

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 1, 2023

## IN RE SERENITY M., ET AL.

**Appeal from the Juvenile Court for Sullivan County  
No. 20-JV-43676 Raymond C. Conkin, Jr., Judge**

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**No. E2022-01167-COA-R3-PT**

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This appeal concerns the termination of a mother’s parental rights. The Tennessee Department of Children’s Services (“DCS”) filed a petition in the Juvenile Court for Sullivan County (“the Juvenile Court”) seeking to terminate the parental rights of Andrea A. (“Mother”) to her minor children Serenity M., Alfred M. (“Alfie”), Chloe M., and Zoey M. (“the Children,” collectively).<sup>1</sup> The Children’s father, A.M. (“Father”), surrendered his parental rights and is not a party to this appeal. After a hearing, the Juvenile Court entered an order terminating Mother’s parental rights to the Children on four grounds. Mother appeals. DCS concedes the ground of abandonment by failure to provide a suitable home. We vacate that ground. However, we find, as did the Juvenile Court, that the other three grounds found—substantial noncompliance with the permanency plan, persistent conditions, and failure to manifest an ability and willingness to assume custody—were proven against Mother by clear and convincing evidence. We further find by clear and convincing evidence, as did the Juvenile Court, that termination of Mother’s parental rights is in the Children’s best interest. We affirm as modified, resulting in affirmance of the termination of Mother’s parental rights to the Children.

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

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

Elizabeth A. Brady, Johnson City, Tennessee, for the appellant, Andrea A.

Jonathan Skrmetti, Attorney General and Reporter, and Amber L. Barker, Assistant Attorney General, for the appellee, the Tennessee Department of Children’s Services.

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<sup>1</sup> Serenity M. was born in October 2013; Alfred M. in September 2015; Chloe M. in March 2017; and Zoey M., Chloe’s twin, also in March 2017.

## OPINION

### Background

In August 2019, police responded to a report of child abuse at Mother's apartment. A neighbor reported to the police that Mother grabbed Alfie by his arm and tossed him out of the apartment while shutting the door. When the police arrived, Father told them that Mother also had grabbed Serenity by the face and forced her out of the apartment. The apartment was filthy. There were mattresses and blankets on the floor instead of beds. The police noted that there were abrasions on Alfie's arms and small bruises on Chloe's cheek, Zoey's forehead, and Serenity's knee and shoulder blade. Mother was arrested. She was charged with four counts of child neglect and two counts of child abuse. DCS filed a petition to adjudicate the Children dependent and neglected. The Juvenile Court granted DCS custody of the Children, who were then placed in foster care. In November 2020, the Children were adjudicated dependent and neglected based upon stipulation.

An initial permanency plan was developed for Mother in September 2019, but that plan is not contained in the appellate record. Instead, there is only a Child and Family Team Meeting Summary reflecting the plan's responsibilities. The record contains an updated permanency plan dated June 2020. Mother's responsibilities under her plans, which are not in dispute, included: regularly visit the Children; obtain a legal source of income; obtain and maintain suitable housing for herself and the Children free from criminal activity; and comply with the recommendations of her parenting assessment. Mother was also to pay \$20 per month per child in child support unless otherwise ordered. The June 2020 plan noted that Mother had a job and appropriate housing. She also had completed a parenting assessment. In December 2020, Mother's permanency plan was updated again. Couples therapy, a responsibility from an earlier plan, was deleted because Mother and Father had separated by this point. Mother still needed to complete her parenting education. In June 2021, Mother's permanency plan was updated again but without significant change.

With respect to Mother's criminal history, Mother was convicted of child abuse and neglect in 2018. She was placed on probation. In March 2019, Mother violated her probation for failure to pay fines, failure to comply with the conditions of her probation, and failure to register for and/or attend an alcohol and drug evaluation. In August 2019, the incident which led to the Children's removal occurred. In September 2019, Mother pled guilty to four counts of child abuse and neglect. Two remaining counts were dismissed. Mother was sentenced to 11 months and 29 days with 90 days to serve, the remainder suspended to active probation on the condition that Mother participate in domestic abuse counseling. In August 2020, Mother violated her probation for failure to

pay fines, failure to comply with the conditions of her probation, and failure to register for and/or attend alcohol and drug services.

On December 4, 2020, DCS filed a petition in the Juvenile Court seeking to terminate Mother's parental rights to the Children. DCS alleged the grounds of abandonment by failure to provide a suitable home, substantial noncompliance with the permanency plan, persistent conditions, and failure to manifest an ability and willingness to assume custody. DCS also alleged that termination of Mother's parental rights is in the Children's best interest. This matter was tried in June and July 2022.

Mike Smith ("Smith"), a DCS worker formerly managing the Children's case, testified first. Smith no longer managed their case as of the May before trial. The Children had been in state custody continuously since August 18, 2019. They also had been in foster care since that time. When the Children entered state custody, Mother was incarcerated. There had been domestic violence in her home. Smith testified that DCS tried to reach out to optional family members to find non-custody situations for the Children, but they were unsuccessful with that. Regarding Mother's permanency plans, Smith did not know whether Mother had participated in the initial permanency plan meeting because she was in jail, but "as soon as she was released from jail, she was notified of the action steps, and we did go over the Perm Plan with her at that point." Visitation with the Children was set for Mother upon her release from incarceration. Mother was provided with a copy of her permanency plan.

As to the paramount issues that Mother needed to address, Smith said that "[i]n this situation, it would have been the, resolving the mental health, the domestic violence, because those are the two things that's going to impact safety the most in the home, along with the parenting and the visitation." Smith stated that when DCS filed its termination petition, Mother lacked safe and stable housing. Father was arrested for domestic violence. The Children were witnesses to this domestic violence. They reported "yelling and screaming" between Mother and Father, as well as a physical altercation. In September 2020, Father was arrested again for domestic violence. Mother's permanency plan revised in December 2020 no longer required that Mother and Father complete couples counseling since they were separated by then. Mother needed to follow up on her mental health treatment, but she did not. Smith stated that "[s]he did do intakes, and she, and in fact, when the Perm Plan was ratified back in October 2020, I believe at that point she had received one, maybe two, therapeutic sessions with her provider. And then, she also made a couple more before the new year began there in 2021." Nevertheless, "[a]fter that, she fell into noncompliance and was later terminated from the program." Mother completed a parenting assessment. However, asked whether Mother had completed the recommendations, Smith testified:

She never did. We tried to work with her, well, I tried to work with her for several months to do that. We, I even worked with the probation officer to make an agreement that she can complete a program through Frontier Health which would allow her to do IOP and parenting together at the same time. She never signed up for that program. I spoke with her Frontier Health workers trying to help initiate that, maybe create referrals. Again, there was never any follow through or compliance with that. Eventually, Andrea and I had a conversation, because we, DCS ourselves was not requiring IOP, I agreed to go ahead and initiate parenting education on behalf of the Department and provide that service to her. There was, she did make several appointments, but there was also several no shows and noncompliance. So, she actually never completed the program. It's our policy that we do provide that service for six months, and then we can extend it. And I did get the approval to extend it for one month after that. And then, again, no progress was made as far as the follow through on that, so we eventually quit providing that service.

Mother also failed a drug screen for THC. Asked whether Mother had complied with her most critical action steps, Smith stated “[t]o be honest, the only thing that she’s ever done on the Perm Plan is stay in compliance with visitation. In three years of the children being in custody.” According to Smith, in addition to substance abuse issues, domestic violence, abuse of the Children, and Mother’s incarceration, another issue in the case was the environment of Mother’s home. Smith said that there were only one or two mattresses on the floor at the time of removal. There were “unsanitary, unhealthy conditions.” As for Mother’s most recent housing situation, Smith testified: “[A]s of the last moment I had the case, although the mom reported that she might have had or received a trailer, she would never let me come out and verify if it was safe and stable for the children. So to my knowledge, she’s still currently without housing.”

Regarding visitation with the Children, Smith stated that Mother often times was not receptive to “coaching” on these visits. The Children reacted negatively to Mother’s visits, and eventually the visits were halted. All of the Children were in counseling. Serenity, Chloe, and Zoey were all diagnosed with PTSD, and “[t]hey have all been diagnosed with ADHD.” As to whether the Children were on medication, Smith stated: “That was a struggle for awhile. We were eventually able to convince Andrea to sign off on medication on Serenity. To my knowledge, she’s just recently started using a low dose heart pill, cardiovascular pill to help with calming her down in the evenings to help her sleep.” Regarding Mother’s employment, Smith said it was sporadic. Mother would “get employed, work for a month, and then quit.” Smith testified that Mother had shown the ability to progress and support the Children, but she “chooses not to.” Mother had not paid any child support. Smith testified:

I believe the mom loves the children. But unfortunately, in these situations, a lot of time love's not enough. The children need stability. The children need safe, stable housing. The children need to know what their future's going to look like. Unfortunately, we've been in a situation where mom would start to make a little bit of progress at first, and then she would all of a sudden quit or not progress at all. I would say stemming from mental health issues through, I mean, which she's disclosed herself that she suffers from depression, and bipolar, and other mental health concerns as well, that she would fall into manic episodes or depression, and she, because she wasn't getting the help that she needed, which we've been working trying to help her get over the past three years, she can never sustain her mental health status to provide for these children.

Concerning housing, Mother showed Smith a picture of a lease, but he was unable to determine whether it was a credible lease. Mother told Smith that she has a trailer, but she refused to let him come out and see the trailer. Asked whether placing the Children with Mother would pose substantial harm to their physical or psychological welfare, Smith replied:

I believe it would. I believe that the, due the children, the trauma that they received in the home, which has led to issues in school of them struggling, to the point of, Alfie was expelled from Pre-K. He's doing fine in Kindergarten this year. The twins were at risk from being expelled from Pre-K. Serenity was held back a year. So, I mean, we see the issues in school with all four of them and how they're [sic] behaviors were in school. Based upon their behaviors following visitation and the moment that we stopped visitation, that's the correlation when their behaviors improved.

Smith went further and stated that he "would fear for these children" were they returned to Mother. Smith said that the only consistent thing he had seen out of Mother was that she had been in a healthy relationship for about a year. Smith believed that the Children loved Mother. However, Mother's visits had been cancelled for almost a year, and "[t]here's been, there was no questions of when am I going to see mom again, when's my next visit with mom. And I'm particularly talking about Alfie and Serenity, the older ones." Serenity and Alfie had been in the same home for over two years; Zoey and Chloe had been in the same home for over one year. The Children were bonded with their foster families in pre-adoptive homes. The Children were still able to see one another. On the subject of drug abuse, Smith said that Mother told him that she self-medicates her depression with marijuana. According to Smith, Mother did not want to follow through on things like therapy and legitimate medication.

On cross-examination, Smith acknowledged that Mother completed a mental health intake. Mother also participated in mental health therapy. Mother participated in medication management for a “short period of time.” Smith said that he never had any problems with Mother signing releases except one day in May. Smith cleared his calendar, but Mother never showed up. Smith said that Mother never tested positive for any substances other than THC. According to Smith, when Mother’s visits were cancelled around November 2021, she inquired about visitation and asked for pictures of the Children. Smith sent Mother some pictures. To show whether she had acquired parenting skills with the Children, Mother had to complete parenting education, but she never did. When Mother was engaging in visitation before it was suspended, her visits “weren’t consistent as far as appropriate....” Smith recalled one visit when Mother played a song on her phone that used curse words and a racial slur in front of the Children. Mother got frustrated when Smith told her that she did not need to play that sort of music in front of the Children. Smith did acknowledge that some visits went “really well.” Smith said, however, that “[m]any times, [Mother] seemed overwhelmed and just didn’t know what to do.”

Jeralyn Martin (“Martin”) testified next. Martin was the Children’s case manager as of trial. Martin had been on the case for a month. Mother told Martin that she was living in a two-bedroom trailer. In the month that Martin was on the case, Mother had not provided her with any proof of completion of any of the action steps on her permanency plan.

On August 17, 2022, the Juvenile Court entered an order terminating Mother’s parental rights. On August 25, 2022, the Juvenile Court entered an amended order terminating Mother’s parental rights.<sup>2</sup> The Juvenile Court found that the following grounds were proven against Mother by clear and convincing evidence: (1) abandonment by failure to provide a suitable home; (2) substantial noncompliance with the permanency plan; (3) persistent conditions; and (4) failure to manifest an ability and willingness to assume custody. The Juvenile Court further found, also by clear and convincing evidence, that termination of Mother’s parental rights is in the Children’s best interest. The Juvenile Court stated, as pertinent:

**GROUND 1**  
**ABANDONMENT — FAILURE TO PROVIDE SUITABLE HOME**  
**T.C.A. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii)**

[DCS concedes as to this ground.]

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<sup>2</sup> On August 25, 2022, the same day the amended order was entered, Mother appealed the August 17, 2022 order. The amended order is not substantively different from the original order. This appeal is of the final judgment.

