

IN THE COURT OF APPEALS OF TENNESSEE
KNOXVILLE

Assigned on Briefs April 1, 2026

IN RE DEANGELO N. ET AL.¹Appeal from the Chancery Court for Roane County
No. 2023-AD-653 Tom McFarland, Chancellor

No. E2025-00235-COA-R3-PT

This appeal arises from the termination of parental rights of the parents of DeAngelo N. and Daimen N. The trial court terminated their parental rights on the grounds of abandonment, severe child abuse, persistence of conditions, and lack of willingness or ability to assume custody, and the finding that termination was in the best interests of the children. Both parents appeal, arguing that the trial court's findings regarding the grounds for termination were in error and that termination of their parental rights was not in the children's best interest. We vacate the trial court's ruling regarding the ground of severe abuse based on lack of due process, because that ground was not asserted in the pleadings. We also reverse the trial court's ruling that the ground of persistence of conditions was proven, finding the evidence insufficient to clearly and convincingly establish that ground. We affirm the trial court's finding that two other grounds for termination were proven, and the termination of the parents' rights is in the children's best interests. Accordingly, we affirm the decision to terminate both parents' parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Vacated in part; Reversed in part; and Affirmed in part**

FRANK G. CLEMENT, JR., C.J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and KRISTI M. DAVIS, JJ., joined.

Joshua W. Leach, Knoxville, Tennessee, for the appellant, Adam N.

Sara Newcomb Lawson, Kingston, Tennessee, for the appellant, Jordan C.

Kim F. and Frank F., Knoxville, Tennessee, pro se appellees.

¹ This court has a policy of protecting the identity of children by initializing the last names of the children, parents, close relatives, and pre-adoptive parents and by not providing the children's exact birth dates.

OPINION

FACTS AND PROCEDURAL HISTORY

DeAngelo N., (“DeAngelo”), born in May 2021 and Daimen N., (“Daimen”), born in March 2022, (collectively “the Children”) are the children² of Adam N. (“Father”), and Jordan C. (“Mother”) (collectively “Parents”). While at the hospital to deliver Daimen, Mother tested positive for THC; Daimen did not test positive for drugs at birth. A subsequent drug test of Father was positive for fentanyl.

Acting based on a referral, the Tennessee Department of Children’s Services (“DCS”) filed a Petition for Restraining Order and for Expedited Hearing in the Knox County Juvenile Court on April 1, 2022, citing drug exposure to the Children.³ Initially, the Children were left in Mother’s care while Father was forbidden from contact, but following a hearing on April 20, 2022, the Children were placed with the great aunt and uncle of Father, Kim F. and Frank F. (“Petitioners”).⁴ Mother was allowed supervised visitation, but Father remained on no-contact order.

Thereafter, DCS filed a Dependency and Neglect Petition. Following a hearing on July 13, 2022, the juvenile court awarded legal and physical custody of the Children to Petitioners. Both Father and Mother stipulated to a finding that the Children were dependent and neglected based on the Parents’ “substance abuse issues.” The order did not include a finding of severe child abuse. Father was granted visitation by video call only unless he could provide a same-day drug screen. Father took the drug tests required for visitation, and after repeated negative drug tests, Father was granted in-person supervised visitation, effective April 21, 2023. Mother remained on supervised visitation.

The Petitioners initially allowed visitation of the Children in their home, but over time the relationship between Petitioners and Parents deteriorated, and visitation ceased on or about July 12, 2022. Acting pursuant to the juvenile court’s order, Mother contacted Parent Place, an organization facilitating supervised parental visitation, to resume visitation. Starting in November 2022, and with the assistance of Parent Place, Parents’

² Parents have two additional children together, each born after Daimen, but the parental rights of these children are not at issue in this appeal.

³ While this was the first court filing concerning the Children, DCS was previously involved with the Parents during Mother’s pregnancy with DeAngelo after DCS received a report from Mother’s doctor that she had a positive drug screen for THC.

⁴ On April 20, 2022, the Juvenile Court for Knox County entered an Interim Order Verifying Transfer of Physical Custody to Petitioners.

visitation resumed, and Parents visited the Children at Parent Place on five of the eight available dates during the four-month period preceding the commencement of this action.⁵

On March 20, 2023, Mother filed a petition in the juvenile court seeking unsupervised visitation, asserting she was ready for the Children to return to her custody. However, that petition was never heard because, on March 29, 2023, the Petitioners filed a Petition for Termination of Parental Rights and Petition for Adoption in the Chancery Court for Roane County.

The termination petition was tried in the Roane County Chancery Court August 26, 2024, October 1, 2024, and January 7, 2025, during which the court heard testimony from Mother, Father, the Children's maternal grandmother, Petitioners, and the Children's developmental therapist.

Mother testified that she had an older daughter from another relationship that she had voluntarily surrendered custody of, and two younger daughters with Father in addition to the Children. Mother admitted that she used Delta 8 and CBD gummies and that she had tested positive for THC during her pregnancy. Mother testified that she had entered a rehab program for substance abuse, and had abstained from methamphetamine since 2020, although she continued to use marijuana after rehab. Mother testified that she had completed an alcohol and drug assessment as well as a mental health assessment. She also stated that she has been sober, including abstaining from use of marijuana, suboxone or methadone, since March 2022.

Mother acknowledged that she had a court order to complete a nail bed test but stated that her nails were not long enough at the time of the order because she had anxiety and bites her fingernails. Instead, she stated that she paid \$800 out of pocket for a hair follicle test. She testified that when her nails grew out long enough to be tested, she did not have \$1,000 to pay for an additional nail bed test.

Mother also acknowledged that she and Father did not pay any child support, but did supply diapers, wipes, formula and clothes; however, these items were refused by the Petitioners.

Mother stated that after the Children were initially placed with Petitioners, they allowed Parents "to see [the Children] when we wanted to," usually one or two times a week. After the Petitioners received legal and physical custody and new visitation rules for Parents were put in place, Petitioners became "noncompliant," after which Mother filed a

⁵ Of the three missed visits, one was cancelled by the Petitioners due to the Children's illness, one was cancelled by Parents due to lack of childcare for another child, and on one occasion, Parents arrived late and Petitioners left without waiting for them.

petition to hold the Petitioners in contempt in October 2022, and as noted earlier, starting in November 2022, were allowed to visit the Children at Parent Place.

Mother testified that she filed a petition for unsupervised visitation on March 20, 2023, asserting that she had complied with all court requirements and was ready for the Children to be returned to her custody.⁶ Mother also testified that she and Father have a suitable bedroom and age-appropriate furniture and toys for the Children, and that they are financially stable and ready to care for them.

Petitioner Kim F. testified that since assuming custody, she has moved into a new house with more space for the Children, partially to accommodate medical beds designed for their special needs. She explained the Children's diagnoses with ADHD, autism and Hepatitis C, and taking the Children to Vanderbilt healthcare for care every other month, in addition to other local treatments and therapies. Kim stated that she had quit her job to care for the Children because their behaviors were challenging for babysitters. She testified that she and Frank F. take the Children to the park, the zoo and amusement parks.

Mother's mother, Wendi C., testified that Mother began using drugs at age 15 and had been diagnosed with depression, bipolar disorder, and schizophrenia. Wendi described Mother's surrender of her first daughter, who Wendi C. adopted. Wendi was critical of Mother as a parent but praised the Petitioners' care of the Children.

Petitioner Frank F. also testified. He stated that during the initial visitations at his home, Mother would get easily annoyed by the Children. Father was quiet but would play and "keep it cheery" with the Children. He testified that he and Kim F. have good relationships with the Parents' extended family and often attend holidays and other gatherings and events together. Frank F. stated that the Children greet him at the door each day with hugs and kisses and that he and Kim F. are able to provide love, financial support, medical treatment, and anything the Children need. Both Petitioners admitted refusing the diapers Parents brought to visits, testifying that the Children were allergic to the brand of diapers provided.

The court next heard from Kayla Elliott, an early interventionist and developmental therapist with the Michael Dunn Center, who worked with the Children once a week for about a year. She testified that after visits with Parents, the Children would become more aggressive. She also testified that the Petitioners had a great connection with the Children.

Father then testified. He stated that he worked for a landscaping company and had been there for about two years. He described his current housing as a three-bedroom apartment shared with his father, Mother, and their two younger daughters. He testified

⁶ This petition was never heard because the Petitioners filed their petition for termination of Parents's parental rights nine days later, on March 29, 2023.

that he was able to make rent. He also stated that his relationship with Petitioners, his great aunt and uncle, had worsened since they took custody of the Children.

Father testified that he currently had no driver's license and does not drive Mother or his two daughters. However, when asked about prior testimony alleging that Father had been seen driving the family to and from Parent Place, Father did not deny the allegation, but responded, "I would like to see proof."

Father testified that his positive drug screen for fentanyl was a result of an attempt to buy hydrocodone off the street for stomach pain. However, he explained, the pill was "fake" and was actually fentanyl.

When asked about his court-ordered nailed drug test, Father stated that every time he went for testing, he was told his fingernails and toenails were too short, so he offered a hair test instead, which returned negative results. He also stated that once his nails were long enough, he no longer had sufficient funds to take the nail bed test. During this portion of Father's testimony, the court stated

I gave [Parents] multiple opportunities to do what the Court ordered. The Court found that when they showed up—when they showed up with no fingernails and no toenails for a nail bed test, they knew exactly what they were doing. They were avoiding that test against the orders of this Court. I gave them another chance to do it, and they did not.

The trial court explained that Parents had been informed that if they did not get a nailed test, the court would rule that they had both had a positive drug test. Father then testified that he had completed an outpatient substance abuse program and currently refrains from alcohol and illicit substances but does consume Delta 8 products.

The court announced its initial ruling from the bench on January 7, 2025, which was followed by a written order that was amended twice. The final judgment at issue in this appeal, titled Second Amended Findings of Fact and Conclusions of Law, was entered on May 29, 2026.⁷

⁷ Following an initial review of the appellants' briefs and the record in this appeal, this court determined that the trial court's final judgment from which this appeal was taken, its Amended Findings of Fact and Conclusions of Law entered March 3, 2025, did not contain sufficient findings of fact and conclusions of law to satisfy the requirements of Tennessee Code Annotated § 36-1-113(k). Accordingly, we suspended the appeal and remanded the case to the trial court by order entered on April 30, 2026, for the limited purpose of entering an amended final judgment with additional findings of fact and conclusions of law compliant with the requirements of Tennessee Code Annotated § 36-1-113(k) based on the evidence presented at trial. See *In re Angela E.*, 303 S.W.3d 240, 251 (Tenn. 2010) (holding that the trial court's responsibility to make specific findings of fact and conclusions of law under Tennessee Code Annotated §

The trial court found Mother's credibility was negatively impacted by discrepancies regarding her drug use. In part, the court described its findings as follows:

The Court finds that [Mother] has struggled with substance abuse issues that have largely gone unaddressed. The Court finds that her testimony that was given under oath conflicted with her response to Interrogatories that were under oath regarding her substance use history. Her credibility is questioned by the fact that she has given conflicting statements on the dates that she attended rehabilitation. The Court finds it unlikely that [Mother] has remained sober since March of 2022, as she testified. The Court finds that her intentional and willful failure to comply with the Order of this Court and submit to a nail bed drug screen supports the substance abuse finding and also negatively affects her credibility . . . The Court further questions her candor and supports a finding that, in her July 2022 Alcohol and Drug Assessment, [Mother] did not want to address the issues that lead to her losing custody of these minor children by being evasive and noncooperative. The Court further has concerns that [Mother] did not seem concerned about her usage of marijuana. The Court questions the credibility of [Mother] by her juxtaposition that she could not afford to comply with the order of this Court and submit to a nail bed drug screen, but that she could be financially responsible for the children, although she was not.

The court also found Father's testimony to be "for the most part, not credible." Specifically, the court reasoned:

The Court does not find [Father's] testimony about his substance use history to be credible. [Father] testified that he submitted to treatment approximately ten or eleven years ago, but continued to abuse substances after treatment. He testified that he used THC for his anxiety. That he used opioids seventeen to eighteen years ago, went to rehab at Phoenix House, but he also testified in 2022, he bought hydrocodone, bought pills off the street, and that the hydrocodone was laced with fentanyl. The Court also finds that ample time was provided for [Father] to submit to a nail bed screen ordered by this Court and does not find [Father's] testimony that he was not afforded enough time to grow his nails as credible. The Court has concerns regarding [Father's] substance use as he testified that he sold marijuana approximately two years prior to these proceedings. Moreover, the Court has concerns that [Father] admitted to . . . [using] THC on a daily basis.

36-1-113(k) is mandatory and that parental termination cases may be remanded for failure to comply). The trial court entered its Second Amended Findings of Fact and Conclusions of Law May 29, 2026, after which Parents submitted supplemental briefs, and the appeal proceeded.

The court also questioned Father's testimony regarding his rent and earnings, stating that "[t]he Court does not find it credible if someone doesn't know how much their rent is." The court further discredited Father's credibility regarding whether he was in the practice of driving without a driver's license because on cross examination "he became evasive" and Petitioners testified that they saw him driving the children.

The court found Petitioners' testimony to be credible and commended them for getting to the bottom of the Children's medical and developmental needs.

After making its findings of fact, the court stated its conclusions of law, pursuant to which the trial court ruled that Petitioners had proven four grounds for termination: (1) abandonment by willfully failing to support the Children pursuant to Tennessee Code Annotated § 36-1-102(1)(A)(i) and Tennessee Code Annotated § 36-1-102(D); (2) persistent conditions pursuant to Tennessee Code Annotated § 36-1-113(g)(3); (3) severe abuse pursuant to Tennessee Code Annotated § 36-1-113(g)(4) and Tennessee Code Annotated § 37-1-102(b)(27); and (4) failure to manifest a willingness to assume legal and physical custody or financial responsibility of the Children pursuant to Tennessee Code Annotated § 36-1-113(g)(14).

The court also conducted its analysis of the Children's best interests pursuant to Tennessee Code Annotated § 36-1-113(i), finding by clear and convincing evidence that it was in the Children's best interests for Mother and Father's parental rights to be terminated.

This appeal by both parents followed.

ISSUES

Father presents the following issues on appeal:

1. Whether the Chancery Court erred in finding that Father severely abused the Children.
2. Whether the Chancery Court erred in finding that Father abandoned the minor children for failure to support the Children.
3. Whether the Chancery Court erred in finding that Father has not remedied the conditions that led to the Children's removal from his custody.
4. Whether the Chancery Court erred in finding that Father failed to manifest by act or omission a willingness to assume legal and physical custody or financial responsibility.

5. Whether the Chancery Court erred in finding that the termination of the parental rights of Father was in the best interest of the Children.

Mother presents substantially the same issues, but states them as follows:

1. Whether the Chancery Court erred in finding that Mother severely abused the Children.
2. Whether the Chancery Court erred in finding that Mother failed, without good cause of excuse, to make reasonable and consistent payments for the support of the Children.
3. Whether the Chancery Court erred in finding that Mother has not remedied the conditions that led to the Children's removal from her custody.
4. Whether the Chancery Court erred in finding that Mother failed to manifest by act or omission a willingness to assume legal and physical custody or financial responsibility.
5. Whether the Chancery Court entered an order terminating the parental rights of Mother that failed to substantiate the grounds for termination and the best interests of the Children as required.

Petitioners have not filed appellate briefs; thus, they do not present any issues.

STANDARD OF REVIEW

Under both the United States and Tennessee Constitutions, parents have a right to the upbringing and custody of their children. *In re Swanson*, 2 S.W.3d 180, 187 (Tenn. 1999). This right is fundamental and is superior to the claims of others, but it is not absolute. *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). A parent's right to care and custody of a child continues without interruption as long as the parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *In re Audrey S.*, 182 S.W.3d 838, 860 (Tenn. Ct. App. 2005). "The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not." *In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016).

The termination of parental rights is governed by statute in Tennessee. A court must rule that there exists at least one of the statutory grounds for termination, and also that termination is in the best interests of the child. *In re J.C.D.*, 254 S.W.3d 432, 438 (Tenn. Ct. App. 2007) (citing Tenn. Code Ann. § 36-1-113(c)).

Appeals proceed as follows:

[T]he appellate court reviews the findings de novo on the record with a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013). The appellate court next reviews the trial court's order de novo to determine whether the facts amount to clear and convincing evidence that one of the statutory grounds for termination exists, and if so, whether termination of parental rights is in the best interests of the child. *Id.*

In re Bentley E., 703 S.W.3d 298, 301 (Tenn. 2024).

Any questions of law raised are reviewed de novo with no presumption of correctness. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007).

ANALYSIS

I. GROUNDS FOR TERMINATION

To terminate parental rights, a court must find that at least one statutory ground for termination has been proven by clear and convincing evidence. *In re Carrington H.*, 483 S.W.3d 507, 535 (Tenn. 2016) (citing Tenn. Code Ann. § 36-1-113(c)). Here, the trial court found that Petitioners proved four grounds. We will discuss each in turn.

A. Severe Child Abuse

Both Parents contend that the trial court erred in finding that Petitioners proved the ground of severe abuse under Tennessee Code Annotated § 37-1-102.

We begin by noting that Petitioners did not seek to terminate either parent's rights based upon a finding of severe abuse. The fact severe abuse was not pleaded in the petition is also confirmed by the trial court's final judgment, which lists the grounds pleaded in the petition as follows:

The Petitioners grounds that were plead were: (1) Abandonment for failure to visit as to both Respondents; (2) abandonment for failure to financially support the minor children as to both Respondents; (3) persistent conditions as to both Respondents; and (4) failure to manifest an ability and willingness to assume custody.

Thus, neither Father nor Mother were put on notice that their parental rights could be terminated based on the ground of severe abuse under Tennessee Code Annotated § 37-1-102.⁸ We find this omission dispositive of this issue because, as we have explained:

“[C]ourts must strictly apply the procedural requirements in cases involving the termination of parental rights.” *Weidman v. Chambers*, No. M2007-02106-COA-R3-PT, 2008 WL 2331037, at *6 (Tenn. Ct. App. June 3, 2008) (citing *In re W.B.*, 2005 WL 1021618, at *10; *In re M.J.B.*, 140 S.W.3d at 651). Thus, a court may terminate a parent’s rights to his child based only upon the statutory ground(s) alleged in the petition because otherwise the parent would be “disadvantage[d] in preparing a defense.” *In re W.B.*, 2005 WL 1021618, at *10 (reversing an order that terminated parental rights based on grounds not alleged in the petition).

In re Anthony R., No. M2012-01412-COA-R3-PT, 2013 WL 500829, at *4 (Tenn. Ct. App. Feb. 8, 2013) (footnote omitted).

Here, Mother and Father did not receive sufficient notice that severe abuse was a ground upon which their parental rights could be terminated. Further, the record before us also fails to establish that the ground was tried by implied consent. *See In re Landon H.*, No. M2011-00737-COA-R3-PT, 2012 WL 113659, at *6 (Tenn. Ct. App. Jan. 11, 2012) (stating that if a ground is not sufficiently pled, we should “next consider whether . . . a ground for termination of [the parent’s] parental rights was tried by implied consent of the parties.”).

Because the ground of severe abuse was not pled in the petition and the issue was not tried by implied consent, we vacate the trial court’s ruling concerning severe abuse.

B. Abandonment

The trial court found grounds for abandonment of the Children by both Parents based on failure to support. Tennessee recognizes abandonment by failure to support as a ground for parental termination, defined as follows:

For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent or parents or the guardian or guardians of the

⁸ We acknowledge that this issue was not expressly raised by either parent. Nevertheless, as the Supreme Court has instructed, “in an appeal from an order terminating parental rights the Court of Appeals must review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 525–26 (citing *In re Angela E.*, 303 S.W.3d at 251 n. 14).

child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(i).

Although there was no child support order requiring either parent pay a certain amount of support, “[a] parent’s obligation to support his or her child exists regardless of a court order requiring the parent to pay support.” *In re Malaysia C.*, No. M2014-01019-COA-R3-PT, 2015 WL 572954, at *9 (Tenn. Ct. App. Feb. 10, 2015) (internal citations omitted). Further, a parent’s reliance on the fact that the custodial guardians of the children refused items offered in support of the child will not excuse a parent’s failure to support if it occurs outside the statutory time period. *Id.*

Here, we first note that the four-month period in which the trial court ruled that both Parents’ had abandoned the Children by failure to support began November 28, 2022 and extended to March 28, 2023. During this time period, Parents brought diapers, wipes, and formula for the Children to a visitation on one occasion, but the Petitioners refused to accept them.⁹ Although Parents contend they would have offered more support had they not been rebuffed, no financial support was offered to Petitioners during the relevant four-month period. Moreover, the trial court found that both Parents had the ability to pay support, noting that Father was earning \$40,000 a year and both Parents testified that they had the ability to financially support the Children if custody was returned to them. Thus, they had the means to provide financial support, but they willfully failed to do so during the relevant period.¹⁰

⁹ On visits that occurred before and after the relevant four-month period, Parents brought supplies for the Children, which were also refused by Petitioners.

¹⁰ A parent may assert an affirmative defense that any failure to support was not willful pursuant to Tennessee Code Annotated § 36-1-102(1)(I), which states that, “it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian’s failure to visit or support was not willful.” However, the parent has the burden of proof to show that the failure to support was not willful, by a preponderance of the evidence. *Id.* In support of their contention, Mother and Father maintain that although they had the ability to pay support, there had never been an order entered in the juvenile court which ordered payment of child support. However, as discussed herein, “[t]he fact that a parent may not be under an order to pay support is not dispositive of the question of whether the failure is willful, as the obligation to pay support exists in the absence of a specific order.” *In re M.F.O.*, No. M2008-01322-COA-R3-PT, 2009 WL 1456319, at *3 (Tenn. Ct. App. May 21, 2009) (citing *In re J.J.C.*, 148 S.W.3d 919, 926 (Tenn. Ct. App. 2004)). Here, the record reflects that Mother and Father failed to pay any support for the benefit of the Children, despite having income and the ability to spend money on products such as Delta 8 and other CBD products. Thus, they failed to carry their burden of proof that their failure to pay support was not willful.

While a foster parent's rebuff of material support is "part of the constellation of facts that must be considered to assess willfulness," *In re Kaleb N.F.*, No. M2012-00881-COA-R3-PT, 2013 WL 1087561, at *23 (Tenn. Ct. App. Mar. 12, 2013), the fact remains that Mother and Father only attempted once during the applicable time period to provide material support. Such efforts are properly categorized as token support. *In re Audrey S.*, 182 S.W.3d at 867. Further informing our evaluation of willfulness, Parents provided no other support. *See* Tenn. Code Ann. § 36-1-102(1)(D) ("That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant four-month period[.]").

At trial, Parents also alleged that they could not provide money in support of Children because they did not know the address of the Petitioners and Parent Place does not facilitate child support payments. However, we have held that not knowing a custodial parent's address is not a defense to abandonment by failure to support because payments may be made to the juvenile court under such circumstances. *In re Archer R.*, No. M2019-01353-COA-R3-PT, 2020 WL 820973, at *7 (Tenn. Ct. App. Feb. 19, 2020). Moreover, Petitioners are Father's great aunt and uncle; presumably their location could have been ascertained by inquiry with Father's relatives. Additionally, the court found both Parents were not credible; thus, their claim to not know where to send financial support is unpersuasive.

Finding that the Petitioners clearly and convincingly proved that both parents had the ability to support the Children but willfully failed to do so, we affirm the finding that the ground of abandonment by failure to support was proven.

C. Persistent Conditions

Parents contend the trial court erred by finding that the ground for termination of persistence of conditions was proven.

Under Tennessee law, persistence of conditions sufficient to terminate a parent's parental rights are present when:

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

See In re Lyrical T., No. E2022-00457-COA-R3-PT, 2023 WL 1879386, at *4 (Tenn. Ct. App. Feb. 10, 2023).

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

Tenn. Code Ann. § 36-1-113(g)(3)(A).

With respect to this ground, the trial court found as follows:

It is undisputed that these minor children have been removed from the care of the [Parents] for more than six months. . . . [T]hese minor children were removed from the care of [Parents], in part, due to substance abuse issues. The Court finds that these conditions still exist as the Court has deemed the drug screens ordered by the Court in these proceedings as failed due to the [Parents'] willful failure to comply with the orders of this court. Due to continued substance use issues, there is little likelihood that these conditions will be remedied at an early date so that the [C]hildren can safely return to these parents.

Parents both noted in their briefs that the sole reason the Children were removed from their custody was substance abuse, specifically Mother's THC-positive drug screening during pregnancy and Father's fentanyl-positive drug screening. Further, both Parents stipulated to a finding of dependency and neglect based on substance abuse at the time of the Children's removal. And, as the trial court's findings stated above confirm, the Children were removed from Parents "due to substance abuse issues." Thus, the question before us is whether there is evidence sufficient to establish that Parents' substance abuse issues persist.

While Mother and Father insist that they have received treatment since the Children's removal in April 2022 and are currently sober, the court found their testimony was not credible, and we give great weight to such credibility findings. *See In re Adoption of D.A.S.*, No. E2007-01142-COA-R3-PT, 2007 WL 3447247, at *2 (Tenn. Ct. App. Nov. 16, 2007); *see also Davis v. Davis*, 223 S.W.3d 233, 238 (Tenn. Ct. App. 2006). Moreover, although both Parents passed hair follicle drug tests following removal of the Children,

they both failed to comply with the court order requiring them to submit to a nailbed drug screen.

Initially, Mother and Father had from January 11, 2024, until February 1, 2024, to complete the nailbed test. The deadline was later extended to February 27, 2024. Yet, Mother and Father testified that they could not complete the test during this time frame because their nails were too short. Both testified at trial that they have a habit of biting their fingernails. However, as the trial court stated in its ruling from the bench, it had advised Parents that failure to submit to a nailbed screening would result in the court considering them to have failed the test. “This nailbed test gave the parents the keys to the kingdom,” the trial court opined from the bench at trial. “They could have easily defeated this case had they complied, but they intentionally did not comply.” As a result, the trial court found Mother and Father positive for drugs.

A court may draw a negative inference from a party’s refusal to submit to a court-ordered test. *In re Mya H.*, No. W2016-01285-COA-R3-PT, 2017 WL 3176108, at *5 (Tenn. Ct. App. July 26, 2017) (“We can certainly discern how an adverse inference may be taken in proper circumstances when a party refuses to participate in ordered genetic testing.”). Further, the failure to obey a court ordered drug test may be used to prove a parent’s substantial noncompliance with a permanency plan. *See In re Angel M.*, No. E2016-02061-COA-R3-PT, 2017 WL 3228314, at *12 (Tenn. Ct. App. July 31, 2017). However, a negative inference “does not amount to substantive proof which can be substituted for a fact[.]” *Nat’l Life & Acc. Ins. Co. v. Eddings*, 221 S.W.2d 695, 698 (1949). Moreover, a negative inference based on failure to comply with drug screens “does not . . . constitute clear and convincing evidence to support the persistence of conditions ground.” *In re Billy T.W.*, No. E2016-02298-COA-R3-PT, 2017 WL 4317656, at *12 (Tenn. Ct. App. Sept. 27, 2017).

Accordingly, the failure of a parent to take a drug test is not sufficient evidence to prove that the parent would have tested positive of drugs. *See id.* Moreover, both parents passed hair follicle tests, and Father passed repeated urine tests, which results were relied upon to allow Father to visit the Children at Parent Place during the relevant four-month period.

Although we may evaluate persistence of conditions based on the totality of the circumstances, *see In re Dustin M.*, No. M2019-01661-COA-R3-PT, 2020 WL 2036648, at *11 (Tenn. Ct. App. Apr. 28, 2020), and we are deferential to the trial court’s findings on credibility, which carry great weight, *see Davis v. Davis*, 223 S.W.3d at 238, the record before us does not contain evidence to establish that either parent is using or abusing illegal drugs. The only positive test of drug use after the Children were removed was one Father took, but the drug that tested positive was Delta 8, which is legal in Tennessee. Thus, the record contains no evidence that Parents’ substance abuse issues persist.

As we explained in *In re Billy T.W.*, “[b]ecause the father in *In re Jimmy B.* failed to cooperate with DCS, the Department was unable to present evidence at trial that he continued to use drugs at the time when the petition was filed.” 2017 WL 4317656, at *12. *See In re Jimmy B.*, E2015-02070-COA-R3-PT, 2016 WL 2859180, *7 (Tenn. Ct. App. May 11, 2016). The court held that DCS had failed to meet its burden of proving persistence of conditions. *Id.* at *12. As the court reasoned in *In re Billy T.W.*, we conclude that the record in this case does not contain clear and convincing evidence that Mother or Father’s substance abuse problems persisted at the time of trial. *See id.*

Accordingly, we reverse the trial court’s ruling that the ground of persistence of conditions under Tennessee Code Annotated § 36-1-113(g)(3) was proven.

D. Ability and Willingness to Assume Custody

The trial court also found grounds for termination of Parents’ parental rights based on Tennessee Code Annotated § 36-1-113(g)(14), which permits termination when “[a] parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child[.]”

When “clear and convincing evidence demonstrates that a parent ‘has failed to manifest either ability or willingness, then the first prong of the statute is satisfied.” *In re Pandora G.*, No. M2023-01223-COA-R3-PT, 2024 WL 713520, at *4 (Tenn. Ct. App. Feb. 21, 2024), appeal denied (May 17, 2024) (quoting *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020)) (emphasis in original). For the second prong of the statute, a petitioner must show “that ‘placing the child in the parent’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.’” *In re James W.*, No. E2020-01440-COA-R3-PT, 2021 WL 2800523, at *15 (Tenn. Ct. App. July 6, 2021) (quoting *In re Neveah M.*, 614 S.W.3d at 674).

Considering the first prong, willingness and ability to assume custody or financially support the child, the trial court ruled as follows:

The Court finds by clear and convincing evidence that the [Parents] have failed to manifest by act or omission, primarily by omission, a willingness to personally assume legal and physical custody of the [Children]. This is most clearly established by the [Parents’] failure to comply with orders of this Court and the Juvenile Court for Knox County, Tennessee. The [Parents] failed to remedy the conditions regarding substance abuse that lead to their removal.

Moreover, the [Parents] willingness to assume financial responsibility, again, the proof is primarily [Parents'] acts of omission. These [Parents] have not paid any financial support to the Petitioners for the [Children]. There was testimony from [Mother] that she would, on occasion, attempt to deliver products such as diapers; however, the Court finds this is token support at best.

Evaluations of ability are to focus on the parent's lifestyle and circumstances. *In re J.S.*, No. M2022-00142-COA-R3-PT, 2023 WL 139424, at *10 (Tenn. Ct. App. Jan. 10, 2023) (quoting *In re Serenity W.*, No. E2018-00460-COA-R3-PT, 2019 WL 511387, at *6 (Tenn. Ct. App. Feb. 8, 2019)). In evaluating willingness, we must look for more than mere words but rather demonstrated attempts to overcome the obstacles that prevent them from assuming custody. *In re Mynajah S.*, No. E2021-00040-COA-R3-PT, 2021 WL 3520856, at *14 (Tenn. Ct. App. Aug. 11, 2021) (see also *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at *8 (Tenn. Ct. App. Mar. 22, 2019)). In our consideration of willingness and ability to assume custody, "the most relevant time period for this ground is the time preceding the filing of the petition to terminate parental rights. But the court may also consider the parent's actions after the petition was filed." *In re Isaiah F.*, No. M2023-00660-COA-R3-PT, 2024 WL 1765247, at *5 (Tenn. Ct. App. Apr. 24, 2024) (citations omitted).

We find, as did the trial court, that Mother and Father's failure to complete a nail bed test while under court order to do so is evidence that they were not fully committed to overcoming obstacles that prevented them from assuming custody. *In re Mynajah S.*, WL 3520856, at *14. We also note that while Parents had the ability to assume the financial burden of caring for the Children, they failed to do so. Thus, the proof shows that they were not willing to do what was necessary to assume custody. As discussed above, they provided no financial support to the Children after their removal, and only token material support.

Regarding the second prong, the trial court found

that placing the child [sic] in the [Parents'] care would pose a risk of substantial physical harm as this Court has previously concluded that these [Parents] are still dealing with substance use issues which could cause harm to the children. Moreover, this Court heard ample testimony about the bond that the children have developed with the Petitioners.

Although the record does not support the above finding that Parents are still dealing with substance abuse issues, we agree with the trial court that placing the Children in the Parents' care carries a risk of substantial harm. The danger to the Children lies in removing them from the Petitioners' custody, with whom they have lived most of their lives and have a strong bond. As we have stated, "removing children from foster families with whom they have bonded over time would 'pose a risk of substantial harm to the physical or

psychological welfare of the [child].” *In re Ethan W.*, No. E2024-00318-COA-R3-PT, 2024 WL 4600451, at *9 (Tenn. Ct. App. Oct. 29, 2024); *see also In re F.N.M.*, No. M2015-00519-COA-R3-PT, 2016 WL 3126077, at *12 (Tenn. Ct. App. Apr. 11, 2016) (quoting *State v. C.H.H.*, No. E2001-02107-COA-R3-CV, 2002 WL 1021668, at *8–9, (Tenn. Ct. App. May 21, 2002)).

The Children’s special needs are also a significant factor to be considered in the context of the risk of substantial harm, as we explained in *In re Samuel H.*, No. M2025-01188-COA-R3-PT, 2026 WL 2566371, at *8 (Tenn. Ct. App. Aug. 31, 2026). In *Samuel H.*, we found it critical that the father had not demonstrated the ability to meet the specialized educational and developmental needs of the Children, noting that the children had significant special needs. *See id.* Here, the Children have special medical and developmental needs, including autism, developmental delays, ADHD, and hepatitis. These challenges require, *inter alia*, frequent medical visits to healthcare providers, some as far away as Vanderbilt University Medical Center in Nashville. This is problematic because neither Father nor Mother have a valid driver’s license, nor alternative transportation. Moreover, neither parent has demonstrated the ability to meet the specialized educational and developmental needs of the Children. Failing to ensure that the Children get the healthcare and other services they need would certainly subject them to the risk of substantial harm.

Finding that the evidence clearly and convincingly proved the essential elements of this ground, we affirm the trial court’s ruling that this ground was proven.

II. BEST INTERESTS OF THE CHILDREN

Once a court has found clear and convincing evidence of one or more grounds for termination, “the interests of parent and child diverge.” *In re Jude M.*, 619 S.W.3d 224, 244 (Tenn. Ct. App. 2020) (citations omitted). “While the parent’s interests do not evaporate upon a finding of unfitness, the focus of the proceedings shifts to the best interests of the child.” *In re Audrey S.*, 182 S.W.3d at 877 (citation omitted).

“Facts considered in the best interests analysis must be proven by ‘a preponderance of the evidence, not by clear and convincing evidence.’” *In re Mia C.*, No. E2023-00828-COA-R3-PT, 2024 WL 4003297, *20 (Tenn. Ct. App. Aug. 30, 2024) (See *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015)). After a court makes its factual findings regarding the grounds for termination, it must consider the combined weight of the best interest factors to determine whether it amounts to clear and convincing proof that termination is in the child’s best interests. *See id.*; *see also In re Kaliyah S.*, 455 S.W.3d at 555–56.

In determining whether termination of parental rights is in a child’s best interest, courts must consider the non-exhaustive list of statutory factors in Tennessee Code Annotated § 36-1-113(i). *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). These

statutory factors are not exclusive, and courts are free to consider any other proof offered at a termination proceeding that is relevant to the best interest analysis. *In re Neveah M.*, 614 S.W.3d at 679 (citations omitted).

The trial court found Factors A, B, C, D, G, H, I, J, K, M, N, O, P, Q, R, S, and T weighed in favor of termination and that no factors weighed against termination. Of these, the court found factors A, B, H, M, and N to be particularly weighty in determining whether preservation of a legal relationship between Parents and the Children was in the Children's best interests. As to Factors E, F, and L, the court held that these were "not applicable or without sufficient evidence to make a determination."

The factors in § 36-1-113(i) generally fall into three categories: (1) those related to the child's emotional needs; (2) those related to the child's general needs, physical environment, and wellbeing; and (3) those related to the Parents' efforts.

We first review the trial court's findings regarding the Children's emotional needs. *See* Tenn. Code Ann. § 36-1-113(i)(1)(A) (concerning the need for stability); *id.* § 113(i)(1)(B) (concerning how changes in caretakers affect wellbeing); *id.* § 113(i)(1)(C) (concerning continuity and stability in meeting the Children's basic material, educational, housing, and safety needs); *id.* § 113(i)(1)(D) (concerning the parent-child attachment); *id.* § 113(i)(1)(E) (concerning regular visitation); *id.* § 113(i)(1)(H) (concerning attachment to others); and *id.* § 113(i)(1)(I) (concerning relationships with others).

In evaluating these factors, the trial court credited the Petitioners for their stability and strong attachment with the Children, as well as their care for the Children's special needs. The court found "[t]he children have been enrolled in school and have well established relationships within their environment with the Petitioners. A disruption in placement would have a negative and adverse effect on their health and well-being." In considering factor (B) the court found that a change of caretakers would have a negative impact on the Children's "physical and psychological health. These minor children have special needs, for which the Petitioners are providing care, and the [Parents] are unable to meet the needs of these children." The court also noted that "[d]uring these children's, albeit short lifetimes, the children were in the care of the [Parents] for a very limited time." The court went on to note when considering factor (D) that "[Parents] do not currently have a healthy attachment with these minor children. The [Parents] had little to no relationship with these children when they were removed from their care and they have not fostered a positive relationship in the interim."

The record clearly supports the fact that the Petitioners have bonded with the Children, have been proactive in addressing the Children's developmental issues, and have provided a reliable, continuous source of care and affection. We note, however, that the trial court did not include Factor E in its analysis, which would have revealed Parents' regular, albeit supervised, visitation with the Children. Specifically, Parents visited with

the Children on five of the eight available visits during the relevant four-month period. Additionally, records from Parent Place show caring, positive interactions between Parents and the Children during the four visits. Nevertheless, the evidence preponderates in favor of the trial court's finding that these factors considered together favor termination of the Parents' parental rights.

We next examine the Children's general needs, physical environment, and well-being. *See id.* § 36-1-113(i)(1)(G) (whether the parents' home may exacerbate a child's existing trauma); *id.* § 36-1-113(i)(1)(J) (a parent's lasting adjustment of circumstances); § 36-1-113(i)(1)(N) (concerning abuse or neglect); *id.* § 113(i)(1)(O) (the parent's provision of safe and stable care to the Children or any other child); *id.* § 113(i)(1)(P) (whether the parent has demonstrated an understanding of the basic and specific needs required for the Children to thrive); *id.* § 113(i)(1)(Q) (the parent's demonstrated commitment to maintaining a home in which the Children can thrive); *id.* § 113(i)(1)(R) (the physical environment of the parent's home); *id.* § 113(i)(1)(S) (the parent's provision of more than token support); and *id.* § 113(i)(1)(T) (the mental and emotional fitness of the parents).

Finding these factors weighed in favor of termination, the court referenced the dependency and neglect finding of the Knox County Juvenile Court. The court reiterated its finding that Parents "willfully failed to comply" with a court ordered drug screen. The court also found that Parents have not demonstrated an understanding of what is needed for the Children to thrive, nor are they committed to providing such an environment. The Parents were found to have never provided more than token support and to have exposed the Children to unsafe conditions, like transporting them without a driver's license. Further, in its consideration of factor (G) the court concluded that "living in the home of the [Parents] would exacerbate the children's experience of trauma. Moreover, the minor children likely have little to no memory of ever being in the [Parents'] care and would likely find being in the care of the [Parents] akin to being in a stranger's home." After a review of the record, we find that the evidence preponderates in favor of these findings.

We next consider the Parents' efforts. *See id.* § 36-1-113(i)(1)(K) (concerning a parent's use of available resources); and *id.* § 36-1-113(i)(1)(M) (concerning a parent's sense of urgency). As to Factor K, the trial court found that Parents "have not taken advantage of any programs, services, or resources unless they directly and financially benefit." We find this conclusion to be overstated. The fact that the Parents have gone to rehab and Mother has completed the mental health assessments required by the parenting plan shows that Parents have utilized at least some of the resources available to them.

Likewise, we respectfully disagree with the trial court's finding that Parents have shown "no sense of urgency," *id.* § 36-1-113(i)(1)(M), in addressing the conditions that made custody with Parents unsafe in the first place. The court described Parents' failures to take drug screens and obtain lawful means of transportation. While Father did not get

his driving privileges restored (his license having been suspended), Mother was assertive about enforcing visitation to see the Children, arranging visits with Parent Place when the Petitioners discontinued visits in their home and filing a petition for contempt when Petitioners did not comply with the visitation schedule. Parents were also proactive in rescheduling visits when they were cancelled due to illness or holidays and getting approval for their later-born children to participate in visitations at Parent Place. Further, prior to the commencement of this termination action, Mother had filed for full custody, asserting that she had complied with the parenting plan and was ready for the Children to return to her care. We find that these actions show a sense of urgency in the Parents, particularly Mother. Thus, we conclude that the evidence preponderates against the trial court's finding that factors (K) and (M) favor termination.

Our analysis of the factors above must be more than a rote examination. *In re Audrey S.*, 182 S.W.3d at 878. We must do more than a simple tallying of the factors in favor and against termination. *In re Gracelynn H.*, No. E2025-00466-COA-R3-PT, 2026 WL 1998717, *10 (Tenn. Ct. App. July 10, 2026). Instead, we must look at the unique facts and circumstances of each case to determine the weight of the factors in the context of the case. *Id.*

Although we respectfully disagree with some of the trial court's findings regarding the best interest factors, having conducted a de novo review of the factors, we have determined that the combined weight of the relevant factors amounts to clear and convincing evidence that termination of the Parents' parental rights is in the best interest of the Children. *See In re Carrington H.*, 483 S.W.3d at 535; *see also In re Kaliyah S.*, 455 S.W.3d at 555–56. Accordingly, we affirm the trial court's determination that termination of the Parents' parental rights is in the Children's best interest.

Having affirmed the trial court's finding that two grounds for termination of both parents' parental rights have been proven and that termination of their parental rights is in the Children's best interests, we affirm the trial court's decision to terminate the parental rights of both Parents.

IN CONCLUSION

The judgment of the trial court is affirmed in part, vacated in part and reversed in part, and this case is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed jointly and severally against the appellants, Adam N. and Jordan C.

FRANK G. CLEMENT JR., C.J.