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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 3, 2023

IN RE GENESIS B.

**Appeal from the Juvenile Court for Washington County
No. 54569 Sharon M. Green, Judge**

No. E2022-00973-COA-R3-PT

This appeal concerns the termination of a mother’s parental rights to her child. Jordan H. (“Father”) and his wife Johnnaysja S. (“Stepmother”) (“Petitioners,” collectively) filed a petition in the Juvenile Court for Washington County (“the Juvenile Court”) seeking to terminate the parental rights of Cynthia B. (“Mother”) to her minor son Genesis B. (“the Child”). Mother has a history of criminal conduct involving the sale of illegal drugs. After a hearing, the Juvenile Court entered an order terminating Mother’s parental rights to the Child. The Juvenile Court found that the following grounds were proven against Mother by clear and convincing evidence: abandonment by wanton disregard, persistent conditions, and failure to manifest an ability and willingness to assume custody. The Juvenile Court found further, also by clear and convincing evidence, that termination of Mother’s parental rights is in the Child’s best interest. Mother appeals, arguing in part that despite her continued criminal conduct she has demonstrated a genuine desire to maintain a relationship with the Child as evidenced by, for example, her filing a petition for visitation and engaging in some visitation. We affirm the judgment of the Juvenile Court in its entirety.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and JEFFREY USMAN, JJ., joined.

Kristen Rudder, Johnson City, Tennessee, for the appellant, Cynthia B.

Dustin D. Jones, Johnson City, Tennessee, for the appellees, Jordan H. and Johnnaysja S.

OPINION

Background

In July 2016, the Child was born to Mother. In November 2017, Father filed a petition in the Juvenile Court alleging that the Child was dependent and neglected based upon Mother's arrest and the fact that the Child was in the care of his maternal grandparents. In April 2018, the Juvenile Court adjudicated the Child dependent and neglected and placed him in Father's custody. In September 2018, the Juvenile Court entered an order establishing Father's parentage of the Child. On October 12, 2021, Petitioners filed a petition in the Juvenile Court seeking to terminate Mother's parental rights to the Child. Mother was incarcerated again at this point. Petitioners alleged the grounds of (1) abandonment by wanton disregard, (2) persistent conditions, and (3) failure to manifest an ability and willingness to assume custody. Petitioners alleged further that termination of Mother's parental rights is in the Child's best interest. The Juvenile Court appointed counsel for Mother. Mother filed a motion to dismiss the petition, arguing that it failed to allege any facts to support its bare recitation of grounds and best interest. On January 21, 2022, Petitioners filed an amended petition to terminate Mother's parental rights. Petitioners asserted the same grounds as in the original petition, but set out specific factual allegations this time. In March 2022, Mother filed an answer in opposition to the amended petition.

This matter was heard in May 2022. Mother participated by phone due to her incarceration. Michael Barron ("Barron"), an officer with the Johnson City Police Department, testified first. Barron testified that in May 2021, Mother was the target of a narcotics investigation in which he was the leading investigator. Mother was selling crack cocaine. According to Barron, "[Mother] was the source from where we had a couple of confidential informants getting their narcotics from." Consequently, she was charged with four counts of the sale of Schedule II narcotics. Asked how he knew Mother sold the drugs, Barron stated: "The confidential sources identified her and the controlled purchases were monitored by electronic and traditional surveillance by the investigators that I work with so we observed her on video and observed her through traditional surveillance, the vehicle that was used during those purchases came back registered to her."

Next to testify was William Rhodes ("Rhodes") of the Washington County Sheriff's Office. Rhodes arrested Mother in November of 2017. Asked what the charges were, Rhodes stated: "It should have been resale. She had quite a bit of narcotics on her. It was just a mixture of cocaine and marijuana." Rhodes testified to another encounter with Mother, this time in May of 2021. Rhodes was trying to contact Mother after she had fled from some other officers. Mother was ordered to step out of her truck. She then put her truck in gear and drove off, nearly striking an officer.

Roger Antone (“Antone”), a deputy with the Washington County Sheriff’s Office, took the stand. Antone testified to an encounter he had with Mother at the Washington County Detention Center in Jonesborough. One evening in April 2021, Mother was sitting in her vehicle next to the dumpster outside of the jail. Antone approached Mother to ask what her intentions were. Mother told Antone that she was there to see her boyfriend. Antone told her that they had been having issues with people trying to sneak drugs into the facility. He asked if he could search her vehicle. Mother refused. Antone told Mother that she was subject to being searched while on Detention Center property. Mother then drove off, leading to a pursuit. She wound up crashing into two vehicles. Mother incurred multiple charges in connection with this incident.

Mother testified next. Mother stated that she was arrested for the distribution of narcotics on November 7, 2017. In April 2019, Mother was convicted on a federal charge of distributing crack cocaine. Mother was incarcerated from November 7, 2017 through February 2020. As part of Mother’s supervised release for a term of three years, she was required to refrain from using controlled substances or committing new crimes. Mother pled the Fifth Amendment concerning the pending state charges that she was facing. Mother acknowledged having tested positive for marijuana in February of 2021. A petition was filed later against Mother alleging that she had violated the terms of her supervised release in her federal case. Mother entered into an agreed order of revocation. Her supervised release was revoked, and she was sentenced to twenty-four months.

Mother testified that in June or July of 2020, she filed a petition for visitation and communication with the Child. Mother additionally sought custody of the Child. Mother, having previously engaged in supervised visitation, was granted some unsupervised visits with the Child in April 2021. However, Mother exercised only one unsupervised visit with the Child before she again faced incarceration. Mother testified that she knowingly made the decision to engage in conduct that could lead to her incarceration. Asked if she lacked the ability to assume custody of the Child at this time, Mother replied: “Yes, due to my incarceration.” Mother was not sure what additional incarceration she could face in connection with the state charges pending against her.

Father testified next. When the Child was born, Father did not know right away that the Child was his; he later heard rumors to that effect. Father eventually learned from the Sheriff’s Department about a child support petition concerning him and the Child, which triggered Father’s active involvement in the case. Father stated that his relationship with the Child is “great.” Petitioners have two other children in their home besides the Child. Father stated that these children also have a good relationship with the Child. Father testified to the Child’s relationship with Stepmother:

That is great as well. She works during the week so mostly they go to school during the week, of course, so on the weekends it is pretty much an all day thing. They are pretty much free. They are at home or wherever the fun is on that day or something of that sort. Their bond is pretty inseparable. He likes to walk and hold her hand and all that stuff. They are pretty much inseparable.

The Child calls Stepmother “Mom.” Father stated that the Child is doing “great” in school. According to Father, when Mother was released from her initial incarceration, the Child did not know who Mother was and had to be reintroduced to her. Father stated that Mother would sometimes call the Child but that she “only calls whenever it gets close to Court time and that is pretty much it.” As for any financial assistance from Mother, Father testified that she had paid only one hundred and fifty dollars and then only after being ordered to do so by the court. Father said that the Child never asks about Mother.

On cross-examination, Father acknowledged that he had been ordered by the court to make changes on his phone to allow Mother to engage in video calls with the Child. Father also acknowledged having stated before that he did not have a responsibility to help foster a relationship between the Child and Mother. Father testified that he said this out of frustration and that he had in fact allowed Mother to speak to the Child. Father was then asked about a person that he knew who had been charged with rape and murder. Father stated that the man was an acquaintance who is “pretty much a rapper.” Father had appeared in some of the rapper’s videos in the past. However, Father said that he had nothing to do with the actions underlying the criminal charges. He also said that he last appeared in one of the videos about a year before the hearing.

Stepmother testified. She had been married to Father for approximately five years. Stepmother testified that Father is a “good father” who “has always provided for his kids.” Stepmother said that she has a loving bond with the Child. Regarding the rapper that Father knew who was charged with rape and murder, Stepmother said that Father was not around him when he incurred his criminal charges. Stepmother testified to her belief that it is in the Child’s best interest for Mother’s parental rights to be terminated and for the Child’s adoption by her to proceed. Asked about Mother’s relationship with the Child, Stepmother stated: “I wouldn’t say it is a strong relationship. He knows her as his Mom. He knows that is Mom. He knows that he has siblings through her but as far as having that mother and son bond that is not there.” The first day of the hearing concluded.

When the hearing resumed, Mother testified again by phone. Mother stated that she had tried to provide the Child with whatever she could, including clothes. Mother said that she tried to make payments up until her arrest. Mother stated further that, since she had been incarcerated, phone contact with the Child was difficult. According to Mother, Father

refused to set up any type of “video arrangements” and she usually spoke to the Child through Stepmother. Communication was inconsistent. As for her present activities, Mother stated that she was involved in a government work program called Unicor. Mother made sleeping bags for the Homeland Security Defense Team. Mother said that the program provides training and helps participants get a job after incarceration. Mother also completed the Trauma for Life program, in which she learned how certain things from her childhood still affected her. Mother had interviewed for Resolve, the second part of the trauma program, which involved one-on-one therapy to help recover from past trauma. Mother said that her anticipated release date was February 15, 2023, but should be sooner with programming credit. Asked if she felt it would be in the Child’s best interest for her parental rights to be terminated, Mother stated:

I don’t feel like it is in his best interest. I know that he is confused and doesn’t understand. I don’t feel like that I’ve ever put him in harm’s way and I never had anything around him. I don’t feel like he deserves that and it is unfair to him. I know that I made a big mistake but that doesn’t mean that I don’t love him or don’t want to be his mother or not care about him.

On cross-examination, Mother acknowledged that she sold crack cocaine, which led to her first stint in prison. Mother further acknowledged that she went back to selling drugs after she got out of prison. Mother said, however: “I never had any of that around any of my children. It was never in my house and never was around them.” Mother knew that if she got caught committing her crimes, she would go back to prison. Mother said that she “made a bad decision.” Mother’s first conviction for a drug charge was in 2009, for which she received an eight-year sentence. Mother completed her probation associated with that conviction in 2017.

