). “[W]e may not ‘soldier on’ to make our own findings of fact relative to this ground” like we might with other types of cases. *In re Alexis S.*, No. E2018-01989-COA-R3-PT, 2019 WL 5586820, at \*9 (Tenn. Ct. App. Oct. 29, 2019); *see also In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004) (stating that the absence of specific findings fatally undermines the validity of a termination order).

Here, the trial court has made no findings of fact or conclusions of law regarding the second prong of this ground. As such, we vacate the trial court’s order in relation to the ground of failure to manifest an ability and willingness to assume custody of the child. *See In re Haley S.*, No. M2017-00214-COA-R3-PT, 2018 WL 1560078 (Tenn. Ct. App. Mar.



29, 2018) (vacating the trial court’s determinations regarding grounds where it failed to make sufficient findings of fact and conclusions of law).

Generally, when a trial court fails to make appropriate findings and conclusions as directed by statute, the remedy is to for this Court to remand the matter for the filing of a more detailed final order. *Id.* (remanding the matter with instruction that the trial court make appropriate findings and conclusions). But we have previously concluded that, where another ground for termination has been affirmed, the interest of judicial economy would be better served by simply vacating the ground and continuing with our review, rather than remanding the case. See *In re Disnie P.* 2023 WL, at \*14 (citing *In re Kamyiah H.*, No. M2021-00834-COA-R3-PT, 2022 WL 16634404, at \*7 (Tenn. Ct. App. Nov. 2, 2022) (vacating one ground due to a lack of sufficient findings but concluding it was not necessary to remand the case for additional findings because other grounds existed to support termination of the mother’s parental rights); *In re Ralph M.*, No. E2021-01460-COA-R3-PT, 2022 WL 3971633, at \*16–17 (Tenn. Ct. App. Sept. 1, 2022) (vacating one ground due to insufficient findings of fact but declining to remand for additional findings because “other grounds exist[ed]”). As we have determined that there were other grounds for termination proven by clear and convincing evidence, we do not remand this matter to the trial court for additional findings and conclusions regarding this ground.

### C. Best Interest

Because we have determined that at least one statutory ground has been proven for terminating Mother’s parental rights, we must now decide if DCS has proven, by clear and convincing evidence, that termination of Mother’s rights is in the child’s best interest. Tenn. Code Ann. § 36-1-113(c); *White v. Moody*, 171 S.W.3d 187, 192 (Tenn. Ct. App. 1994). The factors that courts should consider in ascertaining the best interest of child include, but are not limited to, the following:

- (A) The effect a termination of parental rights will have on the child’s critical need for stability and continuity of placement throughout the child’s minority;
- (B) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition;
- (C) Whether the parent has demonstrated continuity and stability in meeting the child’s basic material, educational, housing, and safety needs;
- (D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;
- (E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive

relationship with the child;

(F) Whether the child is fearful of living in the parent's home;

(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;

(H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;

(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;

(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;

(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;

(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;

(O) Whether the parent has ever provided safe and stable care for the child or any other child;

(P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;

(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;

(R) Whether the physical environment of the parent’s home is healthy and safe for the child;

(S) Whether the parent has consistently provided more than token financial support for the child; and

(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

Tenn. Code Ann. § 36-1-113(i).

“This list is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent’s rights is in the best interest of a child.” *In re M.A.R.*, 183 S.W.3d at 667 (citations omitted). Similarly, determining a child’s best interest does not entail simply conducting “a rote examination” of each factor and then totaling the number of factors that weigh for or against termination. *In re Audrey S.*, 182 S.W.3d at 878. Instead, the “relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.” *Id.* (citing *White*, 171 S.W.3d at 194). Moreover, “courts must remember that the child’s best interests are viewed from the child’s, rather than the parent’s, perspective.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (quoting *In re Audrey S.*, 182 S.W.3d at 878). Thus, “[w]hen the best interest of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child.” Tenn. Code Ann. § 36-1-101(d).

Here, in determining that the termination of Mother’s parental rights was in the child’s best interest, the trial court found that all but factors (F), (G), and (O) were relevant and favored termination in this case. While we agree with the trial court that this is not a case that requires a delicate balancing of factors, our Supreme Court has established that “the best interests analysis is and must remain a factually intensive undertaking,” and so we must “consider all of the statutory factors, as well any other relevant proof any party offers.” *In re Gabriella D.*, 531 S.W.3d at 682. We note, however, that there exists a significant overlap between some factors, and, rather than tax the length of this Opinion, we group our discussion of the child’s best interest based on the overarching themes within the list of twenty factors.

We look first to those factors related to the child’s emotional needs. *See* Tenn. Code Ann. § 36-1-113(i)(A) (involving the effect of termination on the child’s need for stability), (B) (involving the effect of a change in caretakers on the child’s wellbeing), (D) (involving the security of the parent-child attachment), (E) (involving visitation), (H) (involving the child’s attachment to another parent-figure), (I) (involving the child’s relationships with others), (T) (involving the effect of the parent’s mental and emotional fitness on the child).

The DCS case worker testified that during visits, both Mother and the child would become overly emotional and need to be removed from the visit to de-escalate. And after visiting with Mother, the child required a therapeutic calm down sequence to regulate his feelings. Mother's last visit with the child was in August 2021. Mother was crying before and during the visit, and left after only ten minutes. The child believes that was her saying goodbye and only talks about Mother when he is angry. Even after the child was removed based, in part, on drug exposure, Mother has been resistant to therapy and medication for her mental health issues, choosing instead to self-medicate with THC. Meanwhile, the child is in therapy to regulate his emotions and is on medication to manage his mental health. If Mother is unable or unwilling to treat her own mental health issues, we have little confidence that she will continue the child's treatment. Instead, the child is currently in a pre-adoptive home where he is receiving the support that he needs. The child has bonded with Foster Mother and her family and believes that he has already been adopted. Terminating Mother's parental rights would only improve the child's stability within this placement. These factors therefore weigh in favor of termination.

Next, we address those factors involving the physical environment of the child and the parent. *See* Tenn. Code Ann. § 36-1-113(i)(F) (involving the child's fear of the parent's home), (G) (involving whether the child's trauma is triggered by being in the parent's home), (N) (involving any abuse or neglect present in the parent's home), (O) (involving the parent's prior provision of safe and stable care to any child), (Q) (involving the parent's commitment to having a home that meets the child's needs), (R) (involving the health and safety of the home). The child was initially removed from Mother's custody after being found dependent and neglected based, in part, on a finding of lack of supervision. Mother's other child was removed from her custody at the same time. Since then, Mother has not maintained stable housing, and lived for some time with a man she alleged was physically and sexually abusing her. Mother has tested positive for a myriad of illegal substances as recently as March 2022, and shown no effort to remediate her drug use issues. The child can become destructive and angry while thinking about Mother and has indicated that he does not feel safe around Mother. This is not an environment in which the child can be expected to thrive. Thus, these factors weigh in favor of termination.

We turn to those factors concerning the efforts made by the parent. *See* Tenn. Code Ann. § 36-1-113(i)(C) (involving the parent's continuity in meeting the child's needs), (J) (involving the parent's lasting adjustment of circumstances), (K) (involving the parent's use of available resources), (L) (involving DCS's reasonable efforts), (M) (involving the parent's sense of urgency), (P) (involving the parent's understanding of the child's basic needs). Here, Mother has made very little effort to regain custody of the child. She does not have stable housing, despite offers of assistance from DCS. Mother has four convictions for public intoxication and two for assault. She has failed three drug screenings and refused a fourth, admitting drug use. DCS arranged four alcohol and drug assessments for Mother after her arrests, which she did not attend. DCS made visits available and convenient to Mother, yet she did not attend more than token visitation. Perhaps most

indicative of Mother’s lack of a sense of urgency in regaining custody of the child is the fact that Mother could not even be bothered to attend the trial at which her parental rights to the child were terminated, and she has still provided no explanation for her absence. These factors weigh heavily in favor of termination.

The final factor involves “[w]hether the parent has consistently provided more than token support for the child.” Tenn. Code Ann. § 36-1-113(i)(S). The record does not contain any evidence of Mother’s child support obligation or whether she provided any financial support to the child since his removal from her custody. Therefore, this factor weighs against termination. *See, e.g., In re Jayda J.*, No. M2020-01309-COA-R3-PT, 2021 WL 3076770, at \*28 (Tenn. Ct. App. July 21, 2021) (holding that because no evidence was presented as to a factor, the factor weighed against termination).

So according to our review, the vast majority of the factors weigh in favor of terminating Mother’s parental rights to varying degrees. While determination of the child’s best interest may not be reduced to a simple tallying of the factors for and against termination, *see In re Audrey S.*, 182 S.W.3d at 878, especially considering the similarities between the factors, we cannot help but acknowledge the overwhelming sense that the child’s life will not be improved by a reintroduction to Mother. Here, from the child’s perspective, we must conclude that the most important factors are the lack of meaningful relationship between the child and Mother and the detrimental effect that a change in caretakers and environment would cause. *See In re Addalyne S.*, 556 S.W.3d at 795–96 (“This Court has previously indicated that in some cases the lack of a meaningful relationship between a parent and child is the most important factor[.]”). With all of the above in mind, we conclude that there was clear and convincing evidence to establish that termination of Mother’s parental rights was in the best interest of the child. Accordingly, we affirm the trial court’s ultimate decision to terminate Mother’s parental rights.

## V. CONCLUSION

The decision of the Juvenile Court of Sevier County is vacated in part and affirmed in part, and this cause is remanded to the trial court for all further proceedings as may be necessary and consistent with this Opinion. Costs of this appeal are taxed to Appellant Robin D., for which execution may issue if necessary.

s/ J. Steven Stafford \_\_\_\_\_  
J. STEVEN STAFFORD, JUDGE