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**GROUND 2**  
**SUBSTANTIAL NONCOMPLIANCE WITH PERMANENCY PLAN**  
**T.C.A. §§ 36-1-113(g)(2) and 37-2-403**

20. After the children came into state custody, DCS created permanency plans for them in the underlying dependency and neglect proceedings that gave rise to this cause.
21. The permanency plans listed a number of requirements that the Respondent needed to satisfy before the children could safely be returned home. The plans gave [Mother] ample time to satisfy those requirements.
22. The plans required [Mother] to:
- a) Obtain and maintain safe and stable housing for herself and the children;
  - b) Obtain and maintain a legal source of income sufficient to provide for the children;
  - c) Participate in couples therapy;
  - d) Complete a clinical parenting assessment and follow all recommendations, which include individual counseling, medication management, and parenting education;
  - e) Remain in compliance with probation;
  - f) Participate in and pass random drug screens;
23. [Mother] signed the plans on September 19<sup>th</sup> 2019.
24. This Honorable Court ratified the initial permanency plans on October 19<sup>th</sup> 2019 as in the children's best interests and found that the requirements for the Respondent were reasonably related to remedying the reasons for foster care.
24. The Court finds that [Mother] has not substantially complied with the responsibilities and requirements set out for her in the permanency plans to wit:
- a) She failed to maintain safe and stable housing for the children because there was a domestic violence incident between her and the father at her home in July 2020 while the children were present, and they continued to live together until Father was arrested for assault again in September 2020;
  - b) She failed to participate in couples therapy; she claimed Frontier [H]ealth was not providing the service due to COVID-19, however Frontier Health confirmed the service was offered and not accepted;

c) She failed to follow the recommendations of the clinical parenting assessment; she reported that she was engaged in services at Frontier Health, however Frontier Health reported as of August 2020 she had not engaged in counseling, medication management, or parenting since December 2019; Further she failed to keep an appointment for an intake on August 3<sup>rd</sup> 2020;

d) She failed to remain in compliance with probation and her probation was violated on September 18<sup>th</sup> 2020 due to a failed drug screen;

e) She has failed to participate in and pass random drug screens, and continued failing drug screens;

25. The Court finds that, as of the date of hearing, the permanency plans are reasonable and related to remedying the reasons for which the children were placed into foster care, such that, had the Respondent cooperated with the same, it would have addressed the reasons for which the children were in DCS custody.

26. DCS has proven, by clear and convincing evidence, the ground of substantial noncompliance with the permanency plan against Respondent.

**GROUND 3**  
**PERSISTENT CONDITIONS**  
**T.C.A. §§ 36-1-113(g)(3)**

27. As of the filing of the State's termination petition, the children had been removed from the home, physical and legal custody of [Mother] for a period of six (6) months by a court order at the underlying dependency and neglect proceedings in that gave rise to this cause. This order was based upon a petition which alleged that the children were dependent and neglected and was filed on August 20<sup>th</sup> 2019.

28. DCS removed the children from their home because of the Mother physically abusing the children, and environmental neglect.

29. The conditions that led to the removal still persist in that Respondent Mother has not taken any proactive steps to acquire proper parenting skills.

30. Other conditions in the home exist that, in all reasonable probability, would lead to further neglect or abuse of the children in that Respondent has not provided proof she is financially able to provide for the children, she has not resolved her substance abuse issues, or her mental health issues, and due to the ongoing domestic violence in her home a trial home placement of the children was revoked.

31. There is little chance that those conditions will be remedied soon so that the children can be returned safely to the home.



32. Continuation of the parent/child relationship greatly diminishes the children's chances of being placed into a safe, stable and permanent home.
33. DCS has proven, by clear and convincing evidence, the ground of persistent conditions against Respondent.

**GROUND 4**  
**FAILURE TO MANIFEST AN ABILITY AND WILLINGNESS TO**  
**ASSUME CUSTODY T.C.A. § 36-1-113 (g)(14)**

34. The Respondent Mother has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the children.
35. The Respondent has failed to present any proof that she is financially capable of providing for the children.
36. The Respondent has failed to establish safe and stable housing for the children thereby demonstrating that she does not have the ability to assume physical custody.
37. The Respondent has failed to acquire appropriate parenting skills or cooperate with DCS and service providers to such an extent that she has failed to demonstrate an ability or willingness to assume legal custody of the children.
38. Placing the children in the Respondents' legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the children.
39. DCS has proven, by clear and convincing evidence, the ground for termination contained in T.C.A. § 36-1-113(g)(14) against Respondent.

**BEST INTEREST**  
**T.C.A. § 36-1-113(i)(1)**

40. The Court finds that, after having found that grounds exist to terminate the parental rights of a Respondent, the Court must then analyze whether or not it is in the child's best interest for termination to be granted. The Court further finds that the nonexclusive list of best interest factors which the Court must consider are contained in Tennessee Code Annotated § 36-1-113(i)(1). Further the petition as pled was under previous subheadings of the same statute, therefore the Court will address these factors under the current headings and subheadings.
41. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(A) is applicable in this matter. Thus, the Court finds that it is in the best interests of the minor children for termination to be granted as to the

Respondent, because the children require stability and continuity of placement through their minority which they have currently in their foster homes.

42. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(B) is applicable in this matter. Thus, the Court finds that it is in the children's best interests for termination to be granted as to the Respondent because the effect of a change in caretakers and physical environment is likely to have a detrimental effect on the children's emotional, psychological, and medical conditions. The children have remained in the current homes who have provided for all of their needs and are intent on adopting them.

43. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(C) is applicable in this matter. The Court finds that it is in the children's best interests for termination to be granted as to the Respondent, because she has not demonstrated continuity and stability in meeting the children's basic material, educational, housing, and safety needs.

44. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(D) is applicable in this matter. The Court finds that it is in the children's best interests for termination to be granted as to the Respondent, because there is no secure and healthy parental attachment between Respondent and the children, and it is unlikely that such an attachment can be created.

45. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(E) is applicable in this matter. Thus, the Court finds that it is in the children's best interests for termination to be granted as to the Respondent, because although she participated in visitation she failed to cultivate a positive relationship with the children, and favored the twins and would ignore the other children. She had to be often redirected to put down her phone and interact with the children.

46. The Court finds that the best interest factor contained in ... T.C.A. § 36-1-113(i)(1)(F) is applicable in this matter. Thus, the Court finds that it is in the children's best interests for termination to be granted as to the Respondent, because the children are fearful of living in the home. The children have expressed their fears regarding the domestic violence they witnessed between their parents.

47. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(G) is applicable in this matter. Thus, the Court finds that that it is in the children's best interest for termination to be granted as to the Respondent, because the Respondent triggers or exacerbates the children's experience of trauma or post[-]traumatic symptoms. The children carry diagnoses of post[-]traumatic stress disorder as a result of the domestic violence and lives they lived in the home of Respondent.

48. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(H) is applicable in this matter. Thus, the Court finds that ... it is in the children's best interest for termination to be granted as to the Respondents, because the children have created a healthy parental attachment with another person or persons in the absence of the Respondent.

49. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(I) is applicable in this matter. Thus, the Court finds that ... it is in the children's best interest for termination to be granted as to the Respondent, because the children have an emotionally significant relationship with persons other than the Respondent and it would have a detrimental impact on the children's relationships with those persons and the child's access to information about the children's heritage. The children are in two pre[-]adoptive foster homes of the same biological family who live near each other, so the children see each other often and are able to preserve their sibling relationship.

50. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(J) is applicable in this matter. Thus, the Court finds that [it is] in the children's best interests for termination to be granted as to the Respondent, because she has failed to demonstrate such a lasting adjustment of circumstances, conduct, or conditions as to make it safe and beneficial for the children to be placed in her home and is consistently unable to provide safe and stable care for the children.

51. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(K) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not taken advantage of available programs, services, and community resources to assist her in making a lasting adjustment of circumstances, conduct or condition which would make it safe for the children to return to her care. Respondent has had three years to rectify her situation to have the children returned to her and due to her acts and omissions she has failed to avail herself of services offered.

52. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(L) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because DCS has provide[d] reasonable efforts to assist the Respondent in making a lasting adjustment of circumstances, conduct or condition which would make it safe for the children to return to her care.

53. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(M) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not demonstrated a sense of urgency in seeking custody of

the children, or addressing the circumstances, conduct, or conditions which would make it safe to return the children to her home.

54. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(N) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent or other persons residing in their home have shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the children or any other child or adult. The children have witnessed the domestic violence between their parents in the home, and Respondent was found guilty of child abuse/neglect/endangerment on two separate occasions.

55. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(O) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not provided safe and stable care for these children or any other child.

56. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(P) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not demonstrated an understanding of the basic and specific needs required for the children to thrive. She has failed to comply with DCS and service providers to gain such understanding.

57. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(Q) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not demonstrated a commitment to creating and maintaining a home that meets the children's basic and specific needs and in which the children can thrive.

58. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(R) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the physical environment in the Respondent's home is not healthy and safe for the children. This is evidenced by her convictions and that she continues to allow the children's father into her home.

59. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(S) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent has not provided more than token financial support for the children.

60. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(T) is applicable in this matter. Thus, the Court finds that it is in the children's best interest for termination to be granted, because the Respondent[']s mental or emotional unfitness would be detrimental to the

children and prevent the Respondent from consistently and effectively providing safe and stable care and supervision for the children.

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 failure to provide a suitable home; 2) whether the Juvenile Court erred in finding the ground of substantial noncompliance with the permanency plan; 3) whether the Juvenile Court erred in finding the ground of persistent conditions; 4) whether the Juvenile Court erred in finding the ground of failure to manifest an ability and willingness to assume custody; and 5) whether the Juvenile Court erred in finding that termination of Mother's parental rights is in the Children'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.<sup>3</sup> *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."

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<sup>3</sup> 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."

*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. 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 grounds<sup>4</sup> 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 enumerated,<sup>5</sup> 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

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<sup>4</sup> Tenn. Code Ann. § 36-1-113(g)(1)-(13).

<sup>5</sup> Tenn. Code Ann. § 36-1-113(i).

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 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).

Four statutory grounds for termination of parental rights are at issue on appeal. On December 4, 2020, when DCS filed its termination petition, the statutory grounds read 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;
- (2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4;
- (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;

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(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 March 6, 2020 to April 21, 2021).

The abandonment ground at issue, failure to provide a suitable home, was found by the Juvenile Court. However, DCS on appeal concedes as to this ground, and we need not discuss this ground further. We vacate the ground of abandonment by failure to provide a suitable home.

We now address whether the Juvenile Court erred in finding the ground of substantial noncompliance with the permanency plan. In her brief, Mother contends that

she was not in substantial noncompliance with her permanency plan.<sup>6</sup> Mother argues in her favor, to wit: that she participated in therapeutic visitation; that she participated in mental health services; that she had housing by the time of the hearing; that she had completed her criminal sentence; that certain child support Father owed her had passed through her account for the Children's support; that she had ended her relationship with Father; and that the only new charge she received was in August 2020, which was prior to the Juvenile Court's October 2020 ratification of her permanency plan. DCS argues in response that, while Mother visited the Children when she was able to do so, she refused to allow DCS to visit her residence; that she failed to maintain a consistent income or provide proof of same; that notwithstanding any payments made by Father through her account, Mother herself never paid any child support; that Mother failed to follow through on parenting education; and that she failed to comply with recommended treatment.

We note DCS worker Smith's testimony that "the only thing that [Mother's] ever done on the Perm Plan is stay in compliance with visitation. In three years of the children being in custody." Smith identified mental health, domestic violence, and parenting issues as other major concerns in this matter. In these categories, Mother's efforts were half-hearted. Mother refused to allow DCS to inspect her most recent residence. She only briefly engaged in medication management, preferring to "self-medicate" with marijuana. Crucially, she did not complete parenting education, nor did she pursue it with much seriousness. As this case originated in Mother's abuse and neglect of the Children, those permanency plan responsibilities of Mother's geared toward addressing her mental health needs and parenting skills were of the utmost importance. Mother failed to make a reasonable effort in these critical areas. The evidence does not preponderate against the Juvenile Court's findings relative to this ground. We find, as did the Juvenile Court, that

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<sup>6</sup> The record does not contain the initial 2019 permanency plan created for Mother; it includes only a "summary." Mother does not question her responsibilities under her successive permanency plans, but the omission presents a problem. "Even if a plan is later revised, 'the original [permanency] plan must still be included in evidence, in addition to the revised plan, if DCS is relying on noncompliance with the original plan as a ground for termination.'" *In re Dyllon M.*, No. E2020-00477-COA-R3-PT, 2020 WL 6780268, at \*7 (Tenn. Ct. App. Nov. 18, 2020), *R. 11 perm. app. denied June 10, 2021* (quoting *In re T.N.L.W.*, No. E2006-01623-COA-R3-PT, 2007 WL 906751, at \*5 (Tenn. Ct. App. Mar. 26, 2007), *no appl. perm. appeal filed*). In *In re Dyllon M.*, the appellate record contained only one complete permanency plan out of five plans created in that case. *Id.* at \*8 n.8. Both the original plan and final plan were omitted. *Id.* at \*8. Here, we are missing only the first plan. The record contains the June 2020 permanency plan, the December 2020 permanency plan, and the June 2021 permanency plan. Moreover, the Juvenile Court's findings as to this ground are not entirely dependent upon Mother's alleged substantial noncompliance with the initial plan. Mother's substantial noncompliance in certain areas extended to the date of trial and stemmed from successive plans as well. We thus consider *In re Dyllon M.* distinct. Nevertheless, in reviewing this ground, we will not consider Mother's initial permanency plan. To prove substantial noncompliance with a permanency plan, the actual plan or plans relied upon by DCS to sustain the ground must be entered into the record. A "summary" is insufficient.

the ground of substantial noncompliance with the permanency plan was proven against Mother by clear and convincing evidence.

We next address whether the Juvenile Court erred in finding the ground of persistent conditions. There is no dispute that the Children had been in DCS custody for the requisite six months prior to the initial termination hearing date. Mother argues, however, that there are no existing conditions that prevent the Children's safe return to her. Mother states that she has sought treatment for her mental health issues and has submitted to a parenting assessment. She acknowledges missing some mental health appointments but asserts, without citing to the record, that she was "limited at times as to phone availability and WiFi availability as many of her appointments were done through telehealth due to the pandemic." Mother says that she maintained housing throughout the custodial episode; that Child and Family Team Meeting summaries do not reflect any physical issues with her home; that she has resolved her legal issues; and that DCS did not try to reintegrate her with the Children. For its part, DCS states that Mother's current living situation is unknown as she refused to allow DCS to see her home; that while Mother held a number of jobs intermittently, she did not hold steady employment; that Mother failed to provide pay stubs to DCS or pay child support; that she failed to follow through on parenting education or to take her medication properly; and that Mother's visits with the Children were suspended because the Children became aggressive after the visits.

As relevant to this ground, the Juvenile Court found that "[t]he conditions that led to the removal still persist in that Respondent Mother has not taken any proactive steps to acquire proper parenting skills."; that "[o]ther conditions in the home exist that, in all reasonable probability, would lead to further neglect or abuse of the children in that Respondent has not provided proof she is financially able to provide for the children, she has not resolved her substance abuse issues, or her mental health issues, and due to the ongoing domestic violence in her home a trial home placement of the children was revoked."; that "[t]here is little chance that those conditions will be remedied soon so that the children can be returned safely to the home."; and that "[c]ontinuation of the parent/child relationship greatly diminishes the children's chances of being placed into a safe, stable and permanent home." The evidence does not preponderate against these findings. The Children were removed from Mother's care due to her abuse and neglect of them. In order to make it safe for the Children to return to Mother's custody, she needed to address her mental health needs and parenting skills. Mother instead chose to "self-medicate" with marijuana, resist medication management, and otherwise fail to follow through with recommended courses of action. In addition, the present state of Mother's housing situation is unknown as she refused DCS access to her home. After three years of the custodial episode, Mother's prospects for ever safely parenting the Children remain hazy at best; in contrast, the Children are experiencing stability and care in their foster

homes. 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 two-pronged 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 argues that she has shown both the ability and willingness to assume custody of the Children. In support of her contention, she states that she regularly visited the Children until her visits were suspended; that she had housing by the time of trial; and that she ended her relationship with Father. Mother states that DCS failed to engage with her probation officer; that it failed to request an additional drug screen; and that it failed to assess the appropriateness of her home. In response, DCS states that Mother never maintained a consistent source of income; that she refused to allow DCS to see her most recent home; that she used marijuana to “self-medicate”; that she stopping taking her medication; that she missed a number of therapy sessions; and that she never completed her parenting education.

As relevant to this ground, the Juvenile Court found that Mother never presented any proof that she is financially capable of supporting the Children; that she never established safe and stable housing for the Children; and that she failed to develop appropriate parenting skills. The evidence does not preponderate against these findings. With respect to her ability to parent the Children, the evidence shows that the Children were negatively affected by Mother’s visits. Mother resisted “coaching” on her visits and expressed frustration when told she should not, for example, play music with curse words and a racial slur in front of the Children. This case stemmed from Mother’s abuse and neglect of the Children. It was incumbent upon Mother to address her mental health needs and parenting skills, but she failed to follow through with recommended courses of action such that Mother was unable to resume visiting the Children. In addition, while it is undisputed that Mother loves the Children, Mother’s half-hearted commitment to taking the steps necessary to assume custody of the Children reflects a lack of genuine willingness on her part to assume custody of the Children. Mother failed to manifest either the ability or willingness to assume custody of the Children; either would suffice to establish the first

prong of this ground. With respect to the second prong of this ground, we note Smith's testimony that he would fear for the Children if they were placed back in Mother's custody. Given Mother's failure to make any substantial progress in addressing her mental health needs or parenting skills since the time of the Children's removal, combined with the Children's attachment to their current foster families, placing the Children in Mother's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the Children. Both prongs of the ground are established. We 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 Children's best interest. On December 4, 2020, when DCS filed its termination petition, the statutory best interest factors read as follows:

- (i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
  - (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
  - (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
  - (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
  - (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
  - (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
  - (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
  - (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i) (West March 6, 2020 to April 21, 2021).

In its written order, the Juvenile Court analyzed the more recently enacted best interest factors that had not taken effect at the time DCS filed its termination petition in this matter. However, in *In re Da'Moni J.*, No. E2021-00477-COA-R3-PT, 2022 WL 214712 (Tenn. Ct. App. Jan. 25, 2022), *R. 11 perm. app. denied April 1, 2022*, we concluded that a trial court's application of the new best interest factors when the old factors were applicable did not constitute reversible error. *Id.* at \*23 ("We agree with the Juvenile Court that the best interest factors relevant to this case are included in the new version of factors that went into effect in April 2021.")<sup>7</sup> Likewise, we conclude that the

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<sup>7</sup> Although the following best interest factors were not in effect at the time the termination petition was filed, we include these for purposes of comparison with the previous best interest factors that are relevant to this proceeding. The new best interest factors at Tenn. Code Ann. § 36-1-113(i)(1) provide 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

Juvenile Court's application of the new best interest factors does not require reversal in this case.

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

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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.

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).

Mother contends that the Juvenile Court erred in its best interest analysis. Mother argues in her favor that DCS’s efforts were questionable in this case; that DCS failed to engage certain out-of-state relatives for possible placement of the Children; that Mother has ended her relationship with Father; that she has engaged in mental health services; that she works and has housing; that she has resolved her legal issues; that she visited regularly with the Children when she was allowed to do so; and that she loves the Children and they love her. In response, DCS states that Mother never followed through with parenting education; that she refused to allow DCS to see her home; that her employment was sporadic; that Mother’s relationship with the Children was unhealthy; that the Children are bonded to their foster families; that Mother has previously abused and neglected the Children; that Mother did not fully cooperate with medication management; that Mother never paid child support; that Mother struggled to parent the Children consistently; and that Mother exacerbated the Children’s behavioral issues by her visits.



It is undisputed that Mother visited the Children when she was able. However, the visits tended to be negative for the Children. Indeed, the visits were so negatively impactful that they were cancelled after a time. Mother states that she works, but the evidence reflects that her employment history is sporadic. In any event, she has failed to pay child support, notwithstanding her jobs. In other areas, the pattern is similar with Mother. She undertakes certain required tasks but then unjustifiably fails to see them through. Mother complains about DCS's efforts in the case. However, Mother refused to allow DCS to inspect her home, even when the environment in Mother's home is one of the key concerns of the case. Mother cannot refuse DCS access to her home and then benefit at trial from that refusal by asserting that DCS failed to prove her home is still unsafe. For Mother to have had an opportunity to regain custody of the Children following her abuse and neglect of them, it was incumbent upon her to, at minimum, be transparent. On the subject of mental health, Mother elected to "self-medicate" with marijuana in lieu of complying fully with medication management and proper mental health services. Time and again, Mother checked certain boxes, completed an intake, or undertook some initial action, only to not follow through. The Children were removed on account of Mother's abuse and neglect of them. Notwithstanding Mother's separation from Father, her failure to remedy those underlying personal problems rendering her unfit to parent the Children means that it remains unsafe for Mother to parent the Children any time soon. Meanwhile, the Children are bonded with their foster families in stable, pre-adoptive homes. The Juvenile Court made extensive findings relative to the Children's best interest. The evidence does not preponderate against the Juvenile Court's findings. We find by clear and convincing evidence, as did the Juvenile Court, that termination of Mother's parental rights is in the Children's best interest.

### **Conclusion**

We vacate the ground of abandonment by failure to provide a suitable home. Otherwise, we affirm the judgment of the Juvenile Court. The judgment of the Juvenile Court is thus affirmed as modified, resulting in affirmance of the termination of Mother's parental rights to the Children. This cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Andrea A., and her surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE