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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs December 1, 2022

IN RE JEREMIAH B.

Appeal from the Juvenile Court for Sevier County
No. 21-426 Dwight E. Stokes, Judge

No. E2022-00833-COA-R3-PT

In this case involving termination of the mother’s parental rights to her child, the trial court found that three statutory grounds for termination had been proven by clear and convincing evidence. The trial court further determined that clear and convincing evidence established that termination of the mother’s parental rights was in the child’s best interest. The mother has appealed. Discerning no reversible error, we affirm.

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

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and JEFFREY USMAN, JJ., joined.

Vicki Tucci Krusel, Sevierville, Tennessee, for the appellant, Monique P.

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

OPINION

I. Factual and Procedural Background

On April 30, 2021, the Tennessee Department of Children’s Services (“DCS”) filed in the Sevier County Juvenile Court (“trial court”) a petition seeking to terminate the parental rights of Monique P. (“Mother”) to her son, Jeremiah B. (“the Child”).¹ The

¹ In the same petition, DCS also sought to terminate the parental rights of the Child’s father, Jeremy B. In addition, DCS sought to terminate the parental rights of Mother and Joseph B. to Darien B., the Child’s half-brother. The termination of the parental rights of Jeremy B. to the Child and of Mother and Joseph B. to Darien B. are not at issue in this appeal.

Child's father, Jeremy B. ("Father"), is not a party to this appeal; therefore, our review of the trial court's judgment will pertain exclusively to Mother. Previously, the Child had been removed from Mother's custody on December 27, 2019, upon DCS's filing of a dependency and neglect petition and the trial court's entry of an *ex parte* protective custody order. At the time of his removal from Mother's custody, the Child was approximately twenty months old. The trial court later adjudicated the Child dependent and neglected on August 19, 2020, based upon Mother's stipulation that clear and convincing evidence established a finding of dependency and neglect due to environmental issues and her positive drug screen at the time of the Child's removal.

In its dependency and neglect petition, DCS stated that it had received a referral containing allegations of drug exposure, environmental neglect, and lack of supervision with respect to the Child and his half-brother. A DCS case manager met with Mother at her residence on December 27, 2019. The case manager reported that he was "accosted by an offensive odor upon approaching the home," a camper. The camper was not "fully equipped with running water" and was "very cluttered and filthy." The case manager observed a mouse and several cockroaches throughout the home. In addition, the case manager related that the camper included a back door without a padlock, leading to a "six-foot drop." On the same day, Mother consented to a drug screen and admitted to having smoked marijuana two hours prior to the case manager's pre-scheduled arrival. Mother tested positive for amphetamine, methamphetamine, and marijuana, although she denied using methamphetamine. "Family friends" who resided with Mother also admitted to using marijuana a few hours prior to the case manager's visit. They tested positive for marijuana as well.

Sixteen months following the Child's removal, DCS filed a petition seeking to terminate Mother's parental rights based on the following statutory grounds: (1) abandonment by failure to provide a suitable home, (2) persistence of the conditions leading to the Child's removal, and (3) failure to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Child. Therein, DCS alleged that Mother had continued to use methamphetamine, reside in the removal home with unresolved safety issues, and appear "under the influence" at visits with the Child or cancel visits "last minute." On May 19, 2022, the trial court entered a judgment finding that DCS had established by clear and convincing evidence all three termination grounds alleged in its petition and that termination of Mother's parental rights was in the Child's best interest. Consequently, the trial court terminated Mother's parental rights to the Child. On May 31, 2022, the court entered an amended judgment, which corrected the misnaming of Father as "Jeremiah" in the original judgment. The amended judgment was otherwise identical to the original. Mother has timely appealed.

II. Issues Presented

Mother presents the following issues for this Court's review, which we have reordered and restated slightly as follows:

1. Whether the trial court erred by finding that DCS presented clear and convincing evidence in support of the statutory ground of abandonment by failure to provide a suitable home pursuant to Tennessee Code Annotated §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii).
2. Whether the trial court erred by finding that DCS presented clear and convincing evidence to support the statutory ground of persistence of conditions that led to the Child's removal pursuant to Tennessee Code Annotated § 36-1-113(g)(3).
3. Whether the trial court erred by finding that DCS presented clear and convincing evidence to support the statutory ground of failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child pursuant to Tennessee Code Annotated § 36-1-113(g)(14).
4. Whether the trial court erred by finding clear and convincing evidence that termination of Mother's parental rights was in the Child's best interest.

III. Standard of Review

In a termination of parental rights case, this Court has a duty to determine "whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence." *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). The trial court's findings of fact are reviewed *de novo* upon the record, accompanied by a presumption of correctness unless the evidence preponderates against those findings. *See* Tenn. R. App. P. 13(d); *see also In re Carrington H.*, 483 S.W.3d 507, 523-24 (Tenn. 2016); *In re F.R.R., III*, 193 S.W.3d at 530. Questions of law, however, are reviewed *de novo* with no presumption of correctness. *See In re Carrington H.*, 483 S.W.3d at 524 (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)). The trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002).

"Parents have a fundamental constitutional interest in the care and custody of their children under both the United States and Tennessee constitutions." *Keisling v. Keisling*,

92 S.W.3d 374, 378 (Tenn. 2002). It is well established, however, that “this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute.” *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). As our Supreme Court has explained:

The parental rights at stake are “far more precious than any property right.” *Santosky [v. Kramer]*, 455 U.S. [745,] 758-59 [(1982)]. 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 (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; *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty, N.C.*, 452 U.S. 18, 27 (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. 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).

* * *

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.

In re Carrington H., 483 S.W.3d at 522-24. “[P]ersons seeking to terminate [parental] rights must prove all the elements of their case by clear and convincing evidence,” including statutory grounds and the best interest of the child. *See In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010).

IV. Statutory Grounds for Termination of Mother’s Parental Rights

Tennessee Code Annotated § 36-1-113 (Supp. 2022) lists the statutory requirements for termination of parental rights, providing in relevant part:

- (a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.

* * *

- (c) 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.

In its final judgment, the trial court found that clear and convincing evidence supported the following grounds for termination: (1) abandonment by failure to establish a suitable home, pursuant to Tennessee Code Annotated § 36-1-113(g)(1) and § 36-1-102(1)(A)(ii); (2) persistence of the conditions leading to the Child’s removal, pursuant to Tennessee Code Annotated § 36-1-113(g)(3); and (3) failure to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Child, pursuant to Tennessee Code Annotated § 36-1-113(g)(14). We will address each ground found by the trial court in turn.

A. Abandonment by Failure to Establish a Suitable Home

Concerning statutory abandonment, Tennessee Code Annotated § 36-1-113(g)(1) (Supp. 2022) provides as relevant to this action:

- (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[.]

Tennessee Code Annotated § 36-1-102(1)(A) (Supp. 2022) provides the following definitions of abandonment as pertinent here:

For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, “abandonment” means that:

* * *

- (ii) (a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;
- (b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and
- (c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home

for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department[.]

In determining that clear and convincing evidence supported the statutory ground of abandonment by failure to establish a suitable home, the court specifically found in its final order that the Child had been removed from Mother's custody on December 27, 2019, through a court order.² The court additionally concluded that its protective custody order reflected a finding that "reasonable efforts were not required to maintain the child in the home due to the circumstances of the family and child but that DCS made reasonable efforts." Furthermore, the court assessed that DCS had made reasonable efforts in "any four-month period" to assist Mother in establishing a suitable home. *See In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at *13 (Tenn. Ct. App. Dec. 15, 2016) ("[T]he proof necessary to support termination under this ground need not be limited to any particular four-month period after removal."). According to the trial court, DCS's reasonable efforts included providing visitation, paying for "therapeutic" visitation, paying for assessments, paying for and offering various types of drug screens, assisting Mother in her housing search, and inviting Mother to "Child and Family Team Meetings."

In contrast, the trial court determined that Mother had not made reciprocal reasonable efforts. Although the court recognized that Mother had visited the Child more consistently than had Father, the court found that she had failed drug screens and failed to present herself for drug screens consistently. The court also noted that Mother had not displayed seriousness toward remedying the reasons for the Child's removal, stating: "At a time when it is important to show a history of clean drug screens, [Mother] was instead changing residences and employment." The court ultimately determined that Mother had not made significant progress in establishing permanent, stable housing and employment and that her failure to make minimal efforts to improve these conditions demonstrated a lack of concern for the Child such that it appeared unlikely that she would be able to provide the Child with a suitable home at an early date. Upon our review of the record, we conclude that the evidence does not preponderate against the trial court's findings and agree that DCS presented clear and convincing evidence to establish this statutory ground of abandonment.

² As Mother acknowledges in her appellate brief, her trial testimony concerning the location of the Child's removal was unclear. Mother testified that the Child was removed from her custody while at the home of "Aunt Tina." Mother did not clearly explain the identity of "Aunt Tina" in relation to her.

With respect to subsections (ii)(a) and (b) of the abandonment statute, the record reflects that the Child was removed from Mother's custody on December 27, 2019, by court order upon DCS's filing of a dependency and neglect petition. Mother later stipulated to a finding of dependency and neglect by clear and convincing evidence predicated upon the environmental issues in the home and her positive drug screen on the day of the Child's removal. In addition, as noted in its final judgment, the trial court found through its protective custody order that reasonable efforts had been made to prevent the Child's removal from the home, despite it being reasonable for DCS to have made no efforts given the "circumstances of the family." These facts are undisputed, and the evidence does not preponderate against them.

The testimony presented during trial also supports the trial court's findings related to DCS's efforts to assist Mother pursuant to subsection (ii)(c). This Court has previously elucidated the meaning of reasonable efforts:

Reasonable efforts is a fact intensive inquiry and must be examined on a case-by-case basis. *State v. Puryear*, 2005 WL 735038, *9 (Tenn. Ct. App. Mar. 30, 2005). "Reasonable efforts" as defined by the legislature is "the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." Tennessee Code Annotated section 37-1-166(g)(1) (2003). However, the burden of family reunification does not lie entirely with DCS as reunification is a "two-way street." *State Dept. of Children's Services v. Belder*, [No. W2003-02888-COA-R3-PT,] 2004 WL 1553561, *9 (Tenn. Ct. App. July 9, 2004).

In re C.L.M., No. M2005-00696-COA-R3-PT, 2005 WL 2051285, at *9 (Tenn. Ct. App. Aug. 25, 2005).

Kandi Kirk, the foster care worker assigned to the Child's case from the time of his removal until August 15, 2021, testified that she assisted Mother in her search for appropriate housing. According to Ms. Kirk, she brought Mother to her office to register for Department of Housing and Urban Development ("HUD") housing on Ms. Kirk's computer. At that time, HUD housing in Sevier County was full, but Knox County's waiting list was "open." Ms. Kirk also confirmed for Mother that Jefferson County HUD housing was then available, but Mother expressed that she did not desire to live in Jefferson County due to its distance from Sevier County. In addition, Ms. Kirk conducted a home visit of Mother's camper, determining that it was unfit, as well as warning Mother that motels and hotels were not considered appropriate housing options. As additional efforts, Ms. Kirk arranged parenting classes, an alcohol and drug assessment, and a mental health assessment for Mother.

Both Ms. Kirk and her successor, Kaylie Vineyard, a foster care worker who was assigned to the Child's case in November 2021, testified that they had facilitated visits

between Mother and the Child, including a four-month period of “therapeutic visits.” Ms. Kirk and Ms. Vineyard also consistently attempted to arrange drug screens for Mother. According to Ms. Kirk, DCS investigated potential relatives for the Child’s placement as well. In addition, DCS created permanency plans outlining requirements for Mother to complete. We conclude that DCS’s efforts, made through Ms. Kirk and Ms. Vineyard, were reasonable. *See In re Ima D.*, No. M2021-00022-COA-R3-PT, 2021 WL 5441832, at *7 (Tenn. Ct. App. Nov. 22, 2021) (concluding that DCS’s efforts to assist the respondent father, which included “scheduling an alcohol and drug assessment for Father, scheduling a mental health assessment for Father, attempting to assist Father in finding new housing, facilitating visitation with the Children, and providing random drug screens,” were reasonable); *see also In re H.S.*, No. M2019-00808-COA-R3-PT, 2020 WL 1428777, at *7 (Tenn. Ct. App. Mar. 20, 2020) (“We have long held that providing drug screens, maintaining consistent communication with a parent, coordinating alcohol and drug assessments, and offering counseling services constitute reasonable efforts to assist a parent in establishing a suitable home.”).

On appeal, Mother argues that she made “significant reciprocal efforts” to establish a suitable home. As evidence, Mother states that the trial court found that she had been in partial compliance with two of the permanency plans. She further asserts that she visited the Child, developed a “childcare plan,” developed a “transportation plan,” purchased the Child a “Spider-Man toy,” provided some financial assistance, sought employment, provided available proof of employment to DCS, participated in counseling, and continued to seek mental health treatment when she relocated to Georgia. Following our review of the record in this matter, we conclude that although Mother put forth some effort to improve her living situation, these efforts do not equate to or exceed the efforts made by DCS.

We recognize that Mother completed an alcohol and drug assessment, a mental health assessment, and an “intensive outpatient substance abuse and mental health treatment program.” Nevertheless, Mother rarely responded to DCS’s requests for drug screens. Ms. Kirk testified that she had previously informed Mother that her failure to comply with a requested drug screen would result in a “failed drug screen.” Despite this warning, Ms. Kirk reported that Mother would typically either fail to respond to her text messages requesting drug screens or agree to cooperate with a drug screen but then fail to follow through. Ms. Vineyard testified that Mother had not tested negative for illegal drugs since Ms. Vineyard was assigned to the case in November 2021. Mother either did not submit to drug screens or tested positive during Ms. Vineyard’s assignment to the case. Ms. Vineyard also indicated that Mother did not comply with drug screens requested in December 2021, February 2022, and April 2022. Beyond avoiding drug screens, Mother tested positive for methamphetamine in July 2020, methamphetamine in November 2020, marijuana in March 2022, and methamphetamine in May 2022, which was a week prior to trial.

Mother blamed her positive drug screens for marijuana on her use of “CBD,” or Cannabidiol. She acknowledged that DCS workers had informed her that CBD use could result in a positive drug screen for marijuana depending on the quantity consumed. Mother attributed her positive drugs screens for methamphetamine to her use of allergy medication. However, Ms. Vineyard testified that prior to complying with the drug screen in May 2022, the results of which reflected methamphetamine use, Mother made a point to clarify to Ms. Vineyard that she had quit taking her allergy medication. Thus, Mother’s contention that she tested positive for methamphetamine due to her allergy medication is without merit. The trial court determined that Mother’s testimony concerning drug screens, including her “excuses and justifications” for her substance abuse issues, was not credible, stating: “When drug screens were taken, the mother has failed for methamphetamine, amphetamine, and THC. Credibility is on the part of the state in regard to drug screens, contacting the mother, and her not responding.” As this Court has stated on numerous occasions, this Court will “not re-evaluate a trial judge’s assessment of witness credibility absent clear and convincing evidence to the contrary.” *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999) (internal citations omitted).

With respect to Mother’s home environment, Mother testified that she had lived at five different locations since the Child’s removal and had not resided in any one place for longer than seven months. Clearly, Mother’s housing circumstances did not reflect any degree of stability. *See State, Dep’t of Children’s Servs. v. T.M.B.K.*, 197 S.W.3d 282, 294 (Tenn. Ct. App. 2006) (concluding that the mother lacked stable housing in part due to the fact that she had lived in four different residences after the children were removed from her custody); *In re M.J.B.*, 140 S.W.3d 643, 657 (Tenn. Ct. App. 2004) (concluding that the mother had not established stable housing inasmuch as she had “lived in fourteen different places between July 2000 and January 2003”).

Following the Child’s removal, Mother moved out of the camper and began residing with someone named “Aunt Tina” for three months. No testimony was presented concerning Aunt Tina’s relationship to Mother, but Mother implied during trial that Aunt Tina was not her biological aunt. Based upon Mother’s testimony, it appears that she did not intend to reside with Aunt Tina permanently. Mother subsequently relocated to Blue Ridge, Georgia, in March 2020 despite having rejected the opportunity to live in Jefferson County HUD housing due to its distance from Sevier County. She also testified that she had lived in an Econo Lodge motel for seven months in Sevierville at one point during the pendency of the case. Mother further articulated that she had attempted to remedy the unsuitable conditions of her camper so that the Child could return to her custody and live with her there. However, Mother explained that Ms. Kirk had inspected the camper and determined that there was insufficient residential space for Mother, the Child, and his half-brother. Ms. Kirk testified that the camper lacked running water, electricity, certain windows, and adequate space for Mother and the two children.

During trial, Mother testified that she was currently residing with roommates in Cleveland, Georgia, and had relocated to a room inside of a trailer two weeks prior to trial. This was the first time DCS had been informed of her move to a trailer. Ms. Vineyard testified that throughout her tenure overseeing the case, she never knew whether Mother was living in Georgia. According to Ms. Vineyard, Mother failed to provide her with a “clear answer” when asked whether she was residing in Georgia or Tennessee. Ms. Vineyard added that she had not inspected Mother’s new home given that she had only learned about her move through Mother’s testimony that day. The court found that Mother’s “credibility in regard to the housing issue” was lacking.

The evidence established that Mother’s work history was also varied and erratic. During the pendency of DCS’s custody of the Child, Mother had at various times worked at McDonald’s, Waffle House, “Soaky Mountain,” Dollywood, a construction company, a company called “Satori Packaging,” Subway, Dollar General, “Mamma Mia’s,” “Mystic Technologies,” and, by the time of trial, Wal-Mart. Her longest stint of employment at any one location was her seven-month course of employment at Waffle House in Sevierville. To this matter, Ms. Kirk testified that Mother would often not work at any one place for more than one month. Mother’s work history also reflects instability. *See In re M.J.B.*, 140 S.W.3d at 657 (concluding that the mother had been unable to maintain stable employment, noting that she held seven to ten different jobs between July 2000 and November 2001 and that only one of those stints of employment had lasted for more than five months). Furthermore, Mother only provided proof of employment for three out of the eleven employers for whom she worked during the pendency of the case.

Mother further cites her visitation with the Child as an example of her effort to establish a suitable home. Ms. Kirk, however, explained that Mother would sometimes appear to be under the influence of drugs during visits. According to Ms. Kirk, Mother’s eyes would sometimes be “glassy,” and Mother would exhibit paranoia, rapid speech, and “rapid behavior.” Moreover, Ms. Kirk related that during visits, Mother would delegate parenting to the Child’s older half-brother and that she never brought a diaper bag to any of the visits. Ms. Vineyard added that Mother would sometimes go months without visiting the Child due to her incarceration for failure to pay child support, her decision to cancel visits, or her failure to confirm visitation times. Furthermore, Desirae Gammichia, a foster care specialist at Helen Ross McNabb who supervised some of Mother’s visits with the Child, testified that the Child usually would play on Mother’s phone during visits and that the most recent occasion spanned four hours, three of which the Child had spent on Mother’s phone.

Considering the proof concerning Mother’s continued drug use, her failure to comply with drug screens, her inability to establish a stable home, her failure to maintain stable employment during the pendency of the case, and her failure to consistently communicate with DCS, we cannot conclude that Mother made reciprocal reasonable efforts to establish a suitable home. Although Mother may have exerted some effort to

establish a suitable home, we cannot conclude that her efforts were concerted or reasonable given the stakes involved. Rather, the evidence reflects that Mother exhibited a lack of concern for the Child to such a degree that it was unlikely that she would be able to provide a suitable home at an early date. Although DCS did not inspect Mother's various residences in Georgia, the evidence supports a determination that Mother never clearly notified DCS of her relocation to and within Georgia. Even assuming that Mother had remedied the environmentally harmful aspects of her home, her continued drug use rendered her home unsuitable, particularly given the trial court's findings concerning Mother's credibility attendant to drug use. *See In re Nevada N.*, 498 S.W.3d 579, 596 (Tenn. Ct. App. 2016) ("Thus, while the evidence shows that Mother has established a 'proper physical living location,' the record clearly and convincingly demonstrates that Mother's home is not free of drugs." (quoting *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *9 (Tenn. Ct. App. June 10, 2014)); *see also In re Kambri P.*, No. M2019-01352-COA-R3-PT, 2020 WL 2991793, at *5 (Tenn. Ct. App. June 4, 2020) (same). We therefore affirm the trial court's finding of clear and convincing evidence regarding this statutory ground of abandonment.

B. Persistence of Conditions Leading to the Child's Removal

The trial court also found clear and convincing evidence of the statutory ground of persistence of the conditions leading to removal of the Child from Mother's custody. Relative to this statutory ground, Tennessee Code Annotated § 36-1-113(g)(3) (Supp. 2022) provides:

- (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[.]

By the time of trial, the Child had been in DCS's custody for over twenty-eight months. As established through our review of the evidence respecting the statutory ground of abandonment, the conditions that led to the Child's removal, namely drug use and environmental issues, persisted. Mother tested positive for methamphetamine use a week prior to trial. Throughout the pendency of DCS's involvement, Mother failed to consistently respond to requests for drug screens. Mother also failed to establish stable housing and employment. Two weeks prior to trial, Mother relocated to her then-current residence, a room within a trailer in Cleveland, Georgia. By commencement of trial, Mother had not yet informed DCS of her relocation, the names of her roommates, or her address.

Mother propounds that she made efforts to address her drug use and remedy the unsuitability of her housing. However, we emphasize that this termination ground is not dependent on a parent's efforts to improve the circumstances that led to a child's removal. Rather, the focus lies on the results of those efforts. *See In re Audrey S.*, 182 S.W.3d 838, 874 (Tenn. Ct. App. 2005) (explaining that this ground for termination focuses "on the results of the parent's efforts at improvement rather than the mere fact that he or she had made them."). Moreover, "[t]he purpose behind the 'persistence of conditions' ground for terminating parental rights is 'to prevent the child's lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.'" *In re Nevada N.*, 498 S.W.3d at 606 (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576 (Tenn. Ct. App. Oct. 13, 2008)). Thus, while we recognize that Mother made some attempts to resolve her housing issues and address her drug use with counseling and an intensive outpatient program, we emphasize that the focus of this ground is upon the status of the conditions that led to the Child's removal—not the parent's efforts to change those conditions. In the present case, Mother did not effectuate a change in conditions despite initiating some attempts to do so. *See, e.g., In re Lillian D.*, No. E2016-00111-COA-R3-PT, 2016 WL 4505691, at *12 (Tenn. Ct. App. Aug. 26, 2016) ("[D]espite efforts by both DCS personnel and Mother, the reason for removal of the Child from Mother's care . . . still persisted at the time of trial.").

Although Mother completed an intensive outpatient program, we note that she continued to test positive for illegal drugs even a week prior to trial. Furthermore, despite some efforts to address her unlawful drug use, Mother's avoidance of requested drug screens by DCS evinces an irresolute attempt to overcome this obstacle to reunification with the Child. *See In re Mya E.*, No. M2012-02323-COA-R3-PT, 2013 WL 2106839, at

*8 (Tenn. Ct. App. May 13, 2013) (determining that “[i]n this case, while Father had attended two drug treatment programs, it was shown that he had returned to his use of drugs thereafter” and that “the evidence showed that Father had made some progress but fell far short of remedying the underlying causes for the Children’s removal from his custody”). Here, Mother fell significantly short of remedying the underlying causes of the Child’s removal, particularly given her persistence in denying methamphetamine use.

In view of the expanse of time that the Child had remained in DCS custody, we agree with the trial court’s determination that there was little likelihood that the conditions leading to removal would be remedied at an early date. Likewise, we agree that continuation of the parent-child relationship would inhibit the Child’s chances of early integration into a safe, stable, and permanent home, particularly considering Mother’s lack of progress and cooperation with DCS after twenty-eight months and the Child’s relational bond with his current foster family. We therefore conclude that the evidence does not preponderate against the trial court’s findings and agree that clear and convincing evidence establishes this statutory ground for termination.

C. Failure to Manifest an Ability and Willingness to Assume Custody of or Financial Responsibility for the Child

Lastly, the trial court found clear and convincing evidence that Mother had failed to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Child. Concerning this statutory ground, Tennessee Code Annotated § 36-1-113(g)(14) (Supp. 2022) provides:

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[.]

To establish this ground, DCS was required to show by clear and convincing evidence that (1) Mother failed to manifest either an ability or willingness to assume custody of or financial responsibility for the Child and (2) returning the Child to Mother’s custody would pose a risk of substantial harm to the Child’s welfare. *In re Neveah M.*, 614 S.W.3d 659, 674, 677 (Tenn. 2020); *In re Jeremiah S.*, No. W2019-00610-COA-R3-PT, 2020 WL 1951880, at *6 (Tenn. Ct. App. Apr. 23, 2020) (“Under this ground for termination, the petitioner must prove each element by clear and convincing evidence.”).

In its final judgment, the trial court found that Mother had failed to manifest both an ability and a willingness to assume legal and physical custody of or financial responsibility for the Child and further determined that placing the Child in Mother’s custody would pose a risk of substantial harm to the physical and psychological welfare of

the Child. The court included in its judgment the following findings of fact with respect to conditions that Mother had failed to address during the twenty-eight months the Child had been in protective custody: she lacked stable housing, changing residences five times since the Child's removal and informing DCS of her most current residence for the first time during her trial testimony; she had not "shown substantial interest or concern about her substance abuse issues," instead making "excuses or justifications" that were not credible; she constantly transitioned from job to job and residence to residence; she attended the trial by "Zoom video conferencing" rather than securing arrangements to appear in person to "put her best foot forward"; and she failed to address her substance abuse issues, maintain safe and appropriate housing, or demonstrate that she was "consistently available" for the Child. Upon our thorough review, we conclude that the evidence preponderates in favor of these factual findings.

On appeal, Mother contends that she did exhibit a willingness to assume custody of the Child, citing her participation in an intensive outpatient program, weekly counseling, an alcohol and drug assessment, and a mental health assessment. She also urges that she made several attempts to locate housing free of environmental concerns. Upon careful review, we disagree.

Concerning willingness in this context, this Court has previously elucidated: "Parents demonstrate willingness by attempting to overcome the obstacles that prevent them from assuming custody or financial responsibility for the child." *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at *8 (Tenn. Ct. App. Mar. 22, 2019). Furthermore, "we look for more than mere words," *id.*, and "we have previously held that evidence was sufficient to meet this ground when it showed that the parent voluntarily chose to live a lifestyle lacking stability." *In re Antonio J.*, No. M2019-00255-COA-R3-PT, 2019 WL 6312951, at *9 (Tenn. Ct. App. Nov. 25, 2019) (citing *In re Morgan K.*, No. M2018-00040-COA-R3-PT, 2018 WL 5733291, at *13 (Tenn. Ct. App. Oct. 31, 2018)). Although Mother exhibited a measure of effort to overcome the obstacles to reunification by completing an intensive outpatient program, engaging in counseling, completing the required assessments, and attempting to find appropriate housing, these efforts were overshadowed by the following: repeated failure to respond to requests for drug screens, continued drug use, proffered excuses and justifications for failed drug screens, failure to acknowledge her persistent drug use, inconsistent visitation with the Child, and improper behavior during visits with the Child. These actions and omissions reflect a lack of commitment on Mother's part toward regaining custody of the Child.

Furthermore, for reasons previously stated within this Opinion, Mother did not manifest an ability to assume legal and physical custody of or financial responsibility for the Child. Mother continued to test positive for methamphetamine, including during the week before trial. She informed DCS of her current residence through her testimony at trial, thereby failing to afford DCS workers an opportunity to inspect the suitability of her home and determine whether the environmental factors that led to the Child's removal had

been remedied. Mother relocated to five different residences and could not maintain stable employment during the twenty-eight months since the Child's removal. With a few exceptions, Mother did not provide to DCS proof of employment. Although she paid a total of \$676.86 in child support from June 2020 to October 2021, these payments were inconsistent. Mother subsequently stopped paying child support altogether, resulting in her periodic incarceration. Ergo, she did not manifest an ability to assume legal and physical custody of or financial responsibility for the Child.

We also agree with the trial court's determination that returning the Child to Mother's custody would present a substantial risk of harm to the Child's welfare due to Mother's drug use and instability. See *In re Anari E.*, No. M2020-01051-COA-R3-PT, 2021 WL 1828500, at *17 (Tenn. Ct. App. May 7, 2021) ("Given Father's unabashed drug use, as well as his continual failure to achieve stability, an unacceptable risk of harm would inhere were the Children returned to Father's care."); *In re Antonio J.*, 2019 WL 6312951, at *10 ("Stability, as this Court has often recognized, is an 'extremely important' necessity for children."). Based upon our careful review of the record, we conclude that Mother's "continuing lack of stability" is "both likely and harmful." See *In re Antonio J.*, 2019 WL 6312951, at *10.

Furthermore, removing the Child from the stability of his foster home would contribute to the risk of substantial harm to his welfare. To this point, the Child's foster mother, Roseanne C. ("Foster Mother"), and Ms. Vineyard testified regarding the Child's bond with his foster parents, their children, and the other foster children in the household. According to Foster Mother, the Child referred to his foster parents as "Mom" and "Dad." Foster Mother related that she and her husband were striving to address the Child's behavioral issues with "therapeutic" preschool. Certainly, the Child's foster family provided him with stability that Mother would not be able to provide at an early date. We therefore affirm the trial court's determination that clear and convincing evidence established this ground for termination.

V. Best Interest of the Child

When a parent has been found to be unfit by establishment of at least one statutory ground for termination of parental rights, as here, the interests of parent and child diverge, and the focus shifts to what is in the child's best interest. *In re Audrey S.*, 182 S.W.3d at 877; see also *In re Carrington H.*, 483 S.W.3d at 523 ("The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination." (quoting *In re Angela E.*, 303 S.W.3d 240, (Tenn. 2010))). Tennessee Code Annotated § 36-1-113(i) provides a list of factors the trial court is to consider when determining if termination of parental rights is in a child's best interest. This list is not exhaustive, and the statute does not require the court to find the existence of every factor before concluding that termination is in a child's best interest. See *In re Carrington H.*, 483 S.W.3d at 523; *In re Audrey S.*, 182 S.W.3d at 878 ("The relevancy

and weight to be given each factor depends on the unique facts of each case.”). Furthermore, the best interest of a child must be determined from the child’s perspective and not the parent’s. *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004).

Tennessee Code Annotated § 36-1-113(i)(1) (Supp. 2022) lists the following factors for consideration:

- (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 statute further provides: “When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” Tenn. Code Ann. § 36-1-113(g)(i)(2).

Under the previous statutory scheme utilizing nine similar best interest factors, our Supreme Court instructed regarding the best interest analysis as a whole:

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 [533,] 555 [(Tenn. 2015)] (citing In re Audrey S., 182 S.W.3d at 861). “After making the underlying factual findings, the trial court should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest[s].” Id. When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” In re Audrey S., 182 S.W.3d at 878. Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. Id. “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child. . . .” Tenn. Code Ann. § 36-1-101(d) (2017).

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. In re Audrey S., 182 S.W.3d at 878. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. White v. Moody, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004). Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. See In re Audrey S., 182 S.W.3d at 878. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated. In re Carrington H., 483 S.W.3d at 523. “[D]epending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.” In re

Audrey S., 182 S.W.3d at 878 (citing White v. Moody, 171 S.W.3d at 194). But this does not mean that a court is relieved of the obligation of considering all the factors and all the proof. Even if the circumstances of a particular case ultimately result in the court ascribing more weight—even outcome determinative weight—to a particular statutory factor, the court must consider all of the statutory factors, as well as any other relevant proof any party offers.

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

In its final judgment, the trial court concluded that all but four of the twenty best interest factors weighed in favor of terminating Mother’s parental rights to the Child. The court determined that the remaining four factors either weighed neutrally or were inapplicable. Upon our thorough review of the evidence presented in this matter, we conclude that clear and convincing evidence established that termination of Mother’s parental rights to the Child was in his best interest.

Factors (A), (C), and (J) are related by reason of their emphasis on the Child’s stability and safety. With respect to factor (A), the trial court found that the Child was in “serious need for stability” and that Mother had failed to demonstrate any improvement with respect to her illegal drug use and housing issues. Relatedly, concerning factor (C), the court found that Mother had not demonstrated continuity and stability in meeting the Child’s basic needs because she had failed to maintain stable housing and a source of income. Concerning factor (J), the court noted Mother’s persistent use of illegal drugs as recent as a week prior to trial. The evidence preponderates in favor of the court’s findings. As previously stated, Mother initiated some effort to address her substance abuse and housing issues. Nevertheless, Mother had not demonstrated significant improvement or an ability to maintain stable housing or employment. Notwithstanding her completion of an intensive outpatient program and an alcohol and drug assessment, Mother tested positive for methamphetamine use a week prior to trial and never admitted to such use. Considering that the Child had been in DCS custody for twenty-eight months, the Child’s need for stability and continuity of placement was imperative. Ultimately, Mother demonstrated neither continuity and stability in meeting the Child’s needs nor a lasting adjustment in circumstances, conduct, or conditions so as to render her home safe and beneficial for the Child.

Concerning factor (B), the trial court found that a change in caregivers would have a negative effect on the Child, noting that he was thriving in his foster home in contrast to the home from which he had been removed. The evidence preponderates in favor of this finding. The Child had bonded well with his foster parents and foster siblings. His foster parents were initiating beneficial steps to address the Child’s behavioral issues by enrolling him in “therapeutic” preschool. In contrast, near the time of trial, Mother had changed jobs again, resided with new roommates in a trailer, and tested positive for methamphetamine.

We conclude that returning the Child to Mother's custody would have rendered a deleterious effect on the Child's well-being.

Factors (D), (H), and (I) are related due to their emphasis on parental attachments and relationships. With respect to factor (D), the trial court found that Mother and the Child did not have a secure and healthy parental attachment and that there was no reasonable expectation that Mother could establish one. Concerning factor (H), the court found that the Child had bonded with his foster family in Mother's absence. Likewise, regarding factor (I), the court determined that the Child had bonded with his foster siblings and that termination of Mother's parental rights to the Child would not have a negative impact on the Child's access to information about his heritage. Although Foster Mother testified that the Child still referred to Mother as "Mom," she also indicated that the Child did not ask his foster parents about Mother. Furthermore, Mother visited the Child inconsistently, exhibited erratic behavior during visits, and outsourced her role as parent to the Child's older half-brother. In contrast, Foster Mother and Ms. Vineyard testified that the Child related well with and had bonded to the other children in the family. He referred to the foster parents as "Mom" and "Dad."

On appeal, Mother posits that the Child's relationship with his foster family should not weigh in favor of termination given that he "had been initially placed at the home of the current foster family, until the home was disrupted by the foster mother during which time he resided with a different foster family." Mother, however, fails to explain the nature of this disruption in the Child's foster care. According to Foster Mother, the Child and his half-brother were placed in her and her husband's home from the time of removal until September 2020. The Child was returned to their care again in December 2021, remaining there since. The only testimony relating to the Child's removal from the foster family in September 2020 came from Ms. Vineyard, who explained that the Child and his half-brother had been removed from the foster family due to the half-brother's behavioral issues. Ms. Vineyard further explained that the interim foster family had determined they could no longer maintain the Child in their care, and the Child was then returned to Foster Mother and her family in December 2021. By reason of Ms. Vineyard's testimony, we decline to weigh this disruption in foster care against termination. Based upon the evidence, we agree with the court's decision to weigh factors (D) and (H) in favor of termination. However, DCS did not present evidence with respect to how termination of Mother's parental rights would affect the Child's relationship with his half-brother or his access to information about his heritage. Therefore, factor (I) should weigh neither in favor of nor against termination of parental rights.

Concerning factor (G), the trial court found that returning the Child to Mother's home would trigger or exacerbate the Child's experience of trauma or post-traumatic symptoms, noting that the Child had experienced trauma in Mother's home when he was exposed to her drug use and instability. Although DCS presented evidence that Mother was using illegal drugs while parenting and that her home was environmentally unsuitable

when the Child was in her custody, DCS did not present evidence of the Child's trauma or post-traumatic symptoms. The court's finding that factor (F), whether the Child would be fearful of living in Mother's home, was inapplicable further indicates that factor (G) should not have been weighed in favor of termination. We therefore conclude that this factor should have been weighed neutrally as well.

Factors (K) and (L) both relate to services and assistance offered to Mother. With respect to factor (K), the trial court found that Mother had not taken advantage of available programs. Certainly, Mother failed to engage DCS with respect to drug screens, and she rejected DCS's offer to register her for HUD housing in Jefferson County. However, considering that Mother had completed an intensive outpatient program and was engaged in counseling during a portion of the pendency of this case, we cannot conclude that this factor should weigh heavily in favor of termination. Concerning factor (L), the court rightly weighed this factor in favor of termination, noting DCS's efforts to assist Mother in making a lasting adjustment.

Factors (M), (P), and (Q) all relate to Mother's actions to meet the Child's needs. The trial court weighed all three factors in favor of termination of Mother's parental rights. We agree with the trial court's determination concerning these factors. With respect to factor (M), Mother did not demonstrate a sense of urgency in addressing the circumstance, conduct, or conditions that initially made an award of custody unsafe and not in the Child's best interest. Mother's lack of urgency and seriousness was clearly demonstrated by her excuses for testing positive for methamphetamine, explanations the trial court apparently did not find credible. Although more than two years had elapsed since the Child's removal from Mother's custody, she refused to acknowledge her methamphetamine use despite completing an intensive outpatient program. Mother's erratic job history and inability to secure a safe and appropriate home for the Child further established that she had not acted with a sense of urgency. These facts also apply to factor (P), whether Mother demonstrated an understanding of the basic and specific needs required for the Child to thrive, and (Q), whether she demonstrated the ability and a commitment to creating a home that would meet the Child's needs. Ultimately, Mother had made little progress in the more than two years since the Child's removal.

The trial court weighed factor (O) in favor of termination of Mother's parental rights, noting that the Child had spent a longer portion of his life in foster care than in Mother's custody. The evidence preponderates in favor of the court's finding. With respect to factor (S), the court found that Mother had been providing more than token financial support but that such support had "fallen off." DCS presented evidence that Mother had paid \$676.86 in child support from June 2020 to October 2021. According to Mother, she had been ordered to pay \$110.00 in child support per month. Mother's payments were inconsistent, and she was incarcerated twice for failure to pay child support. Mother explained that she did not make child support payments during certain periods when she was unemployed. DCS presented little to no evidence of Mother's means such

that we would be able to conclude that \$676.86 constituted token support. We therefore conclude that this factor should have weighed neither in favor of nor against termination. *See In re Stephen H.*, No. M2022-00674-COA-R3-PT, 2022 WL 17843018, at *21 (Tenn. Ct. App. Dec. 22, 2022) (“Considering the scant evidence related to Father’s means, the evidence preponderates against the court’s finding, and this factor should weigh neither in favor of nor against termination.”).

With respect to factor (T), the trial court found that Mother’s status of mental or emotional fitness would be detrimental to the Child by reason of her failure to “cooperate and follow through” and failure to “consistently make progress.” Mother related that she had been diagnosed with bipolar disorder, borderline personality disorder, anxiety, and depression. She acknowledged that she had used marijuana in the past to treat her anxiety. Therefore, by her own testimony, Mother’s mental health issues were linked to her illegal drug use. In addition, although Mother offered that she had been participating in weekly counseling, Ms. Vineyard countered that she had confirmed with the counseling service that Mother was discharged from therapy due to “noncompliance” in March 2022. Furthermore, Ms. Vineyard noted that Mother had falsely reported to her in April 2022 that she was continuing therapy. We therefore conclude that the evidence preponderates in favor of the trial court’s findings and that the trial court appropriately weighed this factor in favor of termination.

Although the evidence did not support the trial court’s conclusions related to factors (G), (I), and (S), clear and convincing evidence established that termination of Mother’s parental rights to the Child was in the Child’s best interest based on the remaining best interest factors weighing in favor of termination. We therefore affirm the trial court’s determination by clear and convincing evidence that termination of Mother’s parental rights to the Child was in the Child’s best interest.

VI. Conclusion

Based on the forgoing reasons, we affirm the trial court’s judgment. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the trial court’s judgment terminating Mother’s parental rights to the Child and collection of costs assessed below. Costs on appeal are assessed to the appellant, Monique P.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE