

FILED

05/22/2026

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs April 1, 2026

**IN RE SCARLET J.**

**Appeal from the Juvenile Court for Grainger County  
No. 2023-JV-60 Steven Lane Wolfenbarger, Judge**

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**No. E2025-01566-COA-R3-PT**

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This appeal requires us to determine whether clear and convincing evidence supports: (1) at least one statutory ground for termination of Appellant’s parental rights; and (2) that termination is in the child’s best interest. Discerning no error, we affirm.

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

STEVEN W. MARONEY, J., delivered the opinion of the court, in which JEFFREY USMAN and WILLIAM E. PHILLIPS, II, JJ., joined.

Jordan Long, Tazewell, Tennessee, for the appellant, Eric K.<sup>1</sup>

Jonathan Skrmetti, Attorney General and Reporter, and Allen T. Martin, Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

**OPINION**

**I. Background**

The minor child at issue in this case, Scarlet J. (the “Child”), was born in August of 2023, to Callie J. (“Mother”). Eric K. (“Appellant”) is the Child’s alleged father, but he has never established paternity. Mother and Appellant were never married.<sup>2</sup> Appellee Tennessee Department of Children’s Services (“DCS”) became involved with this family

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<sup>1</sup> In cases involving minor children, it is the policy of this Court to redact the parties’ names to protect their identities.

<sup>2</sup> Callie J.’s parental rights were terminated in the same order terminating Appellant’s parental rights. Callie J. is not a party to this appeal.

shortly after the Child was born, when it “received a report . . . alleging [the Child] was born to a drug exposed mother.” A DCS case manager observed the Child at the hospital and reported she had “sores on her legs in various stages of healing.” The record indicates that the Child has been diagnosed with “neonatal abstinence syndrome” and “a sensory processing disorder.” The Child also has some speech and developmental delays, which require therapy.

Due to concerns with Mother’s living situation, the Child’s maternal grandfather volunteered to take the Child shortly after she was born. Following a home study of grandfather’s home, on September 12, 2023, DCS filed a petition in the Juvenile Court for Grainger County (“trial court”) to transfer temporary legal custody to him. The trial court granted the petition, noting that temporary legal custody was given to the grandfather “because the mother tested positive for illicit substances while pregnant and the father’s whereabouts are unknown.”<sup>3</sup>

However, just seven days later, on September 19, 2023, the trial court entered an order granting DCS temporary legal custody because “there [were] concerns regarding the ability of [the] grandfather to properly supervise visitation with [M]other.” Appellant was not present at the preliminary hearing, and the trial court noted that he “did not have service or [his] whereabouts [were] unknown.”<sup>4</sup> The Child was then placed in foster care, where she has remained since that time.

On September 25, 2023, DCS filed a petition to adjudicate dependency and neglect. A preliminary hearing took place on September 26, 2023. Appellant did not participate, but the trial court noted that the guardian ad litem “located information that indicates Appellant is on federal supervised release for convictions regarding methamphetamine. Appellant incurred a second indictment related to methamphetamine while his first meth charge was pending.” By order of September 26, 2023, the trial court mandated no contact between Appellant and the Child until Appellant appeared before the court. The Child remained in DCS’ custody.

The case was assigned to DCS Family Service Worker (“FSW”) Emileah Buffalo. She testified that Appellant was in contact with DCS “for a month or two at the beginning of the case.” However, after the initial period of participation, Appellant stopped communicating with DCS. DCS attempted to reach Appellant through his probation officer, mail, clear searches, and text messages; however, DCS had no contact with Appellant for approximately one year, *i.e.*, November 2, 2023, until November 2024.

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<sup>3</sup> On September 7, 2023, DCS was notified that the Child’s “cord stat drug test was positive for THC.”

<sup>4</sup> Appellant was not listed on the Child’s birth certificate. However, Mother named him on a form requesting the name and/or address of father for a child born out of wedlock.

On October 8, 2024, DCS filed a petition to terminate Appellant’s parental rights. As grounds for termination, DCS averred that Appellant: (1) failed to establish paternity, citing Tennessee Code Annotated sections 36-1-113(g)(9) and 36-1-117(c); and (2) failed to manifest an ability and willingness to assume custody, citing Tennessee Code Annotated section 36-1-113(g)(14). DCS further averred that termination of Appellant’s parental rights was in the Child’s best interest.

By order of November 26, 2024, the trial court: (1) set the termination hearing for March 11, 2025; (2) appointed an attorney to represent Appellant; and (3) granted Appellant supervised visitation.

After several continuances, the trial court heard DCS’ petition to terminate Appellant’s parental rights on August 12, 2025. By order of September 25, 2025, the trial court terminated Appellant’s parental rights on the grounds alleged in DCS’ petition and on its finding that termination of Appellant’s parental rights was in the Child’s best interest. Appellant appeals.

## II. Issues

There are two dispositive issues:

**III.** Whether there is clear and convincing evidence to support at least one of the grounds relied upon by the trial court to terminate Appellant’s parental rights.

II. If so, whether there is clear and convincing evidence to support the trial court’s finding that termination of Appellant’s parental rights is in the Child’s best interest.

## III. Standard of Review

It is well-settled that:

A parent’s right to the care and custody of [his or] her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clause of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (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 (1982); *In re Angela E.*, 303 S.W.3d at 250.

*In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016) (footnote omitted).

Termination of parental rights proceedings are governed by statute in Tennessee, *In re Kaliyah S.*, 455 S.W.3d 533, 541 (Tenn. 2015), and the statutes identify “those situations in which the state’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth grounds on which termination proceedings can be brought.” *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (quoting *In re W.B.*, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at \*7 (Tenn. Ct. App. Apr. 29, 2005) (citing Tenn. Code Ann. § 36-1-113(g))) (internal quotation marks omitted).

Tennessee Code Annotated section 36-1-113 governs the termination of parental rights. It provides, in pertinent part:

- (c) Termination of parental or guardianship rights must be based upon:
  - (2) 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.

Therefore, every termination of parental rights case requires the trial court “to determine whether the parent has engaged in a course of action or inaction that constitutes one of the statutory grounds for termination[,]” and whether termination of the parent’s rights is in the child’s best interest. *In re Donna E.W.*, No. M2013-02856-COA-R3-PT, 2014 WL 2918107, at \*2 (Tenn. Ct. App. June 24, 2014). “Because the stakes are so profoundly high[ ]” in a termination of parental rights case, the statute “requires persons seeking to terminate a . . . parent’s parental rights to prove the statutory grounds for termination by clear and convincing evidence.” *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). This Court has observed that “[t]his heightened burden of proof minimizes the risk of erroneous decisions.” *Id.* (citations omitted).

As the Tennessee Supreme Court has explained, if the trial court determines that clear and convincing evidence supports grounds for termination in light of its factual findings, the 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.” *In re Kaliyah S.*, 455 S.W.3d at 555. The party petitioning for the termination of parental rights bears the burden of demonstrating that termination is in the best interest of the child by clear and convincing evidence. *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010).

We review the trial court’s findings of fact *de novo* on the record with a presumption of correctness. Tenn. R. App. P. 3; *In re Carrington H.*, 483 S.W.3d at 524 (citations omitted). However, “[i]n light of the heightened burden of proof in termination proceedings . . . [we] must make [our] 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.” *Id.* (citation omitted). A trial court’s conclusion that clear and convincing evidence supports termination of parental rights is a conclusion of law that we review *de novo* with no presumption of correctness. *Id.* (citation omitted). “This standard of review is consistent with the standard of review for mixed questions of law and fact.” *In re Taylor B.W.*, 397 S.W.3d at 112-113 (citing *Starr v. Hill*, 353 S.W.3d 478, 481-82 (Tenn. 2011)) (“Although a presumption of correctness attaches to the trial court’s findings of fact, we are not bound by the trial court’s determination of the legal effect of its factual findings[.]”).

#### **IV. Grounds for Termination of Appellant’s Parental Rights**

The trial court terminated Appellant’s parental rights on the grounds of failure to establish paternity, citing Tennessee Code Annotated sections 36-1-113(g)(9) and 36-1-117(c), and failure to manifest an ability and willingness to assume custody, citing Tennessee Code Annotated section 36-1-113(g)(14). Although only one ground must be proven by clear and convincing evidence, the Tennessee Supreme Court has held that “appellate courts must review a trial court’s findings regarding all grounds for termination and whether termination is in a child’s best interests, even if a parent fails to challenge these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 511. Accordingly, we will review the trial court’s findings as to both grounds.

##### **A. Failure to Establish Paternity**

Tennessee Code Annotated section 36-1-113(g)(9)(A)(v) provides a ground for termination of the parental rights of a person “who is not a legal parent at the time of the filing of a petition to terminate parental rights” and who “has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(2)[.]”

Tennessee Code Annotated section 36-1-117(c)(2) was repealed effective July 1, 2024. 2024 Pub. Acts, c. 996, § 15, eff. July, 1, 2024. Because the repeal occurred before the petition for termination was filed on October 8, 2024, section 117(c)(2) does not apply

in this case.

Further, the record does not establish that Appellant was listed as a “putative” father on the registry referenced in Tennessee Code Annotated section 36-2-318(j). Therefore, section 318(j) is likewise inapplicable.

Here, because neither provision applies, the failure-to-establish-paternity ground may be established only if Appellant “failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity.” Tenn. Code Ann. § 36-1-113(g)(9)(A)(v).

Concerning this ground, the trial court determined:

There is nothing in this record to indicate that [Appellant] was legitimated. [Appellant] testified that he had taken a DNA paternity test in April 2025; however, there are no results of that test, and he does not know the results.

[Appellant] has made no effort to legitimate himself as the [C]hild’s legal father, and there is no proof that he paid child support or undert[ook] or offer[ed] to pay any child support. . . .

For the foregoing reasons, the Court finds by clear and convincing evidence that the ground set forth in T.C.A. § 36-1-113(g)(9) has been met, and [Appellant] failed to establish paternity of the child[.]

We now review whether the record supports the trial court’s findings.

Here, the record demonstrates that Appellant knew of his alleged paternity early in the case but failed to timely file a petition to establish paternity. He testified that, “around the time” the Child was born, he was in a rehabilitation program that did not allow cell phones. However, he “was trying to . . . get a hold of [Mother]” but could not because the program coordinators “wouldn’t let [him] get on Facebook or nothing [sic].”

FSW Buffalo confirmed that she “notified [Appellant] that he was the father . . . [i]n the very beginning [of DCS’ involvement].” She clarified that these communications with Appellant occurred in the first month or two after the Child’s removal into DCS custody, which occurred on September 12, 2023. During his testimony, Appellant confirmed he was in communication with FSW Buffalo and Mother at the beginning of the case, to-wit:

Q: Okay. So you heard Ms. Buffalo testify. So at the very beginning of the case you had already gotten out of the [rehabilitation] program and you were at Salvation Army?

A: Yes. And [] I had [] . . . finally got [sic] in contact with [Mother] and [] we had a zoom meeting and [] Ms. Buffalo told me to contact Mother, and keep in touch with her. That she would [] give all the information to [Mother].

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Q: All right. So how long was it before you became reinvolved in the case?

A: . . . I left the Salvation Army [] and went to a different . . . rehab [] called Journey Pure. I was there for 30 days. [] I got out of there and went to a halfway house, and [] I was there for about three months.

Q: What was the halfway house's name?

A: It was [] the Foundation House in [] Clinton, Tennessee, and [] I moved back over to [] the Knoxville area. And I was there for about three weeks and got served.

Q: Served with what?

A: With [] the paperwork . . . to come to Court . . . for my rights and my Parenting Plan.

Q: So was it the termination paperwork?

A: Yeah. I got the Perm Plan and the Termination Plan. I got two things . . . around September, I think.

Q: Was that in 2024?

A: Yeah.

During the time he was at the Journey Pure rehabilitation facility, in February or March of 2024, Appellant was aware that he had a child in DCS custody:

Q: And so when you were finally served is when you decided that you wanted to visit and try to do things for the [C]hild; right?

A: I was – I didn't have contact with anybody and I was homeless with no phone. So I didn't have any way to get a hold of nobody. I was in a program with no phone and I didn't have an ability to do much.

Q: Did you have a case manager at that program?

A: [ ] Journey Pure, I had a case manager, yes.

Q: And did you advise your case manager that you had a child in DCS custody?

A: That's all I talked about.

Q: Okay.

According to his testimony, Appellant “got a DNA test” in April of 2025. However, it appears that Appellant never followed up concerning the test results. Regardless, as noted in the trial court’s order, the DNA test results were neither filed in the trial court, nor otherwise used by Appellant to establish his paternity. Further, Father did not take this DNA test until well after the petition to terminate his parental rights was filed on October 8, 2024.

The record clearly establishes that Appellant: (1) knew he was the purported father in the first month or two after the Child’s removal into DCS custody, which occurred on September 12, 2023; but (2) failed to file a petition to establish paternity within thirty days after notice of his alleged paternity, all as required by Tennessee Code Annotated § 36-1-113(g)(9)(A)(v). In short, the record shows, by clear and convincing evidence, that Appellant failed to establish paternity of this Child. The trial court did not err in terminating his parental rights on this ground.

### **B. Failure to Manifest Ability and Willingness to Assume Custody**

Tennessee Code Annotated section 36-1-113(g)(14) provides a ground for termination of parental rights when:

[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[.]<sup>5</sup>

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<sup>5</sup> Appellant does not dispute that DCS may proceed under section 113(g)(14). This Court has recognized that, in light of statutory amendments, section 113 (g)(14) applies to putative fathers along with the section 113 (g)(9)(A) grounds. *See, e.g., In re Ka’Myiah M.*, No. M2024-01421-COA-R3-PT, 2025 WL 3643403, at \*4 (Tenn. Ct. App. Dec. 16, 2025); *see also In re Katelyn R.*, No. M2023-00354-COA-R3-PT, 2024 WL 1299102, at \*9-10 (Tenn. Ct. App. Mar. 27, 2024). Rather than two independent grounds under sections 36-1-113(g)(9)(A)(iv) and (v), seeking termination under section 113(g)(14), in essence, requires proof of both to establish a ground for termination. *See In re Kaitlyn D.*, No. M2023-00658-COA-

The interpretation of Tennessee Code Annotated section 36-1-113(g)(14) adopted by our Supreme Court places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal custody or financial responsibility for the child. If a party seeking to terminate parental rights proves by clear and convincing evidence that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied. *In re Naveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020) (citing *In re Amynn K.*, No. E2017-11866-COA-R3-PT, 2018 WL 3058280 (Tenn. Ct. App. June 20, 2018)). The party seeking to terminate parental rights then must show that placing the child in the parent’s custody poses “a risk of substantial harm to the physical or psychological welfare of the child.” Tenn. Code Ann. § 36-1-113(g)(14).

Concerning this ground, the trial court found:

Although [Appellant] completed a mental health evaluation, an alcohol and drug evaluation, and passed drug screens administered by DCS, he has provided no proof of employment, stable housing, or transportation. [Appellant] has been in a series of rehabs and halfway houses and was essentially homeless this entire custodial episode. [Appellant] has [not] paid child support, although the testimony indicated that [he] has provided diapers and gifts on occasion.

The evidence supports the trial court’s finding that this ground is established. At the time of the hearing, Appellant testified that his car had been “repoed,” and he had no driver’s license. Although Appellant had brief periods of employment, at the time of the hearing on the petition to terminate his parental rights, he was unemployed, which resulted in a lack of income. Appellant testified that he “put in for some day jobs.” However, he went on to state that he had “a few daily jobs here and there where [he] made a little bit of money, but not much.” Finally, he testified that he was “not capable of a job[.]”

Appellant candidly explained that his financial issues caused him to relapse. He further admitted that he suffers from depression and anxiety, to-wit:

Q: So are you saying you relapsed after you lost everything just financially?

A: Yeah. I did and [] the only thing I could think of was because, you know, the stress that I put myself through. But it’s not an excuse . . . . I . . . went

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R3-PT, 2024 WL 1049483, at \*13 (Tenn. Ct. App. Mar. 11, 2024); *In re J.S.*, No. M-2022-00142-COA-R3-PT, 2023 WL 139424, at \*9 (Tenn. Ct. App. Jan. 10, 2023).

to Peninsula to try to get my medications right. And [] ended up in these programs because I needed to be here.

Q: All right. When you say get your medications right, you've got mental-health issues?

A: I have depression [and] anxiety real bad. So [] I can get really [] depressed sometimes.

Appellant's drug use and mental health issues have resulted in periods of homelessness and several stints in rehab. During his testimony, Appellant admitted the following:

Q: So respectfully, [Appellant], it appears that the only stable housing that you've had is when you've been in halfway houses or rehab centers; isn't that fair to say?

A: It's fair to say.

Indeed, at the time of the hearing, Appellant was living in a halfway house:

Q: All right. What is your living situation now as far as I know you're at the halfway house. But is it a place where you can live with your family?

A: Yeah. See—with [] me being a single father—and I'm trying to get to be a single father . . . it's hard to find anything that allows kids to come over when you're in my situation.

Although the halfway house where Appellant was residing at the time of the hearing would not allow children, Appellant testified that he planned to move to another facility, True Purpose, which was more family oriented:

Q: But you don't have a date certain as to when you would actually leave [the current halfway house and move to the other facility]?

A: Yeah. [] before – I have to be out of here on the 14th, so two more days.

Q: Of this month?

A: Yes, ma'am.

Q: Okay. But you said you have to find out, you're waiting on a bed at True Purpose, right?

A: Yes, ma'am.

Q: So does that mean that you're homeless until you get a bed at True Purpose?

A: I have other places that I can go. I'm just choosing to try to wait for this option here because it's family oriented and I can – [], it'll help me establish what I need to set up [] it'll help me with transportation. It helps me with a job and, um, it just does a lot for families.

Q: Right. But if you have to be discharged on August 14, where are you going to go if you don't have a bed?

A: . . . I don't know. I have to get a hold of my case manager after this and we have to sit down and talk. We put out for a few places, but as of right now, [] I don't know where I'll be.

As a further complication to his financial and housing issues, Appellant testified that, "I have a fiancé and another baby on the way. It's fixing [sic] to be born in two weeks." From the foregoing testimony, it is clear that Appellant does not have the present ability to assume custody or care of this Child.

As to the second prong of this ground, *i.e.*, risk of substantial harm, Appellant's lack of housing and income would certainly pose a substantial risk of physical harm to the Child. As discussed further below, the Child has medical issues that require special care, regular medical appointments, and therapies. Appellant has no transportation and no employment, and so it is unlikely that he could ensure these needs are met. Furthermore, Appellant has no stable housing. Despite his expressed resolve to obtain adequate housing, the record shows that, up to the date of the hearing, he has been unable to do so. The Child needs stability, and, at present, Appellant can offer none. Moreover, Appellant admitted to relapsing in the face of financial difficulties and other stressors. This, coupled with his testimony regarding his propensity toward depression and anxiety, raises significant concerns as to the Child's physical safety in his custody.

Finally, as discussed further below, the Child has no parental bond with Appellant. Rather, she has bonded with her foster family, which is the only family she has known. In this regard, placing the Child in Appellant's custody would likely cause significant psychological harm. Accordingly, there is clear and convincing evidence to support the trial court's findings as to both prongs of this ground for termination of Appellant's parental rights.

## V. Best Interest

Tennessee Code Annotated section 36-1-113(i)(1) contains a non-exclusive list of factors applicable to the court's best-interests analysis. The statute provides:

(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.

At the time of the filing of the petition to terminate Appellant's parental rights, those factors included, but were 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.

The statutory factors are not exclusive but “illustrative . . . and any party to the termination proceeding is free to offer any other factor relevant to the best[-]interests analysis.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (citation omitted). Whether termination is in the child’s best interest must be “viewed from the child’s, rather than the parent’s, perspective.” *Id.* (quoting *In re Audrey S.*, 182 S.W.3d at 878). “[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[.]” *Id.* (quoting Tenn. Code Ann. § 36-1-101(d) (2017)). The court’s “focus on the perspective of the child is the common theme’ evident in all of the statutory factors.” *In re Neveah M.*, 614 S.W.3d at 679 (Tenn. 2020) (quoting *In re Audrey S.*, 182 S.W.3d at 878).

The trial court’s factual findings relevant to the best-interest analysis must be supported by a preponderance of the evidence. *In re Kaliyah S.*, 455 S.W.3d at 555 (citation omitted). Additionally, the court must determine whether the combined weight of the facts amounts to clear and convincing evidence that termination of parental rights is in the child’s best interest. *Id.* (citation omitted). As noted above, we review the trial court’s best-interest analysis under the standard of review applicable to mixed questions of fact and law. *In re Taylor B.W.*, 397 S.W.3d at 112-113. We will affirm the trial court’s factual findings unless they are unsupported by a preponderance of the evidence. *In re Neveah M.*, 614 S.W.3d at 674 (citations omitted). Whether the court’s factual findings amount to clear and convincing evidence that termination of parental rights is in the child’s best interest is a question of law that we review *de novo* with no presumption of correctness. *Id.* (citations omitted).

Turning to the final order in this case, the trial court considered the relevant statutory factors and made specific findings, which we review below.<sup>6</sup>

#### A. Tennessee Code Annotated Section 36-1-113(i)(1)(A)

As to the effect termination will have on the Child’s need for stability through her minority, the trial court found, “The foster home is the only home that [Child] has ever known. She was placed there shortly after her birth. This factor weighs in favor of terminating the parental rights of . . . [Appellant].” The record supports the trial court’s

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<sup>6</sup> The trial court found that there was no evidence concerning the following factors: “[w]hether the child is fearful of living in the parent’s home”; “[w]hether 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; and “[w]hether the parent . . . has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult[.]” Tenn. Code. Ann. §§ 36-1-113(i)(F), (G), (N). We agree that there is no evidence in the record as to these factors, and that the trial court did not err in not considering them in its decision.

finding. The Child was removed from Mother's custody shortly after she was born. The Child was placed with her foster family when she was less than one month old. She has been with the same foster family since her placement, and the foster mother testified that she wants to adopt the Child.

### **B. Tennessee Code Annotated Section 36-1-113(i)(1)(B)**

As to the effect a change in caretaker or environment will have on the Child, the trial court reviewed the Child's multiple diagnoses and behavioral/developmental issues and found that the "[Child] is receiving appropriate care for all her diagnoses due to her foster mother. This factor weighs in favor of terminating the parental rights of . . . [Appellant]." As discussed above, the record establishes that the Child suffers from several medical conditions that require various therapies, treatments, and appointments. As foster mother testified:

Q: And does [the Child] have any medical or behavior diagnoses?

A: [S]he has NAS, which is neonatal abstinence syndrome. [S]he also has a sensory processing disorder. [T]hose are the two main things . . . she does have a speech delay and developmental delay [] as well.

Q: Okay. And does she regularly attend or does she attend any regularly scheduled medical appointments or therapy appointments?

A: Yes. She has speech every Monday. She has developmental therapy every Thursday morning. She has [] behavior therapy, PCIT, which is parent-child interaction therapy. And we're working on [] when [Child] gets really angry, she hurts herself[,] [] which the Grow With Me Clinic says that we can work through it, it's part of being an NAS diagnosis. And then she has [physical therapy] every Friday.

Q: What is the physical therapy for?

A: So she's tip-toe walking . . . 80 percent of the time, which is causing her to have her tendons start to tighten. So we're doing that. She's also getting fitted for braces [] to try to force her to walk on her flat feet. [] [A]nd then she's also been seen for a few muscular things . . . .

There is no dispute that foster mother is diligent in her attention to Child's medical needs. The foster family has the means and wherewithal to ensure that the Child attends all of her appointments, whereas Appellant has no transportation and no license. If the Child's medical care lapses, it is likely that her developmental and medical needs will persist. This is not in the Child's best interest.

### **C. Tennessee Code Annotated Section 36-1-113(i)(1)©**

As to Appellant's continuity and stability in meeting the Child's material, educational, housing, and safety needs, the trial court found that "[Appellant] has never met any of the [C]hild's basic material, educational, housing, or safety needs. . . . [Appellant] resides in a halfway house." As discussed above, the record provides ample evidence that Appellant has not been able to maintain stable housing. According to his testimony, *supra*, Appellant's proposed solution was to move to another halfway house that would allow families. However, at the time of the hearing, Appellant had not procured such housing. Regardless, considering the Child's ongoing needs, a halfway house would not be the best placement. Furthermore, such placement would be temporary, and there is no indication as to Appellant's ability to provide permanent housing at any near date.

The record also shows that Appellant has no reliable income and, to date, has been able to provide only token support. There is no indication that Appellant is physically unable to work. However, as he testified, his substance abuse, coupled with anxiety and depression caused by financial stress, has resulted in his unemployment. Without a legitimate income source, and without adequate housing, Appellant cannot provide the necessary "continuity and stability in meeting [the] Child's [needs]." As such, this factor weighs in favor of termination of his parental rights.

### **D. Tennessee Code Annotated Section 36-1-113(i)(1)(D)**

As to the parent-child attachment between the Child and Appellant, the trial court held that, "[Appellant] has not visited the child in several months, and he only visited the [C]hild five times during this custodial episode. Although testimony indicates that "[Appellant's] visitation with [Child] was appropriate, there is no secure and healthy parental attachment between [Appellant] and [Child]."

The record supports the trial court's findings. As discussed below, Appellant has exercised only five visits during the Child's lifetime. Although Appellant has acted appropriately during visits, there is no indication that the Child has bonded with him. This is to be expected given that Appellant has seen the Child only a handful of times in her entire life.

Additionally, as foster mother testified, the Child had difficulty separating from her at the outset of visits with Appellant. Foster mother explained that the "[Child] was upset at the beginning [of visits]," and foster mother "stayed for probably about 30 or so minutes until [she] could sneak out." The record clearly shows that the Child has formed a parental attachment with her foster mother, and she has no such attachment to Appellant. As such, this factor supports termination of Appellant's parental rights.

**E. Tennessee Code Annotated Section 36-1-113(i)(1)(E)**

Concerning whether Appellant availed himself of regular visitation, the trial court found that, “[Appellant] has visited [Child] five times during [her] entire lifetime. His last visit was several months ago.” Although Appellant was initially under a no-contact order, the trial court granted him supervised visitation in November of 2024. FSW Buffalo confirmed that twelve supervised visits were scheduled; however, Appellant attended only five:

Q: I’m sorry. [Father] had five visits with the [C]hild but he was offered 12?

A: Yes, ma’am.

Q: So can you advise . . . what were the reasons for him missing visits?

A: So one he was late for and he was so late that it had to be canceled. [] [A]nother he was sick. Sometimes his car would break down.

Q: Was he ever a no call, no show?

A: No.

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Q: Okay. And did you have him – was there a – how many visits did you offer a month?

A: Two a month.

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Q: . . . So since she’s been in custody, how many times has she had a face-to-face visit with her father?

A: Five.

Q: And how long has she been in custody?

A: For almost two years.

Although Appellant testified that he could not attend all visits due to various issues, including the lack of transportation, the fact remains that Appellant has seen this Child only five times in two years. Accordingly, the evidence supports the trial court’s finding that

this factor weighs in favor of termination.

**F. Tennessee Code Annotated Section 36-1-113(i)(1)(H), (I)**

Regarding the Child's healthy parental attachment with another person and her emotionally significant relationships with others, the trial court made the following findings:

[Child] has a very healthy attachment with her foster mother and foster siblings. She calls [her foster mother], "Mommy." [The Child] considers the three other children in her home her siblings and is so attached to her sibling closest in age that her Pre-K teacher suggested that the children be separated for their benefit. [Child] is also bonded to [the foster mother's] parents, siblings, and their children. These factors weigh in favor of terminating the parental rights of [Appellant].

The foster mother's testimony supports the trial court's findings:

Q: In your opinion, is [the Child] attached to you?

A: Yes. I'm mommy.

Q: A[n]d is she bonded with your other children?

A: Yes. Bubby is her favorite, which is what she calls [another child living in the home]. [A]nd then [another male child] is her right-hand man. I'm afraid of what they're going to get into as they get older.

Q: But [another female child in the home] and [Child] are the same age, aren't they?

A: They are 7 months apart and they do everything together. They actually got separated in classrooms this year, because they want them to be more independent of each other. [S]o that's been hard. . . cause [sic] they're not used to not being together all day, every day.

Not only does the undisputed proof show that the Child is bonded with her foster mother and siblings, but foster mother also testified that the Child has established bonds and relationship with her extended foster family, and with others in their immediate circle:

Q: And what kind of family dynamic does [Child] have with your family?

A: So we have a nanny[;] she's with us every single day. She helps me with [] my kids. [M]y dad, she calls Papaw. [O]f course, she thinks he hung the moon, cause [sic] he spoils her. And then my mom, she calls Grandmother. I have two sisters who she's really close with, and their kids. [O]ne sister has four kids and the other has three. [A]nd so they see them regularly, because we have Sunday dinner. . . . [W]e have church family as well that she sees quite often.

Q: And do you love [Child]?

A: Absolutely.

The record supports the trial court's finding that the Child's attachments with her foster mother, foster siblings, and the foster mother's extended family are healthy and emotionally significant. Taking her from the current family would not be in the Child's best interest; as such, these factors weigh in favor of termination of Appellant's parental rights.

#### **G. Tennessee Code Annotated Section 36-1-113(i)(1)(J)**

As to whether Appellant has demonstrated that he is able to make lasting adjustments such that Child would be safe with him, the trial court found that, "[Appellant] testified that his drug of choice is methamphetamine, and he has been in a series of treatment facilities and halfway houses for almost all the [C]hild's life." The trial court found these facts supported termination of Appellant's parental rights. As discussed above, the record shows that Appellant lived in multiple halfway houses and drug rehabilitation programs across Tennessee for most of Child's first two years of life. Furthermore, Appellant's testimony showed uncertainty about his future housing and employment prospects.

While we acknowledge Appellant's efforts to complete treatment for his drug addiction, at the time of the hearing, his ability to remain sober, while also working and maintaining a home, was unproven. We are also troubled by Appellant's admission that previous financial stress has caused him to relapse. For these reasons, and others discussed above, the record supports the trial court's finding that Appellant was unable to make lasting adjustments to keep Child safe in his custody.

#### **H. Tennessee Code Annotated Section 36-1-113(i)(1)(K), (L)**

Regarding Appellant's actions to take advantage of available assistance programs, services, or resources—and DCS's reasonable efforts to aid Appellant in making lasting adjustments—the trial court found that, "Appellant completed some assessments early on and has been actively involved in various treatment programs." It also determined that

“DCS ha[d] made reasonable efforts to assist [him]. These factors weigh against terminating the parental rights of Appellant.” We agree. As noted above, Appellant is trying to avail himself of treatment programs and other forms of assistance, so this factor does not weigh in favor of termination. However, as noted above, the lasting effect of Appellant’s efforts is not proven.

**I. Tennessee Code Annotated Section 36-1-113(i)(1)(M)**

As to the next factor, the trial court held that “Appellant has demonstrated no urgency in establishing paternity . . . .” As discussed above, Appellant has not established paternity of the Child. As such, this factor weighs in favor of termination of his parental rights.

**J. Tennessee Code Annotated Section 36-1-113(i)(1)(O)**

Regarding whether Appellant ever provided safe and stable care for the Child, the trial court noted that Appellant “has [n]ever provided safe and stable care for the [C]hild, and there is no evidence in the record indicated that [he has] done so for any other child.” We agree.

We have previously discussed the fact that Appellant is currently living in a halfway house. Appellant is making strides in his efforts to remain sober, but his sobriety is not proven. By his own admission, Appellant has relapsed. As he explained, the relapse was brought about by financial problems and other stressors. Furthermore, Appellant testified that he would have another child within two months of the hearing. At present, Appellant cannot provide the safety and stability the Child needs. This factor weighs in favor of termination of his parental rights.

**K. Tennessee Code Annotated Section 36-1-113(i)(1)(P)**

As to the next factor, *i.e.*, “Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive,” the trial court found that

[n]either parent seems aware of or ha[s] any information or knowledge about the [C]hild’s basic and specific needs, namely the various therapies that the Court previously discussed. They are not involved in any of [Child]’s medical or behavioral treatment and have not shown any knowledge of [Child’s] needs. Moreover, [Appellant] ha[s] failed to demonstrate the ability and commitment to creating and maintaining a home that meets [Child’s] basic and specific needs required for her to thrive.

Testimony from the foster mother regarding Appellant’s interest in the Child’s needs and medical care support the trial court’s findings:

Q: Did [Appellant] ever ask you about [Child's] doctors' appointments or diagnoses?

A: No. He never asked about [Child's] medical.

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Q: So he didn't inquire as to how [Child's] well-being was?

A: Not that remember. I'd have to go back through the messages.

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Q: So when did you last speak to [Appellant] through [a messaging app]?

A: [A]bout February. [] I've sent messages continuing, but I've not heard back [] from messages.

Q: So when you say, you've sent messages . . . , when was the last message you sent?

A: [] I sent one for open house. . . their – the Early Headstart's open house, so she was all dressed up. And I sent that picture.

Q: When was that?

A: About two weeks ago.

Q: No response?

A: Huh-uh.

Unfortunately, the circumstances of the Child's birth have resulted in myriad developmental and physical issues. It is imperative to the Child's well-being that her parent not only understand her needs, but that he or she ensures those needs are met. From the record, it is clear that Appellant does not have a clear grasp of the Child's needs. His lack of inquiry concerning her health and development is indicative of this. The foregoing testimony supports the trial court's conclusion that Appellant did not demonstrate an understanding of the Child's basic or specific needs because it shows Appellant was not aware of, or had no interest in learning about, the Child's various medical conditions, appointments, therapies, or education. This factor weighs in favor of termination of Appellant's parental rights.

**L. Tennessee Code Annotated Section 36-1-113(i)(1)(Q)**

As to whether Appellant demonstrated the ability and commitment to create and maintain a home that would support Child and her needs, we have previously discussed the fact that Appellant has primarily resided in rehabilitation centers and halfway houses. There is ample proof to support the trial court's finding that this ground weighs in favor of termination of Appellant's parental rights.

**M. Tennessee Code Annotated Section 36-1-113(i)(1)(R)**

Concerning the home environment available for the Child, the trial court found that "[n]either parent has demonstrated that they have a home that would be healthy and safe for the child. This factor weighs in favor of terminating the parental rights of [Mother] and [Appellant]."

At trial, Appellant testified he was living in a halfway house. When asked if his family could live with him in that location, Appellant testified, "[I]t's hard to find anything that allows kids to come over when you're in my situation." Appellant went on to state he was exploring a different living option, but this was also speculative at the time of trial, which was more than two years after the Child's placement in her current foster home. The record supports the trial court's finding that this factor supports termination of Appellant's parental rights.

**N. Tennessee Code Annotated Section 36-1-113(i)(1)(S)**

As to the financial support factor, the trial court found that Appellant has "consistently provided [no] more than token support for [Child] and this factor weighs in favor of terminating the parental rights of [Mother] and [Appellant]."<sup>7</sup> The record supports this finding.

Indeed, the record establishes that Appellant was never able to provide more than token support for the Child. FSW Buffalo testified:

Q: Okay. And what type of support has [Appellant] provided for [Child]?

A: He has bought her . . . a box of diapers, a pair of shoes [] a few outfits. But no child support.

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<sup>7</sup> Token support as it relates to putative fathers, is defined by Tenn. Code Ann. § 36-1-102(45)(B)(ii) as "one (1) or more payments that constitute no more than perfunctory support or payments of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial support for the child or the child's mother during the pregnancy[.]"

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Q: Okay. During his visits, did [Appellant] bring anything to the visits?

A: Snacks and toys.

Q: He did bring snacks and toys?

A Yes.

Likewise, the Child's foster mother testified:

Q: What about cards, and gifts, and letters, or anything like that? Did . . . [Appellant] ever send anything to [Child]?

A: . . . [Appellant] gave—when I met him at the Court either November or December of '24, he had some things for her. Some diapers and some things, and he also gave her Christmas presents [] at their end of the month December visit.

Q: Okay. When did [Appellant] last send anything to [the Child]?

A: [I]t's been a while. I can't remember if he sent anything in January or not. [] I'm not sure. I know two times for sure.

Q: Do you know what it was?

A: I know he sent clothes for her. But I can't remember if it was just in December or—December or if he also did it one other time maybe.

The evidence clearly supports the trial court's finding that Appellant provided no more than token support for the Child.

#### **O. Tennessee Code Annotated Section 36-1-113(i)(1)(T)**

Concerning Appellant's mental or emotional fitness, the trial court found that “[d]ue to the history of drug use . . ., and [Appellant's] testimony about other mental or emotional challenges including anxiety and depression, the Court finds that [he] has [not] demonstrated appropriate mental or emotional fitness to properly care for [Child].” The record also supports this finding.

Appellant's testimony regarding his anxiety and depression is set out above. Although Appellant testified that his medications are currently “stabilized,” his long-term

mental fitness has not been established. However, more troubling is the fact that Appellant admitted that, when faced with financial instability and other stressors of life, he has relapsed into methamphetamine use. Appellant's ability to maintain the emotional and mental fitness necessary to care for this Child is not proven. As such, this factor weighs in favor of termination of his parental rights.

For these reasons and others discussed above, the trial court's findings on the statutory, best-interest factors are supported by a preponderance of the evidence, and the weight of those findings constitutes clear and convincing evidence that termination of Appellant's parental rights is in the Child's best interest.

## **VI. Conclusion**

For the foregoing reasons, we affirm the trial court's order terminating Appellant's parental rights to the minor Child. The case is remanded to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, Eric K. Because Eric K. is proceeding in forma pauperis in this appeal, execution for costs may issue if necessary.

s/ Steven W. Maroney  
STEVEN W. MARONEY, JUDGE