In June 2022, the Juvenile Court entered its final judgment terminating Mother’s parental rights to the Child. The Juvenile Court found that the following grounds were proven against Mother by clear and convincing evidence: (1) abandonment by wanton disregard; (2) persistent conditions; and (3) failure to manifest an ability and willingness to assume custody. The Juvenile Court found further, also by clear and convincing evidence, that termination of Mother’s parental rights is in the Child’s best interest. In its final judgment, the Juvenile Court found in relevant part:

I
ABANDONMENT BY INCARCERATED PARENT — WANTON DISREGARD

T.C.A. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(iv)(c)

10. The first ground alleged is abandonment by an incarcerated parent by Wanton Disregard. According to the records submitted into evidence from

the Federal District Court for the Eastern District of Tennessee ... the “Judgment in a Criminal Case” shows that [Mother] plead[ed] guilty to Count #2 of the indictment. Count #2 of the indictment states that on November 7, 2017, [Mother] did knowingly, intentionally and without authority possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base (crack), a schedule II controlled substance, in violation of Federal law. The imposition of the judgment was on April 8, 2019, and [Mother] was sentenced to serve a period of imprisonment for a total term of thirty-seven (37) months, and then supervised release for a term of three (3) years upon her release from imprisonment.

11. After [Mother] was released (on supervised release), she acknowledged during trial that in February of 2021 she tested positive for marijuana on a drug screen, however her supervised release was not violated at that time. Not long after the failed drug screen was when the flurry of activity with the Johnson City Police Department and the Washington County TN Sheriff’s Office began, which resulted in [Mother] receiving multiple, and currently pending, state charges.

12. [Mother] engaged in conduct prior to her incarceration that exhibited a wanton disregard for the child’s welfare. There were several law enforcement officers who testified in this case. Officer Michael Barron of the Johnson City Police Department testified that in March of 2021 he was the lead investigator in a narcotics case involving four (4) separate controlled purchases and in total the sale of approximately eight (8) grams of crack cocaine by [Mother] to confidential informants working with the police. [Mother] has been charged with four (4) counts of Sale of Schedule II Narcotics, and those charges are still pending. The Court finds that [Mother] did plead her 5th amendment right when questioned about the pending criminal charges, and that she had the absolute right to plead the 5th, however the officer did testify as to the conduct on [Mother’s] part that he observed, and he was confident that it was [Mother] who sold the crack cocaine to his confidential informants.

13. The Court also heard testimony from Washington County Sheriff’s Deputy Roger Antone, who was working at the Washington County Detention Center on April 29, 2021. He testified that he had an encounter with [Mother] in the jail parking lot which led to a pursuit. He stated that [Mother] was sitting in the driver seat of a white truck next to a dumpster. When asked why she was there, she told the officer that she was there to see her boyfriend through the windows. When the officer asked to search her vehicle, [Mother] put the truck in drive and sped off, hitting two vehicles while making her escape.

14. The Court heard testimony from W. Rhodes who has been working for the Washington County, Tennessee Sheriff's office for twenty-four (24) years. He testified that a few days prior to May 10, 2021, [Mother] had fled from officers when they encountered her at her apartment building. After getting into a white truck, [Mother] was instructed to stop but did not, and almost struck an officer who had his gun drawn.

15. From all of the foregoing events, [Mother] has received multiple Tennessee state criminal charges that are still pending. [Mother] did plead her fifth (5th) amendment rights with regard to all of those charges, which she has the absolute right to do, however, the fact that while [Mother] was out on supervised release at the time and, according to the officer's testimony, was engaging in criminal conduct by selling crack cocaine, by eluding police, and by crashing into vehicles and being charged with reckless endangerment, provides clear and convincing proof that she engaged in conduct prior to her incarceration that exhibits a wanton disregard for the child. The Court's inquiry into [Mother's] prior conduct can, and does, relate back to her conduct which lead to her initial drug conviction which she was on supervised release for in the first place, the sale of crack cocaine.

16. On Nov. 2, 2021, [Mother] entered into an Agreed Order of Revocation whereby her Federal supervised release was revoked, and she was Ordered to serve her current term of incarceration. [Mother] believes that she has a release date of Feb[.] 15, 2023, which the Court finds is approximately eight (8) months after this date (the last day of the trial in this cause). During the child's lifetime, [Mother's] conduct prior to her various periods of incarceration has exhibited nothing but wanton disregard for the child's welfare, and the Court finds that the Petitioners have proven Abandonment by Wanton Disregard by clear and convincing evidence.

II

PERSISTENT CONDITIONS

T.C.A. §§ 36-1-113(g)(3)

17. There is also clear and convincing evidence of persistent conditions as to [Mother]. The child has been removed from her care and custody since April of 2018, and the child has never returned to her care and custody. The child was found to be a dependent and neglected child in her care by clear and convincing evidence due to her incarceration, and she is now again incarcerated on this day today. The conditions that led to the removal of the child from her care and custody, and the fact that she is presently incarcerated, would cause the child to be subjected to further abuse and neglect, and there is little likelihood that these conditions would be remedied at an early date. As mentioned by counsel, we as adults think of eight (8)

months as not being a very long time, but to a young child, eight (8) months is very long time. The Court finds that the continuation of the parent/child relationship between [Mother] and the child greatly diminishes Genesis's being placed into a *permanent* home. He is currently in a safe home. He is in a stable home. And there is an individual in that home that the child looks at as his mother, he calls her mom, she meets his needs, and she takes care of him along with his father. It is his step-mother, [Stepmother], and the child has a strong bond to his step-mother, who is not involved in criminal activity, and who does not use or sell controlled substances. When Genesis would first call her "mom", step-mother would try to explain that she was his "bonus mom", and told the child that he had a mom. But step-mother knows that *she* shares the bond with the child, and she does want to adopt Genesis and be his mother. The Court credits [Stepmother] that she has never done anything to discourage the relationship between the child and [Mother]. Her testimony was very credible. She loves the child, and would love to become his mother. She would be a wonderful person to serve as his mother. Without termination, and the subsequent adoption, the child's chance of integration into a permanent home would be diminished. Persistent Conditions has been proven by clear and convincing evidence.

III

FAILURE TO MANIFEST AN ABILITY AND WILLINGNESS TO ASSUME CUSTODY

T.C.A. § 36-1-113(g)(14)

18. The next ground alleges [Mother's] failure to manifest [an] ability and willingness to assume custody and financial responsibility for the child. [Mother] is incarcerated right now, and has been incarcerated for a majority of the child's life. [Mother] acknowledged very candidly during her testimony that while she is incarcerated she is not able to serve as the child's mother, and is not able to assume custody at this point. Since the child was first removed at fifteen (15) months old, [Mother] has only had one (1) day of unsupervised visitation since that time, and only for a couple of hours. She has an anticipated release date of February 15, 2023, but at least until that time, she would not be able to assume custody or financial responsibility for the child. It is currently impossible to place the child with her, due to her incarceration, and if the child was placed with her, the child would be at a substantial risk of harm. The Court finds, by clear and convincing evidence, that [Mother] has failed to manifest an ability and willingness to assume custody and financial responsibility for the minor child and placing the child with her would pose a substantial risk of harm to the physical and

psychological welfare of the child. The Petitioners have proven this ground for termination of parental rights by clear and convincing evidence.

BEST INTEREST

19. The Court has found all three (3) termination grounds alleged by the Petitioners by clear and convincing evidence, and therefore turns to the Best Interest of the child and those factors that the Guardian ad Litem outlined in her closing argument. The Court is considering all relevant and child-centered factors applicable to this case:

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.** The child is in a stable and continuous placement from his eyes, and so the termination of [Mother's] parental rights would promote stability and continuity of his placement with his father and step-mother. The Court's review of this factor favors termination of [Mother's] parental rights.

b. **The effect a change in caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition.** There was no proof presented as to the termination of [Mother's] parental rights having any effect on the child's physical condition, but the Court finds that it would present a risk of injury to the mental and psychological condition of the child to take him out of his current custodial situation (i.e. away from his father, step-mother and his siblings that he enjoys being with). Any change in caretakers would be very difficult on the child. The Court's review of this factor favors termination of [Mother's] parental rights.

c. **Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs.** [Mother] has been incarcerated for the largest majority of [the] child's life so far, and she has not been meeting, and does not currently meet any of the child's basic material, educational, housing and safety needs. The Court's review of this factor favors termination of [Mother's] parental rights.

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 an attachment.** The Court finds that [Mother] has an attachment toward the child, but there is no real proof before the Court that this attachment goes both ways. Genesis is aware that [Mother] is his mother, but the contacts between Genesis and [Mother] have been very limited during the child's lifetime. The greatest amount of contact occurred between periods of [Mother's] incarceration, when court clinic was supervising her visits. This supervised contact was better than nothing, but did nothing to promote a meaningful parental relationship for a significant

period of time. With no release date for [Mother] to be expected in the next eight (8) months, there is little likelihood that a secure and healthy parental attachment could be established at any time in the near future. The Court's review of this factor favors termination of [Mother's] parental rights.

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. The Court has already discussed the difficulties for mother visiting due to her incarceration, and she has not been able to maintain regular contact/visitation with [the] child. The Court finds no proof that there exists a positive relationship between [Mother] and the child. The Court's review of this factor favors termination of [Mother's] parental rights.

f. Whether the child is fearful of living in the parent's home. The Court heard no proof as to this factor, and it is not applicable.

g. Whether the parent, parent's home, or other in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms. The Court heard no proof as to this factor, and it is not applicable.

h. Whether the child has created a healthy attachment with another person or persons in the absence of the parent. The Court finds that examination of this factor weighs heavily in the Court's best interest determination, in that the child has created a very healthy attachment with his step-mother in the absence of his mother. The Court's review of this factor favors termination of [Mother's] parental rights.

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. The child does have emotionally significant relationships with his half-siblings that reside with the child full-time in the father and step-mother's home. Genesis considers these children to be his siblings and he is very bonded to them. The Court's review of this factor favors termination of [Mother's] parental rights.

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. [Mother] has remained incarcerated and has not demonstrated a lasting adjustment of her circumstances. [Mother] has a

lengthy history of criminal activity which involves the sale of controlled substances. The Court's review of this factor favors termination of [Mother's] parental rights.

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.** [Mother] has been incarcerated for the greater majority of the child's life, and so the resources available to her have been limited. The Court's review of this factor did not weigh towards the Court's decision as to best interest.

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.** The child is not in the custody of the department, and so this factor is not applicable.

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.** The Court finds that the father did demonstrate an urgency in establishing paternity and in seeking custody of the child. The Court finds that [Mother] has not demonstrated a sense of urgency in seeking a return of custody of the child. Instead of working toward that goal, [Mother] continued to engage in criminal conduct that led to her re-incarceration and put her further from that goal. The Court's review of this factor favors termination of [Mother's] parental rights.

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.** The Court finds that this factor is not applicable.

o. **Whether the parent has ever provided safe and stable care for the child or any other child.** Since this child was fifteen (15) months old, [Mother] has not provided safe and stable care for this or any other child. The Court's review of this factor favors termination of [Mother's] parental rights.

p. **Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive.** [Mother] has been incarcerated for a majority of [the] child's life, and so it is difficult for the Court to assess whether she possesses an understanding of the basic and specific needs required for the child to thrive. The Court's review of this factor does not weigh into the Court's determination of best interest in this cause.

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. [Mother] has not demonstrated an ability or commitment to creating and maintaining a home that meets the child's needs and in which he can thrive. [Mother] acknowledges that her current incarceration is due to her own actions and behavior, and those actions and behaviors run contrary to her demonstrating an ability and commitment to creating a safe and stable home for the child. The Court's review of this factor favors termination of [Mother's] parental rights.

r. Whether the physical environment of the parent's home is healthy and safe for the child. [Mother] is incarcerated as a Federal detainee, and so the physical environment of her current home is not healthy and safe for the child. The Court's review of this factor favors the termination of [Mother's] parental rights.

s. Whether the parent has consistently provided more than token financial support for the child. [Mother] has been incarcerated for a majority of the child's life, and her testimony did not support a finding that there has been anything more than token support that she has provided for the child during his life. The Court's review of this factor favors termination of [Mother's] parental rights.

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. The Court's review of this factor did not weigh into the Court's determination as to whether it is in the best interest of the child to terminate [Mother's] parental rights.

20. In considering all of the best interest factors as spelled out fully above, the Court does find, by clear and convincing evidence, that it is in the overwhelming best interest of the minor child that [Mother's] parental rights to the child be terminated.

21. Having found statutory grounds and best interest, by clear and convincing evidence, the Court does hereby terminate all parental rights, privileges and responsibilities of [Mother] to [the Child].

Mother timely appealed to this Court.

Discussion

Although not stated exactly as such, Mother raises the following issues on appeal: 1) whether the Juvenile Court erred in finding the ground of abandonment by wanton disregard; 2) whether the Juvenile Court erred in finding the ground of persistent conditions; 3) whether the Juvenile Court erred in finding the ground of failure to manifest

an ability and willingness to assume custody; and 4) whether the Juvenile Court erred in finding that termination of Mother's parental rights is in the Child's best interest.

As our Supreme Court has instructed regarding the standard of review in parental rights termination cases:

A parent's right to the care and custody of her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.¹ *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. *In re Angela E.*, 303 S.W.3d at 250. "[T]he [S]tate as *parens patriae* has a special duty to protect minors . . ." Tennessee law, thus, upholds the [S]tate's authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child." *Hawk*, 855 S.W.2d at 580 (quoting *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); see also *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Angela E.*, 303 S.W.3d at 250. "When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it." *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388. "Few consequences of judicial action are so grave as the severance of natural family ties." *Id.* at 787, 102 S.Ct. 1388; see also *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are "far more precious than any property right." *Santosky*, 455 U.S. at 758-59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of "severing forever all legal rights and obligations of the parent or guardian of the child." Tenn. Code Ann. § 36-1-113(l)(1); see also *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is "*final* and irrevocable"). In light of the interests and consequences at stake, parents are constitutionally entitled to "fundamentally fair procedures" in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; see also *Lassiter v. Dep't of Soc.*

¹ U.S. Const. amend. XIV § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."). Similarly, article 1, section 8 of the Tennessee Constitution states "[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

Servs. of Durham Cnty., N.C., 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

Among the constitutionally mandated “fundamentally fair procedures” is a heightened standard of proof – clear and convincing evidence. *Santosky*, 455 U.S. at 769, 102 S.Ct. 1388. This standard minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights. *Id.*; *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010). “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 at 596 (citations omitted). The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not. *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).

Tennessee statutes governing parental termination proceedings incorporate this constitutionally mandated standard of proof. Tennessee Code Annotated section 36-1-113(c) provides:

Termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

This statute requires the State to establish by clear and convincing proof that at least one of the enumerated statutory grounds² for termination exists and that termination is in the child’s best interests. *In re Angela E.*, 303 S.W.3d at 250; *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination.” *In re Angela E.*, 303 S.W.3d at 254. Although several factors relevant to the best interests analysis are statutorily

² Tenn. Code Ann. § 36-1-113(g)(1)-(13).

enumerated,³ the list is illustrative, not exclusive. The parties are free to offer proof of other relevant factors. *In re Audrey S.*, 182 S.W.3d at 878. The trial court must then determine whether the combined weight of the facts “amount[s] to clear and convincing evidence that termination is in the child’s best interest.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). These requirements ensure that each parent receives the constitutionally required “individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Furthermore, other statutes impose certain requirements upon trial courts hearing termination petitions. A trial court must “ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child.” Tenn. Code Ann. § 36-1-113(k). A trial court must “enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” *Id.* This portion of the statute requires a trial court to make “findings of fact and conclusions of law as to whether clear and convincing evidence establishes the existence of each of the grounds asserted for terminating [parental] rights.” *In re Angela E.*, 303 S.W.3d at 255. “Should the trial court conclude that clear and convincing evidence of ground(s) for termination does exist, then the trial court must also make a written finding whether clear and convincing evidence establishes that termination of [parental] rights is in the [child’s] best interests.” *Id.* If the trial court’s best interests analysis “is based on additional factual findings besides the ones made in conjunction with the grounds for termination, the trial court must also include these findings in the written order.” *Id.* Appellate courts “may not conduct de novo review of the termination decision in the absence of such findings.” *Id.* (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n. 15 (Tenn. Ct. App. 2007)).

B. Standards of Appellate Review

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the

³ Tenn. Code Ann. § 36-1-113(i).

evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. *In re Bernard T.*, 319 S.W.3d at 596-97. 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 M.L.P.*, 281 S.W.3d at 393 (quoting *In re Adoption of A.M.H.*, 215 S.W.3d at 810). Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d at 246.

In re Carrington H., 483 S.W.3d 507, 521-24 (Tenn. 2016) (footnotes in original but renumbered). In conjunction with a best interest determination, clear and convincing evidence supporting any single ground will justify a termination order. *E.g.*, *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Three statutory grounds are at issue. On October 12, 2021, when Petitioners filed their original petition to terminate Mother's parental rights, the three grounds at issue were set out in statute as follows:

- (g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:
- (1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

- (3)(A) 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;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard;

(14) 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) (West July 1, 2021 to June 30, 2022).⁴

Abandonment by wanton disregard was defined as follows:

(1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, "abandonment" means that:

(iv) A parent or guardian is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, or a parent or guardian has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action and has:

⁴ The Juvenile Court found that Petitioners' amended petition filed January 21, 2022, which reiterated the same previously alleged grounds, relates back to the original petition filed October 12, 2021. Neither party disputes this. We note that, in any event, the applicable statutes did not undergo any relevant changes between those dates.

(c) 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)(c) (West July 1, 2021 to May 8, 2022).

We first address whether the Juvenile Court erred in finding the ground of abandonment by wanton disregard. In her brief, Mother points to her seeking visitation and then exercising some visitation with the Child as evidence that she did not intend to abandon him. Mother also cites the fact that she once notified Father to cancel an upcoming unsupervised visit because she knew she was about to be arrested. Mother thus contends that her conduct does not arise to wanton disregard. Mother's argument, which ignores her repeated criminal conduct, is unpersuasive. As this Court stated in *In re Audrey S.*: "We have repeatedly held that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child." *In re Audrey S.*, 182 S.W.3d 838, 867-68 (Tenn. Ct. App. 2005). Mother's repeated criminal conduct fits squarely with Tennessee caselaw on what constitutes wanton disregard for the welfare of a child. Mother's choices were not a result of a one-time lapse in judgment; instead, Mother was released from incarceration and resumed engaging in criminal behavior all over again. Mother chose to make herself unavailable to parent the Child. The Juvenile Court made detailed findings relative to this ground. The evidence does not preponderate against the Juvenile Court's findings. We find, as did the Juvenile Court, that the ground of abandonment by wanton disregard was proven against Mother by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of persistent conditions. Mother concedes that the Child was in Father's custody for the requisite six months and that the Child was adjudicated dependent and neglected. Mother asserts, however, that after her expected release in February 2023, she will have a chance to prepare for reunification with the Child; that she has proven herself able to parent the Child without supervision; that she had paid some child support; and that "[Petitioners] offered no evidence that Mother's actions or behavior rose to the level of abuse against [the Child], therefore they have failed to show that he would be subject to any abuse or neglect, or that his safety would be at risk, if returned to [Mother's] care."

Mother again overlooks her repeated criminal conduct. As found by the Juvenile Court, this case began with Mother's incarceration, and Mother is incarcerated once again. When Mother was released the first time and had an opportunity to start anew, she went back to criminal activity. The conditions necessitating the Child's removal clearly persist. Mother is unable to parent the Child due to her choice to repeatedly engage in criminal

conduct, specifically that involving illegal drugs. Given Mother's demonstrated propensity to engage in criminal conduct, including fleeing from police officers and selling crack cocaine, the threat of abuse or neglect to the Child is evident. Meanwhile, the Child is bonded with Petitioners and is thriving in their home. Under these circumstances, preserving the parent-child relationship between Mother and the Child greatly diminishes the Child's prospects of integration into his present home. The Juvenile Court made detailed findings corresponding to the elements necessary to sustain this ground. The evidence does not preponderate against the Juvenile Court's findings. We find, as did the Juvenile Court, that the ground of persistent conditions was proven against Mother by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of failure to manifest an ability and willingness to assume custody. With respect to the first prong of this ground, the Tennessee Supreme Court has explained:

[W]e conclude that section 36-1-113(g)(14) places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility for the child. 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.

In re Neveah M., 614 S.W.3d 659, 677 (Tenn. 2020) (citation omitted). Mother states that she made a genuine effort to maintain a meaningful relationship with the Child as evidenced by her filing a petition for visitation; that Mother spoke to the Child "every chance she got"; and that Mother's participation in programs while incarcerated shows her sincere effort to improve as a parent. These are indeed positive acts on Mother's part. However, they pale in comparison to the consequences of Mother's repeated criminal conduct. By her own acknowledgment at trial, Mother is unable to parent the Child due to her incarceration. Mother knew that by re-engaging in criminal activity, she stood to make herself unavailable to parent the Child. She chose to do so anyway, showing her lack of genuine willingness to assume custody of the Child. We find, as did the Juvenile Court, that Mother failed to manifest either the ability or willingness to assume custody of the Child; Mother's failure to manifest either one is sufficient to establish the first prong.

The second prong of this ground calls for determining whether placing the Child in Mother's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the Child. As relevant, the Juvenile Court found that Mother had exercised only a single unsupervised visit with the Child since his removal from her custody. The Juvenile Court found further that Mother expected to be released from incarceration in February 2023. The Juvenile Court concluded: "It is currently impossible

to place the child with [Mother], due to her incarceration, and if the child was placed with her, the child would be at a substantial risk of harm.” However, Tenn. Code Ann. § 36-1-113(g)(14) requires proof of a risk of substantial harm, not a substantial risk of harm. This distinction is potentially significant. A substantial risk of harm could encompass all types of harm, even trivially minor harm. In contrast, substantial harm has been described thusly:

First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. Second, it indicates that the harm must be more than a theoretical possibility. While the harm need not be inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

Ray v. Ray, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001) (footnote omitted). The Juvenile Court’s finding of a substantial risk of harm thus does not comport with the requirement of Tenn. Code Ann. § 36-1-113(g)(14). Nevertheless, upon our *de novo* review of the Juvenile Court’s factual findings, we find that notwithstanding the Juvenile Court’s finding of a substantial risk of harm, placing the Child in Mother’s custody would pose a risk of substantial harm to the physical or psychological welfare of the Child. In a relatively recent case in which we found that a risk of substantial harm was proven by clear and convincing evidence, we concluded:

Given Father’s unresolved legal issues, history of drug abuse, and current incarceration, as well as the bond established between Foster Mother and the Children and their success under her care and custody, we affirm the trial court’s finding that the return of the Children to Father’s custody would pose a risk of substantial harm to their welfare. See *In re Amynn K.*, [No. E2017-01866-COA-R3-PT,] 2018 WL 3058280, at *15 [(Tenn. Ct. App. June 20, 2018), *no appl. perm. appeal filed*] (partially citing the child’s bond with the foster parents, who had custody for four years, in affirming the trial court’s finding of this statutory ground); *In re Ke’Andre C.*, No. M2017-01361-COA-R3-PT, 2018 WL 587966, at *11 (Tenn. Ct. App. Jan. 29, 2018) (noting that the parents had “knowingly engaged in repeated criminal conduct that necessitated their re-incarceration” in finding that returning the children to the parents would pose a risk of substantial harm). Upon careful review, we conclude that clear and convincing evidence supports this statutory ground as well.

In re Erin N., No. E2021-00516-COA-R3-PT, 2022 WL 444284, at *24 (Tenn. Ct. App. Feb. 14, 2022), *no appl. perm. appeal filed*.

Similarly, in the present case, the Child is strongly bonded to Petitioners. On the other hand, the Child is not deeply attached to Mother. In addition, Mother has effectively been out of the Child's life for a majority of his life due to her repeated criminal conduct resulting in re-incarceration. We find by clear and convincing evidence that placing the Child in Mother's custody would present a risk of substantial harm to the Child. Both prongs of the ground are satisfied. We therefore find, as did the Juvenile Court, that the ground of failure to manifest an ability and willingness to assume custody was proven against Mother by clear and convincing evidence.

The final issue we address is whether the Juvenile Court erred in finding that termination of Mother's parental rights is in the Child's best interest. The applicable statutory best interest factors read as follows:

- (i)(1) In determining whether termination of parental or guardianship rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court. Those factors may 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.
- (2) When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.
- (3) All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court's written order.

- (4) Expert testimony is not required to prove or disprove any factor by any party.
- (5) As used in this subsection (i), “parent” includes guardian.

Tenn. Code Ann. § 36-1-113(i) (West July 1, 2021 to June 30, 2022).

With regard to making a determination concerning a child’s best interest, the Tennessee Supreme Court has instructed:

When conducting the best interests analysis, courts must consider nine statutory factors listed in Tennessee Code Annotated section 36-1-113(i). These statutory factors are illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis. *In re Carrington H.*, 483 S.W.3d at 523 (citing *In re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005)). Facts considered in the best interests analysis must be proven by “a preponderance of the evidence, not by clear and convincing evidence.” *In re Kaliyah S.*, 455 S.W.3d at 555 (citing *In re Audrey S.*, 182 S.W.3d at 861). “After making the underlying factual findings, the trial court should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest[s].” *Id.* When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” *In re Audrey S.*, 182 S.W.3d at 878. Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. *Id.* “[W]hen the best interests 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) (2017).

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. *In re Audrey S.*, 182 S.W.3d at 878. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. *White v. Moody*, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004). Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. *See In re Audrey S.*, 182 S.W.3d at 878. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated. *In re Carrington H.*, 483 S.W.3d at 523. “[D]epending 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.” *In re Audrey S.*, 182 S.W.3d at 878 (citing *White v. Moody*, 171 S.W.3d at 194). But this does not mean that a court is relieved of the obligation of considering all the factors and all the proof. Even if the circumstances of a particular case ultimately result in the court ascribing more weight—even outcome determinative weight—to a particular statutory factor, the court must consider all of the statutory factors, as well as any other relevant proof any party offers.

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017).⁵

Mother argues that her visits and contact with the Child have not been disruptive to him; that there is no evidence that her actions are irredeemable; that the Juvenile Court did not consider the impact on the Child of reducing her role to that of complete stranger; and that the Child knows her as “mom” and has some knowledge that she is his mother. All in all, Mother argues that the Juvenile Court erred in concluding that it is in the Child’s best interest for her parental rights to be terminated.

Insofar as Mother’s arguments rest upon the assertion of a mother-son bond that should not be broken, we note the Juvenile Court’s finding that Mother’s attachment toward the Child was not reciprocated. Indeed, Mother’s visits were “better than nothing” as found by the Juvenile Court, but they did not lead to a meaningful relationship between Mother and the Child. Thus, while Mother’s visits may not have been disruptive, they were not overly impactful, either. As to the Juvenile Court’s alleged failure to consider the effect of reducing Mother to the role of complete stranger to the Child, the Juvenile Court’s factual findings relative to best interest reflect that it very much considered that particular consequence of termination. The Juvenile Court found “no real proof,” nor does the record yield any such proof, that the Child is attached to Mother. By contrast, there is considerable evidence of the Child’s attachment to Petitioners. While the Child may have some knowledge that Mother is his mother, that in itself hardly is conclusive of the Child’s best interest when there is no evidence that the Child is bonded to Mother. In sum, there is no basis from this record to conclude that severing the parent-child relationship between Mother and the Child would be to the Child’s detriment.

The paramount concern in this case, one that recurred again and again in the Juvenile Court’s findings regarding best interest, is that of Mother’s repeated criminal conduct resulting in her incarceration. She has repeatedly engaged in criminal conduct over the life

⁵ In *In re Gabriella D.*, a prior version of the best interest factors was in effect. However, we believe the Tennessee Supreme Court’s analysis applies to the amended version of Tenn. Code Ann. § 36-1-113(i), as well.

of the Child, rendering herself habitually unable to parent the Child. Meanwhile, the Child enjoys stability in Petitioners' home, where he is thriving. Regrettably, time and again Mother prioritized criminal activity above her responsibilities as a parent. The Child deserves the permanence of his current home; there is no hint that Mother will be ready or able any time soon to care for the Child. The Juvenile Court made factual findings corresponding to each of the applicable statutory best interest factors. Upon our review of the record, the evidence does not preponderate against these findings. We find by clear and convincing evidence, as did the Juvenile Court, that termination of Mother's parental rights is in the Child's best interest.

Conclusion

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

D. MICHAEL SWINEY, CHIEF JUDGE