

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs April 4, 2016

**IN RE: MAISON W.**

**Appeal from the Chancery Court for Lincoln County  
No. AD351 J.B. Cox, Chancellor**

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**No. M2015-02153-COA-R3-PT – Filed May 27, 2016**

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Deanna R.H.B. (“Mother”) appeals the order of the Chancery Court for Lincoln County (“the Trial Court”) finding and holding that it had been proven by clear and convincing evidence that grounds existed to terminate Mother’s parental rights to the minor child Maison W. (“the Child”) for persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3), and for severe abuse pursuant to Tenn. Code Ann. § 36-1-113(g)(4), and that it was in the Child’s best interest for Mother’s parental rights to be terminated. We find and hold that the evidence in the record does not preponderate against the Trial Court’s finding by clear and convincing evidence that grounds existed to terminate Mother’s parental rights to the Child and that it was in the Child’s best interest to terminate Mother’s parental rights. We, therefore, affirm.

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

D. MICHAEL SWINEY, CHIEF JUDGE, delivered the opinion of the court, in which W. NEAL MCBRAYER, and BRANDON O. GIBSON, JJ., joined.

Louisa Jackson Davis, Lewisburg, Tennessee, for the appellant, Deanna R.H.B.

Pat M. Fraley, Fayetteville, Tennessee, for the appellees, Charlie F.W., Lynda S.F.W., and Devin K.W.

## OPINION

### Background

The Child and his two minor step-sisters<sup>1</sup> were taken into State custody in June of 2013 after Mother was arrested and charged with manufacture of methamphetamine, child abuse: neglect, and possession of a Schedule II drug, among other things. Each of Mother's children has a different father. At the time of Mother's arrest, the Child's father, Devin K.W. ("Father"), was serving time in the Coffee County Jail.

By order entered June 11, 2013, the Juvenile Court for Lincoln County ("the Juvenile Court") entered a Protective Custody Order finding the Child to be dependent and neglected. On July 8, 2013, the Juvenile Court entered an order awarding temporary custody of the Child to his paternal grandparents, Charlie F.W. ("Grandfather") and Lynda S.F.W. ("Grandmother" or collectively "Grandparents"). On July 19, 2013, the Juvenile Court entered an Adjudicatory Hearing Order With Finding of Severe Abuse finding and holding, *inter alia*:

The Court specifically finds by clear and convincing evidence, based upon testimony of CPS Investigator Erin Alderman, Deputy Mike Pitts, and the mother, [Mother], that the children are dependent and neglected within the meaning of the law based upon the following factual findings: that the mother has been using methamphetamine for fifteen years; that Deputy Pitts located acid, meth oil, syringes and methamphetamine inside the home in reach of the children and that a methamphetamine lab was located in a backpack in a shed behind the home; that the home was quarantined; that there were spoons and syringes throughout the home with residue of methamphetamine; that the children reside in the home and were at the home upon law enforcement arrival; that the children's hands had blue paint and law enforcement located a box inside the home that had just been painted blue and the box contained used syringes and drug paraphernalia; and that the components and paraphernalia were located in various places throughout the home (living room, kitchen, master bathroom) where the children had access.

B. Based upon the findings of fact above, the Court further finds the above-named children are victims of severe child abuse as defined by Tennessee Code Annotated, Section 37-1-102 (b)(23)(a) and (d) and that

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<sup>1</sup> The Child's step-sisters are not involved in this case. As such, even though many of the orders entered by the Juvenile Court also concern the Child's step-sisters, we need not discuss facts that pertain to the Child's step-sisters. We focus our discussion on the facts that relate directly to the Child.

the mother, [Mother], was the perpetrator of that severe child abuse. Based upon this finding, the Department of Children's Services is relieved of the requirement to make reasonable efforts to reunite the above-named children with the mother, [Mother], pursuant to 37-1-166(g)(4). The Court further finds that 37-1-167 is applicable in that the children have suffered aggravated child abuse pursuant to 37-1-102(b)(23) at the hands of the mother, [Mother], and that the children shall not be placed back into [Mother's] care unless the Court makes a finding by clear and convincing evidence that a threat to the children's safety no longer exists.

C. The Court also finds that based on an assessment of the family and the children's circumstances, it was reasonable to make no effort to maintain the children in the home.

D. The mother has the ability to provide support for the children.

On September 27, 2013 the Juvenile Court entered a Final Order of Disposition and No Contact Order finding and holding, *inter alia*: "The Court further finds that the mother testified that she had allowed the children to maintain telephone contact with Gary Lambert, her prior boyfriend, who was convicted of promotion of methamphetamine. [Mother] has pending charges of initiation and promotion of the process to manufacture methamphetamine and criminal conspiracy." The September 27, 2013 order provided, *inter alia*, that :[t]he children shall have NO CONTACT with Gary Lambert, whether in person, by telephone, or messages sent through third parties."

On March 17, 2014, Grandparents filed a petition seeking to terminate Mother's parental rights to the Child and to adopt the Child.<sup>2</sup> Grandparents filed a motion on May 28, 2015 seeking to suspend Mother's visitation with the Child alleging that Mother had violated her probation by testing positive for methamphetamine on April 15, 2015, and that Mother had been arrested in Madison County, Alabama on May 27, 2015 and charged with felony possession with intent to distribute cocaine and violation of ephedrine/manufacture/sale/transfer of precursor chemicals. The Trial Court entered an order on June 9, 2015 suspending Mother's visitation with the Child.

The case proceeded to trial in August of 2015 upon Grandparent's petition to terminate Mother's parental rights to the Child. On the day of trial, Mother was served with a warrant for violation of probation alleging that she had tested positive on April 15, 2015 for amphetamine use, and a warrant for violation of probation due to her arrest in Madison County, Alabama on May 27, 2015.

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<sup>2</sup> The Trial Court entered an order on June 11, 2014 dismissing the Department of Children's Services ("DCS") from the case after finding that DCS did not have custody of the Child and was not required to participate in termination proceedings when a child was placed with a relative. DCS is not involved in this appeal.

Mother testified at trial. She admitted that she was arrested in Lincoln County in 2013, which was when the Child was taken into custody. Mother pled guilty in October of 2013 to two counts of possession of a Schedule II drug. She spent time in jail and then was placed on probation. Mother was asked if she had complied with the terms of her probation, and she stated:

Yes, ma'am. I'm - - I'm on supervised probation, so I visit every week on Wednesdays, and they do random drug tests. I was actually asking for extra drug tests at probation there for the longest until, I think, Axie and I had had a conversation about [one of Mother's other children], and I had told her that I was, you know, doing extra drug tests there . . . . We - - we agreed that I would get a hair follicle test. So I quit - - I quit asking for extra drug tests at probation. And I had the hair follicle test done. It was supposed to go back a year, but it only went back 90 days. That was in January of this year, I think, but, yeah, I did - - I've done the drug tests. I've done weekly visits. My fines were, like, almost \$8,000 when I first started, and I've got them down to, like, \$2,000 - - . . . so I paid those fines.

Mother testified that she still owes approximately \$2,000 on her fines. She testified that she never has been charged with violation of probation for non-payment or for failure to report. Mother also stated that she has maintained employment and has kept her probation officer apprised of this fact.

Mother was asked what she did after her arrest in 2013 to address her problem with meth, and she stated:

I put - - I begged, and begged, and begged to help be bonded out so that I could put myself in rehab. I didn't feel like - - you know, I felt I needed - - I needed something more than just, you know, sitting in jail. So I put myself in a rehab program that was not only - - most inpatient rehabs are 28-day programs. I went with a 60-day program that dealt with mental health, like, co - - co-occurring disorders is what they called it. It was for drug abuse and mental health disorders.

Mother was admitted to Buffalo Valley on June 20, 2013, and was discharged on August 21, 2013. Mother stated that upon her release from Buffalo Valley:

I chose to go to transitional housing. Some people call it halfway housing. And I stayed there for four months. My goal wasn't to come back and, you know, be in the same environment, or around the same people, or thrown

back in, you know, the things that maybe I wasn't ready to deal with. So I -  
- I picked transitional because you still have health care professionals there  
to, you know, to help you, and, you know, they help you get back on your  
feet, so, I mean, that's actually how I was able to, you know, get a job so  
quickly and all of that good stuff.

After leaving the transitional housing in December of 2013, Mother moved back  
in with her parents. Mother has lived with her parents continuously since she left the  
transitional housing. Mother testified that the house where she lives is in her mother's  
name, but that Mother pays the mortgage. Mother explained that her father passed away  
after she moved back in with her parents. Mother now lives with her mother and her  
brother.

Mother admitted that her brother has been arrested. When asked if he had been  
arrested for meth-related offenses, Mother stated: "I don't believe so. . . . I mean, I know  
- - I think he's gotten a DUI." Mother stated that she was unsure of her brother's "whole  
history."

Mother testified that prior to her children being removed from her custody in June  
of 2013 all three of them lived with Mother in her own place. Up until their removal  
Mother was the children's primary caretaker. Mother stated: "All of my kids, I made  
sure that they had time with their dad or their other family. You know, I split holidays  
with them to make sure they never - - they never missed out on anything." Mother  
testified that the Child's father moved away when the Child was young and paid child  
support, but was not routinely involved in the Child's life.

At the time of trial, the Child was 10 years old and his step-sisters were 16 and 8  
years of age. Mother testified that she owns a car. She stated that "[i]t's the car that I  
bought for my daughter when she turned 16," but Mother stated that the car was in  
Mother's name.

Mother is employed at Advance Financial and has been since December of 2013.  
Mother previously was employed at AT&T. Mother worked at both places from  
December of 2013 until November of 2014. Mother stated: "I quit at AT&T in  
November of 2014 because Daddy's health was declining and he needed more care. And  
so I wasn't able to do both of them."

Mother testified that the first time she used methamphetamine was fifteen years  
ago. Mother was asked if she had used meth or illegal drugs for the last fifteen years, and  
she stated: "If I had used it once, and then I use it again, then that would be for that  
period of time." When asked about the time period between those two uses, Mother

stated: "There were occasions, yes." Mother was asked if she had a meth problem, and she stated: "I would say that anyone that has ever done methamphetamine and did it again would constitute as having a problem, yes. . . . If I did it once and I did it again, then that - - yes, ma'am, I believe I fall in that category that I have a problem."

Mother was asked what she has done about her problem, and she stated: "I've done a lot about that. I've gone to rehab. I go to meetings. I've seen health care professionals. I am - - I've gone to counseling here and there." Mother stated that she has attended AA or NA meetings in Lewisburg, Fayetteville, and in Huntsville. Mother was asked how many times she attended meetings within the last year, and she stated: "Oh, I - - I don't know."

The warrant concerning her arrest in Madison County, Alabama, which was served on Mother on the morning of trial, stated that Mother had a prior conviction in Alabama. Mother, however, insisted that she did not have a prior conviction in Alabama. When asked why the warrant so stated, Mother testified:

The best I can understand after reading that is that they were taking the charge from the - - from that same issue and saying that I had a prior charge of 12 grams of whatever before the charge of the - - that one. Even though - - even though - - even though it reads like - - like you're stating, I have absolutely no convictions in Alabama, nor have I ever. So that is incorrect, if that's what it's trying to state.

Mother was questioned about the warrant and asked if on May 27, 2015 she possessed a controlled substance of more than eight grams but less than 28 grams of methamphetamine. Mother pled the Fifth Amendment to this question. Mother was asked if she was trying to purchase, and she stated: "No, I wasn't trying to purchase anything."

Mother testified that she first went to court on the Alabama charges on July 23, 2015. Mother was asked how long she was in jail in Madison County, Alabama as a result of this arrest, and she stated: "I don't know, a few hours." Mother bonded out on a \$15,000 bond. Mother testified that she paid \$1,500 for the bond.

Mother was arrested in Alabama with John Broadhurst, who also was charged with the same crimes. Mother was asked if she sees Mr. Broadhurst, and she stated: "No. . . . Because I don't - - I don't like him. We're not friends. It's not - - we don't have a relationship like that." Mother was asked why she was with Mr. Broadhurst, and she stated: "I don't - - I don't - - I don't know why I was with him. It was a poor decision on

my part.” Mother testified that Mr. Broadhurst lives in Alabama. Mother denied living in Alabama with Mr. Broadhurst and his mother.

Mother was asked if she had an attorney in Alabama, and she testified that she has a public defender, and that she has not hired an attorney. Mother does not know when her next court date is because she asserted that information is mailed, and she has not yet received it. Mother was asked if she expects her case to be tried, and she stated: “Aren’t all cases tried? . . . I’m saying - - I’m not understanding the question because I thought all cases were tried.” Mother was asked if the case were tried if she expected to win, and she stated: “Yes, ma’am. . . . Because - - I’m just going to plead the Fifth. I don’t know how to answer some of these questions.”

A hair follicle test done on Mother on January 7, 2015 was negative. When questioned with regard to the warrant for violation of probation for failing the drug test in April, Mother invoked the Fifth Amendment. When asked if she had failed that drug test for anything besides meth, Mother stated: “Not that I’m aware of, no, sir.” Mother testified that she had done no drugs other than meth. Mother stated that she could pass a drug test if one were administered on the day of trial.

Mother was asked about her duty to support her child, and she stated:

I would be more than happy to support my child. . . . I’d be more than happy to do it [even without a court order]. . . . I have tried to - - I have tried to buy him things. I have tried to give them money, and they will refuse it or give it back to me. I buy him things when he is at my house. I buy him anything that he wants or needs, and - - and I hold insurance on him, which they refuse to - - to use. So we’re just going to take up TennCare money even though we’re gainfully employed.

Mother insisted that she has tried to give Grandparents money, but they would not accept it. She also testified that she attempted to provide the cards to show that the Child has health, dental, and vision insurance through her job, but Grandparents would not accept the cards. When questioned, Mother admitted that she never tried to mail an insurance card to Grandparents.

Mother was asked what the Child was like, and she stated: “[He] is an amazing little boy. He is so kind. He’s so giving. He’s so hard working. . . . He’s a very good student. He wants nothing more than for people to be proud of him and to like him. . . . He loves sports, all sports. Basketball, football, baseball.” Mother was asked if she spent money on the Child since he has been in the custody of Grandparents, and she stated:

Yeah. I'm talking about any time he would - - he visited me, even though he was in their care, I mean, I - - I paid for everything while he was there. While - - like his - - his uniforms or - - or supplies needed for - - for some of his extracurricular activities. Like, I know his football stuff. At one time, I - - I got - - I paid for all of that. You know, each of the - - each of the sports has fees that's due. There were a couple of times that I paid for those. I mean, anything that I knew about, I was more than happy to pay for or pay half of. The - - the problem is that there's - - you know, there's no communication. There's not - - I'm not given the opportunity to do anything more or contribute more. You know, if I don't - - if I don't know about it, even - - even asking questions sometimes, you know, I get the - - I either don't get an answer or don't get a response, or I get - - get a response that's giving me nothing, so I - - I can't do anything.

Mother testified: "I tried to call my kids every day just to talk to them to let them know that nothing had changed, and Mamma is still there, and Mamma is still thinking about them." Mother testified that she met with resistance when she tried to call every day. She stated: "Oh, every - - . . . every time. Either not answering at all, or answering and hanging up, or mistakenly answering and hearing somebody on the other line." Mother testified that this continued until the Trial Court entered an order allowing her to call only on certain days and at certain times. Mother testified that she maintained regular visitation with the Child until a no contact order was entered in May or June of 2015.

Mother admitted that the last time she saw the Child was before his birthday in June. She also admitted that she does not know who the Child's teacher is. Mother was asked who the Child's teacher was last year, but she could not recall the teacher's name. Mother was asked if the Child had one teacher last year or if he switched classes, and Mother stated: "I think he had one teacher. I'm not positive. Because that's - - you know, that's not because I don't ask questions, or I don't care, or I'm not involved, that's because that's - - that's all the information I - - I could get. I mean, there's no - - . . . ." Mother was asked if she ever tried to call the school to obtain information, and she stated: "No, I didn't. I didn't think that I was allowed to do that. And, I mean, I couldn't even call them and get information, you know, and I got in trouble for - - for calling too many times there."

Mother admitted that the Child has been around Mother's brother, but denied that the Child had ever been around John Broadhurst. When asked why she did this to the Child, Mother stated:



I can assure you it was not on purpose. It was not intentional. And there is no one in this world who is harder on their - - on me than I will ever be because of it. I love my kids more than anything, and I hate myself every day for the mistakes that I've made.

Mother was asked why she put meth before her children, and she stated:

Maybe because no matter what I did, I felt like I wasn't getting anywhere. No matter how hard I tried or how much I begged to see my son, or to get him extra, or to be able to talk to him, or for him to come over, it didn't matter, I was told no, no, no.

Mother was asked why she repeatedly put drugs before her children before they were removed from her custody, and she stated: "I have always taken care of my children. Drug addiction is a mental issue. It's an emotional issue. Just because you have a drug problem does not mean that you don't love or care about the people that you love or care about, period."

Grandfather was 72 years old at the time of trial. He testified that he is retired. Grandfather previously was employed at AAR Corporation in Huntsville. Grandfather testified that his health is good and that Grandmother's health also is good. He further testified that the Child's health is good. The Child wears braces. Grandfather testified that the Child is in counseling at Junior's House and at Centerstone.

Grandfather was asked about the Child's grades, and he stated: "His grades have been good. Well, he just started this year, but last year he received some honors at the end of the school year, and most of the time - - well, all the time he was on the honor roll, most of the time high honor roll."

Grandfather testified that Father plays an active role in the Child's life<sup>3</sup>. Father is an RN at Harton Hospital in Tullahoma. Father visits with the Child at Grandparents' house and is free to come and go. In the past two months Father has seen the Child "[t]wo or three" times. Grandfather testified that since Grandparents were granted custody of the Child, the Child has seen his step-sister McKenna, "[b]ut as far as Meleah, . . . there's too much age difference between them. She's doing her own thing. She's a teenager, and she's doing her own thing with her teenage friends."

Grandfather stated that he and Grandmother have been the sole support for the Child since they got custody. They never have gone to the Child Support office to try to

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<sup>3</sup> Father joined in the petition to terminate Mother's parental rights offering to surrender his own parental rights to the Child so that Grandparents could adopt.

obtain child support from Mother. Grandfather draws Social Security of approximately \$1,980 per month, and he also draws a pension of around \$200 per month. Grandmother also draws Social Security of around \$750 or \$760 per month. Grandparents do not have a mortgage on their house, and they own their vehicles out right.

Grandfather testified that Mother never offered to provide support for the Child. When asked if Mother tried to give money for the Child's care, Grandfather stated:

She would - - she would just - - when she was trying to push him to play ball, play this, do that, well, then she - - "I'll pay the fee," "I'll buy his equipment," and all of this. And the whole sole purpose of that was where she'd get to see him every chance she could at practices and the ballgame. That was her purpose behind it. One, because she was trying to help scotch his activities.

Grandfather admitted that Mother "went to a lot" of the Child's ballgames and also attended practices when she was not working.

Grandfather testified that the Child is not playing these sports anymore. He stated:

And the - - no, and the reason being that he's not playing is because he got some teeth messed up, and his dental health had been denied, or been neglected, I should say, for way before she was ever arrested. And then he got a tooth knocked out with a horseshoe. And then I wound up carrying him because we couldn't find her, wound up carrying him to the dentist to get that tooth seen about, and we wound up we had to pull it then, and then his health has been denied - - neglected ever since then. And we've got him in a program right now that's getting his teeth fixed. Of course, it's an ongoing situation, and we signed enough papers to do that to buy a farm. . . . Well, the thing of it is he got a tooth broke in football, and we're trying to get his teeth in some kind of shape where he'll be halfway presentable and won't be ashamed of himself. We're trying to get his teeth up in good shape where they've been neglected for so long. And, like I said, it's an ongoing situation, and it will - - it will be ongoing for a long time.

Grandfather admitted that the Child's tooth was broken before Mother was arrested, and that this accident happened while the Grandparents were watching the Child. The Child is not involved in any extracurricular activities at this time.

When asked if Mother ever had tried to give them an insurance card, Grandfather stated: "She tried to, but she - - when we got him, he didn't have any insurance, and we

got him on insurance, and we didn't disrupt it on account of the situation being the way it was. We left it the way - - what we had him on." Grandfather testified that the Child was on TennCare.

Grandfather was asked about problems with Mother calling too often, and he stated:

At one point in time, there was a court order of the times that she could call and talk to him, and part of the time she had got to the point where she thought she could call any time she wanted to, and . . . . The Court stopped that.

Grandfather testified that he has seen the Child upset after a visit with Mother. The Child brought home an iPad from a visit with Mother, and Grandfather "found this mushy note from Warren Campbell [to Mother] on it." Grandfather testified that he knows Warren Campbell and stated that Warren Campbell's "got a history as long as from here to Huntsville about meth." Mother denied having any relationship with Warren Campbell. Grandfather was asked if he saw anything else on the iPad, and he stated: "One other thing that somewhere, somehow or another she said that every chance she got she would get him so much money and her so much money on a regular basis. Where that was coming from, I have no idea." Grandfather also saw a mention of Gary Lambert on the iPad. Grandfather testified that the iPad went back to Mother's house and remained there.

Grandfather and Grandmother are willing to take care of the Child until the Child becomes an adult. Grandfather does not believe the Child would be safe with Mother if returned to her custody. Grandfather stated that he does not trust Mother. When asked if he believes Mother, Grandfather stated: "It all depends on what you're saying what I believe. A lot of the stuff I believe, and a lot of it I don't believe. . . . Most of the time, with her track record and here on the stand today, I wouldn't believe her."

Grandfather was asked if he has not wanted Mother to have a relationship with the Child for some time, and he stated:

Well, who would want her to have a relationship with him with her record? I mean, that's like putting a - - . . . . Her arrest - - . . . - - and her conviction, and it had been brought out in court in past that - - how long she had been on meth, and it's a known fact that people that's on meth don't get off of it overnight. Well, in fact, they never get off of it.

After trial, the Trial Court entered its order on September 22, 2015 incorporating by reference its Memorandum Opinion in which it found and held, *inter alia*:

#### FINDINGS OF FACT

The court finds the following facts that relate to its analysis of the case:

1. On July 19, 2013, [Mother] was adjudicated by the Juvenile Court of Lincoln County, Tennessee, as having committed severe abuse on the child that is at issue in this case. Ex. 2.
2. From the time of the adjudication of severe abuse, the Department of Children's Services was relieved of its obligation to aid in the reunification of [Mother] and the child. Ex. 2.
3. The child was placed in the custody of [Grandparents] on July 3, 2013, due to the arrest of his father and the drug charges of the mother, and the child has remained in the custody of [Grandparents] through the present.
4. The Juvenile Court Order outlines the egregious nature of the conduct and the child's access and exposure to the manufacture of methamphetamine. Ex. 2.
5. Near the time of the adjudication, [Mother] enrolled in an inpatient rehabilitation program at Buffalo Valley and court ordered supervised visits began at the rehab facility.
6. For an approximate four month period after leaving Buffalo Valley in August of 2013, [Mother] lived in a halfway house facility.
7. [Mother] began gainful employment in approximately December of 2013.
8. On September 10, 2014, an Agreed Order was entered by the Juvenile Court of Lincoln County, Tennessee, concerning the older child of [Mother]. In that Order, the court found that the threat to the minor child's safety no longer exists to prevent the minor child from being placed in the care of [Mother]. It cites *Tennessee Code Annotated* § 37-1-167. Ex. 4.
9. The September 10, 2014, Order does not address the child at issue in this case and no similar finding has been made by the Juvenile Court concerning this child. See Ex. 4.
10. The petition was filed March 17, 2014.
11. The relevant time period for the court's consideration of grounds exclusive of the finding of severe abuse is the four months immediately preceding the filing of the petition (November 17, 2013, to March 17, 2014).
12. [Mother] has an addiction to methamphetamine which spans 15 years.
13. [Mother] took the fifth amendment to a number of questions surrounding recent activities that have led to her being charged with, but not having been found guilty of, probation violations.

14. [Mother] admitted to failing a drug screen in April of 2015.
15. [Mother] admitted that she had tested positive for methamphetamine when she failed the drug test.
16. [Mother] admitted to having been in the company of John Broadhurst, a known drug user with whom she claims to have no relationship.
17. [Mother] characterizes her recent behavior as a lapse in judgment.
18. [Mother] was served with two warrants for probation violation on the day of the hearing.
19. [Mother] has pending charges in Alabama for which she posted a \$15,000.00 bond.
20. The court notes a marked difference in the appearance of [Mother] on the day of the hearing and her appearance in a Christmas photo of 2014. On the day of the hearing, [Mother] was substantially thinner and appeared to be in much poorer health.
21. [Mother] has not paid any child support on the minor child.
22. During the time that this child has been out of her care, after she got out of rehabilitation, [Mother] has been gainfully employed at two jobs, until recently, and she is presently still employed with Advance Financial.
23. There has been no child support ordered even though the Juvenile Court urged the grandparents to seek support from Child Support Enforcement.
24. [Mother] claims to have purchased items for the child when the child was in her care during visits.
25. [Mother] has carried insurance on the child from her work.
26. [Mother] claims to have paid for extra-curricular activities for the child.
27. Based on the treatment of the child, the child has dental issues that remain unresolved.
28. The child has been removed from his extra-curricular activities by [Grandparents].
29. The stated reason for his removal is that his dental health demands that he not participate in the extra-curricular activities.
30. Petitioner, [Grandfather], testified that he and his wife have a good bonded relationship with the child and that they have sufficient means to raise the child.
31. Petitioners are the Paternal Grandparents of the child.
32. Father has consented to an adoption by his parents.
33. Petitioners intend to allow a relationship between the child and his father going forward even though they are under no legal obligation to do so. They do not intend to allow a relationship between the child and his mother.
34. [Grandfather] acknowledged that [Mother] participated in the child's extra-curricular activities.

35. The child has two older [sic] siblings: Meleah, a sister, who is sixteen years old, and Makenna, a sister, who is ten years old [sic]. Each of the three children has a different biological father.
36. [Grandparents] have taken steps to foster a relationship between the child and the younger sister, Makenna.
37. No real steps have been taken to foster a relationship with the older sister, Meleah. [Grandparents] attribute this lack of effort to the difference in the ages of the siblings.
38. [Mother] is living with her mother and at least one known drug user has frequented that residence during a time when [Mother] has had residential time with the child.
39. [Mother] does not have a home of her own, but chooses to live with her mother.
40. [Mother] does not have her own automobile, and the car that is in her name is driven by the oldest child as her car.
41. [Mother] has chosen methamphetamine over her child.
42. [Grandfather] has refused to take an insurance card from [Mother] in the past.
43. [Grandparents] have the child enrolled in TennCare for insurance purposes.

#### ANALYSIS GROUNDS

Petitioners urge the court to find multiple grounds for terminating the parental rights of [Mother] in this case. In their pleadings, they argue for termination based on abandonment of the child by [Mother] for not visiting the child. They alternatively plead for termination on the ground of abandonment by non-support. Petitioners also argue persistence of conditions as a ground for termination. They lastly allege the statutory ground of a severe abuse finding.

\* \* \*

On this record, Petitioners are not able to make out a case for abandonment of the child based on [Mother's] willful failure to visit the child. The proof in the record shows that [Mother] initially took advantage of the very limited supervised visitation afforded her by the Juvenile Court. There is not clear and convincing proof in the record that [Mother] willfully failed to visit for four months preceding the filing of the petition.

Whether [Mother] willfully failed to pay support for the child is a more difficult analysis. There has never been a court order for the mother to pay a specific amount of support for the child. However, [Mother] has negotiated an

agreed order with Meleah's father that alleviates her support obligation. She pays support on Makenna. [Mother] clearly knows she has an obligation to support the child as evidenced by her attempts to give [Grandparents] insurance cards for the child. She also claims to have paid for extra-curricular expenses for the child. This testimony is not greatly disputed by [Grandparents]. These attempts might best be characterized as token support in light of what it actually costs to raise a child, especially in light of the fact that [Mother] is paying support for another child pursuant to court order. However, out of an abundance of caution, the court is reluctant to find that she has willfully not supported the child.

Petitioners also urge the court to terminate [Mother's] parental rights based on *Tennessee Code Annotated* §36-1-113(g)(3)(A), which is commonly known as persistence of conditions, as a ground for termination.

\* \* \*

In this case, the child has been removed from [Mother] for a period in excess of six months. The conditions that led to the child's removal were the severe abuse perpetrated on the child by [Mother] surrounding her methamphetamine addiction. Subsequent to the finding, [Mother] took substantial steps, on her own without the assistance of DCS, who was under no legal obligation to assist her, to deal with her methamphetamine addiction. She completed a rehabilitation program. She lived in a halfway house. She took on two jobs. She convinced the Juvenile Court and DCS to restore her sharing with her oldest child.

These steps are all substantial steps that can lead to success, but for the fact that [Mother] appears to be in the midst of a significant relapse. She has failed a drug screen. [Mother] admits that she failed the drug screen for methamphetamine. She asserted her Fifth Amendment right not to incriminate herself to all questions surrounding her several outstanding probation violation warrants. The court takes a negative inference from her assertion of those rights and can only conclude that she has been actively using methamphetamine and has returned to the company of known drug users who she was with at the time of her arrest on her Alabama probation violation. Other known drug users have been in the home of her mother where she is living. These lapses are eerily similar to the conditions that led to the removal of the child in the first place. The court is clearly convinced that the conditions that were temporarily remedied by the actions of [Mother] actually persist.

The court is clearly convinced that continuation of the parent child relationship greatly diminishes the chance of an early integration into a safe and stable home . . . . The court's mind rests easy in this conclusion. [Mother's] future is uncertain. She has been charged but not convicted with multiple probation violations. She has failed a drug screen based on methamphetamine use and is in the company of people she should not be around if she was interested in integrating the child back into her life.

For the foregoing reasons the court finds that the grounds of persistence of conditions exist in this case.

Petitioners also urge a finding of grounds pursuant to *Tennessee Code Annotated* §36-1-113(g)(4). It states:

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian.

[Mother] concedes that she has been adjudicated as having perpetrated severe abuse on the child by the Juvenile Court of Lincoln County, Tennessee. The court agrees that given the Juvenile Court's Recitation [sic] of the facts in its order that there was clear and convincing evidence of severe abuse perpetrated on the child by [Mother]. Grounds exist pursuant to *Tennessee Code Annotated* §36-1-113(g)(4).

#### BEST INTERESTS

Since there are grounds for termination of [Mother's] parental rights, the court must next determine whether there is clear and convincing proof that termination of the parental rights of [Mother] is in the child's best interests.

The court must analyze best interests in light of the following statutory factors: [contained in Tenn. Code Ann. § 36-1-113(i)].

\* \* \*



[Mother] has not made such a lasting adjustment to her circumstances, conduct, or conditions as to make it safe for the child to be in her home. Although she had made significant and meaningful progress in this area, she has reverted to conduct that led to the removal of the child in the first place. It cannot be overstated that [Mother] has failed a drug screen for methamphetamine and has taken the Fifth Amendment as to the probation violations that she has been accused of. She has returned to the company of known drug users and some of them have been in the home of her mother where she resides. Her rail thin physical appearance in court stands in stark contrast to her appearance in the Christmas card from 2014. She has clearly chosen her addiction over this child. The court places great weight on this factor in its analysis.

No services have been offered to [Mother] because the Juvenile Court rightfully relieved the Department of Children's Services of the obligation to provide services. The conduct that led to the removal was egregious and directly related to [Mother's] methamphetamine addiction. The second factor is inapplicable because there was no legal obligation to provide services. The court does note the efforts made by [Mother] in this case on her own to try and deal with her addiction. However, those efforts have not proved fruitful and [Mother] has clearly relapsed into the type of behavior that led to the child's removal.

[Mother] has visited with the child to the extent that has been allowed by the court. This factor does not favor termination. Further, [Mother] does have a relationship with her child. This is the strongest factor in her favor.

However, she has chosen to squander that relationship in favor of her addiction. The court places less weight on these two factors due to the dangerous and destructive behavior [Mother] has been engaging in.

The child is in a stable, bonded, drug free home with the Grandparents who desire to adopt him. There is great potential for harm to the child if the child were returned to [Mother] in her present state. She does not have a home of her own and there have been drug users frequenting her mother's home where she resides. The child's medical and emotional needs have been met by the Grandparents.

[Mother] is the perpetrator of severe abuse on this child. She is presently engaged in conduct that mirrors the conduct that led to the Juvenile Court finding that she severely abused her son. She has tested positive for methamphetamine. She is in the company of drug users. Her "lapse" in judgment is much more than

just a momentary mistake. This factor weighs heavily in favor of termination.

[Mother] lives with her mother. This home is not a healthy and safe physical environment for the child. Drug users have been in the home. Neither [Mother] nor her mother have [sic] expelled the drug users from the house. [Mother] is clearly in a place where she has resorted to use of illegal drugs which renders her unable to competently care for her child.

Mother's mental or emotional state is not at issue with the exception of the choice she has made to reengage her addiction. This factor does not favor termination.

Lastly, [Mother] knows that she should have been paying child support. She has not paid support according to the guidelines. She pays support on another child. This factor favors termination although the court gives it lesser weight.

All of these factors when viewed together clearly and convincingly favor termination.

[Mother] urges the court to consider several additional facts that go to best interests. The child has two siblings. Grandparents have not promoted a relationship with the 16 year old sibling due to the difference in their ages. They have promoted a relationship with the other sister who is much closer in age to the child.

[Mother] also complains that [Grandparents] have willfully failed to promote a relationship between the child and her. It is clear that the Grandparents are reluctant to trust [Mother] and have acted accordingly. Their fear of [Mother's] return to drug use has manifested itself in the conduct of [Mother].

[Mother] is repulsed by the change in the sibling status that would be created if the Grandparents are allowed to adopt. This argument is a red herring. Although it sounds repugnant, the court must guard for the best interests of the minor child. Father has consented to the adoption. Everyone understands that as it relates to the child's legal status that it is accomplished by operation of law in this instance.

The court is not impressed with the answers of Grandfather when he was questioned about what information was given in his TennCare application to obtain insurance on the minor child. Further, the application was unnecessary as

mother had insurance through her work. These answers indicate how hard it has been for mother to try and have a meaningful relationship with this child. He has clearly been obstructionist. As it turns out his instincts were correct. [Mother] has resumed her life in the drug culture and clearly should not be trusted around the child in her present state.

The reasons given for removing the child from his extra-curricular activities are objectively sound. The court suspects that the true motive for removal is to ensure less contact with Mother. That being said, there has been no petition filed by Mother that the court is aware of to have this decision reviewed either in this court or in the Juvenile Court.

Grandfather should not have refused the insurance card provided by mother. His stubborn refusal to accept anything from Mother has made this situation more difficult.

Grandparents have clearly refused to promote a relationship with Mother. Reviewing the Juvenile Court order, which outlines what this child was subjected to, provides a reasonable basis for their refusal to promote a relationship with [Mother]. Also, the Grandparents followed the court orders concerning visitation even in the face of this knowledge.

These arguments, which were exploited to their fullest extent by [Mother's] able counsel, do not disturb the court's conclusion. There is no substantial doubt in the court's mind that it is in the best interest that [Mother's] parental rights be terminated.

## CONCLUSION

For the foregoing reasons the court finds that grounds for termination exist and that it is in the best interests of the child for [Mother's] parental rights to be terminated.

Mother appeals the termination of her parental rights to the Child to this Court.

## Discussion

Although not stated exactly as such, Mother raises four issues on appeal: 1) whether the Trial Court erred by failing to timely enter an order; 2) whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown

that grounds existed to terminate Mother's parental rights to the Child for persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3); 3) whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown that grounds existed to terminate Mother's parental rights to the Child for severe abuse pursuant to Tenn. Code Ann. § 36-1-113(g)(4); and, 4) whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown that it was in the Child's best interest for Mother's parental rights to be terminated.

Grandparents raise an issue regarding whether the Trial Court erred in denying their motion to supplement the record with post-judgment facts. After the Trial Court denied this motion, Grandparents filed a "Renewal Motion to Supplement the Record" in this Court. By order entered February 11, 2016, we denied this motion. Our disposition of the issues raised by Mother, as will be discussed below, render moot the issue raised by Grandparents with regard to their motion to supplement. We, therefore, need not address this issue further.

As our Supreme Court recently instructed:

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.<sup>4</sup> *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. "When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it." *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388. "Few

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<sup>4</sup> U.S. Const. amend. XIV § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."). Similarly, article 1, section 8 of the Tennessee Constitution states "[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

consequences of judicial action are so grave as the severance of natural family ties.” *Id.* at 787, 102 S.Ct. 1388; *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are “far more precious than any property right.” *Santosky*, 455 U.S. at 758-59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(1)(1); *see also Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is “*final* and irrevocable”). In light of the interests and consequences at stake, parents are constitutionally entitled to “fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

Among the constitutionally mandated “fundamentally fair procedures” is a heightened standard of proof – clear and convincing evidence. *Santosky*, 455 U.S. at 769, 102 S.Ct. 1388. This standard minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights. *Id.*; *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010). “Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005).

Tennessee statutes governing parental termination proceedings incorporate this constitutionally mandated standard of proof. Tennessee Code Annotated section 36-1-113(c) provides:

Termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

- (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

This statute requires the State to establish by clear and convincing proof that at least one of the enumerated statutory grounds<sup>5</sup> for termination exists and that termination is in the child’s best interests. *In re Angela E.*, 303 S.W.3d at 250; *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination.” *In re Angela E.*, 303 S.W.3d at 254. Although several factors relevant to the best interests analysis are statutorily enumerated,<sup>6</sup> the list is illustrative, not exclusive. The parties are free to offer proof of other relevant factors. *In re Audrey S.*, 182 S.W.3d at 878. The trial court must then determine whether the combined weight of the facts “amount[s] to clear and convincing evidence that termination is in the child’s best interest.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). These requirements ensure that each parent receives the constitutionally required “individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Furthermore, other statutes impose certain requirements upon trial courts hearing termination petitions. A trial court must “ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child.” Tenn. Code Ann. § 36-1-113(k). A trial court must “enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” *Id.* This portion of the statute requires a trial court to make “findings of fact and conclusions of law as to whether clear and convincing evidence establishes the existence of each of the grounds asserted for terminating [parental] rights.” *In re Angela E.*, 303 S.W.3d at 255. “Should the trial court conclude that clear and convincing evidence of ground(s) for termination does exist, then the trial court must also make a written finding whether clear and convincing evidence establishes that termination of [parental] rights is in the [child’s] best interests.” *Id.* If the trial court’s best interests analysis “is based on additional factual findings besides the ones made in conjunction

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<sup>5</sup> Tenn. Code Ann. § 36-1-113(g)(1)-(13).

<sup>6</sup> Tenn. Code Ann. § 36-1-113(i).

with the grounds for termination, the trial court must also include these findings in the written order.” *Id.* Appellate courts “may not conduct de novo review of the termination decision in the absence of such findings.” *Id.* (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n.15 (Tenn. Ct. App. 2007)).

### ***B. Standards of Appellate Review***

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. *In re Bernard T.*, 319 S.W.3d at 596-97. 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 Adoption of 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 507, 521-24 (Tenn. 2016) (footnotes in original but renumbered), *petition for cert. filed sub nom. Vanessa G. v. Tennessee Dep’t of Children’s Servs.*, \_\_\_ U.S. \_\_\_ (U.S. April 27, 2016) (No. 15-1317) .

We first consider whether the Trial Court erred by failing to timely enter an order. In pertinent part, Tenn. Code Ann. § 36-1-113(k) provides:

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. . . .

Tenn. Code Ann. § 36-1-113(k) (Supp. 2015).

Mother argues in her brief on appeal that the Trial Court entered its final order 42 days after trial and that this failure to comply with Tenn. Code Ann. § 36-1-113(k) fatally undermines the validity of the order. This Court addressed the issue of whether the failure to enter a final order within thirty days affects the validity of the order in *In re: M.R.W., T.D.B., and A.N.B.*, wherein we stated:

Although we agree with Mother that § 36-1-113(k) evidences the General Assembly's mandate that parental termination cases be adjudicated as expeditiously as possible, we disagree that the trial court's failure to enter its order within thirty days requires that its order be vacated. The trial court's failure to comply with the section insofar as it requires the trial court to make written findings of fact and conclusions of law generally results in remand of the matter on appeal. *See White v. Moody*, 171 S.W.3d 187 (Tenn. Ct. App. 2004). It does not result in loss of jurisdiction by the trial court. *See id.* Rather, in those cases, the matter is remanded for the trial court to make written findings of fact and conclusions of law that then may be reviewed by the appellate courts. *See id.*

Likewise, the trial court's failure to comply with the portion of the section that directs it to enter an order within thirty days of the hearing does not divest the trial court of its jurisdiction. Moreover, in the case now before us, where the trial court has made definite and detailed findings of fact and conclusions of law, remand on appeal as requested by Mother would serve no purpose. However, we again emphasize the urgency of parental termination actions and urge the trial courts to enter their final orders, including written findings of fact and conclusions of law, within the thirty-day period prescribed by 36-1-113(k).

*In re: M.R.W., T.D.B., and A.N.B.*, No. M2005-02329-COA-R3-PT, 2006 WL 1184010, at \*\*3-4 (Tenn. Ct. App. May 3, 2006), *no appl. perm. appeal filed*.<sup>7</sup>

As was the case in *In re: M.R.W., T.D.B., and A.N.B.*, the Trial Court in the case now before us entered detailed and specific findings of fact and conclusions of law. It entered them, however, after the thirty-day period provided for in the statute. We do not find the Trial Court's failure to enter its final order within thirty days of the conclusion of

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<sup>7</sup> The order at issue in *In re: M.R.W., T.D.B., and A.N.B.*, was entered more than fifty days post-hearing. *In re: M.R.W., T.D.B., and A.N.B.*, 2006 WL 1184010, at \*2. The order in the case now before us was entered 42 days post-hearing.



the hearing to fatally affect the validity of the order, but we again take this opportunity to caution trial courts to comply with Tenn. Code Ann. § 36-1-113(k).

We next consider whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown that grounds existed to terminate Mother's parental rights to the Child for persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3), which provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

\* \* \*

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent or parents or guardian or guardians, still persist;

(B) 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 parents or the guardian or guardians in the near future; and

(C) 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) (Supp. 2015).

With regard to this issue, the Trial Court specifically found and held:

In this case, the child has been removed from [Mother] for a period in excess of six months. The conditions that led to the child's removal were the severe abuse perpetrated on the child by [Mother] surrounding her methamphetamine addiction. Subsequent to the finding, [Mother] took substantial steps, on her own without the assistance of DCS, who was under no

legal obligation to assist her, to deal with her methamphetamine addiction. She completed a rehabilitation program. She lived in a halfway house. She took on two jobs. She convinced the Juvenile Court and DCS to restore her sharing with her oldest child.

These steps are all substantial steps that can lead to success, but for the fact that [Mother] appears to be in the midst of a significant relapse. She has failed a drug screen. [Mother] admits that she failed the drug screen for methamphetamine. She asserted her Fifth Amendment right not to incriminate herself to all questions surrounding her several outstanding probation violation warrants. The court takes a negative inference from her assertion of those rights and can only conclude that she has been actively using methamphetamine and has returned to the company of known drug users who she was with at the time of her arrest on her Alabama probation violation. Other known drug users have been in the home of her mother where she is living. These lapses are eerily similar to the conditions that led to the removal of the child in the first place. The court is clearly convinced that the conditions that were temporarily remedied by the actions of [Mother] actually persist.

The court is clearly convinced that continuation of the parent child relationship greatly diminishes the chance of an early integration into a safe and stable home . . . . The court's mind rests easy in this conclusion. [Mother's] future is uncertain. She has been charged but not convicted with multiple probation violations. She has failed a drug screen based on methamphetamine use and is in the company of people she should not be around if she was interested in integrating the child back into her life.

For the foregoing reasons the court finds that the grounds of persistence of conditions exist in this case.

Mother argues in her brief on appeal that she “passed every drug screen from October 2013 until April 2015 and there is no evidence that she failed any drug screens after April 2015.” Mother further argues that her oldest daughter was returned to her care by order of the Juvenile Court, that Mother denied knowing certain men, that there is no evidence that certain men have been in Mother's home, and that Mother has only two probation violation charges, one for the failed drug screen and one for her arrest in Alabama, not multiple violations. This characterization of the evidence, however, is disingenuous.

The evidence in the record on appeal, as discussed more fully above, does not preponderate against the Trial Court's finding that despite taking steps toward addressing her methamphetamine addiction, Mother “appears to be in the midst of a significant relapse.”

The evidence shows that Mother failed a drug screen in April of 2015 by testing positive for methamphetamine use, that Mother has been in the company of known drug users, that Mother's brother with whom she lives has a criminal record, whether that record is simply for DUI as Mother asserts or for other drug use, and that Mother was arrested in Alabama in May of 2015. At the time that Mother failed the drug screen and then was arrested in Alabama, the Child had been out of Mother's custody for almost two years. Furthermore, the Trial Court, who had the opportunity to observe the witnesses in person, specifically found that: "The court notes a marked difference in the appearance of [Mother] on the day of the hearing and her appearance in a Christmas photo of 2014. On the day of the hearing, [Mother] was substantially thinner and appeared to be in much poorer health." The Trial Court found that Mother "has chosen methamphetamine over her child."

The evidence in the record on appeal does not preponderate against the Trial Court's findings made by clear and convincing evidence that grounds were proven to terminate Mother's parental rights to the Child for persistent conditions. We find and hold that clear and convincing evidence was shown that grounds exist to terminate Mother's parental rights to the Child for persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

Next, we consider whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown that grounds existed to terminate Mother's parental rights to the Child for severe abuse pursuant to Tenn. Code Ann. § 36-1-113(g)(4). As pertinent, Tenn. Code Ann. § 36-1-113(g)(4) provides:

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;

Tenn. Code Ann. § 36-1-113(g)(4) (Supp. 2015).

Specifically, the Trial Court found and held:

[Mother] concedes that she has been adjudicated as having perpetrated severe abuse on the child by the Juvenile Court of Lincoln County, Tennessee. The court agrees that given the Juvenile Court's Recitation [sic] of the facts in its order that there was clear and convincing evidence of severe abuse perpetrated on the child by [Mother]. Grounds exist pursuant to *Tennessee Code Annotated* §36-1-113(g)(4).

We need not reiterate in detail the findings made by the Juvenile Court in its July 19, 2013 order finding that Mother had perpetrated severe abuse upon the Child as this order is quoted more fully above. This order was not appealed. Furthermore, the Trial Court in its order agreed “that given the Juvenile Court’s Recitation [sic] of the facts in its order that there was clear and convincing evidence of severe abuse perpetrated on the child by [Mother].” The evidence in the record on appeal, as discussed more fully above, does not preponderate against the Trial Court’s finding that grounds were proven to terminate Mother’s parental rights to the Child for severe abuse. We find and hold that clear and convincing evidence was shown that grounds existed to terminate Mother’s parental rights to the Child for severe abuse pursuant to Tenn. Code Ann. § 36-1-113(g)(4).

Finally, we consider whether the Trial Court erred in finding and holding that clear and convincing evidence had been shown that it was in the Child’s best interest for Mother’s parental rights to be terminated. When making its determination regarding the best interest of a child, a court is to consider the list of non-exclusive factors contained in Tenn. Code Ann. § 36-1-113(i). We will not reiterate the Trial Court’s findings with regard to this issue as they are quoted fully above. The Trial Court considered all of the relevant factors and found that clear and convincing evidence existed that it was in the Child’s best interest for Mother’s parental rights to be terminated.

In her brief on appeal Mother argues that the Trial Court misapplied the factors. Mother argues that because she denied having relationships with drug users, denied knowing about her brother’s criminal charges, and denied having drug users in her home, that the record does not support the Trial Court’s findings. This argument hinges, in large part, upon witness credibility. “When credibility and weight to be given testimony are involved, considerable deference must be afforded to the trial court when the trial judge had the opportunity to observe the witnesses’ demeanor and to hear in-court testimony.” *Hughes v. Metro. Gov’t of Nashville and Davidson County*, 340 S.W.3d 352, 360 (Tenn. 2011). The Trial Court implicitly found Mother to be not credible with regard to some of her testimony, particularly with regard to Mother’s return to the company of known drug users. The Trial Court found that Mother’s asserted “‘lapse’ in judgment is much more than just a momentary mistake.” The evidence in the record on appeal does not preponderate against the Trial Court’s findings relative to this issue. We find and hold that clear and convincing evidence was shown that it was in the Child’s best interest for Mother’s parental rights to be terminated.

### **Conclusion**

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the

appellant, Deanna R.H.B., and her surety.

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D. MICHAEL SWINEY, CHIEF JUDGE