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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs March 1, 2023

**IN RE: BRAYLIN T.**

**Appeal from the Circuit Court for DeKalb County  
No. 2020 CV-61 Amy V. Hollars, Judge**

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**No. M2022-01256-COA-R3-PT**

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This is a termination of parental rights case. The mother appeals the trial court's order terminating her parental rights, arguing that it is not in the child's best interest for her rights to be terminated. For the reasons discussed herein, we affirm.

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

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Sheila F. Younglove, McMinnville, Tennessee, for the appellant, Kathleen T.

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

**OPINION**

**BACKGROUND AND PROCEDURAL HISTORY**

*Removal of Child*

Kathleen T. ("Mother") is the mother of one minor child, Braylin T. ("Child"), born in July 2014.<sup>1</sup> On June 4, 2019, the Department of Children's Services ("DCS") received a referral with allegations of a drug-exposed child. During the course of its investigation, DCS discovered that Mother and Child had been residing with the maternal grandmother, Theresa T. ("Maternal Grandmother"), and the step-grandfather, Jerry C. ("Step-Grandfather"). Maternal Grandmother and Step-Grandfather previously had a child

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<sup>1</sup> This Court has a policy of protecting children's identities in parental termination cases, and we therefore initialize the surnames of certain persons mentioned in this Opinion.

removed from their home due to methamphetamine use and had not yet regained custody of that child. It was further discovered that the same child had been sexually abused by another individual who had lived in the home. At the time of the June 2019 referral, there were several individuals living in the home in addition to Mother, Child, Maternal Grandmother, and Step-Grandfather. DCS informed Mother that she and Child could not continue living with Maternal Grandmother due to safety concerns, which included substance abuse, bedbug and roach infestations, and the high number of individuals residing in the home. Mother and Child then moved in with Mother's father.

On September 4, 2019, DCS received another referral concerning the fact that Mother and Child had returned to live with Maternal Grandmother. Upon further investigation, DCS noted unsanitary conditions, including an infestation of roaches and bedbugs, holes in the wall, a toilet in the living room, and, again, multiple people living in the home. The individual who had allegedly previously sexually abused a child in the home was also discovered to once again be living there. Mother tested negative for drugs; however, Maternal Grandmother admitted to using methamphetamine just two days prior. Mother also informed DCS that there was another individual living upstairs that was using methamphetamine and had been "causing all the problems." After a discussion with DCS, Mother agreed that Melissa H., could take custody.<sup>2</sup> However, shortly thereafter, Mother took Child back to Maternal Grandmother's home and refused to let him return to the home of Melissa H. A child and family team meeting was scheduled for Tuesday, September 10, 2019, but Mother refused to attend despite DCS providing transportation.

On September 13, 2019, DCS filed a petition to declare Child dependent and neglected and asked for emergency temporary custody. That same day, the Juvenile Court of Dekalb County, Tennessee, issued an order finding that there was probable cause to believe that Child was dependent and neglected and awarded DCS custody.

### *The Permanency Plans*

DCS created four separate permanency plans outlining the requirements Mother needed to follow to regain custody of Child. The juvenile court ratified each of these permanency plans. The first plan was developed on October 7, 2019. Mother's responsibilities under this plan were as follows: submit to a psychological assessment with a clinical parenting component and complete all recommendations; submit a working budget to DCS; contact her DCS case manager weekly; obtain and maintain safe and stable housing; obtain and maintain a legal means of income; submit to random hair and urine drug screens and be able to test negative; refrain from allowing individuals with a criminal record to live with her; visit Child at least twice a month and provide healthy snacks and drinks for the visitation.

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<sup>2</sup> Pursuant to DCS's appellate brief, Melissa H. is referred to as Child's "other grandmother."

A second permanency plan was created on March 27, 2020. Mother's responsibilities remained largely the same as the first plan, with the addition of the following responsibilities: sign releases of information for all of the psychiatric hospitals she has received care from since Child has been in DCS custody; sign releases for her current service providers; allow DCS to make both announced and unannounced home visits to assess safety; remedy her criminal charges; and refrain from participating in further criminal activity.

The third permanency plan was created on July 24, 2020, and contained the same responsibilities of the previous two plans. The fourth and final permanency plan was created on November 8, 2021. This plan again contained the same responsibilities as previous plans, with the addition of the requirement that Mother will provide proof that she is consistently participating and cooperating with her mental health providers.

#### *Mother's Criminal Behavior*

Mother incurred multiple criminal charges during the custodial episode. Specifically, she was arrested a total of five times, and her charges included criminal trespass, failure to appear, theft of property pertaining to shoplifting, and retaliation for past action. Mother was incarcerated on the following dates: December 16-17, 2019; January 10-11, 2020; January 29-30, 2020; August 26, 2020; and June 9, 2020 – October 28, 2020.

#### *Petition for Termination of Mother's Parental Rights*

On October 19, 2020, DCS filed a "Petition for Termination of Parental Rights" ("Petition") regarding Mother. Pursuant to its Petition, DCS set forth numerous grounds that allegedly warranted termination of Mother's parental rights, namely: abandonment by an incarcerated parent for failure to support; abandonment by an incarcerated parent for failure to visit; abandonment by wanton disregard; abandonment by failure to establish a suitable home; substantial noncompliance with the permanency plans; persistent conditions; and a failure to manifest an ability and willingness to assume custody of Child. DCS further asserted that termination of Mother's parental rights was in Child's best interest. Trial on the termination case occurred on May 19, 2022. On August 9, 2022, the trial court entered an order terminating Mother's parental rights. Specifically, it determined that DCS had proven, by clear and convincing evidence, each of the above-enumerated grounds for termination. The trial court further determined that termination of Mother's parental rights was in Child's best interest. This appeal followed.

#### **ISSUES ON APPEAL**

Mother raises a single issue on appeal for our review, restated as follows: Whether the trial court erred in finding that the termination of Mother's parental rights was in

Child's best interest. Notwithstanding the fact that Mother only presents a single issue for our review, precedent from the Tennessee Supreme Court necessitates that we conduct a more thorough examination of this case. Indeed, pursuant to the direction included in the opinion in *In re Carrington H.*, 483 S.W.3d 507 (Tenn. 2016), "in an appeal from an order terminating parental rights the Court of Appeals must review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal." *Id.* at 525-26.

### STANDARD OF REVIEW

"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." *Id.* at 521 (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010)). Although this right is considered to be both fundamental and constitutionally protected, it is not absolute. *In re J.C.D.*, 254 S.W.3d 432, 437 (Tenn. Ct. App. 2007). This right "continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination." *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). "[T]he state as *parens patriae* has a special duty to protect minors," *Hawk v. Hawk*, 855 S.W.2d 573, 580 (Tenn. 1993) (quoting *Matter of Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)), and "Tennessee law . . . thus . . . upholds the state's authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child." *Id.*

Under Tennessee law there exist "[w]ell-defined circumstances . . . under which a parent's rights may be terminated." *In re Roger T.*, No. W2014-02184-COA-R3-PT, 2015 WL 1897696, at \*6 (Tenn. Ct. App. Apr. 27, 2015). These circumstances are statutorily defined. *Id.* (citing *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005)). "To terminate parental rights, a court must determine that clear and convincing evidence proves not only that statutory grounds exist but also that termination is in the child's best interest." *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). "'Clear and convincing evidence' is 'evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.'" *Id.* (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). This heightened burden of proof "minimizes the risk of erroneous decisions." *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007).

Due to this heightened burden of proof, we must adapt our customary standard of review:

First, we must review the trial court's specific findings of fact de novo in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court's specific factual findings will be presumed to be correct unless the evidence

preponderates otherwise. Second, we must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights.

*In re Audrey S.*, 182 S.W.3d at 861.

## DISCUSSION

Before we address the merits of Mother's appeal, we find it appropriate to discuss the considerable briefing issues contained within Mother's appellate brief. Specifically, we note that Mother's actual argument is limited to a single sentence subsequent to her presentment of the relevant best interest factors to be analyzed. Her sole sentence of argument, which incidentally is not supported by any specific citation to the record, states that, "[a]lthough limited by long-term mental health struggles, [Mother] made attempts to comply with her permanency plan so she could raise her child." The entire rest of the brief is nothing more than a recitation of the facts of the underlying matter and the relevant standard of review. In reviewing Mother's brief, we find that it is not in compliance with Rule 27(a) of the Tennessee Rules of Appellate Procedure, which requires that an appellant's brief must include the following, in pertinent part:

(7) An argument, which may be preceded by a summary of argument, setting forth:

- (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on; and
- (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)[.]

Tenn. R. App. P. 27(a). In *In re Yariel S.*, No. E2016-00937-COA-R3-PT, 2017 WL 65469, at \*5–6 (Tenn. Ct. App. Jan. 6, 2017), we cautioned against attorneys who offer little argument in support of a client's position, there specifically in relation to an attorney who relied upon this Court's duty to perform a comprehensive review under *In re Carrington H.*:

Mother's counsel offers little argument in support of Mother's request for reversal of the statutory grounds supporting the termination. Instead, counsel cites our Supreme Court's holding in *Carrington*[.] . . . We agree that our review of each ground and the best interest decision is required; however, we

caution counsel against the use of our Supreme Court's holding in this manner. *See generally* Tenn. Sup. Ct. R. 8, RPC 8(3) (providing that lawyers are obligated to act as a zealous advocate on behalf of his or her client).

*Id.* In accordance with our Supreme Court's opinion in *In re Carrington H.*, we soldier on in our review. However, as we stated in our opinion in *In re Yariel S.*, we caution counsel against forgoing the requirements of Rule 27 on the basis that this Court is required to review the grounds for termination and the best interest analysis. *See In re K.W.*, No. M2021-00408-COA-R3-PT, 2021 WL 5783355, at \*8-9 (Tenn. Ct. App. Dec. 7, 2021) (discussing the warning of caution provided in *In re Yariel S.* and noting how zealous advocacy is required). Again, we emphasize counsel's obligation to zealously represent their clients. Tenn. Sup. Ct. R. 8, RPC 8(3). Because waiver is not available in this matter despite Mother's *de minimis* brief, we will proceed to analyze whether or not there is clear and convincing evidence to support both the grounds for termination and whether the termination is in Child's best interest.

### *Grounds for Termination*

Although Mother does not challenge the trial court's findings on any of the grounds for termination of her parental rights, this Court will address each ground found by the trial court pursuant to the direction of our Supreme Court, as indicated earlier. *See In re Carrington H.*, 483 S.W.3d at 525-26.

### Abandonment by an Incarcerated Parent

A ground for termination exists based on a parent's abandonment of his or her child. Tenn. Code Ann. § 36-1-113(g)(1). As it relates to this termination proceeding, abandonment by an incarcerated parent was defined as:<sup>3</sup>

A parent or guardian is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, or a parent or guardian has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action and has:

- (a) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the parent's or guardian's incarceration;

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<sup>3</sup> The statute has since been amended.

(c) Has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(iv) (Supp. 2020). In its order, the trial court determined that all three grounds under this portion of the statute—failure to visit, failure to support, and wanton disregard—applied to Mother. The termination petition was filed on October 19, 2020. Mother was incarcerated beginning on June 9, 2020, through October 28, 2020. As such, Mother was incarcerated during the entirety of the four months immediately preceding the filing of the termination petition. Therefore, the relevant four-month period for our analysis is the four months immediately preceding Mother’s incarceration as it relates to the failure to visit and failure to support grounds. As discussed below, however, our focus is not restricted to that period as it relates to the wanton disregard ground.

### Failure to Visit

The failure to visit is statutorily defined as “the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. 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 four-month period.” Tenn. Code Ann. § 36-1-102(1)(E). “Token visitation” is defined as “visitation, under the circumstances of the individual case, [which] constitutes nothing more than perfunctory visitation or visitation of such an 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).

According to the record on appeal, Mother did not visit Child at all during the relevant four-month period. In fact, Mother’s last visit with Child was October 10, 2019. We note that Mother was eligible for two visits per month, to last no less than two hours per visit. Mother did schedule visits with Child, but she would later cancel those visits. Mother was also aware of her duty to visit Child as it was expressly set out in the permanency plans, and she was made aware that her failure to visit may constitute a ground for termination of her parental rights. Mother admitted during discovery that she failed to visit Child because she was “not in a good place emotionally.” The trial court found that Mother did not provide sufficient proof as to any excuse for her failure to visit as she was not incarcerated or hospitalized during the relevant period and there was a clear duty to visit. Moreover, the trial court noted that “visitation preserves the thread of the relationship,” and Mother did not have *any* visitation with Child. Based on our review of the record, we agree with the trial court and conclude that there is clear and convincing evidence that Mother abandoned Child by failing to visit him during the four-month period immediately preceding her incarceration.<sup>4</sup>

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<sup>4</sup> We also note that Mother did not raise the affirmative defense of lack of willfulness as to the ground of failure to visit. *See* Tenn. Code Ann. § 36-1-102(1)(I).

### Failure to Support

The failure to support is defined as “the failure, for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child. That the parent had only the means or ability to make small payments is not a defense to failure to support if *no* payments were made during the relevant four-month period.” Tenn. Code Ann. § 36-1-102(1)(D) (emphasis added). Token support “means that the support, under the circumstances of the individual case, is insignificant given the parent’s means.” Tenn. Code Ann. § 36-1-102(1)(B).

The record shows that, during the relevant four-month period, Mother did not pay any voluntary support for Child.<sup>5</sup> The trial court had ordered Mother to pay \$259.00 per month of child support beginning on October 31, 2019. The permanency plans included Mother’s responsibility to pay this support, and Mother was aware of this responsibility. Moreover, as with the failure to visit, Mother had acknowledged that the failure to support may constitute a ground for termination of her parental rights. Based on our review of the record, Mother was able-bodied and capable of working to support Child, as she had a somewhat extensive work history and her medical records from 2020 indicated that she had an ability to work. In light of the foregoing, we conclude that there was clear and convincing evidence that Mother abandoned Child by failing to support Child during the four-month period immediately preceding her incarceration.<sup>6</sup>

### Wanton Disregard

Although not expressly defined by the statute, we note that wanton disregard is recognized “in much the same way as Justice Potter Stewart identified pornography: ‘[we] know it when [we] see it.’” *In re Anthony R.*, No. M2014-01753-COA-R3-PT, 2015 WL 3611244, \*2 (Tenn. Ct. App. June 9, 2015) (quoting *Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964)). “Tennessee courts have held that ‘probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can alone or in combination, constitute conduct that exhibits a wanton disregard for the child.’” *Id.* (citing *In re Audrey S.*, 182 S.W.3d at 867–68). Parental conduct which exhibits a wanton disregard for a child’s welfare is not limited to the four-month period immediately preceding incarceration and may occur at *any* time prior to incarceration. *Id.* (citing *In re Audrey S.*, 182 S.W.3d at 871). Incarceration alone does not warrant a determination that a parent has engaged in conduct that exhibits a

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<sup>5</sup> The record shows that DCS intercepted a stimulus check in May 2020 for Mother that amounted to \$1,036.00. However, this does not constitute a payment of support by Mother. *See In re Ima D.*, No. M2021-00022-COA-R3-PT, 2021 WL 5441832, at \*5 (Tenn. Ct. App. Nov. 22, 2021) (“We note, however, that such intercepted payments are typically not considered when determining whether a parent has failed to support his children.”).

<sup>6</sup> Similar to the charge of failure to visit, Mother also did not raise the defense of a lack of willfulness as to the ground of failure to support.



wanton disregard, *In re Audrey S.*, 182 S.W.3d at 866, but rather, a court must find “by clear and convincing evidence that the parent’s pre-incarceration conduct displayed a wanton disregard for the welfare of the child.” *Id.* “[T]he parent’s incarceration serves only as a triggering mechanism that allows the court to take a closer look at the child’s situation to determine whether the parental behavior that resulted in incarceration is part of a broader pattern of conduct that renders the parent unfit or poses a risk of substantial harm to the welfare of the child.” *Id.*

In this case, Mother was arrested and charged with criminal trespass in December 2019. Mother failed to appear, and three separate bench warrants were thereafter issued related to this charge. In March 2020, Mother was charged with theft of property involving merchandise for allegedly shoplifting from Wal-Mart. During the custodial episode, Mother was incarcerated multiple times. Mother’s most recent arrest for purposes of this case, in June 2020, was for retaliation for past action when DCS attempted to perform a home visit with Mother’s attorney and law enforcement present. During this incident, Mother threatened to “put a bullet between their eyes,” referring to the individuals present as well as the juvenile court judge. In addition to her criminal issues and multiple incarcerations, DCS notes an incident where Child had significant dental issues and tooth pain and was in need of dental surgery, yet Mother refused to consent to the surgery. This resulted in DCS being forced to obtain a court order to approve the surgery.

Moreover, we highlight the concerns raised by the trial court that, despite being warned by DCS to not return to Maternal Grandmother’s home, where there was ongoing drug use and had previously been sexual abuse of another child occurring, Mother returned with Child to the home. In light of the foregoing, we conclude that there is clear and convincing evidence to support the ground that Mother exhibited a wanton disregard for Child’s welfare.

#### Abandonment by Failure to Establish a Suitable Home

In addition to the forms of abandonment espoused above, Tennessee Code Annotated section 36-1-102(1)(A)(ii) also provides that abandonment occurs when:

- (a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;
- (b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child

- or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and
- (c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department.

Tenn. Code Ann. § 36-1-102(1)(A)(ii). "A suitable home 'requires more than a proper physical living location.'" *In re Navada N.*, 498 S.W.3d 579, 595 (Tenn. Ct. App. 2016) (quoting *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at \*9 (Tenn. Ct. App. June 10, 2014)). "It also requires that the home be free of drugs and domestic violence." *Id.* (quoting *In re Hannah H.*, 2014 WL 2587397, at \*9).

As noted above, section 36-1-102(1)(A)(ii) provides that when the ground of abandonment by failure to provide a suitable home is raised, DCS must "[f]or a period of four (4) months following the physical removal" make reasonable efforts in assisting the parent or parents with establishing a suitable home for the child. Here, Child was removed on September 13, 2019, pursuant to a protective order. In its final order, the trial court determined that the relevant four-month period for purposes of this ground was September 14, 2019 to January 14, 2020. First, we note our agreement with the trial court's determination that DCS made reasonable efforts during this period<sup>7</sup> to assist Mother with establishing a suitable home for Child. The record indicates that DCS held multiple child and family team meetings to explain to Mother her responsibilities and the criteria for termination. DCS also offered and provided transportation to Mother, attempted to perform home visits, scheduled appointments with providers, and even created a list of service providers for Mother. Moreover, DCS provided Mother with food when she said she was hungry, offered visitation with Child, provided a list of housing and employment options, and offered to drive Mother to Child's dental surgery, among multiple other efforts. In its order, the trial court found that DCS's efforts were "fairly extraordinary." We agree and conclude that DCS did in fact make reasonable efforts to assist Mother with

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<sup>7</sup> This was an appropriate four-month period to focus on, although we observe that "[a]ccording to an ordinary reading of the statute . . . the proof necessary to support termination under this ground need not be limited to any particular four-month period after removal." *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at \*13 (Tenn. Ct. App. Dec. 15, 2016).

establishing a suitable home for Child. However, we do not find that Mother has made the requisite reciprocal efforts necessary in establishing a suitable home, but rather Mother has “demonstrated a lack of concern for [Child] to such a degree that it appears unlikely” that she can provide a suitable home for Child at an early date. Tenn. Code Ann. § 36-1-102(1)(A)(ii). Mother did not maintain stable housing and instead remained living with Maternal Grandmother, despite DCS’s previous warnings. Maternal Grandmother’s home was rife with drug-use and unsanitary conditions. As noted by DCS in its brief, Mother has had years to establish a suitable home in order to have Child returned, but has failed to do so.

In light of the foregoing, we conclude that there is clear and convincing evidence in the record to find that Mother has failed to establish a suitable home for Child.

#### Substantial Noncompliance with the Permanency Plan

The trial court also terminated Mother’s parental rights on the ground of substantial noncompliance with the permanency plan. Tennessee Code Annotated section 36-1-113(g)(2) provides that termination of a party’s parental rights may be predicated upon a “substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan.” Tenn. Code Ann. § 36-1-113(g)(2). “Trivial, minor, or technical deviations from a permanency plan’s requirements will not be deemed to be substantial noncompliance.” *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004) (citing *In re Valentine*, 79 S.W.3d at 548; *Dep’t of Children’s Servs. v. C.L.*, No. M2001-0279-COA-R3-JV, 2003 WL 22037399, at \*18 (Tenn. Ct. App. Aug. 29, 2003)).

In this case, there were four separate permanency plans developed in the underlying dependency and neglect matter. These plans were ratified by the juvenile court and found to be reasonable, necessary, and in Child’s best interest. As we noted earlier, these plans set forth numerous responsibilities and tasks for Mother to complete, including: submit to a psychological assessment with a clinical parenting component and complete all recommendations; submit a working budget to DCS; contact her DCS case manager weekly; obtain and maintain safe and stable housing; obtain and maintain a legal means of income; submit to random hair and urine drug screens and be able to test negative; refrain from allowing individuals with a criminal record to live with her; visit Child at least twice a month and provide healthy snacks and drinks for the visitation; sign releases of information for all of the psychiatric hospitals she has received care from since Child has been in DCS custody; sign releases for her current service providers; allow DCS to make both announced and unannounced home visits to assess safety; remedy her criminal charges; and refrain from participating in criminal activity. Of all the responsibilities required of her, Mother completed a mental health evaluation in May 2021 after the petition to terminate her parental rights had been filed; maintained stable housing in the form of her own apartment for about sixty days in March 2021; and was employed for about four months. This Court has previously held that a parent’s compliance with a permanency plan

after a petition to terminate parental rights has been filed can be “too little, too late.” *In re A.W.*, 114 S.W.3d 541, 546 (Tenn. Ct. App. 2003). Although Mother attempted to complete a few of her requirements, she was otherwise substantially noncompliant with the permanency plans, and there is no evidence of any effort by Mother to comply with her responsibilities as a whole. Moreover, the limited actions Mother *did* take in an attempt to comply with the permanency plans occurred in 2021, months after DCS’s Petition was filed.

Based on our review of the evidence in this record, we conclude that there is clear and convincing evidence to support a finding that Mother was in substantial noncompliance with the permanency plans.

### Persistence of Conditions

The trial court also terminated Mother’s parental rights on the ground commonly known as “persistent conditions.” This ground applies when:

(3)(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of the proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

- (i) The conditions that led to the child’s removal still persist, preventing the child’s safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child’s safe return to the care of the parent or guardian;
- (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and
- (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child’s chances of early integration into a safe, stable, and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3).

Here, Child was removed from Mother’s custody pursuant to a court order entered on September 13, 2019, based on DCS’s previously-filed dependency and neglect petition, which ultimately resulted in a finding of dependency and neglect. The termination hearing occurred on May 19, 2022, which was more than six months since Child’s removal. Upon reviewing the record, we conclude that the evidence contained therein satisfies this statutory ground for termination. As alluded to elsewhere in this Opinion, Mother has

failed to remedy the conditions that led to Child's removal. Child was removed from Mother's care based on dangerous living conditions, which still persist as Mother lived at the same home from which Child was removed at the time of the hearing. Mother's mental health condition still persists, and she has been inconsistent with attending her mental health appointments and taking her medication. In addition to these conditions still persisting, there is also little likelihood that they will be remedied at an early date such as to warrant Child's safe return. It has been nearly three years since Child's removal, and yet Mother has still not remedied the conditions that led to the removal and there is little to no indication of any progress she has made. Finally, the continuation of the parent-child relationship between Mother and Child greatly diminishes Child's chances of integration into a safe, stable, and permanent home. The record shows that Child has been doing well in his foster home and is receiving appropriate medical care and participating in extra-curricular activities. Moreover, Child has bonded with his foster family who has expressed a willingness to adopt him.

In light of the foregoing, we conclude that there is clear and convincing evidence that the ground of persistent conditions has been proven and is an appropriate ground for termination.

#### Failure to Manifest an Ability & Willingness to Assume Custody

The trial court also terminated Mother's parental rights on the ground that she failed to manifest an ability and willingness to care for Child. Tennessee Code Annotated section 36-1-113(g)(14) provides a ground for termination when:

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

Tenn. Code Ann. § 36-1-113(g)(14). As is evident, and as discussed by case law, this statute is two-pronged. *See In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020). As to the first prong, the trial court determined that Mother had "failed to manifest a willingness and ability to assume custody." The trial court specifically noted Mother's ongoing mental health issues which are such that she cannot presently care for herself. The trial court further noted that Mother has not completed the requirements set forth in the permanency plans and that unsafe living conditions persisted. Mother had also failed to pay any child support towards Child. Ultimately, the trial court determined that Mother has not shown that she is capable of assuming legal or physical custody or financial responsibility of Child. We agree with the trial court's findings. As noted previously, Mother has made almost no progress in remedying any of the issues leading to Child's removal, and this is reflective of her failure to exhibit an ability or willingness to assume any form of custody

of Child.

As to the second prong, the trial court determined that placing Child into Mother's legal and physical custody would pose a risk of substantial harm to his physical and psychological welfare. Specifically, the trial court noted that Child is bonded with the foster family and is enjoying a safe and secure home. Moreover, the trial court found that a change of custody for Child would be detrimental to him. We again agree with the trial court's determination in this regard. While in Mother's care Child was consistently exposed to an unsafe environment and was not receiving proper care, whereas Child is thriving in his foster home and is now living in a stable environment, contrary to his previous living conditions.

In light of the foregoing, we conclude that the trial court's finding of a ground pursuant to section 36-1-113(g)(14) has been satisfied by clear and convincing evidence, and we affirm the trial court's order on this ground.

#### *Best Interests*

Once it is determined that a ground exists for terminating a party's parental rights, the focus then shifts to whether termination is in the child's best interest. *In re Audrey S.*, 182 S.W.3d at 877. Tennessee Code Annotated section 36-1-113(i) provides a non-exhaustive list of factors for the courts to consider in their best interest analysis. Making a determination concerning a child's best interest "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 factors tips in favor of or against the parent." *In re Audrey S.*, 182 S.W.3d at 878. Rather, "[t]he relevancy and weight to be given each factor depends on the unique facts of each case." *Id.* In its order, the trial court made specific findings as to each relevant best interest factor<sup>8</sup> and determined that *all* of the factors weighed in favor of terminating Mother's parental rights. Particularly, the trial court emphasized Mother's ongoing lack of stability and her failure to make any lasting adjustments. The trial court also highlighted the fact that Mother has failed to support Child or maintain regular visitation with Child such that there was no meaningful relationship between Mother and Child. Further, the trial court determined that it would be detrimental to Child if a change in physical environment or custody occurred and that Child needs and deserves permanency, which is available with his foster family to whom he has bonded.

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<sup>8</sup> Although not relevant to the issues posed by this particular appeal, we observe that Tennessee Code Annotated section 36-1-113(i) was recently amended by the General Assembly to incorporate additional factors to be considered as part of the best interest analysis under the statute. *See* 2021 Tenn. Pub. Acts, c. 190, §1. This amended version went into effect on April 22, 2021, well after the filing of the petition in this matter, which occurred on October 19, 2020. As such, we analyze the best interest factors as they existed at the time of the filing in this matter. *See In re D.A.H.*, 142 S.W.3d 267, 273 (Tenn. 2004) ("[S]tatutes are presumed to operate prospectively unless the legislature clearly indicates otherwise.").

We agree with the trial court's assessment and findings and again note Mother's continued lack of stability and lack of attempts to make any corrective steps towards issues that led to Child's removal. Child is now thriving in foster care where he has been offered stability. Accordingly, we find that there was clear and convincing evidence in the record to support the trial court's determination that it was in Child's best interest that Mother's parental rights be terminated.

#### **CONCLUSION**

Based on the foregoing, we affirm the trial court's termination of Mother's parental rights.

s/ Arnold B. Goldin  
ARNOLD B. GOLDIN, JUDGE