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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 1, 2025

IN RE PAISLEY B. ET AL.

Appeal from the Juvenile Court for Maury County
No. 24-JV-41 Douglas K. Chapman, Judge

No. M2024-01641-COA-R3-PT

In this termination of parental rights case, Appellant/Father appeals the trial court's termination of his parental rights to the minor children on the grounds of: (1) abandonment by failure to visit; (2) persistence of conditions; and (3) failure to manifest an ability and willingness to assume custody of the children. Because the record shows that Father's failure to visit was not willful, we reverse the trial court's termination of Father's parental rights on that ground. We affirm the trial court's termination of Father's parental rights on the remaining grounds and on its finding that termination of Father's parental rights is in the children's best interests.

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

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

Seth C. Chapman, Spring Hill, Tennessee, for the appellant, Gavin B.¹

Stacie L. Odeneal, Lawrenceburg, Tennessee, for the appellees, Darby T. and Jesse T.

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

William C. Barnes, Jr., Columbia, Tennessee, Guardian Ad Litem.

OPINION

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

I. Background

Brianna P. (“Mother”) and Appellant Gavin B. (“Father”) are the parents of Paisley B. (d/o/b September 2021) and Jackson B. (d/o/b August 2022) (together, the “Children”). Mother surrendered her parental rights, so this appeal concerns only the termination of Father’s parental rights. In August of 2022, the Tennessee Department of Children’s Services (“DCS”) received a referral for domestic violence between the parents and lack of supervision concerning the Children. As discussed further below, the parents were in a toxic “on again off again” relationship for several years. On October 28, 2022, DCS filed a petition in the Juvenile Court of Maury County, Tennessee (“trial court”) to adjudicate the Children dependent and neglected and for an *ex parte*, protective-custody order. DCS alleged that the Children were dependent and neglected based on allegations of domestic violence between the parents. That same day, the trial court assigned temporary legal custody of the Children to a relative. On October 31, 2022, the trial court entered an order appointing a guardian ad litem (“GAL”).

On November 22, 2022, the trial court entered an order allowing Father supervised visitation with the Children. This order also instructed that the parents “shall have no contact with each other.” By order of December 12, 2022, the trial court continued Father’s supervised visitation. This order permitted the parents to visit the Children together.

On February 1, 2023, the trial court entered an order granting DCS temporary legal custody of the Children after the relative/temporary custodian indicated that she could no longer care for the Children.

On February 13, 2023, the trial court held an adjudicatory hearing, where both parents were present and represented by counsel. The parents waived the hearing and stipulated to the facts alleged in the petition to adjudicate the Children dependent and neglected. On February 15, 2023, the trial court entered an order adjudicating the Children dependent and neglected. This order directed that “[v]isitation shall remain as previously ordered.” By order of March 20, 2023, the trial court ordered that visitation should remain as previously ordered but could increase “upon agreement of the GAL and DCS[.]”

On June 11, 2023, DCS placed the Children with Jesse T. (“Foster Father”) and Darby T. (“Foster Mother”) (together, “Foster Parents,” and together with DCS, “Appellees”).

On August 14, 2023, DCS created a permanency plan for the family (the “First Plan”). Under the First Plan, Father’s responsibilities included: (1) completing intensive outpatient treatment due to a positive drug screen for THC in May 2023; (2) completing a mental health intake and following recommendations thereof; (3) executing any necessary releases for DCS; (4) participating in and successfully completing family violence services;

(5) completing a budget; (6) cooperating with any announced or unannounced visits from DCS; (6) providing DCS with proof of a legal source of income; (7) providing DCS with proof of safe and stable housing; (8) notifying DCS within 72 hours of any change in telephone number or address; (9) obtaining and maintaining safe, reliable, legal transportation; (10) arriving on time to each visit with the Children; (11) providing snacks, meals, toys, and activities for the Children at each visit; and (12) maintaining regular and positive visitation with the Children. On October 23, 2023, the trial court ratified the First Plan.

On October 5, 2023, DCS filed an *ex parte* motion to suspend Father's visitation based on Mother's allegation that Father sent her text messages threatening to kill her and the Children. That day, the trial court entered an *ex parte* restraining order preventing Father from having any contact with the Children. On October 16, 2023, the trial court entered an order concerning the suspension of Father's visitation, wherein it found that Father did not contest the suspension at that time. The trial court held that to regain visitation, Father "must complete domestic violence classes and become in substantial compliance with the responsibilities on the most recent permanency plan." Later, the foregoing allegations were proven false after Father allowed investigators to download data from his cell phone, which showed that Father never sent threatening text messages to Mother.

On November 1, 2023, DCS created another permanency plan for the family (the "Second Plan") (together with the First Plan, "the Permanency Plans"). Father's responsibilities under the Second Plan were similar to those outlined in the First Plan.

On January 29, 2024, the trial court ratified the Second Plan. Also, on January 29, 2024, the trial court entered an order finding Father in partial compliance with the Permanency Plans. However, the trial court ordered the Children to remain in foster care because the parents had not yet completed sufficient services to warrant the Children returning home.

Additionally, on January 29, 2024, Foster Parents filed a petition to terminate Father's parental rights and order of full guardianship (the "Petition"). As grounds for termination, the Petition alleged: (1) abandonment by failure to visit and failure to support; (2) persistence of conditions; (3) failure to manifest an ability and willingness to assume custody of the Children; (4) substantial noncompliance with the permanency plans; and (5) mental incompetence. The Petition also alleged that termination was in the Children's best interest. On February 3, 2024, Father was served with the Petition.

On January 30, 2024, after the Petition was filed but before Father had been served, he filed a motion to resume visitation with the Children because the allegations underlying the suspension of his visitation, *i.e.*, Mother alleging that Father threatened to kill her and

the Children, were unfounded, and the criminal case against Father was dismissed. In the motion, Father alleged that, as ordered by the trial court, he had begun domestic violence classes and had completed 9 weeks of the 26-week program.

By order of April 18, 2024, the trial court allowed DCS to join the Petition. On June 27, 2024, Father filed an answer. Concerning the ground of abandonment by failure to visit, Father asserted the affirmative defense of non-willfulness. Specifically, Father alleged that: (1) he was unable to visit the Children during the three months preceding the filing of the Petition; (2) his visitation was suspended by court order on October 5, 2023; (3) on October 16, 2023, Father agreed to complete domestic violence classes to regain visitation, began participating in a 26-week course, and had since completed the course; and (4) the allegations for which his visits were suspended were ultimately determined to be unfounded, and the criminal charge against him was dismissed.

On September 16, 2024, the trial court heard the Petition. At trial, Appellees declined to pursue the ground of abandonment by failure to support. The following witnesses testified: (1) Father; (2) Jana Dugger, the DCS caseworker; and (3) Foster Mother. Seven exhibits were entered into evidence.

By order entered October 4, 2024, the trial court terminated Father's parental rights on the grounds of: (1) abandonment by failure to visit; (2) persistence of conditions; and (3) failure to manifest an ability and willingness to assume custody of the Children. The trial court found that there was insufficient evidence to establish the grounds of substantial noncompliance with the Permanency Plans and mental incompetence. The trial court also concluded that termination of Father's parental rights was in the Children's best interest. Father filed a timely notice of appeal.

II. Issues

Father raises two issues for review, as stated in his brief:

1. Whether the [t]rial [c]ourt erred in finding by clear and convincing evidence the grounds for termination.
2. Whether the [t]rial [c]ourt erred in finding by clear and convincing evidence that termination was in the [C]hildren's best interests.

Foster Parents raise the additional issue of whether the trial court erred when it concluded that Appellees failed to prove, by clear and convincing evidence, the ground of substantial noncompliance with the Permanency Plans.

III. Standard of Review

The Tennessee Supreme Court has explained that:

A parent's right to the care and custody of her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. *In re Angela E.*, 303 S.W.3d at 250. “[T]he [S]tate as *parens patriae* has a special duty to protect minors’ Tennessee law, thus, upholds the [S]tate’s authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child.” *Hawk*, 855 S.W.2d at 580 (quoting *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); see also *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S.Ct. 1388, 71 L. Ed.2d 599 (1982); *In re Angela E.*, 303 S.W.3d at 250.

In re Carrington H., 483 S.W.3d 507, 521-22 (Tenn. 2016) (footnote omitted). In Tennessee, termination of parental rights is governed by statute, which identifies “‘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))). Thus, a party seeking to terminate a parent’s rights must prove: (1) the existence of one of the statutory grounds; and (2) that termination is in the child’s best interest. Tenn. Code Ann. § 36-1-113(c); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Considering the fundamental nature of a parent’s rights and the serious consequences that stem from termination of those rights, a higher standard of proof is required in determining termination cases. *Santosky*, 455 U.S. at 769. As such, a party must prove statutory grounds and the child’s best interest by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W. 3d at 546. Clear and convincing evidence “establishes that the truth of the facts asserted is highly probable . . . and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from evidence[,]” and “produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established.” *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004).

In termination of parental rights cases, appellate courts review a trial court’s factual

findings *de novo* and accord these findings a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re Carrington H.*, 483 S.W.3d at 523-24 (citing *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010); *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007)). The Tennessee Supreme Court has explained that:

The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review *de novo* with no presumption of correctness. *In re M.L.P.*, 281 S.W.3d at 393 (quoting *In re [A.M.H.]*, 215 S.W.3d at 810). Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed *de novo* with no presumption of correctness. *In re Angela E.*, 303 S.W.3d at 246.

In re Carrington H., 483 S.W.3d at 524.

We note that the trial court found Ms. Dugger's and Foster Mother's testimony credible. While the trial court found Father's testimony "mostly credible," as discussed further below, the trial court found that "some of his testimony showed a lack of insight as to the severity of what was going on and what he needed to do, but as to his credibility . . . he was generally credible with regard to what he stated." In *Wells v. Tennessee Board of Regents*, 9 S.W.3d 779 (Tenn. 1999), the Tennessee Supreme Court explained that

trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. See *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990); *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. See *Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 425-26 (Tenn. 1989); *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. See *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987); *Bingham v. Dyersburg Fabrics Co., Inc.*, 567 S.W.2d 169, 170 (Tenn. 1978).

Wells, 9 S.W.3d at 783; see also *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007). Accordingly, we defer to the trial court's findings concerning witness credibility.

IV. Analysis

A. Grounds for Termination

1. Abandonment by Failure to Visit²

We begin with the trial court's conclusion that Father abandoned the Children. Under Tennessee Code Annotated section 36-1-113(g)(1),³ a parent's parental rights may be terminated when the parent abandons the child as defined in Tennessee Code Annotated section 36-1-102. Relevant here, section 36-1-102(1)(A) provides:

For purposes of terminating the parental . . . rights of a parent . . . to that child . . . "abandonment" means that:

(b) If the child is less than four (4) years of age, for a period of three (3) consecutive months immediately preceding the filing of . . . petition . . . to terminate the parental rights of the parent . . . of the child who is the subject of the petition for termination of parental rights . . . *the parent . . . [has] failed to visit . . . the child;*

Tenn. Code Ann. § 36-1-102(1)(A)(i)(b) (emphasis added). Tennessee Code Annotated section 36-1-102(1)(E) provides that "failed to visit" consists of "the failure, for [the three consecutive months immediately preceding the termination petition], to visit or engage in more than token visitation." Tenn. Code Ann. § 36-1-102(1)(E). The statute defines "token visitation" as "visitation, under the circumstances . . . [that] constitutes nothing more than perfunctory visitation or visitation of such infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child." Tenn. Code Ann. § 36-1-102(1)(C). "That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant time period[.]" Tenn. Code Ann. § 36-1-102(1)(E).

The statute provides for an affirmative defense to abandonment where the parent's failure to visit was not willful. Tenn. Code Ann. § 36-1-102(1)(I). The parent bears the burden of proof at trial to prove that such failure was not willful, and this defense must be established by a preponderance of the evidence. *Id.* Whether a parent failed to visit a child is a question of fact, and whether such failure constitutes willful abandonment is a question of law. *In re Adoption of Angela E.*, 402 S.W.3d 636, 640 (Tenn. 2013) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810). Concerning what constitutes willfulness, this Court has explained that

[c]onduct is "willful" if it is the product of free will rather than coercion. Thus, a person acts "willfully" if he or she is a free agent, knows what he or

² In its appellate brief, DCS declined to defend this ground.

³ The versions of the statutes referenced throughout this opinion were in effect when Foster Parents filed the Petition.

she is doing, and intends to do what he or she is doing.

Failure to visit . . . a child is “willful” when a person is aware of his or her duty to visit . . . , has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so. Failure to visit . . . is not excused by another person’s conduct unless the conduct actually prevents the person with the obligation from performing his or her duty or amounts to a significant restraint of or interference with the parent’s efforts to support or develop a relationship with the child. . . .

The willfulness of particular conduct depends upon the actor’s intent. Intent is seldom capable of direct proof, and triers-of-fact lack the ability to peer into a person’s mind to assess intentions or motivations. Accordingly, triers-of-fact must infer intent from the circumstantial evidence, including a person’s actions or conduct.

In re Audrey S., 182 S.W.3d 838, 863-64 (Tenn. Ct. App. 2005) (internal citations omitted).

Here, Foster Parents filed the Petition on January 29, 2024. At that time, both Children were under the age of 4. Accordingly, as the trial court found, the relevant three-month statutory period was from October 28, 2023, through January 28, 2024. It is undisputed that Father did not visit the Children during the relevant time period due to the October 2023, no-contact order, discussed above. However, in his answer, Father asserted that his failure to visit the Children was not willful. Specifically, Father alleged that: (1) his visitation was suspended by court order; (2) he agreed to complete domestic violence courses to regain visitation, and he began participating in a 26-week course; and (3) the allegations that led to his suspended visitation were ultimately determined to be unfounded and the criminal charge against him was dismissed.

Concerning abandonment by failure to visit, the trial court found:

During the critical period, there was an order suspending [F]ather’s visitation due to a series of events that culminated in an incident in Williamson County that resulted in [F]ather’s arrest. The [c]ourt did suspend visitation [] but gave [F]ather a vehicle by which he could restore his visitation. Father would be required to complete batterer’s intervention and make progress as to the action steps of the permanency plan. While [Father] appeared to begin [b]atterer’s intervention, and made some progress on a few of the permanency steps, there was no real sense of urgency with regard to completing those steps necessary for reunification. Father has been complacent with respect to his progress [] and often appears to rely on family members to charge in as white knights, to get him out of trouble, rather than

taking accountability himself.

As such, the [c]ourt finds [Father] did not visit at all during the three-month critical period due to a suspension of visitation. However, [Father] had the ability to cure the suspension [] but did not do so during the time allotted. The [c]ourt finds the petitioners have carried their burden of proof and [Father's] parental rights should be terminated on the ground [of] abandonment by failure to visit.

As an initial matter, the trial court did not explicitly address Father's affirmative defense that his failure to visit was not willful. Furthermore, the trial made no finding that Father failed to prove his affirmative defense by a preponderance of the evidence. *See* Tenn. Code Ann. § 36-1-102(1)(I). Nevertheless, we deduce from the foregoing findings that the trial court implicitly found that Father's failure to visit was willful. This appears to be based on the trial court's finding that Father "had the ability to cure the suspension," *i.e.*, complete domestic violence classes and make progress with the permanency plan, "but did not do so during the time allotted." The record demonstrates that Father began a 26-week, batterer's intervention program in late 2023, when the trial court ordered that Father could resume his visits with the Children after completing the course. Father's testimony shows that the classes were once per week, for one hour, and that he had completed approximately nine of these classes by January 2024. As Ms. Dugger confirmed in her testimony, in June 2024, Father provided DCS with proof that he had completed the program. As to the trial court's finding that Father did not complete the batterer's intervention class "during the time allotted," the record shows that it was impossible for Father to do so. Given that the program was a 26-week course, and that Father was not ordered to participate in the program until late 2023, Father could not have completed it until mid-2024, which was after the expiration of the relevant three-month statutory time frame, *i.e.*, after January 28, 2024. Concerning the trial court's finding that Father did not make progress towards the Permanency Plans "during the time allotted," this finding is contradicted by the trial court's January 2024 finding that Father was in partial compliance with the Permanency Plans. As discussed above, a person's failure to visit a child is "willful" when that person "is aware of his or her duty to visit . . ., has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so." *Id.* at 864. The record shows that Father was prevented from visiting the Children by Mother's conduct, *i.e.*, her false allegations that Father threatened to kill her and the Children. Despite this interference, Father complied with the trial court's order to participate in a batterer's intervention class. Also, as the trial court found, Father made progress on his requirements under the Permanency Plans. Additionally, the record shows that, on January 30, 2024, after the allegations against him were proven false, the criminal charge was dropped, and before he was served with the Petition, Father filed a motion to resume visitation. The foregoing demonstrates that Father's *intent* was to take the necessary actions to regain his visitation rights. As such, to the extent the trial court concluded that Father's abandonment of the Children by failure to visit was willful, this was error.

Because we conclude that Father proved by a preponderance of the evidence that his failure to visit the Children was not willful, we reverse the trial court's conclusion that Father's parental rights should be terminated on this ground.

2. Persistence of Conditions

The trial court also terminated Father's parental rights under Tennessee Code Annotated section 36-1-113(g)(3), the ground commonly referred to as "persistence of conditions." See *In re Audrey S.*, 182 S.W.3d at 871. This ground applies where

[t]he child has been removed from the home or the physical or legal custody of a parent . . . for a period of six (6) months by a court order entered at any stage of proceedings in which a child is alleged to be 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 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 . . . in the near future; and
- (iii) The continuation of the parent . . . and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

Tenn. Code Ann. § 36-1-113(g)(3)(A). The statute further provides that "[t]he six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard." Tenn. Code Ann. § 36-1-113(g)(3)(B). Persistence of conditions focuses "on the *results* of the parent's efforts at improvement rather than the mere fact that he or she had made them." *In re Audrey S.*, 182 S.W.3d at 874 (emphasis added). The ground also questions whether the child could be returned to the parent in the near future. *Id.* Indeed, the question here is what is "the likelihood that the child can be safely returned to the custody of [the parent], not whether the child can safely remain in foster care[.]" *In re K.A.H.*, No. M1999-02079-COA-R3-CV, 2000 WL 1006959, at *5 (Tenn. Ct. App. July 21, 2000).

The trial court found that the Children had been removed from Father's home for "well beyond the six-month period," and the record supports this finding. Concerning the

first two factors, the trial court found that the condition that led to the Children's removal was the toxic relationship between the parents. Specifically, the trial court found that, during the parents' relationship, Father had been arrested for domestic abuse 12 times. The trial court further found that "either [Father] has beaten [Mother] 12 times; [Mother] has completely made it up 12 times or the truth lies somewhere in the middle. Either way, the [c]ourt finds the history of domestic violence allegations to be an issue and a volatile situation." The trial court was "skeptical as to whether [F]ather ha[d] fully quit his relationship with [Mother] at this point." The trial court questioned Father's credibility on this matter and found that, although Father "may [have been] sincere in testifying he is out of the relationship at this point, [the court] ha[d] no basis to believe that [would remain] true over time." Rather, the trial court found "it likely [F]ather will allow [M]other to return to the home, posing a risk of harm to the [C]hildren, especially in the dynamic between the two parents." Importantly, the trial court found that Father failed to take responsibility for his role in the Children's continued placement in foster care, finding that he assigned blame solely to Mother. Specifically, the trial court found that Father lacked "insight into what caused his children to be removed from his care, and the continued need for foster care." Accordingly, the trial court found that: (1) the conditions that led to the Children's removal persisted; (2) there was little likelihood that the conditions would be remedied at an early date; and (3) returning the Children to Father would further expose them to abuse or neglect.

The record supports the trial court's findings. As an initial matter, Ms. Dugger testified that the Children were removed to DCS custody due to the domestic violence between the parents. Indeed, the record shows that the Children were adjudicated dependent and neglected based on the allegations of domestic violence between Mother and Father. Father's testimony confirmed the parents' toxic relationship. Specifically, Father estimated that, during his four-and-a-half to five-year relationship with Mother, there had been "[a]t least a dozen times" where law enforcement and/or a court intervened in the relationship due to Mother's allegations that Father was violent towards her. When opposing counsel described the relationship as "you have a blow up, you fight, you separate for a while, and then you all get back together at some point," Father testified that the description of the relationship was a "fair way to look at it." When asked to describe Mother in a word or two, Father testified, "[m]anipulative and toxic," and when asked how he would describe his current relationship with Mother, he stated, "[a] mess." Despite this volatility, the record shows that Father continued to return to the relationship. Father even reconciled with Mother in January 2024, *after* she made the false allegations that led to his suspended visitation, discussed above. Notwithstanding Father's testimony that he and Mother were in a relationship as recently as one month before trial, he testified that his relationship with Mother was permanently over. He testified that he and Mother had grown apart, and that he wanted to be responsible, while Mother was "just playing around." Although Father blamed Mother for the Children being in DCS custody, he admitted that he "just [gave] up and just [left]." Contrary to Father's testimony, Ms. Dugger testified that she did not believe that the relationship between the parents was over because Mother

appeared in the courthouse the day of the trial, despite having previously surrendered her rights. Ms. Dugger further testified that this was simply a pattern with the parents—that despite domestic violence and orders of protection, Mother and Father continued to return to each other. Ms. Dugger testified that the reason the Children were in DCS custody was due to both parents’ behaviors. As to Father, Ms. Dugger testified that her biggest concern was that he stayed with Mother, allowing the inconsistency and instability to continue. The foregoing supports the trial court’s finding that the toxic relationship between the parents, which led to the Children’s removal, persists. From our review, we agree that there is little likelihood that the parents will remain separated, and that returning the Children to Father would further expose them to domestic violence.

Concerning the final factor, the trial court found that continuing Father’s relationship with the Children would prevent their early integration into a safe, stable, and permanent home. Specifically, the trial court cited Jackson’s severe health issues and its concern that Father would have neither the ability nor insight to “take care of the needs of the medically fragile child, whereas the child’s extensive needs are being met outside of [F]ather’s home.” Both Ms. Dugger and Foster Mother testified as to Jackson’s challenging health issues. Specifically, Foster Mother testified that on July 15, 2024, she tried to wake the child before daycare and found him unresponsive. After calling 911, Jackson was “life flighted” to Vanderbilt Children’s Hospital, where he remained in the PICU for some time. Although Jackson has trouble with his blood sugar, despite extensive testing, the exact cause of this condition was unknown at the time of trial. Jackson was prescribed a blood sugar monitor, which sends notifications to Foster Mother’s cell phone. Foster Mother testified that the child is no longer in daycare and is with her all the time. After this incident, Foster Parents consulted with an endocrinologist, who conducted more testing. As of the day of trial, Foster Mother testified that it had been confirmed that Jackson has a critically low growth hormone level that the endocrinologist could treat, but there were other issues that would be discussed at an upcoming appointment that would require consultation with a geneticist. Foster Mother further testified that, since July 15, 2024, the child had spent a dozen or more days in doctors’ offices and/or hospitals. Foster Mother testified that, although the foregoing has affected her and Foster Father’s day-to-day schedule, they are able to care for Jackson due to their support system and Foster Father being self-employed. From our review, we agree with the trial court’s assessment that Father does not have the ability or insight to care for Jackson’s extensive needs. Father testified that he worked 47 hours per week at his primary job, 8-10 hours per week at his second job, and did “side work” for 12-16 hours per week. Thus, according to his testimony, Father worked a minimum of 67 hours per week, including weekends. When asked how he would care for the Children while working so many hours, Father’s answer was two-fold. First, he explored placing the Children in a nearby daycare, and second, he discussed with his boss scaling back his hours if the Children were returned to him. As an initial matter, a daycare is only open during certain hours of the day and certain days of the week. Given that Father has relied on Mother and other family members to care for the Children in the past when he has been working, we conclude it likely that Father would

return to Mother or other family members to care for the Children. Furthermore, Father's testimony demonstrates his lack of insight as to Jackson's extensive health issues and the time commitment that his care requires. Given the foregoing, we agree with the trial court that continuing the Children's relationship with Father would prevent their early integration into a safe, stable, and permanent home. Accordingly, we affirm the trial court's termination of Father's parental rights on the ground of persistent conditions.

3. Failure to Manifest an Ability and Willingness to Assume Custody of the Children

The final ground the trial court relied on in terminating Father's parental rights is found at Tennessee Code Annotated section 36-1-113(g)(14), which provides for termination when

[a] parent . . . has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child[.]

Tenn. Code Ann. § 36-1-113(g)(14). This ground required Appellees to establish two separate elements by clear and convincing evidence. *In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at *7 (Tenn. Ct. App. Apr. 4, 2018) (citation omitted). First, Appellees had the burden to show that Father “failed to manifest ‘an ability and willingness to personally assume legal and physical custody or financial responsibility of the [C]hild[ren].’” *Id.* (quoting Tenn. Code Ann. § 36-1-113(g)(14)). Second Appellees had the burden to show that placing the Children in Father's legal and physical custody would “pose a risk of substantial harm to the physical or psychological welfare of the [C]hild[ren].” *Id.* The trial court found that Appellees met their burden as to both elements by clear and convincing evidence. We examine each element below.

Concerning the first prong of this ground, the Tennessee Supreme Court has concluded that “the expressed legislative intent for section 36-1-113(g)(14) is to require clear and convincing proof that a parent or legal guardian was either unable or unwilling to personally assume legal and physical custody or financial responsibility of a child.” *In re Neveah M.*, No. M2019-00313-SC-R11-PT, 2020 WL 7258044, at *14 (Tenn. Dec. 10, 2020) (emphasis in original). Accordingly, “[i]f a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied.” *Id.* (citing *In re Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, at *13 (Tenn. Ct. App. June 20, 2018)) (emphasis in original). When determining whether a parent has demonstrated an ability to assume custody, courts focus on a parent's lifestyle and circumstances. *In re Jonathan M.*, No. E2018-00484-COA-R3-PT, 2018 WL 5310750,

at *5 (Tenn. Ct. App. Oct. 26, 2018) (citing *In re Maya R.*, 2018 WL 1629930, at *7; *In re M.E.N.J.*, No. E2017-01074-COA-R3-PT, 2017 WL 6603658, at *7 (Tenn. Ct. App. Dec. 27, 2017)). “When evaluating willingness, we look for more than mere words.” *In re Jonathan M.*, 2018 WL 5310750, at *5. “Parents must have demonstrated their willingness by attempting to overcome the obstacles that prevent them from assuming custody or financial responsibility for the child.” *Id.*

As to the first prong, the trial court did not find that Father was unable or unwilling to assume *financial responsibility* for the Children as Father paid child support via wage assignment. However, the trial court found that Father was either unable or unwilling to assume *legal and physical custody* of the Children. Specifically, the trial court found that Father’s first priority was his work, and his second priority was his “on-again-off-again relationship with [M]other.” Accordingly, the trial court found that Father was “not prioritizing what needs to be done to be able to get legal and physical custody of the [C]hildren placed with him.” We agree. As discussed above, Father testified that he works a minimum of 67 hours per week. Father’s testimony also shows that his previous work schedule caused him to miss visits with the Children and delayed fulfilling his responsibilities under the Permanency Plans. Father testified that he quit his previous job because he “[d]idn’t get [] respect” from the foreman, not because it caused him to miss visits with the Children or because he could not fulfill his responsibilities under the Permanency Plans. While Father is to be commended for his hard work and consistent child support payments, the record supports the trial court’s finding that Father has put his work before the Children. Furthermore, there is nothing to indicate that Father understands the need to prioritize the Children and/or how to attain a work-life balance that would allow him to care for them. Additionally, as discussed at length *supra*, the record supports the trial court’s finding that Father’s second priority was his relationship with Mother. Indeed, the record shows that Father’s relationship with Mother has always been an obstacle that has prevented him from assuming custody of the Children. Perhaps most striking is the fact that Father returned to the relationship after Mother falsely alleged that Father threatened to kill her and the Children, which allegation resulted in the trial court suspending Father’s visitation. Given that Father testified that he was in a relationship with Mother only one month before trial, he has demonstrated neither an ability nor a willingness to remain separated from her for a prolonged duration such that he could safely assume custody of the Children. Additionally, the record shows that Father’s relationship with Mother has contributed to his unstable living situation as Father testified that he has been forced to move residences multiple times due to Mother’s actions. Indeed, Father’s lifestyle is somewhat transitory and not conducive to providing the Children the continuity and stability they require.

As discussed above, the second prong of the analysis required Appellees to prove, by clear and convincing evidence, that placing the Children in Father’s “legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the [C]hild[ren].” Tenn. Code Ann. § 36-1-113(g)(14). Regarding what constitutes

“substantial harm,” we have explained that

[t]he courts have not undertaken to define the circumstances that pose a risk of substantial harm to a child. These circumstances are not amenable to precise definition because of the variability of human conduct. However, the use of the modifier “substantial” indicates two things. First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. Second, it indicates that the harm must be more than a theoretical possibility. While the harm need not be inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

In re Maya R., 2018 WL 1629930, at *8 (quoting *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)).

As to the second prong, the trial court found that placing the Children with Father would pose physical and psychological harm to them. Again, the trial court cited its concern that Father would not be able to address Jackson’s “extraordinary needs.” Regarding psychological harm, the trial court found that Father is a stranger to the Children, and that “[i]f they were placed in his home, . . . the [C]hildren would perceive to have been ripped from the people who they see as their parents, and that perception poses substantial risk of psychological harm to the [C]hildren.” As discussed at length above, Jackson has extensive health issues that require constant monitoring and the ability to respond immediately in an emergency. We agree with the trial court that Father has not demonstrated that he would be able to undertake such responsibilities. Furthermore, we agree that removing the Children from Foster Parents would cause them psychological harm. Indeed, “[w]e have previously held that returning [a] child to a virtual stranger meets the substantial harm threshold.” *In re Aniyah W.*, No. W2021-01369-COA-R3-PT, 2023 WL 2294084, at *10 (Tenn. Ct. App. Mar. 1, 2023) (citing *In re Brianna B.*, No. M2019-01757-COA-R3-PT, 2021 WL 306467, at *6 (Tenn. Ct. App. Jan. 29, 2021); *In re Braelyn S.*, No. E2020-00043-COA-R3-PT, 2020 WL 4200088, at *17 (Tenn. Ct. App. July 22, 2020)). At the time of trial, Father had not visited the Children in over a year. The Children had been living with Foster Parents for a year-and-a-half, and, as discussed further below, the Children recognized Foster Parents as “Mom and Dad.” In short, the record shows that Father shares no parental bond with the Children and returning them to him would pose a risk of substantial harm to their psychological welfare. Because Appellees have proven both prongs of this ground, we affirm the trial court’s termination of Father’s parental rights for his failure to manifest an ability and willingness to assume custody of the Children.

4. Substantial Noncompliance with the Permanency Plans

Although Appellees sought to terminate Father’s parental rights on the ground of substantial noncompliance with the Permanency Plans, the trial court found insufficient evidence to do so. In their appellate brief, Foster Parents raised an issue as to whether this

was error; DCS did not address this ground in its brief.⁴ Because Foster Parents raised it as an issue, we briefly review whether the trial court erred when it declined to terminate Father's parental rights on the ground of substantial noncompliance with the Permanency Plans.

Tennessee Code Annotated Section 36-1-113(g)(2) provides that a parent's rights may be terminated when "[t]here has been substantial noncompliance by the parent . . . with the statement of responsibilities in a permanency plan[.]" Tenn. Code Ann. § 36-1-113(g)(2). "[T]he permanency plans are not simply a series of hoops for the biological parent to jump through in order to have custody of the children returned." *In re C.S., Jr., et al.*, No. M2005-02499-COA-R3-PT, 2006 WL 2644371, at *10 (Tenn. Ct. App. Sept. 14, 2006). Rather,

the requirements of the permanency plan are intended to address the problems that led to removal; they are meant to place the parent in a position to provide the children with a safe, stable home and consistent appropriate care. This requires the parent to put in real effort to complete the requirements of the plan in a meaningful way in order to place [himself or] herself in a position to take responsibility for the children.

Id. As this Court discussed in *In re A.J.R.*, No. E2006-01140-COA-R3-PT, 2006 WL 3421284, at *4 (Tenn. Ct. App. Nov. 28, 2006):

To prevail in a termination case on a claim of substantial noncompliance with a permanency plan, DCS must prove: (1) the terms of the plan, *Dep't of Children's Services v. D.W.J.*, No. E2004-02586-COA-R3-PT, 2005 WL 1528367 (Tenn. Ct. App. E.S., June 29, 2005); (2) that the plan requirements were reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003); and (3) that the parent's noncompliance was substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. [*In re*] *Valentine*, 79 S.W.3d at 548-49; *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at *12 (Tenn. Ct. App. M.S., June 3, 2003); *Dep't of Children's Services v. T.M.B.K.*, 197 S.W.3d 282, 293 (Tenn. Ct. App. 2006).

In re A.J.R., 2006 WL 3421284, at *4. The Tennessee Supreme Court has explained that

[s]ubstantial noncompliance is not defined in the termination statute. The statute is clear, however, that noncompliance is not enough to justify

⁴ The GAL's brief did not explicitly address this ground.

termination of parental rights; the noncompliance must be substantial. Black's Law Dictionary defines "substantial" as "[o]f real worth and importance." Black's Law Dictionary 1428 (6th ed. 1990). In the context of the requirements of a permanency plan, the real worth and importance of noncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement.

In re Valentine, 79 S.W.3d at 548.

We recall that Father's responsibilities under the Permanency Plans included: (1) completing domestic violence treatment or education courses; (2) submitting to and passing drug screens; (3) maintaining a legal source of income; and (4) completing a mental health assessment. In the final order, the trial court found that "Father started, and completed the batterer's intervention program," although he did not complete it until after the petition to terminate his parental rights was filed. The trial court also found that Father paid child support, had a stable income, and passed all drug screens except for one at the beginning of the case. Furthermore, the trial court found that Father testified that he completed a mental health assessment, although there is no certificate of completion in the record. The trial court noted that it had previously found Father in partial compliance with the Permanency Plans before finding that Father continued to be in partial compliance. Accordingly, the trial court found that termination of his parental rights was not warranted on this ground. We agree. As discussed throughout this opinion, the domestic violence between Mother and Father led to the Children's removal. Notably, Father completed the 26-week batterer's intervention program that was intended to address his role in the domestic violence issues. See *In re C.S., Jr., et al.*, 2006 WL 2644371, at *10. Additionally, Father has maintained stable employment and a stable income throughout the pendency of this case. While the record shows that Father failed to keep DCS informed of his change in residences and telephone numbers, and failed to timely submit proof of income and the mental health assessment, we agree that these instances of noncompliance do not rise to the level of "substantial" such that Father's parental rights should be terminated on this ground.

B. Best Interest

When at least one ground for termination of parental rights has been established, the petitioner must then prove, by clear and convincing evidence, that termination of the parent's rights is in the child's best interest. *In re Bernard T.*, 319 S.W.3d at 606 (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 809). As the Tennessee Supreme Court explained:

Facts considered in the best interest 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.” *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).

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

The Tennessee Legislature has directed that, when determining whether termination of parental rights is in a child’s best interest, the court “shall consider all relevant and child-centered factors applicable to the particular case[.]” Tenn. Code Ann. § 36-1-113(i)(1). The Legislature has also directed that, when considering such factors, “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(i)(2). This Court has noted that “this list [of factors] is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent’s rights is in the best interest of a child.” *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005), *perm. app. denied* (Tenn. Nov. 21, 2005). Depending on the circumstances of an individual case, the consideration of a single factor or other facts outside the enumerated, statutory factors may dictate the outcome of the best interest analysis. *In re Audrey S.*, 182 S.W.3d at 877. As this Court explained:

Ascertaining a child’s best interests . . . does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)’s . . . factors and then a determination of whether the sum of the factors tips in favor of or against the parent. The relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending 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.

White v. Moody, 171 S.W.3d 187, 194 (Tenn. Ct. App. 1994). Below we discuss the trial court’s relevant findings as to each applicable factor.

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. Tenn. Code Ann. § 36-1-113(i)(1)(A).

Concerning the first factor, the trial court found that it weighed in favor of termination. Specifically, the trial court found:

[F]ather has moved homes and changed jobs several times. While [F]ather is a hard worker out there, the [C]hildren, who are now two and three years of age, have only ever lived for a handful of months with [F]ather during their entire lifetimes. One of these children has exceptional medical needs. At this point, continuity and stability appear to be best met outside of the home of [F]ather.

As discussed at length above, the record supports the trial court's finding that Father is unable to provide the Children with stability and continuity, and its finding that they are enjoying that stability in their foster home. Accordingly, this factor weighs in favor of termination.

The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition. Tenn. Code Ann. § 36-1-113(i)(1)(B).

The trial court found that the second factor also weighed in favor of termination, to-wit:

There are two very young children who only know [Foster Parents] as mother and father at this point. To remove the [C]hildren from that relationship at this point, having gone so long without them being around [F]ather, knowing that there is a potential father, and that they are in a potential placement as opposed to being just with "mom and dad" would certainly pose a risk of substantial harm to the [C]hildren's emotional and psychological wellbeing. The [c]ourt finds the youngest child has significant medical needs [F]ather has not, and likely could not, effectively manage given the type and amount of work he does.

The record supports the trial court's findings. At the time of trial, the Children were two and three years old and had been in the care of Foster Parents for a year-and-a-half. The Children had not visited with Father in more than year, and, as Ms. Dugger testified, they identified Foster Parents as "Mom and Dad." In short, Father shares no parental bond with the Children. Indeed, to remove the Children from their current caretakers and physical environment would likely have a significant negative effect on the Children's emotional and psychological welfare. Additionally, Jackson's removal from this environment would likely negatively affect his medical condition, as it requires constant monitoring and an immediate response when his blood sugar levels are critically low. The record shows that Foster Parents are best suited to manage Jackson's condition, and that Father has not shown a willingness or ability to assume this responsibility. This factor weighs in favor of

termination.

Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs. Tenn. Code Ann. § 36-1-113(i)(1)(C).

The trial court also found that the third factor weighed in favor of termination. Specifically, it found:

Even going back to when the [C]hildren were in the care of [F]ather, for four months and two months during the [C]hildren's infancy, there has not been any stability in meeting those needs by [F]ather for any significant time. The [c]ourt believes [F]ather was probably addressing those things when the [C]hildren were first born, by providing the bulk of the income for the home. But as to stability and continuity, the [c]ourt must find [that F]ather has not demonstrated any relative to meeting the [C]hildren's needs.

The Children were only in Father's custody for a short period of their lives. Although Father provided financially for the Children during this time, the record shows that they were subjected to domestic violence due to the parents' volatile relationship. In short, although Father provided financially for the Children, he has been unable to provide them with continuity and stability due to his ongoing and toxic relationship with Mother. This factor weighs in favor of termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(D).

Concerning the fourth factor, the trial court found that it weighed in favor of termination, to-wit:

In this case [Foster Mother] testified the [C]hildren call her and [Foster Father], father and mom. There is no secure or healthy parental attachments between [F]ather and [the C]hildren. [F]ather is likely a stranger to the [C]hildren, especially the youngest child. There is no reasonable expectation this could be remedied in a timely manner.

The record supports that this factor weighs in favor of termination. *See discussion supra* concerning Tennessee Code Annotated section 36-1-113(i)(1)(B).

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. Tenn. Code Ann. § 36-1-113(i)(1)(E).

The trial court found that this factor favored termination, to-wit:

The [c]ourt agrees with [F]ather's counsel that [F]ather's visitation was suspended because of allegations that arose out of Williamson County and were ultimately dismissed. But prior to that time, [F]ather had at least four hours of visitation or more but used less than half of what he was allotted per his testimony. Then from October 2023 through the finalization of this termination, there was not any visitation, nor did [F]ather have a sense of urgency in correcting the conditions that would allow his visitation to be reinstated. The [c]ourt will find that while there were some complicating factors that caused some of this visitation to be suspended, [F]ather failed to effectively or efficiently correct the conditions that led to the suspension of his visitation.

As discussed above, we conclude that Father's failure to visit the Children in the three months preceding the filing of the Petition was not willful, and that Father attempted to resume his visitation. However, the record supports the trial court's finding that, due to his work schedule, Father missed some visits with the Children before his visitation was suspended. Accordingly, we conclude that this factor neither weighs for or against termination.

Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent. Tenn. Code Ann. § 36-1-113(i)(1)(H).

The trial court found that this factor applied and weighed in favor of termination as "the [C]hildren have a very healthy parental attachment with the [Foster Parents] and [Foster Parents'] other children in the home." The record supports the trial court's finding that this factor weighs in favor of termination. See previous discussion concerning Tennessee Code Annotated section 36-1-113(i)(1)(B).

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. Tenn. Code Ann. § 36-1-113(i)(1)(I).

Regarding this factor, the trial court found it supported termination, to-wit:

The [C]hildren have other children in the home with whom they share a sibling-type relationship. The [C]hildren will benefit from a continued relationship with them. As to the [C]hildren's heritage, the [c]ourt finds there is not such an extraordinary or unique heritage of the [C]hildren or [the Foster Parents] to find the cultural consideration to be a significant factor in this

proceeding.

The record supports this finding. Foster Mother testified that Foster Parents have three biological children, who also live in the house. Foster Mother explained that the dynamic between all the children is that of siblings. This factor supports termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(J).

The trial court made no explicit finding concerning this factor; however, it noted its “significant concern about the criminal activity in [F]ather’s home, whether it is the 12 times [F]ather has abused [M]other, the 12 times [M]other has filed a false allegation against [F]ather, or some combination thereof.” Indeed, as discussed above, Father’s toxic relationship with Mother has led to police and court intervention, and ultimately resulted in the Children’s removal from the parents’ custody. As discussed above in the persistence of conditions analysis, this Court shares the trial court’s concern that Father’s relationship with Mother is not over as the record shows that they were in a relationship one month before trial, and Mother appeared at the courthouse on the day of trial. So long as Father continues his “on again off again” relationship with Mother, he will not be able to demonstrate a lasting adjustment of circumstances or conditions that would make it safe and beneficial for the Children to be under his care. In short, the record shows that Father has not demonstrated a lasting adjustment such that he could consistently care for the Children in a safe and stable manner. This factor supports termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(K).

Concerning this factor, the trial court found that did not weigh for or against termination. Specifically, the trial court found that Father completed the batterer’s intervention program and testified that he participated in a mental health assessment. As discussed above, the record supports these findings, and we agree that this factor does not weigh in favor or against termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(L).

The trial court found that this factor weighed in favor of termination. Specifically,

the trial court

agree[d] [F]ather had some unique challenges posed by access to services through private insurance versus TennCare, which does limit the role DCS can play. But [F]ather was not asked to complete any huge or daunting task. Those tasks that were required were not all completed or not completed timely. Father failed to provide proof so that it could be determined whether there was compliance. The [c]ourt finds DCS did make reasonable efforts. Even if DCS didn't provide direct services, DCS worked towards facilitating services through [F]ather's insurance.

Ms. Dugger testified that she tried to help Father access services, despite Father having private insurance through his parents at the time. Ms. Dugger further testified that she attempted to remain in contact with Father throughout the case, but Father changed his address and telephone number, without informing DCS; this made it difficult for DCS to provide services. As such, the record supports the trial court's finding that DCS made reasonable efforts to assist Father in making lasting adjustments, but Father's failure to update his contact information with DCS negated DCS' ability to provide assistance. Accordingly, this factor supports termination.

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.
Tenn. Code Ann. § 36-1-113(i)(1)(M).

Concerning this factor, the trial court found it weighed in favor of termination, to-wit:

In the court's opinion, the [C]hildren are further down the rungs of importance than what they need to be. [F]ather's home is not a drug home, and this is not the worst of cases the [c]ourt has seen. But [F]ather has failed to demonstrate a sense of urgency or prioritize reunification as much as he should have. The [c]ourt does have concern that 12 times back and forth between he and [M]other, is probably going to be a 13th, 14th, and 15th in the future.

As discussed above, Father prioritized his work and his relationship with Mother over his parental responsibilities. Furthermore, Father has failed to address the main issue preventing the Children's return to him, *i.e.*, his toxic relationship with Mother. In view of the previous discussion, the unhealthy dynamic between Mother and Father will not be resolved at any near date. Accordingly, the record supports the trial court's finding that this factor weighs in favor of termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(N).

The trial court found this factor weighed in favor of termination because

[t]here is either brutality, physicality or psychological abuse between [M]other and [F]ather. While [M]other is not in the home of [F]ather today, the parents have frequently shared a home throughout the underlying case and until about a month ago. [F]ather has failed to update [DCS] so verification of other persons in the home can be accomplished.

As an initial matter, Ms. Dugger testified that Father never updated DCS with information concerning other persons residing in his home so that DCS could conduct background checks of them. Additionally, as discussed extensively above, to the extent Mother might reside with Father again in the future, the record supports the trial court's finding that some form of abuse, be it physical or psychological, will persist. Accordingly, the record supports the finding that this factor weighs in favor of termination.

Whether the parent has ever provided safe and stable care for the child or any other child. Tenn. Code Ann. § 36-1-113(i)(1)(O).

Concerning this factor, the trial court found that it did not weigh in favor of or against termination because, during the two months and four months that the Children were in Mother's and Father's care, "[F]ather likely provided for the financial needs of the family to allow them to be safe and stable physically during that time frame." However, the trial court found that "it was likely emotionally unstable due to the back-and-forth between [F]ather and [M]other." The record supports this finding. During the few months when the Children were in Father's care, Father and Mother resided together. The record shows that Father provided financially, and Mother was the primary caretaker of the Children. It was during this time that the domestic violence between the parents led to the Children's removal. Accordingly, although Father provided financially for the Children when they were under his care, he also subjected them to a volatile and unstable environment due to his toxic relationship with Mother. As such, the record supports the trial court's finding that this factor neither weighs for or against termination.

Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive. Tenn. Code Ann. § 36-1-113(i)(1)(P).

The trial court found that Father has not demonstrated an understanding of the basic and specific needs required for the Children to thrive. Specifically, it found

[F]ather to be a hard worker[] and a young parent. The [c]ourt finds that hopefully with some age and wisdom and keeping himself out of the relationship with [M]other, he might have a chance to be able to be a successful [F]ather at some point in time in the future. But as far as taking care of the needs of these [C]hildren, the [c]ourt's going to find that he has not done such[.]

As discussed above in our analysis concerning the ground of failure to manifest an ability or willingness to assume custody, there is nothing to indicate that Father understands the need to prioritize the Children, how to attain a work-life balance that would allow him to do so, or how to permanently end his relationship with Mother. Father's testimony further demonstrates his lack of understanding as to the severity and time commitment required to care for Jackson. Accordingly, this factor weighs in favor of termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(Q).

The trial court found that this factor favored termination because

[F]ather has not updated [DCS] for them to be able to assess the ability of the multiple homes . . . where [F]ather has lived. Ultimately, [F]ather has failed to timely complete the tasks necessary to ensure [F]ather's home was appropriate.

Indeed, Ms. Dugger testified that Father failed to provide DCS with a current address so that DCS could conduct a background check of other persons residing in the home. Furthermore, as discussed above, Father has maintained a somewhat transitory lifestyle due to Mother calling law enforcement to his previous residences. The record shows a consistent pattern where the parents fight and "break up," then reconcile. It appears that Father will lack residential stability so long as he remains in an "on again off again" relationship with Mother. As discussed at length above, it does not seem that Father has permanently ended his relationship with Mother at this time. Accordingly, he is unable to provide the Children with a stable home. This factor weighs in favor of termination.

Whether the physical environment of the parent's home is healthy and safe for the child. Tenn. Code Ann. § 36-1-113(i)(1)(R).

Concerning this factor, the trial court found that it favored termination. Specifically, the trial court found that, "[w]hile [Father's] home is healthy and safe for the [Children], the court will defer back to factor Q: [F]ather didn't go through the steps necessary to be able to let [DCS] know where he's living, for them to be able to come out and run through and check the suitability of any of his homes." Contrary to the trial court's findings, there

is limited evidence in the record concerning the “physical environment” of Father’s home, and there is no evidence to indicate whether it is healthy and safe for the Children. Father’s only testimony regarding his residence at the time of trial was that he lived with his uncle, aunt, and cousin, had resided there for approximately one month, and that the Children would have their own bedroom there. Given the limited evidence, we conclude that this factor weighs neither for nor against termination.

This factor weighs in favor of termination. *See* our discussion *supra* concerning Tennessee Code Annotated section 36-1-113(i)(1)(Q).

Whether the parent has consistently provided more than token financial support for the child. Tenn. Code Ann. § 36-1-113(i)(1)(S).

Concerning this factor, the trial court found that “[F]ather gets a gold star,” because he “has probably provided more support consistently than any other termination the [c]ourt has seen.” Accordingly, the trial court found that this factor weighed against termination of Father’s parental rights. As discussed above, the record supports this finding; Father has maintained consistent employment throughout this case and has provided consistent child support via wage assignment. This factor weighs against termination.

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. Tenn. Code Ann. § 36-1-113(i)(1)(T).

As to the final factor, the trial court found that it did not weigh in favor of termination. Although the results of Father’s mental health evaluation were not provided to DCS, the trial court found that Father was likely *capable* of making the necessary changes to consistently and effectively provide the Children with safe and stable care and supervision, but he did not prioritize those steps. Father testified, and the trial court found his testimony credible, that he participated in a mental health assessment and received no follow-up recommendations. Indeed, there is nothing in the record to suggest that Father’s mental or emotional fitness would be detrimental to the Children. Rather, as the trial court found, Father is likely capable of making the necessary changes, he has simply chosen to prioritize his work and his relationship with Mother over the Children. This factor does not weigh in favor of termination.

For the many reasons discussed above, there is clear and convincing evidence to support the trial court’s conclusion that terminating Father’s parental rights is in the Children’s best interest.

V. Conclusion

For the foregoing reasons, we affirm the trial court’s termination of Father’s parental rights. The case is remanded for such further proceedings as may be necessary and are

consistent with this opinion. Costs of the appeal are assessed to the Appellant, Gavin B. Because Gavin B. is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE