IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 27, 2014

IN RE NICHOLAS G., ET AL.

Appeal from the Circuit Court for Gibson County
No. 8686 Clayburn Peeples, Judge

No. W2014-00309-COA-R3-PT - Filed July 31, 2014

This is a termination of parental rights case. Appellant/Mother appeals the trial court's termination of her parental rights on grounds of: (1) abandonment pursuant to Tennessee Code Annotated Sections 36-1-113(g)(1) as defined by Tennessee Code Annotated Sections 36-1-102(1)(A)(i) and (ii); and (2) substantial non-compliance with the permanency plans pursuant to Tennessee Code Annotated Section 36-1-113(g)(2). We conclude that the grounds for termination of Mother's parental rights are met by clear and convincing evidence in the record, and that clear and convincing evidence also exists that termination of Mother's parental rights is in the children's best interests. Affirmed and remanded.

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

J. STEVEN STAFFORD, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J.,W.S., and DAVID R. FARMER, J., joined.

Harold R. Gunn, Humboldt, Tennessee, for the appellant, Kimberly H.

Robert E. Cooper, Jr., Attorney General and Reporter; and Kathryn A. Baker, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

I. Background

Appellant Kimberly H. ("Mother," or "Appellant") and Daniel G. ("Father") are the biological parents of the four minor children at issue in this case: Nicholas G. (born in 1997), Andrew G. (born in 1999), Sara G. (born in 2004), and Lily G. (born in 2007).[1] The children initially resided with Mother. On August 11, 2011, the children were removed from Mother's custody by an emergency protective custody order entered in the Gibson County Juvenile Court. Mother's history with various child protective services began well before August 2011.

In 2005, Mother and Father separated and Mother moved with the children from Ohio to Michigan. Father remained in Ohio. In 2006, Nicholas and Andrew visited Father in Ohio; during that visit, Father committed severe child abuse against them. As a result, Father was sentenced to four years in prison, and the children were removed from Mother's custody. The Ohio court ordered Mother to obtain stable housing and employment. Mother was also ordered to undergo alcohol and drug assessment, and to attend parenting classes. In March 2008, the Ohio court returned custody of the children to Mother.

After moving to Michigan in 2005, Mother moved several times in that state, and then moved to Florida. Mother testified that she moved to Florida so that her fiancé could obtain employment; however, that relationship ultimately ended, and Mother returned to Michigan with the children. On July 1, 2011, Mother and the children moved to Tennessee.

The instant case began with the removal that occurred on August 11, 2011 after Nicholas assaulted his Mother and brother Andrew. As a result, a domestic abuse charge was filed against Nicholas. At the hearing on August 11, 2011, the Juvenile Court issued an emergency protective order to remove all of the children from Mother's household. Specifically, the court found probable cause that: (1) the children were in need of the immediate protection of the court; (2) the children were dependent and neglected; and (3) it was in the best interests of the children to be temporarily placed in the custody of the State of Tennessee Department of Children's Services ("DCS," or "Appellee"). After obtaining custody of the children, DCS placed them in foster care.

On September 15, 2011, DCS developed the first permanency plan. This plan was ratified by the court on January 10, 2012. The plan required Mother to visit the children on weekends, and also required her to pay child support in the amount of $25 per week per child. In addition, Mother was required to maintain suitable housing, and to ensure that the children's basic needs were met, including care for the children while Mother was at work. Mother was present during the development of the plan, and she signed the plan, indicating

[1] It is the policy of this court to use the initials of children and parties involved in termination actions to protect the privacy of the children involved.

that she had "participated in the development of the permanency and/or the permanency plan [had] been discussed with [her]."

On October 26, 2011, the Juvenile Court entered an order, finding clear and convincing evidence that the children were dependent and neglected. The court required Mother to complete a mental health intake, and to follow all recommendations. DCS contends that it offered to assist Mother in obtaining the mental health intake, but Mother testified that she does not remember this offer. Regardless, in November 2011, within three months of the children's removal, Mother relocated to Arkansas. DCS allegedly advised against Mother's relocation, but Mother stated that she would return at the end of the school year in order to regain custody of the children. At trial, Mother testified that she moved to Arkansas to find work; at the time of trial, Mother had moved twice and had held five different jobs since her move to Arkansas.

On May 21, 2012, the permanency plan was revised; the plan was ratified by the trial court on July 31, 2012. The revised plan required Mother to complete a mental health intake, and to have consistent, in-person visits with the children. These requirements were in addition to those required under the original permanency plan. Mother signed and acknowledged the revised plan. Eventually, three more permanency plans were created: (1) the January 7, 2013 plan; (2) the July 29, 2013 plan; and (3) the January 2, 2014 plan. Neither the January 7, 2013 plan, nor the January 2, 2014 plan were presented to the court for ratification. However, the July 29, 2013 plan was ratified on September 17, 2013. Mother participated in the creation of the July 29, 2013 plan by phone. The requirements contained in the July 29, 2013 plan were substantially the same as those contained in the May 21, 2012 plan. At trial, Mother admitted to participating in the creation of all of the permanency plans except the January 7, 2013 plan (which was never ratified). When asked what was required of her under these plans, Mother admitted that she was required to submit to a mental health assessment, to obtain stable housing, to pay child support, to have consistent visits with the children, and to develop a plan of supervision for the children while she was at work.

On January 28, 2013, DCS filed a petition to terminate parental rights, which petition was heard on January 25, 2014. By order of February 14, 2014, the circuit court terminated Mother's parental rights on grounds of: (1) abandonment by both willful failure to provide support, and failure to provide suitable housing; and (2) substantial non-compliance with the permanency plans.[2] The court also found, by clear and convincing evidence, that termination of Mother's parental rights was in the children's best interests.

[2] Father's parental rights to the children were terminated by the same order; however, he did not appeal. Accordingly, Mother is the sole Appellant in this case.

II. Issues

Mother appeals. There are two issues for review, which we state as follows:

> 1. Whether clear and convincing evidence supports the trial court's grounds for termination of Mother's parental rights?
>
> 2. Whether clear and convincing evidence supports the trial court's finding that termination of Mother's parental rights is in the children's best interests?[3]

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[3] As a point of practice, we note that Mother's appellate brief is woefully deficient First, the "Table of Authorities," cites only the termination of parental rights statute, and Tennessee Rule of Appellate Procedure 3 (for jurisdictional grounds), but lists no relevant case law. The "argument" section of the brief consists of three pages. After reiterating the trial court's grounds for termination, Mother's attorney makes statements such as "Defendant [] testified that she did support her children and that it came out of her paycheck," and "Mother[] denied and/or explained each and every allegation charged to her by [DCS] but the trial court terminated her rights. . . ." Not only does Mother's attorney fail to cite to any case law, but he also fails to cite to any specific portions of the appellate record. We first refer Mother's attorney to Tennessee Rule of Appellate Procedure 27 "Content of Briefs," and particularly Rule 27(a)(7), requiring citation to the record in the argument section of the brief. We also refer Mother's attorney to Court of Appeals Rule 6(b), which provides, in relevant part, that "[n]o complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record," and that "[n]o assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded."

This Court has repeatedly held that the failure to include citation to the record or to appropriate supporting authority in the argument section of the brief is a waiver of the issue on appeal. *See, e.g* ., ***Bean v. Bean***, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) ("Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue."); ***Owen v. Long Tire, L.L.C.***, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011) ("This Court is under no duty to verify unsupported allegations in a party's brief, or for that matter consider issues raised but not argued in their brief."). Although our usual course would be to dismiss this appeal for lack of proper briefing, given the sensitive nature of the case and the fact that it involves the lives of four children, we exercise our discretion under Rule 2 of the Tennessee Rules of Appellate Procedure to address the issues substantively. Tenn. R. App. P. 2 ("For good cause, including the interest of expediting decision upon any matter, the . . . Court of Appeals . . . may suspend the requirements or provisions of any of these rules in a particular case on motion of a party or on its motion and may order proceedings in accordance with its discretion."). In this case, we are presented with a thorough appellate record, which contains all of the information necessary to properly adjudicate the case on its merits. Although Mother's brief is of no help in this appeal, and although we caution her attorney to comply with the mandatory rules of briefing should he appear before this Court in the future, our decision herein is not influenced by the inadequate briefing, and the shortcomings of her

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III. Standard of Review

Under both the United States and Tennessee Constitutions, a parent has a fundamental right to the care, custody, and control of his or her child. ***Stanley v. Illinois***, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L. Ed.2d 551 (1972); ***Nash-Putnam v. McCloud***, 921 S.W.2d 170, 174 (Tenn.1996). Thus, the state may interfere with parental rights only if there is a compelling state interest. ***Nash-Putnam***, 921 S.W.2d at 174–75 (citing ***Santosky v. Kramer***, 455 U.S. 745, 102 S.Ct. 1388, 71 L. Ed.2d 599 (1982)). Our termination statutes identify "those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought." ***In re Dominique L.H.***, 393 S.W.3d 710, 715 (Tenn. Ct. App. 2012) (quoting ***In re W.B.***, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at *7 (Tenn. Ct. App. Apr.29, 2005)). 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. Tenn. Code Ann. § 36-1-113(c); ***In re D.L.B.***, 118 S.W.3d 360, 367 (Tenn.2003); ***In re Valentine***, 79 S.W.3d 539, 546 (Tenn. 2002).

Because of the fundamental nature of the parent's rights and the grave consequences of the termination of those rights, courts must require a higher standard of proof in deciding termination cases. ***Santosky***, 455 U.S. at 769. Consequently, both the grounds for termination and the best interest inquiry must be established by clear and convincing evidence. Tenn. Code Ann. § 36-3-113(c)(1); ***In re Valentine***, 79 S.W.3d at 546. Clear and convincing evidence "establishes that the truth of the facts asserted is highly probable . . . and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence." ***In re M.J.B.***, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). Such evidence "produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established." ***Id***. at 653.

In light of the heightened standard of proof in termination of parental rights cases, a reviewing court must modify the customary standard of review as set forth in Tennessee Rule of Appellate Procedure 13(d). As to the trial court's findings of fact, our review is *de novo* with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). We must then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the

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attorney will not, in any way, prejudice this Court against Mother. Rather, we rely upon the record and the relevant law as cited herein in reaching our decision.

elements necessary to terminate parental rights. ***Jones v. Garrett***, 92 S.W.3d 835, 838 (Tenn. 2002).

IV. Grounds for Termination of Mother's Parental Rights

A. Abandonment by Willful Failure to Support

Tennessee Code Annotated Section 36-1-1-113(g)(1) provides that initiation of termination of parental rights may be based upon "[a]bandonment by the parent or guardian, as defined in § 36-1-102." Tennessee Code Annotated Section 36-1-102(1)(A)(i) defines "abandonment," in relevant part, as follows:

> For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child; . . . .

For purposes of this subdivision, "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means the "willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child." Tenn. Code Ann. § 36-1-102(1)(D).[4] This Court has explained:

> "Willfulness" does not require the same standard of culpability required by the penal code. Nor does it require malevolence or ill will. Willful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent. Conduct is "willful" if it is the product of free will rather than coercion. Thus, a person acts "willfully" if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.

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

[4] Token support means that "the support, under the circumstances of the individual case, is insignificant given the parent's means." Tenn. Code Ann. § 36-1-102(1)(B).

A parent acknowledges her duty to support a child by signing a Criteria and Procedure for Termination of Parental Rights. ***In re: M.J.J.***, No. M2004-02759-COA-R3-PT, 2005 WL 873305, at *5 (Tenn. Ct. App. April 14, 2005). The obligation to pay child support exists even without a court order requiring the payment of child support. ***State, Dep't of Children's Servs. v. Culbertson***, 152 S.W.3d 513, 523-34 (Tenn. Ct. App. 2004).

As defined in Tennessee Code Annotated Section 36-1-102(1)(A)(i), *supra*, the four month time period for the ground of willful failure to visit or support is the four months immediately preceding the filing of the petition to terminate parental rights. As noted above, the petition to terminate Mother's parental rights in this case was filed on January 28, 2013, making the relevant four-month period from September 28, 2012 to January 28, 2013.

In its February 14, 2014 order, the trial court made the following, specific findings concerning the ground of abandonment by willful failure to support:

> In the September 15, 2011 permanency plan for these children adopted as an order of the Juvenile Court on January 10, 2012, [Mother] was required to pay $25 per week in support for the minor children. The mother testified that in the 4 months prior to the Petition to Terminate Parental Rights being filed, from September 28, 2012, until January 28, 2013, she did not pay any support for the minor children. She testified that she was aware the requirement was in the permanency plan however, she did not pay the support for the minor children. She further testified at length about her employment history while the children were in DCS custody and stated that she was able to support the children. [Mother] signed a statement verifying that she received an explanation of those consequences of her failure to support the children on May 21, 2012.

Turning to the record, it appears that Mother was aware of her duty to provide support to these children. The September 15, 2011 permanency plan, which was ratified on January 10, 2012, sets forth Mother's obligation to pay child support: "[M]other. . . will pay the amount of $25.00 per week. . . until . . . assess[ment] by child support services. . . ." It is undisputed that Mother was present during the formation of this plan, and she signed the first permanency plan, confirming that she had "participated in the development of the permanency plan and/or the permanency plan [had] been discussed with [her]." Additionally, during her testimony, Mother stated that she "recall[ed] that [paying $25 per child per week in support] was the idea" in the permanency plan. On May 21, 2012, the permanency plan

was revised; the revised plan was ratified on July 31, 2012. This revised plan included the same child support requirement. Mother signed the revised plan, acknowledging that she understood and agreed with the plan. On May 21, 2012, Mother also signed the Criteria and Procedures for Termination of Parental Rights associated with the plan. Despite her acknowledgment, Mother testified that she did not pay child support between September 28, 2012 and January 28, 2013.

During the relevant time period, Mother testified that she was employed at Huddle House (from August to December 2012). After that, Mother was employed at Teleflora until January 2014. At the time of the trial, Mother stated that she was working at Anchor Packaging "in the clerical department for $10.00 per hour." During this time, Mother's gross, weekly salary was $400; according to her testimony, her net salary was approximately $200 per week. Although Mother was earning an income during the pendency of the case, when asked why she did not pay support for the children, Mother responded that she was "not the one who chose to put [her] children in foster care." Mother contends that the failure to support ground is not met because the $25 child support was taken from her paychecks. However, a review of the record reveals that the deductions from Mother's paycheck did not begin until June 2013, which is outside the relevant, four-month period.

From the record as a whole, we conclude that there is clear and convincing evidence to support the ground of abandonment by willful failure to provide child support.

B. Abandonment by Failure to Establish a Suitable Home

Tennessee Code Annotated Section 36-1-102(1)(A)(ii) further defines "abandonment" for purposes of termination of parental rights as follows:

> (ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or

> guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

It is well settled that a "suitable home" requires more than adequate "physical space;" it requires that the appropriate care and attention be given to the children. ***In re A.D.A.***, 84 S.W.3d 592, 599 (Tenn. Ct. App. 2002). This Court has recognized that the failure of a parent to comply with counseling requirements is "directly related to the establishment and maintenance of a suitable home." ***In re M.F.O.***, No. M2008-01322-COA-R3-PT, 2009 WL 1456319, at *5 (Tenn. Ct. App. May 21, 2009). Furthermore, this Court has acknowledged that the presence of domestic violence may make a home unsuitable. ***DCS v. J.C.***, No. E2008-00510-COA-R3-PT, 2008 WL 3539736 (Tenn. Ct. App. Aug. 14, 2008); *see also* ***In re Jeffery B.***, No. W2012-00924-COA-R3PT, 2012 WL 4854719, (Tenn. Ct. App. Oct. 12, 2012) (citing ongoing domestic violence as evidence that the home remained unsuitable).

Here, the children were removed from Mother's custody on August 11, 2011 by emergency protective order. Accordingly, the relevant time-period for abandonment under the definition at Tennessee Code Annotated Section 26-1-102(1)(A)(ii) would be from August 11, 2011 to December 11, 2011. Mother testified that, during those four months, she was not able to maintain stable housing. In November 2011, Mother moved to Arkansas. Since moving, Mother testified that she had moved twice and had held five different jobs.

In addition, while living in Arkansas, Mother married her current husband. However, at trial, Mother testified that she is no longer living with him because he committed domestic violence against her, and further admitted that the police had been called to the residence "quite a few" times. Mother also testified that her step-daughter committed violence against Mother. Despite these domestic issues, Mother testified that she and her husband are still married, although she indicated plans to consult with Legal Aid about a divorce.

The record reveals that Mother's history of domestic instability began well before these proceedings. At trial, Mother admitted that, between 1999 and 2004, she was investigated several times by the State of Michigan for physical neglect, improper

supervision, inappropriate discipline, and leaving the children with other people. From the record, it does not appear that Mother has remedied the instability in her home. Furthermore, based upon Mother's current domestic issues, it appears that her situation may actually have deteriorated since the filing of the petition to terminate her parental rights. Moreover, despite DCS's attempt to conduct a home study of Mother's Arkansas residence, *see* discussion *infra*, Mother's failure to cooperate with that process has resulted in a lack of any information in the record concerning the exact condition and circumstances of Mother's current home. From the totality of the circumstances, we conclude that there is clear and convincing evidence in the record to support this ground for termination of Mother's parental rights.

C. Substantial Non-Compliance with the Permanency Plans

Mother's parental rights were also terminated on the ground of failure to substantially comply with her responsibilities as set out in the permanency plans. Tenn. Code Ann. § 36-1-113(g)(2). As discussed by this Court in ***In re M.J.B.***, 140 S.W.3d 643 (Tenn. Ct. App. 2004):

> Terminating parental rights based on Tenn. Code Ann. § 36-1-113(g)(2) requires more proof than that a parent has not complied with every jot and tittle of the permanency plan. To succeed under Tenn. Code Ann. § 36-1-113(g)(2), the Department must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place, ***In re Valentine***, 79 S.W.3d at 547; ***In re L.J.C.***, 124 S.W.3d 609, 621 (Tenn. Ct. App.2003), and second that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. ***In re Valentine***, 79 S.W.3d at 548-49; ***In re Z.J.S.***, 2003 WL 21266854, at *12. Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance. ***In re Valentine***, 79 S.W.3d at 548; ***Department of Children's Servs. v. C.L.***, No. M2001-02729-COA-R3-JV, 2003 WL 22037399, at *18 (Tenn. Ct. App. Aug. 29, 2003) (No Tenn. R. App. P. 11 application filed).

Id. at 656–57.

As set out in more detail above, Mother's responsibilities under the parenting plans include: (1) maintain stable housing, (2) pay child support, (3) undergo a mental health evaluation and comply with the recommendations thereof, (4) maintain positive visitation with the children, and (5) have a plan of supervision for the care of the children while Mother is at work . These plans were ratified by the court, and, following our review, we agree that the plans are reasonable and related to the reasons that the minor children came into custody. Despite the fact that she participated in the majority of the staffings, and signed the plans, the record demonstrates that she has failed to substantially comply with any of her plan requirements**.**

We have already discussed Mother's failure to provide suitable housing, and her failure to pay child support above. Concerning the mental health intake requirement, Mother admitted that she had never obtained the assessment, but stated that she could not afford to do so. As noted above, Mother was employed, but she did not have insurance. The record indicates that the assessment would cost $200. The record also indicates that DCS offered to assist Mother in obtaining her mental health assessment; Mother testified that she did not remember this offer. Mother further stated that she could not save $200 for the assessment, even over the two-and-one-half year period that the requirement was pending prior to the filing of the petition to terminate her parental rights.

Mother also failed to maintain consistent visitation with the children. Before she moved to Arkansas, Mother was participating in therapeutic visitation with the children. DCS made arrangements for these visits, and Mother testified that she worked with DCS to coordinate the visits. However, the record reveals that Mother has not exercised her visitation since November 17, 2012. Since that date, Mother has only seen her children when she has come to court. In addition, Mother admitted that she has not called her DCS case manager to arrange for visitation, instead stating that she wanted a new case manager.

Finally, the permanency plans require Mother to have a plan of supervision for the care of the children while she is at work. During her testimony, Mother was unable to articulate a specific plan for the children's care. Instead, she indicated that her plan was "[t]o not work." Mother clarified that she would "work during the day except for the fact that I usually have to live at the schools." From this statement, we glean that Mother was referring to the fact that the children's behavioral issues, discussed *infra*, required her to come to their school often to address these issues. Regardless, it is clear from the record that Mother has no specific plan for the children's care.

From the totality of the circumstances, we conclude that there is clear and convincing evidence to support this ground for termination of her parental rights.

V. Reasonable Efforts

The decision to pursue a termination of parental rights on the grounds of abandonment and/or substantial noncompliance with a permanency plan generally invokes DCS's statutory duty to make reasonable efforts to facilitate the safe return of children to the parent's home. ***In re R.L.F.***, 278 S.W.3d 305, 315 (Tenn. Ct. App. 2008) (citing Tenn. Code Ann. § 37-1-166(b), -166(a)(2), -166(g)(2)); *see also* ***In re Tiffany B.***, 228 S.W.3d 148, 151, 160 (Tenn. Ct. App. 2007) (vacating a finding of abandonment, substantial noncompliance, and persistence of conditions for failure to make reasonable efforts). The statutory duty to make reasonable efforts includes an obligation to exercise "'reasonable care and diligence . . . to provide services related to meeting the needs of the child and the family.'" ***In re R.L.F.***, 278 S.W.3d at 316 (emphasis omitted) (citing Tenn. Code Ann. § 37-1-166(g)(1)). Courts evaluate the reasonableness of DCS's efforts in consideration of the following factors:

> (1) the reasons for separating the parents from their children, (2) the parents' physical and mental abilities, (3) the resources available to the parents, (4) the parents' efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parents' efforts to address the problems that caused the children's removal, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department's efforts.

In re Tiffany B., 228 S.W.3d at 158–59 (footnote omitted) (citing ***In re Giorgianna H.***, 205 S.W.3d 508, 519 (Tenn. Ct. App. 2006)). Courts should decide the reasonableness of DCS's efforts "on a case-by-case basis in light of the unique facts of the case." ***In re Bernard T.***, 319 S.W.3d 586, 601 (Tenn. 2010) (citing ***In re J.C.D.***, 254 S.W.3d 432, 446 (Tenn. Ct. App. 2007)). The burden is on DCS to prove clearly and convincingly the reasonableness of its efforts. ***In re R.L.F.***, 278 S.W.3d at 316 (citing ***In re B.B.***, No. M2003-01234-COA-R3-PT, 2004 WL 1283983, at *9 (Tenn. Ct. App. June 9, 2004)).

The exercise of reasonable efforts is important because "[t]he success of a parent's remedial efforts generally depends on the Department's assistance and support." ***In re Giorgianna H.***, 205 S.W.3d at 518 (citations omitted). DCS employees must affirmatively and reasonably use their education and training to help a parent eliminate the conditions requiring removal of the children and to meet the responsibilities of the permanency plans before courts will terminate the parent-child relationship. ***In re R.L.F.***, 278 S.W.3d at 316. DCS's duty to affirmatively assist parents exists even if the parents do not seek assistance.

Id. (citing ***In re C.M.M.***, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at *7 (Tenn. Ct. App. March 9, 2004)).

The Legislature, however, did not place the burden to reunify parent and child on DCS's shoulders alone. *See* ***State, Dep't. of Children's Servs. v. Estes***, 284 S.W.3d 790, 801 (Tenn. Ct. App. 2008). Reunification "is a two-way street, and neither law nor policy requires the Department to accomplish reunification on its own without the assistance of the parents." ***In re Tiffany B.***, 228 S.W.3d at 159 (citations omitted). "Parents share the responsibility for addressing the conditions that led to the removal of their children from their custody." ***Id***. Once services have been made available, parents must make reasonable efforts to rehabilitate themselves. ***Id***. The reasonableness of DCS's efforts should be decided on a case-by-case basis in light of the unique facts of the case. ***Id***.

The trial court made an express finding that DCS made reasonable efforts to assist Mother. From the record, we agree. The record indicates that although Mother was non-compliant with the permanency plans, DCS did attempt to assist Mother in regaining custody of her children. As noted above, DCS provided therapeutic visitation services to facilitate her contact with the children. In addition, Mother admitted that DCS paid for housing and also paid back-rent in the amount of $900 to facilitate her procurement of housing. DCS also provided Mother with gas cards to assist her in traveling for visitation. In addition, DCS informed Mother that it would assist her in obtaining a mental health intake if she did not qualify for insurance.

When Mother moved to Arkansas, her DCS case manager advised her that it would be difficult for DCS to assist her remotely; Mother informed the case manager that she was relocating to Arkansas in order to find employment, and that she would be residing with a friend while she trained to become a welder. Despite Mother's move to Arkansas, the record indicates that DCS requested two home studies through the Interstate Compact on the Placement of Children. Although Mother argues that these studies were never completed, the record indicates that the reason for that was her own non-compliance in allowing the visits to take place. Mother admitted that she did not respond to the requests for home studies.

From the record, it is clear that DCS exercised reasonable efforts to assist Mother in meeting her requirements under the permanency plans, which were necessary for reunification with her children. It appears, however, that Mother has failed to avail herself of this assistance.

VI. Best Interests

Before a court in this State can terminate a biological parent's parental rights, it must find that doing so is in the best interest of the child. *See* Tenn Code Ann. § 36-1-113(c)(2). In determining whether termination of parental rights is in a child's best interest, the lower court must consider the following factors:

> (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
> (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
> (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
> (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
> (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
> (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
> (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
> (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
> (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101. Tenn. Code Ann. § 36-1-113(i).

The foregoing list of factors is not exhaustive, and the statute does not require the

court to find the existence of every factor before concluding that termination is in a child's best interest. ***State Dept. of Children's Services v. Hood***, 338 S.W.3d 917, 929 (Tenn. Ct. App. 2009) (citing ***State v. T.S.W.***, No. M2001-01735-COA-R3-JV, 2002 WL 970434, at *3 (Tenn. Ct. App. May 10, 2002)).

Based upon the foregoing discussion, it is clear that Mother has failed to make an adjustment of circumstances, conduct, or conditions so as to make it safe and in the children's best interests to be with her. Despite reasonable efforts on the part of DCS, Mother has failed to make a lasting adjustment and, in fact, it appears that such adjustment may not be possible. Mother has failed to support the children, and has failed to visit the children. Because of her absence from their lives, no meaningful relationship has developed between Mother and the children.

The record indicates that the children have done well in foster care. The children's foster mother ("Foster Mother") testified at the hearing that Nicholas and Sara had been in her home since August 2011, and that Andrew and Lily entered her home in September 2013. Foster Mother testified that she has observed that the children have often been disappointed by Mother when she has broken various promises to them. For example, Mother would tell the children that she was coming for a visit, or that she was sending them something, and then would not follow-through. Foster Mother stated that Mother's failure to keep her promises had caused conflict between and among the children because some of them recognized that Mother's promises were "hollow," and others would defend her. Foster Mother further testified that, with the exception of one gift for Nicholas, Mother has never sent cards or presents for the children**.**

Regarding the children's well-being while in her care, Foster Mother testified that the children are doing well in her care. Foster Mother then testified concerning Nicholas's behavioral and mental health issues. For example, he has trouble with social skills and understanding boundaries. However, Foster Mother reported that Nicholas is improving and that his school has recognized this improvement over the past two years. Foster Mother testified that Andrew, Sara, and Lily are all doing well and are succeeding academically.

Andrew, who was fourteen at the time of trial, testified *in camera*. He stated that he wanted to be adopted instead of returning to live with Mother. Foster Mother testified that she and her husband consider all four children to be their own and that they are open to adopting the children.

Finally, from the totality of the circumstances, it appears that a change in caretaker and a change in physical environment would likely have a negative affect on the children at this stage. While living with foster parents, the children have enjoyed stability, which has

resulted in improvement in their behavior and school work. To remove them at this point and place them in what is still an unstable environment with Mother, would likely undo these positive changes.

Applying the foregoing statutory factors, and for the foregoing reasons, it is clear that Mother has not made a lasting change in her conduct or condition that will allow these children to return to her care at an early date. She has not paid child support, and has not exercised visitation with the children in over a year. In addition, this Court is troubled by Mother's statements at trial, denying responsibility for the situation. Specifically, Mother testified that she believes that the situation is partly Nicholas's fault because of his behavior. Mother also testified that she has "never not" supported the children, and that they always had a roof over their heads. Unfortunately, this statement is not supported by the record.

VII. Conclusion

For the foregoing reasons, we affirm the order of the trial court, terminating Mother's parental rights to these four children. The case is remanded to the trial court for such further proceedings as may be necessary and are consistent with this Opinion. Costs of the appeal are assessed against the Appellant Mother. Because Mother is proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

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J. STEVEN STAFFORD, JUDGE