IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs December 2, 2025

IN RE JAKARA K.[1]

Appeal from the Chancery Court for Hamblen County
No. 23CV-409 Douglas T. Jenkins, Chancellor

No. E2025-00366-COA-R3-PT

The appellees filed a petition in chancery court seeking to terminate a father's parental rights. After a bench trial, the trial court granted the petition and entered an order terminating the father's parental rights based on the grounds of (1) failure to manifest an ability and willingness to assume custody, (2) abandonment by failure to visit, and (3) abandonment by failure to support. The trial court also determined that termination of the father's parental rights was in the child's best interests. We affirm the trial court's ruling as to the first ground, we vacate the trial court's ruling as to the second and third grounds, and we affirm the trial court's ruling as to best interests. Consequently, we affirm the trial court's overall ruling that the father's parental rights must be terminated.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated in Part; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which ANDY D. BENNETT and CARMA DENNIS MCGEE, JJ., joined.

Ryan T. Logue, Morristown, Tennessee, for the appellant, Jeremy K.

Aaron J. Chapman, Morristown, Tennessee, for the appellees, Tiffany D. and Danny D.

[1] This Court has a policy of abbreviating the last names of children and other parties in cases involving termination of parental rights to protect their privacy and identities.

OPINION

BACKGROUND

Ja'Kara K. (the "Child") was born in January 2018 to Shauna P. ("Mother") [2] and Jeremy K. ("Father"). The petitioners, Tiffany D. ("Aunt") and Danny D. ("Uncle") (together, "Petitioners"), are married, and Tiffany D. is Mother's aunt. Approximately three days after the Child's birth, Aunt brought the Child and Mother home to live with her.[3]

A few months after the Child's birth, Tamisha T. ("Grandmother"), the Child's maternal grandmother, made a referral to the Tennessee Department of Children's Services ("DCS"). Grandmother reported that she was concerned about the Child's welfare because she believed that Mother was using methamphetamines. In early June 2018, DCS took physical custody of the Child. On June 6, 2018, the Hamblen County Juvenile Court (the "juvenile court") granted DCS legal and physical custody of the Child, pending an adjudicatory hearing on June 27, 2018. The same day, Aunt filed a handwritten petition with the juvenile court with Mother's support asking to be granted legal and physical custody of the Child. The juvenile court declared Aunt to be the Child's custodian on June 27, 2018, finding clear and convincing evidence that the Child was dependent and neglected. The juvenile court granted Father supervised visitation and ordered him to pay $10.00 in child support per month.

Father has an extensive criminal history stretching back to 2007. Father's charges between 2018 and 2023 include: Criminal Impersonation; Simple Possession of Schedule VI Controlled Substance; three counts of Possession of Drug Paraphernalia; Resisting Arrest; two counts of Evading Arrest; Violation of Protective Order; two counts of Possession of Schedule I Controlled Substance with Intent to Manufacture, Deliver, or Sell; four counts of Possession of Schedule II Controlled Substance with Intent to Manufacture, Deliver, or Sell; two counts of Possession of Meth with Intent to Manufacture, Deliver, or Sell; DUI 3rd Offense; Implied Consent; two counts of Driving on Revoked; Burglary of Motor Vehicle; Schedule III Controlled Substance Violations; and Assault.

On September 27, 2023, Petitioners filed a petition to terminate Father's parental rights and adopt the Child (the "termination petition") with the Hamblen County Chancery Court (the "trial court"). The termination petition alleged that Father abandoned the Child by failure to visit and failure to support, failed to manifest an ability or willingness to

[2] Mother's parental rights have been terminated, and she is not participating in the present appeal. Mother is mentioned only for context.

[3] The record is contradictory as to whether Uncle was living in the home at this time.

assume custody of the Child, and that it is in the Child's best interest to terminate Father's parental rights. The trial court heard the termination petition on February 3, 2025.

There are inconsistencies surrounding the dates of several events in the record, but the trial court determined that Petitioners had "the more credible viewpoint" and that "any inconsistencies in the testimony" should be resolved in favor of Petitioners.

Regarding the period of incarceration relevant to the abandonment analysis, Father testified that he was incarcerated from approximately the second week of January 2023 until July 2023 and then again from the beginning of August 2023 until the end of September 2023. While the record on appeal is not clear as to Father's exact periods of incarceration since the Child's birth, Father's testimony makes clear that he has been in and out of jail many times and has been incarcerated for a substantial portion of the Child's life.

Aunt testified that Father visited the Child for the first and only time in April 2018, which was coordinated through communication between Mother and Aunt. Conversely, Father testified that he last visited the Child in August or September 2018. According to Aunt, Father later contacted her through Facebook about a month after he got out of jail sometime in 2019 asking to visit the Child, and Aunt scolded him for waiting so long after getting out of jail to request a visit. She further testified that this was the only time Father directly contacted her requesting a visit and that she never heard from him again. As for the Facebook communication between Aunt and Father to arrange another visit, Father testified that this interaction took place in March 2020 and was one of multiple attempts to arrange a visit with the Child, but he did not specify the details of any other interactions. Aunt testified that she began using a new Facebook account under another name in approximately 2023.

Father testified that he has not paid child support since sometime before September 2022. He further testified that his support of the Child consisted of buying the Child an iPad Air (which Aunt turned down because she said the Child already had a tablet), an outfit, and a pair of shoes in February 2020, and paying child support "when I can." According to Father, the payments mostly came out of his paychecks when he had a job, as well as a couple of cash bonds. Aunt testified that Father's child support payments have "never been consistent" and that she has received only about six payments over seven years.

Father testified that he has no driver's license, is unemployed, has difficulty obtaining employment because of his criminal record, and has no source of income. He further testified that since the Child's birth, he has never had his own residence; between his recurrent periods of incarceration, he has lived either with his mother or father. Father acknowledged that it would be difficult for the Child to adjust to living with him, given that she has lived with Petitioners for her entire life.

Mother testified that when she was in the seventh grade, Uncle made drunken and explicit sexual advances toward her and that Aunt did not believe Mother when Mother told Aunt about the incident. Mother testified that she was worried that if something were to happen with the Child, Aunt would not believe the Child. However, Mother subsequently testified that she was not worried about the Child's welfare, as Uncle "takes good care of [the Child]," and that she "[doesn't] want to put that on him . . . that he would do it to my daughter because he's apologized for it. I forgave him." Aunt denied Mother's allegations against Uncle and testified that Mother made similar accusations against another male family member throughout her periods of drug use and that Mother has interacted with Uncle frequently.

Aunt testified that the Child's younger biological brother, who lives with Grandmother and is a little over a year younger than the Child, touched the Child's "private part"[4] in a McDonald's.[5] Aunt stated that after the Child informed her doctor about the incident in McDonald's, "DCS got involved," and she placed the Child in therapy.

At the end of trial, the trial court found clear and convincing evidence that Father abandoned the Child through failure to visit and failure to support, that Father failed to manifest an ability or willingness to assume custody of the Child, and that it is in the Child's best interests to terminate Father's parental rights. The trial court entered its final written order terminating Father's parental rights on February 20, 2025. Father filed a timely notice of appeal to this Court on March 13, 2025.

ISSUES

Father raises four issues on appeal, which we restate as follows:

1. Whether the trial court erred in finding by clear and convincing evidence that Father failed to manifest an ability and willingness to assume custody of the Child.

2. Whether the trial court erred in finding by clear and convincing evidence that Father abandoned the Child by failing to visit the Child.

3. Whether the trial court erred in finding by clear and convincing evidence that Father abandoned the Child by failing to support the Child.

4. Whether the trial court erred in finding by clear and convincing evidence that it is in the Child's best interests to terminate Father's parental rights.

[4] The report from Helen Ross McNabb says it was the Child's buttocks.

[5] The date of this incident is not provided in the record on appeal.

STANDARD OF REVIEW

"A person seeking to terminate parental rights must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best interest." *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (citing Tenn. Code Ann. § 36-1-113(c) (2013)). "Because of the profound consequences of a decision to terminate parental rights, a petitioner must prove both elements of termination by clear and convincing evidence." *In re Markus E.*, 671 S.W.3d 437, 456 (Tenn. 2023). This heightened burden "minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights" and "enables the fact-finder to form a firm belief or conviction regarding the truth of the facts[.]" *In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016) (first citing *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); and then citing *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010)). "The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not." *In re Carrington H.*, 483 S.W.3d at 522 (first citing *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); and then citing *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005)).

As our Supreme Court recently explained, we employ a two-step process in reviewing termination cases:

> To review trial court decisions, appellate courts use a [] two-step process, to accommodate both Rule 13(d) of the Tennessee Rules of Appellate Procedure and the statutory clear and convincing standard. First, appellate courts review each of the trial court's specific factual findings de novo under Rule 13(d), presuming each finding to be correct unless the evidence preponderates against it. *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); *In re Justice A.F.*, [No. W2011-02520-COA-R3-PT,] 2012 WL 4340709, at *7 [(Tenn. Ct. App. Sept. 24, 2012)]. When a trial court's factual finding is based on its assessment of a witness's credibility, appellate courts afford great weight to that determination and will not reverse it absent clear evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re Justice A.F.*, 2012 WL 4340709, at *7 (citing *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005)).
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> Second, appellate courts determine whether the combination of all of the individual underlying facts, in the aggregate, constitutes clear and convincing evidence. *In re Taylor B.W.*, 397 S.W.3d at 112; *In re Audrey S.*, 182 S.W.3d [at] 861 . . . ; *In re Justice A.F.*, 2012 WL 4340709, at *7. Whether the aggregate of the individual facts, either as found by the trial court or supported by a preponderance of the evidence, amounts to clear and convincing evidence is a question of law, subject to de novo review with no presumption of correctness. *See In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn.

> 2009); *see also In re Samaria S.*, 347 S.W.3d 188, 200 (Tenn. Ct. App. 2011). As usual, the appellate court reviews all other conclusions of law de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d [240,] 246 [(Tenn. 2010)].

In re Markus E., 671 S.W.3d at 457.

DISCUSSION

Grounds for termination

a. Failure to manifest an ability and willingness to assume custody

This ground applies 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) (2023) (effective July 1, 2023 to June 30, 2024).[6] This ground requires clear and convincing proof of two elements. *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020). The petitioner must first prove that the parent has failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child. *Id.* The statute requires "a parent or guardian to manifest both an ability *and* willingness" to personally assume legal and physical custody or financial responsibility for the child. *Id.* at 677 (emphasis added). Therefore, if a party seeking termination of parental rights establishes that a parent or guardian "failed to manifest *either* ability or willingness, then the first prong of the statute is satisfied." *Id.* The petitioner must then prove by clear and convincing evidence that placing the child in the custody of the parent poses "a risk of substantial harm to the physical or psychological welfare of the child." *Id.* at 674. Regarding this second prong,

> [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

[6] In termination cases, we apply the version of the statute in effect at the time the petition was filed. *See In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017). The termination petition in this case was filed on September 27, 2023.

> 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 Jamarcus K., No. M2021-01171-COA-R3-PT, 2022 WL 3755383, at *14 (Tenn. Ct. App. Aug. 30, 2022) (quoting *In re Virgil W.*, No. E2018-00091-COA-R3-PT, 2018 WL 4931470, at *8 (Tenn. Ct. App. Oct. 11, 2018)).

As to the first prong of section 36-1-113(g)(14), the trial court found that there was clear and convincing evidence that Father failed to manifest an ability to personally assume legal and physical custody or financial responsibility of the Child, finding, in relevant part, that Father does not have "his life in shape" and that "he just doesn't have the ability to take custody[.]" The trial court went on to explain that Father has "stumbling blocks in front of the ability to consistently provide" safe and stable care and supervision.

We agree that there is clear and convincing evidence that Father has failed to manifest an ability to personally assume legal and physical custody or financial responsibility of the Child. "Ability focuses on the parent's lifestyle and circumstances[.]" *In re Chayson D.*, 720 S.W.3d 123, 141 (Tenn. Ct. App. 2023) (quoting *In re Serenity W.*, No. E2018-00460-COA-R3-PT, 2019 WL 511387, at *6 (Tenn. Ct. App. Feb. 8, 2019)). Father's repeated periods of reincarceration call into serious question his ability to create and maintain an environment where the Child can thrive. Even when Father is not incarcerated, he has taken basically no steps toward equipping himself to fulfill the duties of a responsible parent. By his own testimony, Father has no driver's license, has no source of income, is unemployed, has difficulty obtaining and maintaining employment because of his criminal record, and has not had a residence of his own at any point during the Child's life. Rather than working toward securing the financial, transportational, and residential security he needs to provide for the Child, Father has instead consistently chosen to repeat the vices of his recent past, resulting in his reincarceration.

On the other hand, the trial court found that Father *had* manifested a willingness to assume custody, as evidenced by the fact that he would not be there in court if he was not willing. We disagree that the simple act of appearing in court is sufficient evidence of willingness to assume legal and physical custody of the Child. *See In re Apex R.*, 577 S.W.3d 181, 205 (Tenn. Ct. App. 2018) (finding that a parent lacked a willingness to assume custody when he "failed to follow up in any meaningful way" on his expressed desire to assume custody). However, the lack of an ability to assume custody is sufficient to establish this ground, meaning we need not further explore the merits of the trial court's findings as to Father's willingness to assume custody. *See In re Neveah M.*, 614 S.W.3d at 677.

As to the second prong of section 36-1-113(g)(14), the trial court found that there was clear and convincing evidence that placing the Child in Father's custody poses a risk of substantial harm to the physical or psychological welfare of the Child. The court found

that Father has committed "substantial criminal activity" and that the Child would suffer "substantial adjustment difficulties" if she were removed from Petitioners' home, as it is a stable environment and "the only home the [C]hild has ever known." Father unequivocally acknowledged as much in his testimony:

> [Petitioners' counsel]: You acknowledge it would be hard for her -- if presented the opportunity to come and live with you, it'd be difficult for her to adjust given that she's lived with [Petitioners] now for seven years?
>
> [Father]: I acknowledge that.

We agree with the trial court's finding. First, Father has an extensive criminal record, which has only continued to grow in size and severity throughout the Child's life, resulting in a consistent cycle of reincarceration. "[P]lacing a child with a parent who engage[s] in repeated criminal conduct that require[s] incarceration would put a child at risk of substantial physical or psychological harm." *In re Brianna B.*, No. M2019-01757-COA-R3-PT, 2021 WL 306467, at *6 (Tenn. Ct. App. Jan. 29, 2021) (citing *In re O.M.*, No. E2018-01463-COA-R3-PT, 2019 WL 1872511, at *4 (Tenn. Ct. App. Apr. 26, 2019)). Second, the Child has never lived with Father, and it is clear from the record that he is practically a stranger to her. This Court has frequently concluded that placing a child in the custody of a parent from whom they were removed at a very young age and who is a near-stranger to them poses a risk of substantial harm. *In re Brianna B.*, 2021 WL 306467, at *6; *In re Antonio J.*, No. M2019-00255-COA-R3-PT, 2019 WL 6312951, at *9 (Tenn. Ct. App. Nov. 25, 2019); *State v. C.H.H.*, No. E2001-02107-COA-R3-CV, 2002 WL 1021668, at *9 (Tenn. Ct. App. May 21, 2002). Aunt's testimony, which is supported by the evidence in the record, demonstrates that the Child would have a particularly difficult and potentially traumatic experience being removed from Petitioners. Therefore, we affirm the trial court's conclusion that Petitioners proved the ground of failure to manifest an ability and willingness to assume custody by clear and convincing evidence.

b. Abandonment by failure to visit and failure to support

The trial court also found clear and convincing evidence that Father abandoned the Child by his failure to visit her and his failure to support her prior to his incarceration. Abandonment by an incarcerated parent is grounds for termination of parental rights. Tenn. Code Ann. § 36-1-113(g)(1). Abandonment occurs, among other circumstances, when:

> (iv) 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 if the child is four (4) years of age or more . . . and has:
>
> (a)(1) 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 if the child is four (4) years of age or more[.]

Tenn. Code Ann. § 36-1-102(1)(A)(iv).

It is undisputed that the Child was more than four years old when the petition was filed. Although the record is unclear whether Father was incarcerated when the petition was filed on September 27, 2023, it is undisputed that he was incarcerated for at least part of the four consecutive months immediately preceding the filing of the petition.[7] When this circumstance arises, the trial court must correctly piece together the most recent 120 days of nonincarceration preceding the filing of the petition[8] to determine the correct four-month period. *In re Elijah F.*, No. M2022-00191-COA-R3-PT, 2022 WL 16859543, at *5 (Tenn. Ct. App. Nov. 10, 2022); *In re Travis H.*, No. E2016-02250-COA-R3-PT, 2017 WL 1843211, at *9 (Tenn. Ct. App. May 5, 2017).

Although the issue was not raised in Father's brief on appeal, we must address the fact that the trial court erred in its analysis of the correct determinative period.[9] *See In re Carrington H.*, 483 S.W.3d at 525–26; *In re Skylith F.*, No. M2022-01231-COA-R3-PT, 2023 WL 6546538, at *20–21 (Tenn. Ct. App. Oct. 9, 2023) (Usman, J., concurring) (noting that it is proper for this Court to scrutinize the determinative period even when none of the parties challenge it). Instead of aggregating the most recent 120 days of nonincarceration preceding the filing of the petition, the trial court's calculation disregarded Father's periods of nonincarceration between July 2023 and September 2023, instead only looking to the four months immediately preceding January 2023. Moreover, the trial court did not specifically calculate the individual dates of nonincarceration when aggregating the four-month total. When making its factual findings on the determinative period, the trial court stated:

[7] The record on appeal reflects that Father was incarcerated from approximately the second week of January 2023 until sometime in July 2023, and then again from early August 2023 until late September 2023.

[8] The day the petition was filed does not count toward the 120-day aggregation. *See In re Jacob C.H.*, No. E2013-00587-COA-R3-PT, 2014 WL 689085, at *6 (Tenn. Ct. App. Feb. 20, 2014).

[9] We also note that the termination petition fails to utilize the correct "manner[] in which to calculate the salient period and fails to plead the actual time period" for abandonment. *In re Jack C. L.*, No. E2022-01803-COA-R3-PT, 2024 WL 2316641, at *4 (Tenn. Ct. App. May 22, 2024), *no perm. app. filed*. However, because the errors in the final order require us to vacate the abandonment grounds, we decline to address any potential errors in the termination petition regarding abandonment.

> I specifically find that the relevant consideration period . . . is hard to, I guess, to nail down precisely, but it -- from the proof that I've heard . . . we have to go somewhere between the 15th and the 18th day of January 2023. And then we worked backward from that, which would be, I guess October -- for a while we said September. But I think if you add it up, it's actually -- let's say it's that earliest day. October 15th, November 15th, December 15th, the following January of 2023. So there's a range in there, maybe the 15th to the 18th, but the precise days are not relevant to our inquiry[.]

Although we agree with the trial court that the evidence on this issue was confusing, at best, the precise days are relevant to calculating the determinative period. *See In re Eimile A.M.*, No. E2013-00742-COA-R3-PT, 2013 WL 6844096, *3 (Tenn. Ct. App. Dec. 26, 2013) (noting that "[t]he statute is very specific for an incarcerated parent with regard to the relevant time period" and "courts must 'strictly apply the procedural requirements in cases involving the termination of parental rights.'" (quoting *In re Landon H.*, No. M2011-00737-COA-R3-PT, 2012 WL 113659, at *4 (Tenn. Ct. App. Jan. 11, 2012))). This Court has previously noted that even single-day discrepancies in the determinative period do not escape scrutiny. *See In re Braxton M.*, 531 S.W.3d at 719–20; *In re Jude M.*, 619 S.W.3d 224, 236 n.2 (Tenn. Ct. App. 2020); *In re Jack C. L.*, 2024 WL 2316641, at *5. Further, the trial court incorrectly identified the determinative period as being between October 2022 and January 2023—a period of only three months—short of the four months required by section 36-1-102(1)(A)(iv) for children aged four years and older.

This Court has recognized that trial courts are permitted to use dates stipulated by the parties to establish the determinative period for abandonment so long as they comply with section 36-1-102(1)(A)(iv). *See In re Braxton M.*, 531 S.W.3d at 719–20; *In re Jocilyn M.P.*, 435 S.W.3d 773, 781 (Tenn. Ct. App. 2014). However, even the "stipulated" dates are unclear. The parties contradict each other as to the correct determinative period, with each listing different determinative periods in their respective appellate briefs.[10] "[W]e cannot conclude that the four-month period was tried by consent because there was never a definitive agreement on what that period should be." *In re Haskel S.*, No. M2019-02256-COA-R3-PT, 2020 WL 6780265, at *6 (Tenn. Ct. App. Nov. 18, 2020). It is unclear whether the trial court utilized the stipulated period in its calculation. Instead of using a stipulated period, the trial court appears to have found the determinative period to be between October 15, 2022 and somewhere from January 15, 2023 to January 18, 2023. The court subsequently found that Father neither visited nor supported the Child between these dates.

[10] Petitioners' brief lists the determinative period as September 17, 2022 to January 17, 2023, while Father's brief both lists the determinative period as September 1, 2022 to January 17, 2023 and states that the trial court determined the determinative period to be October 15, 2022 to January 15, 2023.

A calculation error in the determinative period "can be considered harmless when the trial court made sufficient findings of fact that encompassed the correct determinative period[.]" *In re Elijah F.*, 2022 WL 16859543, at *5 (quoting *In re J'Khari F.*, No. M2018-00708-COA-R3-PT, 2019 WL 411538, at *9 (Tenn. Ct. App. Jan. 31, 2019)). In this case, however, the record on appeal is almost entirely devoid of any information as to how long Father was incarcerated during the summer of 2023. All we can ascertain is that Father was not incarcerated anywhere from 1 to 77 days between July and September 2023. Therefore, the closest we can get to establishing the correct determinative period is that it began somewhere between September 17, 2022 and October 23, 2022, and ended somewhere between January 15, 2023 and January 18, 2023. We simply cannot tell from this record what the determinative period is. For this reason, we vacate the trial court's finding of abandonment by failure to visit and failure to support.

Best interests

Next, we must address whether termination of Father's parental rights is in the Child's best interests. In addition to proving at least one statutory ground for termination, petitioners in termination cases must prove by clear and convincing evidence that termination serves a child's best interests. Tenn. Code Ann. § 36-1-113(c). Indeed, "a finding of unfitness does not necessarily require that the parent's rights be terminated." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005) (citing *White v. Moody*, 171 S.W.3d 187, 193 (Tenn. Ct. App. 2004)). Our termination statutes recognize that "[n]ot all parental misconduct is irredeemable[,]" and "terminating an unfit parent's parental rights is not always in the child's best interests." *Id.* As such, the focus of the best interests analysis is not the parent but rather the child. *Id.*; *see also White*, 171 S.W.3d at 194 ("[A] child's best interests must be viewed from the child's, rather than the parent's, perspective."). Further, "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).

When determining whether termination is in a child's best interests, "the court shall consider all relevant and child-centered factors applicable to the particular case[,]" which "may include, but are not limited to" the twenty non-exclusive factors found at section 36-1-113(i)(1). "The relevancy and weight to be given each factor depends on the unique facts of each case." *In re Marr*, 194 S.W.3d at 499. In some circumstances, one factor may prove dispositive. *In re Audrey S.*, 182 S.W.3d at 878. Nevertheless, we must still consider "all the factors and all the proof" before concluding termination is in a child's best interests. *In re Gabriella D.*, 531 S.W.3d 662, 682 (Tenn. 2017). When considering the facts addressing each applicable factor of the best interests analysis, we must evaluate them "by 'a preponderance of the evidence, not by clear and convincing evidence.'" *In re Bentley E.*, 703 S.W.3d 298, 303 (Tenn. 2024) (quoting *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015)). We address each factor in turn.

"(A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority[.]" Tenn. Code Ann. § 36-1-113(i)(1)(A). The trial court found that this factor weighs "heavily" in favor of termination, as Petitioners have created a "stable environment" for the Child, and Petitioners' home is "the only home the [C]hild has ever known." The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

"(B) 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 this factor weighs in favor of termination, reemphasizing that the Child has only known Petitioners' home and finding that "to take her from it at this point" would cause the Child "substantial adjustment difficulties." The evidence in the record preponderates in favor of this finding.

"(C) 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 found that this factor weighs in favor of termination, as Father has not "shown a propensity to" meet the Child's basic needs. The trial court also found that Father has not consistently provided more than token financial support for the Child, does not have "his life in shape," and has engaged in "substantial criminal activity," including the presence of "drugs, alcohol, things of that nature" in Father's home. The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

"(D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment[.]" Tenn. Code Ann. § 36-1-113(i)(1)(D). The trial court found that this factor weighs in favor of termination, as the Child has "been with [Petitioners] her whole life," and "[a]t this point, I think it would be very difficult for the father" to create a secure and healthy parental attachment. The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal. Father has not seen the Child since she was an infant, and there does not appear to be any indication from the record that the Child even knows who Father is.

"(E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child[.]" Tenn. Code Ann. § 36-1-113(i)(1)(E). The trial court found that this factor weighs in favor of termination, as the "unrebutted clear proof shows that" there have not been visits for years. The evidence in the record preponderates in favor of this finding.

"(F) Whether the child is fearful of living in the parent's home[.]" Tenn. Code Ann. § 36-1-113(i)(1)(F). The trial court found that this factor weighs neither for nor against

termination: "I can't say one way or another on that. I didn't hear any proof on it." We agree with the trial court.

"(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms[.]" Tenn. Code Ann. § 36-1-113(i)(1)(G). The trial court found that this factor weighs in favor of termination but "[p]robably not as heavily as some of these other factors." Father does not address this finding on appeal. However, the trial court also stated that "I really didn't hear anything with regard to that . . . . I don't think [Father], hopefully, [has] ever caused any trauma to the [C]hild." As the trial court acknowledged, there is no evidence in the record that addresses this factor, meaning that the evidence in the record inherently preponderates against the trial court's finding that this factor weighs in favor of termination.

"(H) 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 weighs in favor of termination, as the evidence demonstrates that a "bond has been formed with the [P]etitioners." The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal. The record reflects that the Child considers Petitioners to be her mom and dad and loves them as parents.

"(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage[.]" Tenn. Code Ann. § 36-1-113(i)(1)(I). The trial court found that this factor weighs in favor of termination. Specifically, the trial court found that the Child's relationships with paternal family, such as "cousins, other grandkids of [the Child's] grandmother, things of that nature . . . have really never been there." The trial court also found that "the [C]hild[is] being adopted by an aunt . . . and she testified that she plans on telling her who her parents are, at least her mother. So I don't think the [C]hild's access to information about heritage will be damaged by termination." We agree with the trial court. The record shows that although the Child does have a relationship with her biological brother, Father does not have custody of this brother, so the termination of Father's parental rights would not affect the Child's access to her sibling. Additionally, the Child has developed relationships with Petitioners' children that would be damaged if the Child were removed from Petitioners' home. Father points to Grandmother's testimony that she believes Petitioners will not allow the Child to have a relationship with the Child's extended biological family. However, the record provides ample evidence that Petitioners have fostered the Child's relationships with her extended biological family, including allowing the Child to go on regular playdates with her siblings at Grandmother's home, as well as allowing regular visits by the Child's biological family to Petitioners' home to swim during the summer. Further, Aunt testified that the Child will still see her siblings if parental rights are terminated and she is adopted. Thus, the evidence preponderates in

favor of the trial court's finding that the Child's emotionally significant relationships with her biological family will be preserved after termination of Father's parental rights.

"(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner[.]" Tenn. Code Ann. § 36-1-113(i)(1)(J). The trial court found that this factor weighs in favor of termination, as "there's criminal activity in the home. There's been substantial criminal activity by [Father]. . . . [T]here's a use of drugs, alcohol, things of that nature . . . present in the [Father's] home[.]" The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

"(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions[.]" Tenn. Code Ann. § 36-1-113(i)(1)(K). The trial court found that this factor weighs neither for nor against termination, as "[Father] didn't touch on this too much. . . . I didn't hear any proof, so I don't think it weighs either way." Father does not address this finding on appeal. However, the evidence in the record preponderates against this finding, as Father testified that he had taken part in one program: a 30-day drug rehab program that he completed in July 2018. In the years following his graduation from that program, Father has been convicted of a multitude of serious drug-related crimes. This recidivism deals a serious blow to any claim of "lasting adjustment" gained from this single, month-long rehab program from almost a decade ago. Therefore, this factor weighs in favor of termination. *Contrast In re Edward C.*, 684 S.W.3d 410, 440 (Tenn. Ct. App. 2023) (finding that Factor (K) weighed for termination because the parent "was unsuccessful in making a lasting adjustment even though the evidence demonstrated that she did make attempts[]") *with In re Juanita M.*, No. W2025-00822-COA-R3-PT, 2026 WL 132094, at *15 (Tenn. Ct. App. Jan. 16, 2026), *no perm. app. filed* (finding that Factor (K) weighed against termination because, despite her "inability to end her unlawful drug use[,]" the parent still "actively pursu[ed]" steps to overcome her drug habit and consistently complied with the requirements of her program for over a year leading up to the case).

"(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department[.]" Tenn. Code Ann. § 36-1-113(i)(1)(L). The trial court found that this factor does not apply in this case, as "[t]his was a DCS case early on, but I think they're no longer involved[.]" The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

"(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest[.]" Tenn. Code Ann. § 36-1-113(i)(1)(M). The trial court found that this factor weighs in favor of termination, as Father has not demonstrated any sense of urgency. The trial court pointed to the fact that "[t]he [C]hild[is] 7 years old. She's been with [Petitioners] her whole life." The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

"(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult[.]" Tenn. Code Ann. § 36-1-113(i)(1)(N). The trial court found that this factor weighs in favor of termination, as Father has "definitely . . . neglected [the Child's] basic needs" and has not "shown a propensity" to "meet[] the [C]hild's basic needs." The evidence in the record preponderates in favor of this finding.

Father argues that the allegations of sexual misconduct against Uncle and the Child's brother should cause this factor to weigh against termination. Mother testified that Uncle made drunken sexual advances to her when she was a child. According to Mother, Aunt did not believe her when she told Aunt, and Mother was worried that Aunt would not believe the Child either if something were to happen with the Child. However, Mother also testified that she was not worried about the Child's welfare, as Uncle "takes good care of [the Child]" and that she does not "want to put that on him . . . that he would do it to my daughter because he's apologized for it. I forgave him." Mother was fully supportive of Petitioners taking custody of the Child shortly after her birth. Also, although Mother alleges that she was initially unaware that Uncle was living with Aunt when custody was transferred, the record shows that Mother eventually became fully aware that Uncle resided with Aunt and the Child and yet still made no effort to regain custody of the Child. Mother's allegation, although serious, is decades old, and Mother did not express any concern about Uncle adopting the Child.

Father also argues that terminating his parental rights would negatively affect the Child's psychological condition, as "by [Aunt]'s own testimony the [C]hild is currently in therapy for a [sic] incident that occurred while [the Child] was in her care." Father references the incident in which the Child's younger biological brother allegedly touched her buttocks in a McDonald's. Again, although we do not downplay the seriousness of the allegation, it does not militate in favor of Father. First, the Child's biological brother lives with Grandmother, not Petitioners. Second, Aunt testified that once she learned about the incident, she took steps to limit the Child's visits with her younger brother. Finally, Aunt ensured that the Child received therapy for the incident. We disagree with Father's assertion that this factor weighs against terminating his parental rights.

"(O) 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). The trial court found that this factor weighs in favor of termination, as Father has not provided safe and stable care for the Child or any other child. The trial court found that the Child has "been with [Petitioners] her whole life." Additionally, the record reflects that the Child's brother was removed from Father's custody when he was a month old, while Father was incarcerated, and Father was awarded no visitation rights with that child. The evidence in the record preponderates in favor of the trial court's finding, and Father does not challenge this finding on appeal.

"(P) 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). Regarding this factor, the trial court simply stated that Father had not "mentioned very much to the Court." Father does not address this factor on appeal, and we agree with the trial court that the record does not support the application of this factor.

"(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive[.]" Tenn. Code Ann. § 36-1-113(i)(1)(Q). The trial court found that this factor weighs in favor of termination, as Father has not demonstrated such ability and commitment. The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal. Father has no job, no source of income, no driver's license, no residence of his own, and has regularly engaged in criminal and drug-related activity.

"(R) 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). The trial court found that this factor weighs in favor of termination, as Father's home is not healthy and safe for the Child. As previously discussed, the trial court found that there has been substantial criminal activity by Father, as well as use of alcohol and drugs in Father's home. We agree with the trial court.

"(S) Whether the parent has consistently provided more than token financial support for the child[.]" Tenn. Code Ann. § 36-1-113(i)(1)(S). The trial court found that this factor weighs in favor of termination, as Father has not consistently provided more than token financial support for the Child. The evidence in the record preponderates in favor of this finding. Father has only made six child support payments over the course of seven years and other than that, has provided the Child with a handful of items over the Child's life.

"(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child." Tenn. Code Ann. § 36-1-113(i)(1)(T). The trial court found that this factor weighs in favor of termination, as Father has "stumbling blocks in

front of the ability to consistently provide these things." The evidence in the record preponderates in favor of this finding, and Father does not challenge this finding on appeal.

Overall, the trial court found that, when these factors are considered "together, I do believe they weigh in favor of termination by clear and convincing evidence." We agree; the trial court's findings of fact are apt and supported by the record. Considering all the factors as a whole, there is clear and convincing evidence that termination is in the best interests of the Child. Despite the trial court's erroneous weighing of factors (G) and (K), "these errors were harmless considering the Court's weighing of other significant factors[.]" *In re Edward C.*, 684 S.W.3d at 440. Accordingly, we affirm the trial court's finding that termination of Father's parental rights is in the Child's best interests.

CONCLUSION

The judgment of the Chancery Court for Hamblen County is affirmed in part and vacated in part, and this case is remanded for proceedings consistent with this opinion. Costs on appeal are assessed to the appellant, Jeremy K., for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE