

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 3, 2025

IN RE JAMES S.

Appeal from the Juvenile Court for Hamblen County
No. TR240024 Blake E. Sempkowski, Judge

No. E2025-00593-COA-R3-PT

The trial court terminated Mother/Appellant's parental rights on the ground of severe child abuse and on its finding that termination of her rights is in the children's best interests. Mother appeals. Discerning no error, we affirm.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Ryan T. Logue, Morristown, Tennessee, for the appellant, Katie W.¹

Jonathan Skrmetti, Attorney General and Reporter, and Katherine P. Adams, Assistant Attorney General, for the appellant, Tennessee Department of Children's Services.

OPINION

I. Background

Appellant Katie W. ("Mother") is the mother of the three minor children at issue in this case—twins, James S. and Robert S., who were born in October 2018, and Kynley S. (d/o/b February 2021) (together with James and Robert, the "Children"). According to her testimony, Mother began abusing prescription medications following a horse-riding accident that occurred when she was in tenth grade. Mother testified that she "dabbled" in substance use for a couple years in high school, but her drug use became a much bigger

¹ In cases involving minor children, it is the policy of this Court to redact the parties' names to protect their identities.

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problem after she turned eighteen. At the time the twins were born, in October 2018, Mother had been using suboxone recreationally for approximately “five to seven years,” and James tested positive for suboxone when he was born.

The Children’s father died in October 2021. Mother and father were never married, but Mother testified that father provided support for the Children. After father’s death, Mother testified that she was unable to pay her bills and lost her housing. Shortly thereafter, Appellee Tennessee Department of Children’s Services (“DCS”) received its first referral regarding the Children. At that time, Mother tested positive for methamphetamine, Klonopin, and marijuana, and the Children were removed from her custody due to neglect and drug use. During this first custodial episode, Mother completed her permanency plan responsibilities, and the Children were returned to her care four months after removal. Mother testified that, after the Children were returned to her custody, she continued to struggle with drug addiction. Mother candidly testified that, “the drugs just hindered how I could keep things together. I would do good for so long and then I would lose myself. . . .”

The instant custodial episode began on or about May 15, 2024, when Mother drove the Children while under the influence and was involved in a head-on collision with another vehicle. At the time, Mother tested positive for marijuana, buprenorphine, benzodiazepine, amphetamine, and methamphetamine. All three Children sustained injuries in the accident. Kynley, who was secured in her car seat, suffered only minor injuries. However, neither of the twins was restrained, and both sustained severe injuries. Robert and James were airlifted to the University of Tennessee Medical Center, where Robert underwent surgery for a deep, four-inch laceration on his forehead; he also sustained a concussion. James’ injuries were more severe. He sustained a laceration of the spleen, rib fractures, an injury to his left eye, and had to be intubated in the Intensive Care Unit.

Following the accident, Mother was arrested. Mother ultimately pleaded guilty to three counts of Child Abuse/Neglect/Endangerment of a child under the age of eight in violation of Tennessee Code Annotated section 39-25-401(d), a Class D Felony. Mother also pleaded guilty to one count of DUI in violation of Tennessee Code Annotated section 55-10-401. Mother was sentenced to three years’ incarceration, of which ninety days were to be served in the Cocke County Jail. While incarcerated, Mother testified that she participated in drug rehabilitation treatment. She was released from jail in August 2024 and completed substance-abuse services at the McNabb Center. At trial, Mother testified that she had not abused drugs since her release from jail. She stated that she attended weekly narcotics anonymous meetings and bi-monthly therapy sessions.

On May 16, 2024, the Children were brought into DCS custody pursuant to an emergency order. They were placed with a foster family, where they have remained since that time. When they were removed to DCS, the twins were five years old and still wearing diapers. Both were visibly underweight, with James weighing approximately twenty-five

pounds. On or about May 17, 2024, DCS filed a petition alleging that the Children were dependent and neglected in Mother's care. By order of September 4, 2024, the Juvenile Court for Hamblen County ("trial court") adjudicated the Children dependent and neglected based on its finding "that severe abuse, as defined in Tennessee Code Annotated § 37-1-102(b)(27), has been committed against the [C]hildren." The trial court noted the Children's significant injuries from the accident and Mother's guilty pleas to Child Abuse/Neglect/Endangerment. There is no indication that Mother appealed this order.

On December 18, 2024, DCS filed its petition to terminate Mother's parental rights. As grounds, DCS alleged severe child abuse based on Mother's guilty pleas, *see supra*. DCS also averred that Mother failed to manifest an ability and willingness to assume custody; however, DCS nonsuited this ground at trial. The trial court heard DCS's petition on April 2, 2025. By order of April 3, 2025, the trial court terminated Mother's parental rights on the ground of severe child abuse and on its finding that termination of her parental rights is in the Children's best interests. Mother appeals.

II. Issues

Appellant raises the following issues for review:

1. Whether the trial court erred by finding clear and convincing evidence that Mother committed severe abuse against her children.
2. Whether the trial court erred by finding clear and convincing evidence that it is in the children's best interests to terminate Mother's parental rights.

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, 522-23 (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:

- (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.

Tenn. Code Ann. § 36-1-113(c). 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).

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.” *In re Carrington H.*, 483 S.W.3d at 524 (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.* at 524 (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. Ground for Termination

Tennessee Code Annotated section 36-1-113(g)(4) provides a ground for termination of parental rights when,

[u]nder a prior order of a court or by the court hearing the petition to terminate parental rights or the petition for adoption, a child has been found to be a victim of severe child abuse, as defined in § 37-1-102, and the parent or guardian has been found to have knowingly or with gross negligence either committed severe child abuse or failed to protect the child from severe child abuse.

As referenced in section 36-1-113(g)(4), Tennessee Code Annotated section 37-1-102 defines “Severe child abuse,” in relevant part as the “[e]xposure of a child to serious bodily injury or death, or the risk of serious bodily injury or death, caused by brutality, abuse, neglect, or use of force.” Tenn. Code Ann. § 37-1-102(b)(27)(A)(i). “As used in this subdivision (b)(27)(A), ‘serious bodily injury’ has the same meaning as ‘serious bodily injury to the child’ given in § 39-15-402.” Tenn. Code Ann. § 37-1-102(b)(27)(A)(ii). As discussed above, Mother pleaded guilty to three counts of “Child Abuse/Neglect/Endangerment” of a child under the age of eight, which is defined at Tennessee Code Annotated section 39-15-402(d)(1)(A) as follows:

Any person who negligently, by act or omission, engages in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment, commits a Class A misdemeanor; except that, if the abused child is eight (8) years of age or less, the penalty is a Class B felony.

Based on Mother’s guilty pleas and its finding that “all [C]hildren were injured significantly” in the May 2024 accident, the trial court entered an adjudicatory/dispositional order on September 4, 2024, finding that the Children were dependent and neglected as the victims of “severe abuse, as defined in Tennessee Code Annotated § 37-1-102(b)(27).” There is no indication that Mother appealed the trial court’s

order.

Concerning the ground of severe child abuse, this Court has explained: This ground for termination provides two different “avenues for a finding of severe child abuse.” *In re Anna B.*, No. M2016-00694-COA-R3-PT, 2017 WL 436510, at *4 (Tenn. Ct. App. Feb. 1, 2017). The finding may have already been made in a “prior order of a court,” or, in the alternative, the finding may be made “by the court hearing the petition to terminate parental rights or the petition for adoption.” See Tenn. Code Ann. § 36-1-113(g)(4); *In re Anna B.*, 2017 WL 436510, at *4. Thus, “[a]s the statute makes clear, the finding of severe abuse can be based on a prior court order or on evidence of ‘severe child abuse’ submitted to the court hearing the termination case.” *In re Brianna T.*, No. E2017-01130-COA-R3-PT, 2017 WL 6550852, at *4 (Tenn. Ct. App. Dec. 22, 2017).

“A finding of severe abuse in dependency and neglect proceedings has serious ramifications . . . since a finding of severe abuse can serve as a ground for termination of parental rights.” *In re Kaliyah S.*, 455 S.W.3d at 537 n.5 (citing *In re Samaria S.*, 347 S.W.3d 188, 201 (Tenn. Ct. App. 2011)). In a subsequent termination of parental rights proceeding, the doctrine of *res judicata* prevents a parent from re-litigating whether he or she committed severe child abuse when such a finding has been made in a previous dependency and neglect action. *In re I.E.A.*, 511 S.W.3d 507, 517 (Tenn. Ct. App. 2016) (citing *In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012)). “The doctrine of *res judicata* is ‘based on the public policy favoring finality in litigation and does not depend upon correctness or fairness, as long as the underlying judgment is valid.’” *In re S.S.-G.*, No. M2015-00055-COA-R3-PT, 2015 WL 7259499, at *7 (Tenn. Ct. App. Nov. 16, 2015) (quoting *Lee v. Hall*, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990)). As such,

[t]he most serious consequence of a finding that a parent has committed severe child abuse is that such a finding, in and of itself, constitutes a ground for termination of parental rights. . . . The ground itself is proved by a prior court order finding severe child abuse, and the issue of whether abuse occurred is not re-litigated at the termination hearing.

In re Samaria S., 347 S.W.3d at 201 (quoting *DCS v. M.S.*, No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *10 (Tenn. Ct. App. Mar. 8, 2005)). Upon a finding of severe abuse, “one ground for termination of the parent’s parental rights is effectively established.” *Id.*

When proceeding under the “prior order” avenue of ground (g)(4), “the ground is proven by the prior order finding severe child abuse.” *In re*

B.R.W., No. M2008-00468-COA-R3-PT, 2008 WL 2811301, at *2 (Tenn. Ct. App. July 21, 2008); see, e.g., **In re Madylynn C.**, No. M2021-00184-COA-R3-PT, 2021 WL 4476810, at *10 (Tenn. Ct. App. Sept. 30, 2021) *perm. app. denied* (Tenn. Dec. 28, 2021) (“Because neither Appellant challenged the finality or the validity of the adjudicatory dependency and neglect order, the issue of severe child abuse is *res judicata*.”); **In re S.M.C.**, No. 01A01-9807-JV-00358, 1999 WL 378742, at *2-3 (Tenn. Ct. App. June 11, 1999) (“The existence of the prior court order finding the [parents] committed severe child abuse suffices to establish grounds for termination of parental rights under Tenn. Code Ann. § 36-1-113(g)(4).”).

In re Colten B., No. E2024-00653-COA-R3-PT, 2025 WL 252663, at *5 (Tenn. Ct. App. Jan. 21, 2025).

Here, the trial court accepted the previous adjudication of severe abuse as *res judicata* and found that the requirements of Tennessee Code Annotated section 36-1-113(g)(4) and section 37-1-102(b)(27) were met. As set out in its order terminating Mother’s parental rights:

The Court finds that the Mother committed severe abuse against the children. The Court takes judicial notice of Exhibit 4, the adjudicatory hearing order from the underlying dependency and neglect matter, in which the Hamblen County Juvenile Court previously found that Mother committed severe abuse based on the significant injuries the children received in an accident caused by the Mother driving under the influence; additionally, Mother did plea[d] guilty to the charges associated with driving under the influence as it relates to this incident.

By clear and convincing evidence, the Court finds that the requirements of Tennessee Code Annotated §36-1-113(g)(4) and §37-1-102(b)(27) have been met.

Having reviewed the record, we agree that the issue of severe child abuse is *res judicata*. The doctrine of *res judicata* applies when

an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

In re Heaven L.F., 311 S.W.3d 435, 439 (Tenn. Ct. App. 2010) (quoting **Galbreath v. Harris**, 811 S.W.2d 88, 90 (Tenn. Ct. App. 1990)). The doctrine works to “bar[] a second suit between the same parties or their privies on the same cause of action with respect to all issues which were or could have been litigated in the former suit.” **Massengill v. Scott**, 738 S.W.2d 629, 631 (Tenn. 1987). This Court has applied the doctrine “to prevent a parent from re-litigating whether she committed severe child abuse in a later termination of

parental rights proceeding, when such a finding had been made in a previous dependency and neglect action.” *In re Heaven L.F.*, 311 S.W.3d at 439.

Turning to the record, both the Criminal Court for Cocke County, and the Juvenile Court for Hamblen County (in the dependency and neglect adjudicatory order) found that Mother committed severe child abuse against the Children. There is no indication that Mother appealed either adjudication. Accordingly, the issue of whether Mother committed severe child abuse was fully litigated and is res judicata. Because the question of severe child abuse is res judicata, we conclude that the trial court properly terminated Mother’s parental rights to the Children on this ground. Tenn. Code Ann. § 36-1-113(g)(4) (allowing a court to terminate a parent’s rights when he or she has been found “to have committed severe child abuse against any child”).

V. Best Interests

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 Mother’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 659, 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, the trial court considered the relevant statutory factors and made the following findings:

A. The first factor is a consideration of the effect that termination will have on the [C]hildren’s stability and continuity of care. The Court notes that this is the second custodial episode for the [C]hildren; that is to say, the

[C]hildren have been removed from the Mother's care twice during their short lives. Although Mother was able to quickly regain custody during the first episode, Mother had continued with drug use and did not create stability for the [C]hildren. The drug use caused continued trauma for the [C]hildren which culminated in the vehicle accident in May 2024 in which the [C]hildren received significant injuries. Mother received jail time for her part in that accident. There is no crystal ball to determine if Mother will be able to maintain this time, but the fact that the [C]hildren have been removed twice in a short period of time is indicative of a lack of Mothers ability to provide stability or continuity of care. This factor weighs in favor of termination of parental rights.

B. The Court relies on the Mother's testimony, as well as that of the therapist and others regarding the effect a change would have on these [C]hildren. Ms. Smith, the [C]hildren's therapist, in particular gave very detailed testimony regarding the [C]hildren's individual progress while they have been in foster care since May 16, 2024. James was reported to be in diapers and underweight when he was placed in custody, but that child has now made significant progress and gained weight. Robert was said to have been less extreme, but Robert was said to have regressed when Mother began supervised telephone calls with the [C]hildren. Kynley was the least problematic at the time of her placement in custody but has not responded well to reintroduction to the Mother at this time. The [C]hildren even told the supervisor that they didn't want to speak to Mother during their most recent phone call. It is clear that the [C]hildren cannot be placed back with Mother at this time, and have done very well working towards permanency in their current placement in foster care. This factor weighs in favor of termination of parental rights.

C. While the Court finds that Mother has worked her permanency plan and made significant strides towards improving herself, the Court notes that the keyword in this particular factor is *stability*. Mother has done well since she was released from incarceration, but this is the second removal. The Court does not believe that Mother has been able to show in this short amount of time that she would be able to maintain her changes. The Court again notes that this is the second removal from Mother's care. In addition, it is unknown how long it will be before the [C]hildren will be at a place in their trauma therapy that they are able to successfully speak with Mother again; for Kynley, it might be possible over time, according to Ms. Smith, but for the twins it would likely be much longer until they could work through their issues and be reunited with Mother. This factor weighs in favor of termination of parental rights.

D. The Court did hear some testimony that the [Mother] might have had a healthy attachment and bond with the [C]hildren previously. However, the [C]hildren certainly don't have such a healthy attachment at this time. The

Court finds the source of the bond's destruction to be the trauma inflicted upon these [C]hildren by the vehicle accident on May 15, 2024. Mother obviously feels terrible about what she did, as evidenced by her desire to work services to make changes in her life; however, the impact on the [C]hildren has been far greater than Mother's progress could overcome. The [C]hildren have negative reactions to even having a short phone call with the Mother—those calls have been extremely detrimental to the [C]hildren. The [C]hildren will need a lot more therapy before they could ever have a normal attachment to their Mother again. At this time, it just doesn't exist. This factor weighs in favor of termination of parental rights.

E. The Court finds that Mother was not allowed much contact, but that she did in fact take advantage of the contact she was allowed. There is not much that can be done with five minutes to try to build a relationship with the [C]hildren, but Mother attended every visit she was allowed to have and did the most she could to try to make those five minutes work. This factor weighs against termination of parental rights.

F. The Court finds here that the [C]hildren's differing personalities control and require different outcomes for each child. The Court heard testimony that Robert and James both express either disinterest or fear about Mother and hesitation to engage in conversation about or with her. Therefore, when it comes to James and Robert, this factor weighs in favor of termination. However, when it comes to Kynley, she does not express any fear of Mother. While she did request not to have to speak with Mother on a recent call, she has not expressed any concern or fear about Mother. Therefore, when it comes to Kynley, this factor weighs against termination of parental rights.

G. Despite not having an express fear, the Court does find that this factor, which relates to whether Mother is a trigger for the [C]hildren's trauma, does apply and does weigh in favor of termination. It is clear that all three [C]hildren have exhibited negative behaviors in response to supervised telephone visits with their Mother. While Kynley may not express any fear of Mother, she is still triggered with a trauma response from contact with Mother. This factor weighs in favor of termination of parental rights.

H. There was brief testimony regarding the [C]hildren bonding with the foster family and having a healthy attachment during Mr. Maples testimony. However, the Court took particular notice that the child, Robert, told his therapist outright that he did not want to return to Mother and that he wished to be able to stay where he was. This factor weighs in favor of termination of parental rights.

I. The Court heard some testimony from Mother and Ms. Ronni W[., Mother's sister] that the [C]hildren were bonded with family members and they would all hang out together. The Court also heard testimony that the [C]hildren had developed bonds with their foster siblings and extended family. Because the testimony seems split to either side, the Court finds that

this factor does not weigh in the determination as to whether or not parental rights should be terminated.

J. As the Court has noted several times, the Mother has made tremendous strides in improving her circumstances since the time that she was released from incarceration in August 2024. However, the Court again looks to a single keyword in making the determination—*lasting*. While the Court finds that Mother has made changes, given that this is the second custodial episode, the Court cannot find that Mother's changes, however great, are lasting. The Court would require more time for the Mother to show that changes were lasting. This factor weighs in favor of termination of parental rights.

K. Mother has taken advantage of absolutely every opportunity that has been afforded to her when it comes to services that could improve her wellbeing. This factor weighs against termination of parental rights.

L. DCS has made reasonable efforts to help Mother and the children. The children are in therapy to deal with their trauma, and DCS was prevented from doing much more beyond that to reunite the family considering the children's reaction to Mother. While the Court does find that this factor weighs in favor of termination of parental rights, the Court does note that this factor in particular weighs very little on the ultimate decision made by the Court today.

M. There is no doubt from testimony that the Mother has been urgent in rectifying the situation that brought the children into foster care. This factor weighs against termination of parental rights.

N. The Court finds that there is no evidence of brutality, sexual abuse, psychological abuse, or any other form of abuse contemplated in this factor. There is a great amount of neglect on the Mother's part that led to where she and the [C]hildren are in this case, but as the factor is written, it cannot be applied. This factor does not weigh in favor of termination of parental rights.

O. Mother has dealt with a great many issues over her life, many of which are as of yet unresolved. By Mother's own admission in her testimony, Mother was previously not fully present when caring for her [C]hildren due to her substance abuse. The [C]hildren have been removed twice from the Mother due to her omissions. Mother admitted that she was not previously thinking clearly when she had the [C]hildren in her care. It is clear that Mother has made changes and might be able to care for the [C]hildren now (but for their trauma), but it cannot be said that she has shown an ability to care for them to date. This factor weighs in favor of termination of parental rights.

P. At this time, the Court cannot find that the Mother understands the needs of the [C]hildren. The [C]hildren have significant trauma associated with their Mother. Mother is willing to try, but for Mother there would be no current understanding of their needs without significant therapeutic intervention. This factor weighs in favor of termination of parental rights.

Q. For this factor, the Court notes that there is no durational element. Mother is now doing well for herself, but the factor requires proof that the [C]hildren could thrive in her care, a determination which the Court cannot find at this time. However, considering that Mother has been doing well for herself, the Court does not put weight into this factor for termination of parental rights.

R. From all testimony by Mother, Mother's home appears to be healthy and safe for the [C]hildren and have sufficient room should they be returned to her care. This factor weighs against termination of parental rights.

S. Mother's testimony is that she did pay child support and provided gifts to the [C]hildren on numerous occasions. This factor weighs against termination of parental rights.

T. Mother probably needs to be in narcotics or alcoholics anonymous meetings for some time to come, maybe forever. Mother also needs grief therapy for all that she has lost. Mother has done everything that was asked of her with the significant exception of her ability to show continuity or stability in caring for the [C]hildren. While there is some hesitation on the manner in which to weigh this factor due to Mother's long road to recovery still ahead of her, it cannot be said at this time that any testimony showed her to be unfit. And, so, this factor weighs against termination of parental rights.

In reaching the ultimate conclusion that termination of Mother's parental rights is what will best serve the interests of the [C]hildren, the Court notes that there is significant weight placed on the continuity of care and stability that Mother has not been able to provide in the past. While the Court commends Mother for the work that he has done, the [C]hildren's overwhelming trauma and critical need for stability must be given greater weight so that they can be given an opportunity to find stability which will hopefully lead to healing for them. The Court does not wish to discount the effort that Mother has made, but the [C]hildren's needs must come first in this proceeding.

From our review, the evidence does not preponderate against the trial court's findings concerning the statutory factors. Like the trial court, we note Mother's efforts to address her drug abuse and to maintain employment and housing. At the hearing on the petition to terminate her parental rights, Mother testified that she works full-time and rents a two-bedroom home. Mother has also paid child support, which was set at \$10 per child, and she has bought the [C]hildren gifts for Easter, Christmas, and birthdays. Foster Care Worker ("FSW") Michael Zachary Maples, who was assigned the Children's case from August 2024 to March 10, 2025, testified that Mother stayed in contact with him and checked on the Children regularly. Although FSW Maples testified that there was no indication that Mother had a substance abuse problem, he expressed concern that Mother would be unable to provide a stable home for the Children given the reasons for both removals. This is a concern the trial court noted, and it is a concern that is justified by the

record. Given the two custodial episodes, and Mother's admission that, following the first removal, she did not address her drug problem and continued to use around the Children, we agree with the trial court that there has been no showing that Mother is able to care for these Children without falling back into her old habits. As noted by the trial court, the question of whether termination is in the child's best interest must be "'viewed from the child's, rather than the parent's, perspective.'" *In re Gabriella D.*, 531 S.W.3d at 681 (quoting *In re Audrey S.*, 182 S.W.3d at 878). Accordingly, factor 36-1-113(i)(1)(C) ("Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs"); factor 36-1-113(i)(1)(J) ("Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe . . . for the child to be in the home of the parent, including consideration of whether there is . . . the use of . . . controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner"); and factor 36-1-113(i)(1)(O) ("Whether the parent has ever provided safe and stable care for the child or any other child"), weigh in favor of termination.

Furthermore, in view of the trauma these Children have experienced, it is apparent that there is no meaningful bond with Mother. At the time of the hearing on DCS's petition, Mother had not had in-person contact with the Children since their removal in May 2024. Indeed, under the dependency and neglect adjudicatory order, Mother was to have no contact with the Children. Following a review hearing on January 22, 2025, the no-contact order was lifted, and Mother was allowed telephone visits. These visits occurred with all three Children and lasted approximately five minutes. Smokey Mountain Children's Home caseworker Amanda Worley facilitated these visits by going to the foster home and getting the Children ready for the call. These visits were also supervised by Jada Smith, the Children's therapist, whom the Children did not know was on the phone. Three telephone visits occurred.

During the first visit, despite some anxiety from Robert, he and Kynley engaged with Mother. James did not respond to Mother and refused to remove his headphones. After the first call, Ms. Worley observed "a lot of emotions from all three [C]hildren." Ms. Worley explained that James started hitting himself on the head, and it took about an hour for him to calm down. During the second visit, Kynley interacted with Mother and asked if Mother could buy her things, but Robert and James had a lot of behavioral issues after that call, with James "emotionally shut[ting] down and [refusing to] communicate." Concerning the last telephone visit, Ms. Worley noted that none of the Children wanted to participate. Kynley refused to get out of bed; Robert said he did not want to talk to Mother, and James did not respond at all and refused to remove his headphones. A fourth telephone call was scheduled for the Monday before trial. However, Robert told Ms. Worley that "if [she] loved him, [she] wouldn't not make him do a phone visit again." With all of the Children refusing to participate, Ms. Worley cancelled that phone visit. From the foregoing, it is clear that Mother is a trigger for the Children and that factor 36-1-113(i)(1)(F) ("Whether the child is fearful of living in the parent's home"); and factor 36-

1-113(i)(1)(G) (“Whether the parent. . . trigger[s] or exacerbate[s] the child’s experience of trauma or post-traumatic symptoms”), weigh in favor of termination.

As to factor 36-1-113(i)(1)(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”); and factor 36-1-113(i)(1)(B) (“The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition”), the record indicates that the Children have emotional and psychological needs that require stability in their home environment. All three Children receive trauma therapy from Ms. Smith. However, James appears to have additional issues. Mother testified that James had been diagnosed with autism-spectrum disorder, but that diagnosis was not in his medical records. Ms. Smith testified that she would not diagnose children as young as James with autism. However, she noted that James is developmentally delayed, which she opined could be due to autism, or could be a symptom of neonatal abstinence syndrome due to the fact that he was born addicted to suboxone. Ms. Smith stated that James has difficulty with abstract thinking. Although he is able to speak in full sentences, when asked direct questions, he has difficulty forming a response. He also walks on his toes, which is often a symptom of autism, and he struggles with sensory processing. James also demonstrates “stimming” by pacing, babbling about things he knows about like dinosaurs or farm animals, flapping his hands back and forth, and playing with his hair.² Ms. Smith testified that James has never mentioned Mother. Despite Ms. Smith’s numerous attempts to prompt James to speak about Mother, he has refused to engaged. Similarly, Ms. Worley testified that the only time James shut down communication was when his past or Mother was brought up. Ms. Smith opined that trying to reintegrate James with Mother would be detrimental to him.

As to Robert, the record shows that, before the start of telephone visits with Mother, he was doing very well in therapy, expressing that he was “really happy every day.” However, Ms. Worley testified that Robert had the most extreme reaction to starting the phone calls with Mother. Ms. Worley explained that Robert would become very aggressive and shut down when asked to speak with Mother. Furthermore, Ms. Worley testified that Robert had much difficulty regulating after the visits. Likewise, Ms. Smith testified that, when she prompted Robert to talk about Mother, he would rock back and forth and hit himself on the head. Robert spoke with Ms. Smith about the car accident and brought up the resulting scar on his forehead. A specific trigger for Robert was when anyone called him “Taylyn,” which was the name Mother called him before he was removed from her custody. If Robert was called “Taylyn,” he would hit himself on the head and cry. During

² “Stimming refers to ‘self-stimulatory behavior that is marked by a repetitive action or movement of the body (such as repeatedly tapping on objects or the ears, snapping the fingers, blinking the eyes, rocking from side to side, or grunting), and is typically associated with certain conditions (such as autism spectrum disorder).’” *Montalvan v. Banks*, 707 F. Supp. 3d 417, 423 n. 4 (S.D.N.Y. 2023) (quoting Stimming, Merriam-Webster’s Collegiate Dictionary (11th ed. 2012)).

the first phone call, Mother called Robert “Taylyn” not knowing it upset him. He hit himself on the forehead several times in response. When Robert had tantrums, Ms. Smith testified that she had to hold him for twenty-to-twenty-five minutes to calm him. During one of these episodes, Robert pointed at Ms. Smith and said, “I told you I didn’t want to talk.” Ms. Smith had to end several sessions early to allow Robert time to regulate. Robert said he did not want to live with Mother again.

As noted by the trial court, Kynley has the most secure relationship with Mother. Ms. Smith testified that Kynley told Ms. Smith that she would be “okay” living with Mother again. However, Kynley also told Ms. Smith that she did not want to be hurt again, referring to the car accident. Ms. Worley testified that when Kynley told her that she did not want to visit Mother, it was hard for Kynley to say, but she appeared relieved after she said it. By the time of trial, the only time Kynley brought up Mother was to ask if Mother could buy her things. Like her brothers, Kynley also had a negative reaction to the phone calls. She started acting out at school, tearing blinds down, and pulling clothes out of drawers in the foster home; she also started fights with her foster sisters. Prior to the telephone visits, Kynley demonstrated none of these behaviors.

From the record, all three children have shown regression since the start of the phone calls with Mother. FSW Maples opined that the bond between Mother and the Children is wanting, and we agree. From the foregoing, it is clear that none of the Children have “a secure and healthy parental attachment.” Tenn. Code Ann. § 36-1-113(i)(1)(C). In view of the behaviors the Children have shown when made to interact with Mother, “there is [no] reasonable expectation that such attachment [can be created].” *Id.*

Meanwhile, the evidence shows that the Children have done very well in their current foster placement. For example, when James began therapy with Ms. Smith in June 2024, he had been diagnosed with failure to thrive and was still healing from the facial fractures he received in the car accident. He was underweight, would not eat solid foods, and consumed only Pediasure shakes for the first sixty days in foster care. For three months, Ms. Smith was unable to close her office door during therapy sessions with James because he would throw himself on the floor or start banging his hands or head on the doors, walls, or desk. Ms. Smith noted that, if he made a small mistake, such as dropping play dough on the floor, he would say repeatedly, “Sorry, mommy.” By the time of trial, Ms. Smith opined that James was a different child than he was a year prior. He was able to cope with emotions and had formed secure attachments to his therapists and foster mother. James called his foster mother “mommy.” All three Children have formed close relationships with the foster parents’ extended family, such as their foster grandmother. Robert told Ms. Smith that he wanted to stay with his foster parents. FSW Maples believed that the foster home was stable and that the foster parents could properly care for the Children. From our review, there is ample evidence to support FSW Maples’ assessment. Furthermore, it is clear that the Children are bonded with each other, and removal of one child from the current placement would upset the stability for all three. As such, statutory factor 36-1-

113(i)(1)(H) (“Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent”); and factor 36-1-113(i)(1)(I) (“Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings. . .”), weigh in favor of termination.

From the record, we conclude that the evidence does not preponderate against the trial court’s findings regarding the statutory best-interest factors. Cumulatively, the trial court’s findings amount to clear and convincing evidence that termination of Mother’s parental rights is in the Children’s best interests.

VI. Conclusion

For the foregoing reasons, we affirm the trial court’s order terminating Mother’s parental rights to the three Children. 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, Katie W. Because Katie W. is proceeding *in forma pauperis*, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE