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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 1, 2026

IN RE BELLA F.

Appeal from the Juvenile Court for Carter County
No. J39842T Keith Bowers, Jr., Judge

No. E2025-00792-COA-R3-PT

In this case involving termination of the father's and mother's parental rights to their minor child, the trial court determined that two statutory grounds had been proven against the father and three statutory grounds had been proven against the mother. The trial court further determined that clear and convincing evidence demonstrated that termination of the father's and mother's parental rights was in the child's best interest. Both parents have appealed. Upon the petitioner's concession, we reverse the trial court's findings against both parents as to the statutory ground of failure to manifest an ability and willingness to assume custody of or financial responsibility for the child and the trial court's finding against the mother as to the statutory ground of persistence of the conditions that led to the child's removal. We affirm the trial court's judgment in all other respects, including the termination of the father's and mother's parental rights to the child.

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

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JEFFREY USMAN and VALERIE L. SMITH, JJ., joined.

Andrew Beamer, Knoxville, Tennessee, for the appellants, Gino F. and Amanda F.

Jonathan Skrmetti, Attorney General and Reporter, and Katherine P. Adams, Assistant Attorney General, for the appellee, Tennessee Department of Children Services.

OPINION

I. Factual and Procedural Background

This case focuses on Bella F., the minor child (“the Child”) of Gino F. (“Father”) and Amanda F. (“Mother”). The Child was born in August 2020. On July 31, 2023, the petitioner, the Tennessee Department of Children’s Services (“DCS”), filed a petition for temporary custody of the Child (then nearly three years of age) and her two older half-sisters, T.V. (then fourteen) and B.V. (then eleven) (collectively, “the Children”), in the Carter County Juvenile Court (“trial court”). DCS averred in the petition that the following incident had led to the Children’s emergency removal into protective custody on July 26, 2023:

On July 25, 2023 law enforcement had been contacted due to a citizen observing 2 year old Bella walking around in the area of S. Lynn Ave. in Elizabethton, TN close to midnight. Law enforcement responded and located a male who was allegedly [Mother’s] boyfriend. He stated that he was unsure where the child’s mother was and had not spoken to her in some time. He was able to contact the maternal grandmother . . . stating “Bella got out again” and [the maternal grandmother] came and took responsibility for [the Child].

DCS received a referral the following day regarding the incident with allegations of lack of supervision. Once DCS began an investigation into the matter, it was determined that [DCS] had a history with this family. The last involvement had been when [the Child] was born, and the mother and maternal grandmother had both tested positive for methamphetamine via a hair follicle drug screen. [The Children] had been placed into the custody of relatives. The mother had regained custody of the children in January 2022 through Unicoi County Juvenile Court.

As the mother and grandmother had no current address, [Child Protective Services] had some difficulty in locating the children and received assistance from law enforcement. DCS case managers and law enforcement attempted to contact the mother by phone and text message, to no avail.

The mother’s vehicle was located at . . . Rockhouse Rd. [in] Elizabethton When DCS Case Managers responded to that location, [the Child] was playing outside in the driveway. The grandmother was observed sitting in the passenger seat of the mother’s vehicle. [T.V.] was also present and took [the Child] inside of the home. The grandmother reported that the mother had “signed her rights over” to her for the children and she had no idea where the mother was, nor had any way of contacting her. The

grandmother reported that the mother had some criminal charges out of Greene County and planned to turn herself in. [The maternal grandmother] stated that the 3rd child, [B.V.], was with her paternal grandmother in Elizabethton. The grandmother stated that she did not currently have her own home and was staying at the Rockhouse Rd. residence. When questioned about who the home belonged to, she reported that it belonged to “Steve” but was unable to provide his last name. There was some concern that the grandmother was impaired at the time of contact due to her physical appearance and slurred speech. The grandmother refused to take a drug screen. She reported that she had just been in a car accident with her boyfriend, and he had been driving erratically, causing her to hurt her back. When asked where the children had been during the alleged car accident, she indicated that they had been at Steve’s home. She stated that when [the Child] had been found by law enforcement on the streets the night before, a babysitter named Crystal had been watching her, but she was unable to provide any additional identifying information about Crystal.

DCS further averred that although Father and Mother were married, Father’s whereabouts were unknown and that T.V.’s and B.V.’s father was incarcerated. DCS requested determinations regarding whether the Children were dependent and neglected and whether they were victims of severe child abuse. On July 31, 2023, the trial court entered an order placing the Children into protective custody.

Following a hearing conducted on October 10, 2023, the trial court adjudicated the Children dependent and neglected as to Mother in an order entered on November 16, 2023. Present for the hearing were Mother, Mother’s counsel, and T.V.’s and B.V.’s father. Father did not appear. Concerning Mother, the court found “clear and convincing evidence by default” that the Children were dependent and neglected. The court approved the Children’s foster placement with the paternal grandmother of T.V. and B.V. and found that the Children were thriving in the placement. The court directed Mother to have no contact with the Children pending further order.

On October 12, 2023, the guardian *ad litem*, attorney Kristen E. Rudder (“GAL”), filed a “Motion for Severe Abuse,” requesting that the trial court make a severe abuse finding against Mother regarding the Children. The GAL averred that a hair follicle sample collected from the Child on August 1, 2023, had tested positive for amphetamines and methamphetamine and that a hair follicle sample collected from T.V. on the same date had tested positive for carboxy-Delta 9-THC. The GAL requested that the trial court relieve DCS of the requirement to provide reasonable efforts toward reunification of Mother and the Children.

On January 16, 2024, DCS removed the Child from her first foster placement and placed her with unrelated foster parents (“Foster Parents”). At trial, DCS foster care case

worker Brandy Bennett testified that T.V.'s and B.V.'s paternal grandmother "could not control" the Child. Ms. Bennett further testified that with Foster Parents, the Child had undergone a "complete change" and was involved with many activities, including attending church, dance, and classes at the Young Men's Christian Association ("YMCA"). Ms. Bennett reported that the Child attended daycare and was "getting ready to start school."

Following a hearing conducted on February 13, 2024, the trial court entered an order specific to the Child on March 4, 2024, determining that Mother had committed severe child abuse against the Child by knowingly failing to protect her against exposure to illegal or controlled substances. Mother was incarcerated at the time of the hearing, but she did appear with her counsel. Testimony and exhibits presented at trial indicated that Mother was incarcerated from February 6, 2024, to February 25, 2024, on charges of failure to illuminate a license plate and possession of drug paraphernalia and that these charges were subsequently dismissed. Regarding severe abuse, the trial court found that Mother had known that the maternal grandmother ("Maternal Grandmother") had tested positive on prior hair follicle drug screens but still had allowed Maternal Grandmother to care for the Child. The court directed that Mother was to have no in-person contact with the Child but could have telephone contact. The court further directed that Mother would be allowed to petition for in-person visitation with the Child when she was released from incarceration.

On April 15, 2024, DCS developed a family permanency plan related to the Child. In an order entered on July 24, 2024, the court ratified the permanency plan and found the plan to be in the Child's best interest and the responsibilities outlined therein to be reasonably related to the reasons for foster care. As noted in the permanency plan, Father was "in a sober living program out of state," but he participated electronically in the family and team meeting during which the plan was developed. Father's responsibilities under the plan included: (1) obtaining and maintaining a safe and stable home, (2) obtaining and maintaining a legal source of income, (3) paying child support in the amount of \$100.00 monthly, (4) resolving all legal charges and refraining from incurring any new charges, (5) undergoing an alcohol and drug assessment and complying with all recommendations, and (6) undergoing a mental health assessment and complying with all recommendations. Father did not appear for or otherwise participate in the July 2024 permanency plan ratification hearing.

Mother participated in developing the permanency plan and appeared for the ratification hearing with her counsel. Her responsibilities under the permanency plan included: (1) complying with all court orders, (2) maintaining positive interactions with the Child, (3) obtaining and maintaining a safe and stable home with no environmental concerns, (4) obtaining a legal source of income and providing DCS with proof of job searches and/or paycheck stubs, (5) undergoing a mental health intake and attending therapy to address her history of substance abuse, (6) complying with random drug screens and exhibiting sobriety, and (7) undergoing a parenting assessment. The plan also stated that Mother had a "lack of housing" and that DCS would request homemaker services for

Mother. In the ratification order, the court found that Mother had been participating in therapeutic visitation with the Child and had been allowed to have “increased telephone contact” with the Child two times per week. Although an exhibit presented during the termination trial indicated that Mother had tested positive for opiates on May 29, 2024, the court noted in its July 2024 ratification order that Mother’s “most recent pill count was accurate.” The court also found that DCS had made reasonable efforts to assist the parents. The court directed that “any child support obligations ordered in the permanency plan, if not already in effect,” would begin with ratification of the permanency plan.

DCS filed its petition to terminate the parental rights of Father and Mother to the Child on October 11, 2024. DCS alleged that Father had not paid child support, had not obtained a safe and stable home for the Child because he was currently residing in a sober living facility in Arizona, had not obtained a mental health assessment, and had not resolved all legal charges in Tennessee. According to the petition, Father had at least one violation of probation pending in Carter County and eight “active warrants” reported by the Greene County Sheriff’s Department. DCS also averred that Father had undergone drug screens in March and April of 2024 that were positive for buprenorphine and tetrahydrocannabinol (“THC”). DCS alleged the following statutory grounds for termination of Father’s parental rights: (1) failure to substantially comply with the permanency plan and (2) failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child.

As to Mother, DCS averred in the petition that Mother had continued to incur additional legal charges. Mother’s criminal history, presented as exhibits during trial, indicated that in March 2024, the Carter County Criminal Court had revoked Mother’s prior suspended sentence, upon a conviction for failure to appear, and had reinstated Mother’s supervised probation until March 28, 2027. At the time of the termination petition’s filing, Mother had a pending criminal charge in Unicoi County for providing alcohol to a minor, which also resulted in a pending new violation of probation charge. DCS further averred that Mother had not obtained a safe and stable home and that she had tested positive for amphetamines and methamphetamine in a September 2024 hair follicle drug screen. According to the petition, Mother had not complied with the recommendations of her initial mental health assessment in that she had not consistently attended therapy sessions. It is undisputed that Mother had been injured in a motor vehicle accident in June 2024 and had not been employed since the accident. DCS alleged statutory grounds against Mother of (1) persistence of the conditions leading to the Child’s removal, (2) severe child abuse, and (3) failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child. DCS also alleged that termination of Father’s and Mother’s parental rights was in the Child’s best interest.

The trial court conducted a bench trial on March 25, 2025. DCS presented testimony from Ms. Bennett; Cheyenne Shoun, a DCS family service worker who had handled the case while Ms. Bennett was on leave from November 2024 until mid-February 2025; and

the Child's foster father ("Foster Father"). Mother presented her own testimony and that of D.K., who was Mother's brother's fiancée and had recently hired Mother as a live-in nanny for her son. Father did not appear for trial.¹ Regarding Father's absence, Ms. Bennett testified that although Father had told her at one point that he was in a sober living facility in Arizona, he was supposed to have completed that program in November 2024 and had not provided any further updates to DCS. It is undisputed that Father had been served with the termination petition. Ms. Shoun reported that she had no contact with Father during the months that she handled the case.

At trial, DCS presented exhibits related to the dependency and neglect proceedings, various drug screen results, child support records, and Father's and Mother's respective criminal records. Regarding Mother's progress, Ms. Bennett's and Ms. Shoun's respective testimonies generally supported the allegations in the termination petition. Ms. Bennett stated that Mother initially had been employed at a restaurant and had provided screenshots of paycheck stubs to DCS "a couple of times" before leaving that employment in June 2024. Ms. Bennett acknowledged that Mother had suffered a serious injury to her arm from an automobile accident in June 2024. Ms. Bennett had conducted a home visit to a residence where Mother was living in September 2024, but DCS could not approve the home because the other person residing in the home had a criminal record. According to Ms. Bennett, Mother did not again produce documentation of employment or housing until the day before trial when Mother texted her with a message that she "had room and board and was receiving \$600 a month."

Ms. Bennett reported that Mother had participated in some supervised therapeutic visits with the Child but that those had been suspended when Mother failed a hair follicle drug screen in September 2024. Mother had also participated in some telephone calls with the Child. Ms. Shoun explained that Mother's therapeutic visits with the Child had been reinstated at some point after January 28, 2025. However, Ms. Bennett clarified that the therapeutic visits were not taking place at the time of trial because of issues with obtaining drug screens.

Mother testified that after she failed the fourteen-panel hair follicle drug screen for amphetamines and methamphetamine in September 2024, she disputed the result because it was her understanding that the cut-off level for a positive showing was higher than her result and because she had been given many medications during her recovery from the June 2024 accident. According to Mother, DCS was not able to provide funding for a repeat hair follicle drug screen, so she paid for a five-panel one, reasoning that it "covered everything that [she] failed for on that test." At trial, Mother reviewed an email message with the result of an October 2024 LabCorp five-panel hair follicle test, indicating that she

¹ The trial transcript lists Mother's attorney as counsel for the "respondents." However, Mother's trial counsel argued solely on her behalf and gave no indication of representing Father at trial.

was negative for cocaine, opiates, phencyclidine (“PCP”), amphetamines, and marijuana.² Mother acknowledged that when she had previously attempted to present the five-panel drug screen during a court hearing, the GAL had objected to it and that DCS had then ordered another fourteen-panel hair follicle drug screen. Ms. Shoun reported that it had been problematic to schedule the second fourteen-panel screen because Mother would reply to some text messages but not to messages requesting that she submit to the hair follicle screen. DCS presented a record of unreturned calls made to Mother by Criterion Services, Inc., the provider that had been attempting to perform the hair follicle drug screen. It is undisputed that Mother did not complete the second fourteen-panel hair follicle drug screen requested by DCS until four days before trial and that the results were not yet available at the time of trial.

During trial, Mother presented copies of a lease agreement that she had executed three weeks before trial and a certificate of completion for a program entitled, “Mother-Child Connection,” dated five days before trial. Mother testified that she had been placed on the lease for a three-bedroom townhouse with D.K. upon agreeing to become a live-in nanny for D.K.’s son and that she would receive room, board, and a \$600.00 monthly stipend. D.K. corroborated Mother’s testimony concerning their agreement. Regarding the Mother-Child program, the certificate stated that it included “60 Intensive Outpatient Substance Abuse and Mental Health (Co-Occurring) Treatment (180 hours), 12 Anger Management, and 12 Nurturing Parenting Classes.” Mother acknowledged that she had completed the same program in 2021. Mother further testified that after her motor vehicle accident in June 2024, she had endured six surgeries on her arm, which had been “completely shattered” in the accident. She stated that when a dog knocked her down in August 2024, she had to return to the hospital because her arm had been reinjured and that her treatment had revealed a bone infection. According to Mother, she had a peripherally inserted central catheter (“PICC”) line that caused her to be concerned about infection and limited her ability to leave home for several months. Mother reported that at the time of trial, she was still in the process of healing with physical therapy and had recently been cleared by her doctor to lift four pounds with her injured hand.

Regarding the Child’s situation at the time of trial, Foster Father testified that the Child resided with him, his wife (“Foster Mother”), and multiple pets, including a “couple dogs, cats, chickens, which [the Child] absolutely loves.” Foster Father also testified that he was self-employed and that Foster Mother stayed at home to care for the Child and the household. Foster Father stated that Foster Parents’ two adult daughters no longer resided with them but had developed a close relationship with the Child. He explained that the Child was also “part of the family” with his parents, sister, and mother-in-law. When questioned regarding the behavioral difficulties that the Child had exhibited in her first foster placement, Foster Father clarified that the Child had “dealt with some, I guess we

² Although Mother testified regarding the result of this five-panel drug screen without objection, the laboratory result was not admitted as an exhibit at trial.

call them meltdowns.” He reported that these “meltdowns” had lessened and that Foster Parents had “figured out how to communicate with [the Child] and provide her what she needs.” Foster Father further testified that overall the Child was “doing well” and was “a joy to be around.” Foster Father emphasized that the Child was involved in many activities and participated in some activities, such as learning to play the violin, with Foster Mother. According to Foster Father, the Child had attended speech therapy throughout her placement with Foster Parents and had been attending play therapy weekly at the time of trial. When questioned regarding whether Foster Parents would like to adopt the Child, Foster Father answered in the affirmative and added that if the Child “needs a home, she has it.”

On April 28, 2025, the trial court entered an order terminating Father’s and Mother’s parental rights to the Child. The court determined by clear and convincing evidence that DCS had proven the two statutory grounds against Father and three statutory grounds against Mother alleged in the petition. The court further found by clear and convincing evidence that termination of Father’s and Mother’s parental rights was in the Child’s best interest.

On May 23, 2025, Father, acting through his appellate counsel, filed a motion to set aside the termination order, pursuant to Tennessee Rules of Civil Procedure 60.01 and 60.02, and for new trial, pursuant to Tennessee Rules of Civil Procedure 59.01, 59.02, 59.04, and 59.07. Father averred that he had not been represented at the termination trial and had not been aware that he could request court-appointed counsel. Father stated that he was living in Arizona, was on probation, and could not leave Arizona but that he was willing to participate via Zoom or other electronic means. He attached a letter from his probation officer in Arizona. On the same day, Father and Mother, acting through appellate counsel, filed a notice of appeal with this Court.

This Court, having determined that it lacked subject matter jurisdiction until Father’s post-judgment motion was resolved, entered an order on July 28, 2025, directing Father and Mother (collectively, “Parents”) to supplement the appellate record with a post-judgment order from the trial court. On December 17, 2025, the trial court entered an order denying Father’s motion to set aside and for a new trial. The court found that while DCS had properly served Father with process and provided notice of hearings, Father had “not appear[ed] for the hearing” and had “not request[ed] a telephonic hearing of any type.” Upon supplementation to the record with the trial court’s order, this appeal proceeded.

II. Issues Presented

Parents present two issues on appeal, which we have reordered and restated as follows:

1. Whether the trial court violated Father's due process rights by failing to apprise Father of his right to counsel and of the opportunity to participate at trial via electronic means.
2. Whether the trial court failed to make sufficient findings of fact and conclusions of law in support of its decision that terminating Father's and Mother's parental rights was in the best interest of the Child.

DCS raises two additional issues, which we have similarly restated:

3. Whether the trial court erred in finding by clear and convincing evidence that statutory grounds existed to terminate Father's and Mother's parental rights to the Child.
4. Whether the trial court erred in finding by clear and convincing evidence that termination of Father's and Mother's parental rights was in the best interest of the Child.

III. Standard of Review

In a termination of parental rights case, this Court has a duty to determine "whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence." *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). The trial court's findings of fact are reviewed *de novo* upon the record, accompanied by a presumption of correctness unless the evidence preponderates against those findings. *See* Tenn. R. App. P. 13(d); *see also In re Carrington H.*, 483 S.W.3d 507, 523-34 (Tenn. 2016); *In re F.R.R., III*, 193 S.W.3d at 530. Questions of law, however, are reviewed *de novo* with no presumption of correctness. *See In re Carrington H.*, 483 S.W.3d at 524 (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)). The trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002).

"Parents have a fundamental constitutional interest in the care and custody of their children under both the United States and Tennessee constitutions." *Keisling v. Keisling*, 92 S.W.3d 374, 378 (Tenn. 2002). It is well established, however, that "this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). As our Supreme Court has explained:

The parental rights at stake are "far more precious than any property right." *Santosky [v. Kramer]*, 455 U.S. [745,] 758-59 [(1982)]. Termination of

parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “[...]severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(l)(1); *see also Santosky*, 455 U.S. at 759 (recognizing that a decision terminating parental rights is “*final* and irrevocable”). In light of the interest and consequences at stake, parents are constitutionally entitled to “fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754; *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty, N.C.*, 452 U.S. 18, 27 (1981) (discussing the due process right of parents to fundamentally fair procedures).

Among the constitutionally mandated “fundamentally fair procedures” is a heightened standard of proof—clear and convincing evidence. *Santosky*, 455 U.S. at 754. This standard minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights. *Id.*; *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010). “Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than simply as more probable than not. *In re Audrey S.*, 182 S.W.3d 652, 660 (Tenn. Ct. App. 2005); *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005).

* * *

In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. *In re Bernard T.*, 319 S.W.3d at 596-97.

In re Carrington H., 483 S.W.3d at 522-24. “[P]ersons seeking to terminate [parental] rights must prove all the elements of their case by clear and convincing evidence,” including statutory grounds and the best interest of the child. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010).

IV. Father’s Due Process Rights

As a threshold issue, Father contends that the trial court violated his due process rights by failing to apprise him of his right to court-appointed counsel and by failing to

offer him the opportunity to participate in the termination hearing via electronic means. Father does not dispute that he was properly served with the termination petition and the order setting the termination trial date. Although Father does not directly challenge the trial court's denial of his post-trial motion to set aside the termination order, we note that Father brought this issue before the trial court solely in his post-trial motion. DCS asserts that the trial court correctly denied Father's post-trial motion upon determining that Father had been properly served and that he had not filed any responsive pleadings or requests with the court before failing to appear for trial.

“[P]rocedural due process ensures that litigants are ‘given an opportunity to have their legal claims heard at a meaningful time and in a meaningful manner.’” *In re Walwyn*, 531 S.W.3d 131, 138 (Tenn. 2017) (quoting *Lynch v. City of Jellico*, 205 S.W.3d 384, 391 (Tenn. 2006)). The right to appointed counsel for indigent respondents in parental termination cases arises from the doctrinal basis of due process and is closely aligned with the standard of fundamental fairness required in termination proceedings. *See In re Carrington H.*, 483 S.W.3d at 532. As the *Carrington* Court clarified: “Tennessee court rules, statutes, and decisional law are . . . replete with procedures . . . designed to ensure that parents receive fundamentally fair parental termination proceedings.” *Id.* at 533. However, although “[d]ue process unquestionably requires States to provide parents with fundamentally fair procedures . . . it does not require States to ignore the other interests at stake in parental termination proceedings.” *Id.*

When a respondent parent fails to respond to a termination petition and fails to appear after receiving proper service of process, Tennessee Code Annotated § 36-1-117 (n) (West July 1, 2024, to current) provides:

The court may enter a default judgment against any party to the adoption or termination proceeding upon a finding that service of process has been validly made against that party in accordance with the Tennessee Rules of Civil or Juvenile Procedure and the statutes concerning substituted service; however, in termination proceedings, proof must be presented as to legal grounds and best interest pursuant to § 36-1-113.

Regarding a parent's right to representation by counsel, Tennessee Code Annotated § 37-1-126(a)(2)(B)(ii) (July 1, 2024, to current) provides that “[a] parent is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving . . . [t]ermination of parental rights pursuant to § 36-1-113.” Section 37-1-126(a)(3) further provides that “[i]f a person appears without counsel, the court shall ascertain whether the person knows of the right to counsel and of the right to be provided with counsel by the court if the person is indigent. *See In re Savanna I.*, No. E2018-00392-COA-R3-PT, 2018 WL 6167386, at *6 (Tenn. Ct. App. Nov. 26, 2018) (“In all parental termination proceedings, Tennessee provides a statutory right for indigent parents to receive appointed counsel.”) (citing *In re Carrington H.*, 483 S.W.3d at 527-28)). As the

Savanna I. Court explained, in termination of parental rights proceedings, “counsel will be appointed if the party is indigent and . . . requests appointment of counsel.” 2018 WL 6167386, at *6 (emphasis added).

In this case, the trial court proceeded with the termination trial in Father’s absence, stating in its final order:

The Court finds that [Father] failed to appear to participate in these proceedings. [Father] was properly before the Court. The Court finds that [Father] was personally served with a copy of the Petition to Terminate Parental Rights and a summons, and that he was informed of the date, time, and location of these proceedings pursuant to the Summons and prior Order in this matter. Thereafter, [Father] failed to appear for hearing and he has failed to file any responsive pleading in this cause. As such, the Court allowed [DCS] to proceed in this cause in [Father’s] absence.

Father then timely filed his post-judgment motion to set aside or for new trial, acting through his appellate counsel. Father requested that the termination order be set aside pursuant to Tennessee Rules of Civil Procedure 60.01 (clerical mistakes) and 60.02, apparently under subsection (1) (mistake, inadvertence, surprise, or excusable neglect). Father requested a new trial pursuant to Tennessee Rules of Civil Procedure 59.01 (describing the types of motions allowed under Rule 59), 59.02 (setting forth timeliness of motions), and 59.04. We note that Rule 59.04 provides for a motion to alter or amend a judgment rather than for a new trial.³ We review the trial court’s denial of Father’s post-judgment motion for an abuse of discretion. *See Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012) (explaining that a trial court’s ruling on a post-judgment motion to alter or amend a judgment filed pursuant to either Rule 59.04 or Rule 60.02 is reviewed under an abuse of discretion standard). “A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

Father asserted in his post-judgment motion that he “was not aware of the ability to get court appointed counsel”; “was on probation and unable to leave the State of Arizona”; and “was willing to participate by zoom, or other telephonic device.” He alleged that “no meaningful way for [Father] to participate was made.” Father referenced an affidavit, apparently executed by Father, that is not in the record on appeal. He attached a letter from an Arizona probation officer, which stated:

³ Father also cited Tennessee Rule of Civil Procedure 59.07 as a basis for his motion for a new trial, but Rule 59.07 is inapplicable here because it applies to jury trials. *See Caldwell v. Ruby Falls, LLC*, 674 S.W.3d 899, 923 (Tenn. Ct. App. 2023).

[Father] was placed on Intensive Probation Supervision (IPS) on or around December of 2024. When he was released from custody he was taken to a residential treatment facility named AMITY where he thrived and did well in participating in the programing. When he was discharged, he got himself into a sober living residence. He also got a job at a restaurant on his own and has been employed from early on. [Father] always owned up to his mistakes and was honest with me. He graduated from IPS to Standard probation (4/18/25) and has the possibility of getting off early depending on his new probation officer. He was not able to leave the state while on IPS and has now graduated to lesser supervision.

In denying Father's post-judgment motion, the trial court specifically found:

That [Father] was served with process for the Petition to Terminate Parental Rights.

That no issue was raised as to personal service upon [Father].

That [Father] was living in Arizona at the time of the trial upon the Petition to Terminate Parental Rights.

That [DCS] took all necessary steps concerning [Father], such as effectuating service of process and sending proper notice of hearings.

That [Father] took no steps to request a Zoom hearing and, other than just a letter from a probation officer, no steps were taken to appear personally for the hearing.

[DCS] could have taken no further action concerning [Father] than it took. [DCS] served [Father] with process, [DCS] provided [Father] with notice of hearings, and [Father] did not request anything, he did not appear for the hearing, and he did not request a telephonic hearing of any type.

Based upon the foregoing, the Court denies and dismisses the Rule 59 and 60 Motion to Set Aside Judgment and/or for New Trial filed by [Father.]

(Paragraph numbering omitted.) We agree with the trial court and discern no abuse of discretion in the trial court's denial of Father's post-judgment motion.

Father references Ms. Bennett's testimony that she had been in contact with Father in October and November of 2024 prior to her medical leave, and he thereby argues that DCS should have contacted him with information about obtaining a court-appointed

attorney and the possibility of participating in the termination trial electronically. He also argues that DCS's petition did not sufficiently inform him of his rights. Tennessee Code Annotated § 36-1-113(d) (West July 1, 2024, to June 30, 2025)⁴ delineates what must be included in a petition to terminate parental rights, and as relevant here, § 36-1-113(d)(3)(B) provides:

- (B) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:
 - (i) The petition or request for termination in the adoption petition, if granted, shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;
 - (ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and
 - (iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child, except as provided by contract pursuant to § 36-1-145.

DCS included these required statements in its termination petition. In addition, DCS included a request that Parents be served and be "required to appear and answer," as well as a request that the trial court "inquire as to [Parents'] financial circumstances and appoint them legal counsel if indigent." Given that Father has acknowledged that he was served with the petition, we conclude that DCS fulfilled its statutory obligation of notice to Father.

Father insists that to ensure his due process rights, the trial court should have *sua sponte* notified him of his right to court-appointed counsel if indigent and his "right" to electronically participate at trial. We disagree. Pursuant to Tennessee Supreme Court Rule 13 § 1(d)(2), it was Father's responsibility to respond to the termination petition and to

⁴ Unless otherwise noted, throughout this Opinion all citations to any section within Tennessee Code Annotated § 36-1-113 shall be made in reference to the version that was effective on the date the termination petition was filed in the trial court and not to any other version of the statute. *See, e.g., In re Zakary O.*, No. E2022-01062-COA-R3-PT, 2023 WL 5215385, at *4, n.6 (Tenn. Ct. App. Aug. 5, 2023). In some instances, such as here, the subsection that was in effect at that time has not changed.

request court-appointed counsel. *See In re Joshua M.*, No. E2021-01527-COA-R3-PT, 2022 WL 4666232, at *4 (explaining that “a parent in a termination proceeding is entitled to appointed counsel only if he or she is deemed ‘indigent’ and that “[t]o be deemed ‘indigent,’ a parent must follow the procedure set forth in Tennessee Supreme Court Rule 13”); *In re Savanna I.*, 2018 WL 6167386, at *9 (“As the rule provides, [the parent] must request that an attorney be appointed to represent [the parent] in order for the trial court to appoint counsel in the termination proceedings.” (citing Tenn. Sup. Ct. R. 13 § 1(d)(2))).

In this case, Father filed no answer or motion, and he did nothing to contact the court until after the final order had been entered. Accordingly, we determine that the trial court did not violate Father’s due process rights by failing to appoint counsel to represent Father during the termination trial or by failing to apprise Father of his right to court-appointed counsel. *See, e.g., In re Savanna I.*, 2018 WL 6167386, at *9 (“Because Mother did not notify the court that she desired to participate in the hearing and never requested that the trial court appoint her an attorney in the proceedings to terminate her parental rights, we conclude that the trial court did not err in failing to appoint counsel for Mother.”); *In re Yariel S.*, No. E2016-00937-COA-R3-PT, 2017 WL 65469, at *5 (Tenn. Ct. App. Jan. 6, 2017) (“Mother failed to appear at the hearing and never requested the appointment of counsel. Accordingly, we conclude that the court did not err in failing to appoint counsel for Mother.”).

Concerning provisions for a party to participate at trial electronically, the grant of such a request is discretionary, and the trial court is not required to contact a party and inquire as to whether he would prefer to participate electronically. *See* Tenn. Sup. Ct. R. 55 (“The use of teleconferencing, video conferencing or other technology to conduct court proceedings or other court business remotely is permissible at the discretion of the trial or appellate court.”) (emphasis added). We emphasize that after receiving notice of the termination petition and the order setting trial, Father did not file any pre-trial motions with the trial court requesting that he be allowed to participate electronically.⁵

Father’s insistence that the trial court should have reached out to him, or required DCS to reach out to him, to ask if he needed counsel appointed or desired to participate at trial electronically is unavailing. Upon thorough review, we conclude that the trial court

⁵ Father compares his situation to that of an incarcerated parent, stating that “if father had been actively incarcerated instead of on probation he would have been provided with the very notices that he needed to participate in these proceedings.” In support, Father relies on Tennessee Code Annotated § 36-1-113(f)(1)(B)(ii) and (iii), which require, respectively, that an incarcerated parent who has filed “a timely, written answer within thirty (30) days of service of the petition to terminate their parental rights” is entitled to participate in the termination hearing, with electronic means available at the discretion of the court, and if indigent, is entitled to appointed counsel. However, Father has ignored the provision in § 36-1-113(f)(1)(B) that an incarcerated parent must first meet the condition of filing a timely, written answer, something Father did not accomplish here. Moreover, as Father acknowledges, subsection -113(f) is inapplicable to him because he was not incarcerated when the termination petition was filed.

did not violate Father's due process right to a fundamentally fair parental termination proceeding. *See In re Carrington H.*, 483 S.W.3d at 532.

V. Statutory Grounds for Termination of Parental Rights

Tennessee Code Annotated § 36-1-113 lists the statutory requirements for termination of parental rights, providing in relevant part:

- (a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4

* * *

- (c) Termination of parental or guardianship rights must be based upon:
 - (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
 - (2) That termination of the parent's or guardian's rights is in the best interests of the child.

The trial court determined that the evidence clearly and convincingly supported findings of two statutory grounds to terminate Father's parental rights: (1) failure to substantially comply with the permanency plan and (2) failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child. The trial court further determined that the evidence clearly and convincingly supported findings of three statutory grounds to terminate Mother's parental rights: (1) persistence of the conditions leading to removal of the Child from Mother's custody, (2) severe child abuse, and (3) failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child.

A. Statutory Grounds Conceded by DCS

On appeal, DCS has conceded the statutory ground of failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child as to both parents and the ground of persistence of the conditions leading to removal of the Child as to Mother. This Court has previously explained that the rule expressed by our Supreme Court in *Carrington*—that this Court “must consider all of the grounds found by the trial

court”—“has never been construed to require this Court to also consider the grounds sustained by the trial court and thereafter conceded or waived by the non-parent on appeal.” *See In re Zane W.*, No. E2016-02224-COA-R3-PT, 2017 WL 2875924, at *7 (Tenn. Ct. App. July 6, 2017) (citing *In re Carrington*, 483 S.W.3d at 525-26); *see also In re Mykeena C.*, No. M2024-00206-COA-R3-PT, 2025 WL 2048534, at *4 (Tenn. Ct. App. July 22, 2025) (“When DCS concedes a ground for termination found by the trial court on appeal, this court reverses the trial court’s decision as to the conceded ground.” (citing as collecting cases *In re J.S.*, No. M2022-00142-COA-R3-PT, 2023 WL 139424, at *6 n.6 (Tenn. Ct. App. Jan. 10, 2023))). Accordingly, we reverse the trial court’s findings regarding the ground of failure to manifest against both parents and the ground of persistence of conditions against Mother. We will address each of the remaining statutory grounds in turn.

B. Substantial Noncompliance with Permanency Plan

The trial court found by clear and convincing evidence that Father had failed to substantially comply with the statement of responsibilities set out in the permanency plan. Tennessee Code Annotated § 36-1-113(g)(2) provides as a ground for termination of parental rights:

There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4[.]

The trial court also expressly found that the requirements of the permanency plan were reasonably related to the conditions necessitating foster care. *See* Tenn. Code Ann. § 37-2-403(a)(2)(C) (West July 1, 2023, to May 4, 2025) (providing in part that “the requirements of the statement” of responsibilities must be “reasonable” and “related to remedying the conditions that necessitate foster care placement”); *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002) (holding that a finding concerning whether permanency plan requirements are reasonably related to the conditions necessitating foster care “must be made in conjunction with the determination of substantial noncompliance under § 36-1-113(g)(2)”).

In its final judgment, the trial court stated the following findings of fact regarding Father’s failure to substantially comply with the requirements of the permanency plan:

The permanency plan dated April 15, 2024 listed a number of requirements that [Father] needed to satisfy before the child could safely be placed with him. The initial plan gave [Father] until October 15, 2024 to satisfy those requirements.

The initial plan required [Father] to:

- a. Pay child support in the amount of \$100.00 per month.
- b. Obtain and maintain a safe and stable home for the child.
- c. Have a legal source of income.
- d. Address all legal charges and obtain no new charges.
- e. Complete an alcohol and drug assessment and mental health assessment and comply with all recommendations.

This Court ratified the initial permanency plan on July 16, 2024 as in the child's best interest and found that the requirements for [Father] were reasonably related to the reasons for foster care.

[Father] is in substantial noncompliance with the statement of responsibilities and requirements set out for him in the permanency plan. [Father] has taken no steps to complete the permanency plan tasks.

(Paragraph numbering omitted.) Upon careful review, we determine that a preponderance of the evidence supports the trial court's findings.

Father does not address this statutory ground on appeal. Within his due process argument, he does reference Ms. Bennett's testimony that Father was aware of the Permanency Plan and had been sent a copy of it at the facility where he was residing. It is undisputed that Father participated in the development of the permanency plan and was aware of his responsibilities under it. However, as the trial court found, Father had made no appreciable steps toward completing the permanency plan at the time of trial. Specifically, the evidence demonstrated that Father (1) had paid no child support until the month of trial when he made two payments that totaled \$92.30, (2) had last communicated with DCS in November 2024 that he was residing in a sober living facility with no indication that he could provide a safe and stable home for the Child, (3) had provided no proof of employment, (4) had not yet completed his probation in Arizona and had outstanding warrants in Tennessee, and (5) had not submitted any proof of assessments for alcohol and drug use or mental health. Father had submitted a drug screen to DCS in April 2024, which demonstrated that he tested positive for buprenorphine and THC.

We determine that the trial court did not err in finding that Father had completed none of the responsibilities of the permanency plan at the time of trial. Father filed a post-judgment motion with a letter from his Arizona probation officer attached indicating that Father had graduated from an intensive probation program to standard probation and that he was employed in a restaurant. Setting aside for a moment that this letter did not constitute evidence presented at trial, Father's recent efforts in Arizona, while commendable, were "too little, too late" to demonstrate substantial compliance. *See, e.g., In re A.W.*, 114 S.W.3d 541, 544-47 (Tenn. Ct. App. 2003) (affirming the trial court's finding that the parent's improvements made since the filing of the termination petition

were ““too little, too late.””). We conclude that the trial court did not err in terminating Father’s parental rights upon clear and convincing evidence of the statutory ground of failure to substantially comply with the reasonable requirements of the permanency plan.

C. Severe Child Abuse

The trial court found clear and convincing evidence supporting the statutory ground of severe child abuse as to Mother. Regarding this ground for termination of parental rights, Tennessee Code Annotated § 36-1-113(g)(4) provides:

Under a prior order of a court or by the court hearing the petition to terminate parental rights or the petition for adoption, a child has been found to be a victim of severe child abuse, as defined in § 37-1-102, and the parent or guardian has been found to have knowingly or with gross negligence either committed severe child abuse or failed to protect the child from severe child abuse.

The version of Tennessee Code Annotated § 37-1-102(b)(27)(E) (West July 1, 2024, to December 31, 2024) applicable to this action defined “severe child abuse” in relevant part as:

The ingestion of an illegal substance or a controlled substance by a child under eight (8) years of age that results in the child testing positive on a drug screen, except as legally prescribed to the child[.]

“The most serious consequence of a finding that a parent has committed severe child abuse is that such a finding, in and of itself, constitutes a ground for termination of parental rights.” *In re Samaria S.*, 347 S.W.3d 188, 201 (Tenn. Ct. App. 2011) (quoting *State Dep’t of Children’s Servs. v. M.S.*, No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *10 (Tenn. Ct. App. Mar. 8, 2005)).

On March 4, 2024, following a hearing upon the GAL’s motion, the trial court entered an adjudicatory order finding that Mother had committed severe child abuse against the Child pursuant to Tennessee Code Annotated § 37-1-102(b)(27).⁶ In determining that this ground for termination of parental rights had been proven by clear and convincing

⁶ In the termination order, the trial court did not specify the subsection of Tennessee Code Annotated § 37-1-102(b)(27) applicable to the severe child abuse finding. In the March 2024 order finding severe abuse, the court had cited subdivision § 37-1-102(b)(27)(A) regarding exposure of a child to “serious bodily injury” as defined in Tennessee Code Annotated § 39-15-402. We note that the subsection applicable to the situation in this case, wherein Mother failed to protect the Child from ingestion of an illegal or controlled substance, was § 37-1-102(b)(27)(E). Upon review, we determine what appears to have been a clerical error in the mislabeling of the subsection in the March 2024 order to have been harmless.

evidence, the trial court expressly relied on its previous findings in the March 2024 order, which Mother had not appealed, as *res judicata*. We agree.

Tennessee Code Annotated § 36-1-113(g)(4) allows a trial court to terminate a parent's rights on the ground of severe child abuse if the parent "has been found to have knowingly or with gross negligence either committed severe child abuse or failed to protect the child from severe child abuse" "[u]nder a prior order of a court or by the court hearing the petition to terminate parental rights" (emphasis added). It is well settled that a trial court may rely on a prior court order finding severe child abuse and is not required to relitigate the issue of severe abuse at the trial to terminate parental rights. *See In re Samaria S.*, 347 S.W.3d at 201; *State, Dep't of Children's Servs. v. M.S.*, No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *10 (Tenn. Ct. App. Mar. 8, 2005). As this Court concluded in a comparable situation:

Because Mother did not appeal the trial court's finding of severe child abuse within the time allowed by law, the order became a final order and the finding of severe child abuse is *res judicata*. Thus, the trial court did not err in finding that Mother has committed severe abuse for purposes of terminating her parental rights.

In re Serenity S., No. W2014-00080-COA-R3-PT, 2014 WL 6612571, at *6 (Tenn. Ct. App. Nov. 24, 2014). We therefore affirm the trial court's determination that DCS proved this statutory ground for termination of Mother's parental rights by clear and convincing evidence.

VI. Best Interest of the Child

When, as here, a parent has been found to be unfit by establishment of at least one statutory ground for termination of parental rights, the interests of parent and child diverge, and the focus shifts to what is in the child's best interest. *In re Audrey S.*, 182 S.W.3d 838, 877 (Tenn. Ct. App. 2005); *see also In re Carrington H.*, 483 S.W.3d at 523 ("The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination." (quoting *In re Angela E.*, 303 S.W.3d 240, (Tenn. 2010))). Tennessee Code Annotated § 36-1-113(i)(1) provides a list of factors the trial court is to consider when determining if termination of parental rights is in a child's best interest. This list 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. *See In re Carrington H.*, 483 S.W.3d at 523; *In re Audrey S.*, 182 S.W.3d at 878 ("The relevancy and weight to be given each factor depends on the unique facts of each case."). Furthermore, the best interest of a child must be determined from the child's perspective and not the parent's. *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004).

Tennessee Code Annotated § 36-1-113(i)(1) lists the following factors for consideration:

- (A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority;
- (B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
- (C) Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs;
- (D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;
- (E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;
- (F) Whether the child is fearful of living in the parent's home;
- (G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;
- (H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;
- (I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;
- (J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance

analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

- (K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;
- (L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;
- (M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;
- (N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;
- (O) Whether the parent has ever provided safe and stable care for the child or any other child;
- (P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;
- (Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;
- (R) Whether the physical environment of the parent's home is healthy and safe for the child;
- (S) Whether the parent has consistently provided more than token financial support for the child; and
- (T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

The statute further provides: “When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” Tenn. Code Ann. § 36-1-113(i)(2).

As our Supreme Court has instructed regarding the best interest analysis:

These statutory factors are illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis. In re Carrington H., 483 S.W.3d at 523 (citing In re Audrey S., 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005)). Facts considered in the best interests analysis must be proven by “a preponderance of the evidence, not by clear and convincing evidence.” In re Kaliyah S., 455 S.W.3d [533,] 555 [(Tenn. 2015)] (citing In re Audrey S., 182 S.W.3d at 861). “After making the underlying factual findings, the trial court should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest[s].” Id. When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” In re Audrey S., 182 S.W.3d at 878. Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. Id. “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child” Tenn. Code Ann. § 36-1-101(d) (2017).

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. In re Audrey S., 182 S.W.3d at 878. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. White v. Moody, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004). Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. See In re Audrey S., 182 S.W.3d at 878. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated. In re Carrington H., 483 S.W.3d at 523. “[D]epending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.” In re Audrey S., 182 S.W.3d at 878 (citing White v. Moody, 171 S.W.3d at 194). But this does not mean that a court is relieved of the obligation of considering all the factors and all the proof. Even if the circumstances of a particular case ultimately result in the court ascribing more weight—even outcome determinative weight—to a particular statutory factor, the court must

consider all of the statutory factors, as well as any other relevant proof any party offers.

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017).

A. Sufficiency of Trial Court's Findings and Conclusions

Parents contend, pursuant to Tennessee Rule of Civil Procedure 52.01, that the trial court failed to make sufficient findings of fact and conclusions of law to support its “final decision.” Parents’ argument is confined to the court’s findings and conclusions regarding the statutory best interest factors provided in Tennessee Code Annotated § 36-1-113(i)(1). DCS responds that the trial court made sufficient findings of fact in the termination order as a whole to support the court’s findings and conclusions in the best interest analysis. Upon thorough review of the trial court’s order and the record, we agree with DCS on this issue.

Tennessee Rule of Civil Procedure 52.01 provides in pertinent part:

In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.

The requirement for trial courts to include findings of fact and conclusions of law “‘facilitate[s] appellate review by affording a reviewing court a clear understanding of the basis of a trial court’s decision.’” *Trezevant v. Trezevant*, 568 S.W.3d 595, 622 (Tenn. Ct. App. 2018) (quoting *Lovlace v. Copley*, 418 S.W.3d 1, 34 (Tenn. 2013)).

Although Parents do not reference Tennessee Code Annotated § 36-1-113(k) in their appellate brief, we note that subsection 36-1-113(k) expressly provides that in cases involving termination of parental rights, a “court shall provide a ruling on the petition within thirty (30) days of the conclusion of the hearing and shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the ruling.” As this Court has explained:

Tennessee Code Annotated section 36-1-113(k) “explicitly requires courts terminating parental rights to enter an order which makes specific findings of fact and conclusions of law whether they have been requested to do so or not.” *In re Audrey S.*, 182 S.W.3d at 861. “The findings of fact and conclusions of law required by Tenn. Code Ann. § 36-1-113(k) must address the two necessary elements of every termination case.” *In re J.D.C.*, No. E2007-02371-COA-R3-PT, 2008 WL 1899987, at *8 (Tenn. Ct. App. Apr. 30, 2008). They must address whether one or more of the statutory grounds for termination have been established by clear and convincing evidence, and

they must address whether terminating parental rights is in the child's best interest. *Id.*

In re Haley S., No. M2017-00214-COA-R3-PT, 2018 WL 1560078, at *5 (Tenn. Ct. App. Mar. 29, 2018) (quoting *In re Maria B.S.*, No. E2011-01784-COA-R3-PT, 2012 WL 1431244, at *2-3 (Tenn. Ct. App. Apr. 25, 2012)). “When appropriate findings of fact are not included in the trial court’s order, an appellate court cannot conduct a de novo review and the case must be remanded for the trial court to enter sufficient findings of fact and conclusions of law.” *In re Bentley E.*, 703 S.W.3d 298, 303 (Tenn. 2024).

Parents assert that the trial court’s analysis of individual best interest factors consisted of “merely reciting the statute but not giving any specifics to this matter.” Parents cite to certain paragraphs of the court’s best interest analysis in support of their argument. However, we determine that the trial court included findings of fact in prior sections of its termination order that support the court’s analysis of these best interest factors. As this Court has held:

[W]hile doing so helps facilitate appellate review, a trial court is not required to restate the relevant factual findings within the discussion of each and every ground and best interest factor to comply with section 113(k) so long as the order contains sufficient findings to explain and support the trial court’s conclusions, allowing for meaningful review of the trial court’s decision.

In re Glenn B., No. M2023-00096-COA-R3-PT, 2023 WL 8369209, at *8 (Tenn. Ct. App. Dec. 4, 2023); *see In re Jaxon N.*, No. E2024-01405-COA-R3-PT, 2025 WL 1250586, at *11 (Tenn. Ct. App. Apr. 30, 2025) (“So long as the trial court’s written order contains findings of requisite specificity that show that termination is in the child’s best interest, the fact that the findings are not set out in the ‘best interest’ section of the order does not render the order insufficient.” (quoting *In re Adoption Of C.A.M.*, No. W2008-02003-COA-R3-PT, 2009 WL 3739447, at *7 (Tenn. Ct. App. Nov. 9, 2009))).

For example, Parents urge that a lack of sufficient findings is “especially evident” in the paragraph of the termination order wherein the trial court concluded that factor (N) weighed in favor of termination. The court stated:

The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(1)(N) is applicable in this matter. Thus, the Court finds that it is in the child’s best interest for termination to be granted as to [Father and Mother], because the parents have shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child. Thus, the Court finds that this factor weighs in favor of terminating [Father’s and Mother’s] parental rights.

Parents acknowledge that “statements of findings are made in the beginning of the Order,” but they maintain that “nothing denotes or would show how those findings are related to this best interest analysis.”

To the contrary, as we have determined in a prior section of this Opinion, the trial court properly concluded that the adjudicatory order wherein the court had found that Mother had committed severe child abuse against the Child was *res judicata* as to this termination action. As to Father, the court found in its termination order that Father had failed to complete any of the permanency plan tasks that would have demonstrated his readiness to care for the Child. As the court found, Father “lack[ed] stability” and had presented “no proof of a home, no proof of employment, and no proof of a situation in which he could assume the role of ‘father’” to the Child. Other than his participation electronically in the development of the permanency plan, Father had been absent throughout the proceedings. Therefore, although there is no proof in the record that Father abused the Child, his neglect of the Child is evident in his absence from her life and from the proceedings before the trial court. We conclude that these findings are sufficient to support the court’s determination that factor (N) weighed in favor of terminating Father’s and Mother’s parental rights. We will address Parents’ argument regarding the specificity of findings supporting factors (H) and (I) in the following analysis.

B. Best Interest Factors

In its final judgment, the trial court concluded that fourteen factors weighed in favor of terminating Father’s and Mother’s parental rights and that six factors were inapplicable. The court did not weigh any factors against termination. Upon careful review of the evidence presented, we determine that clear and convincing evidence established that termination of Father’s and Mother’s parental rights was in the Child’s best interest. Given the similarity of the trial court’s analysis as to Father and Mother, we will address application of the best interest factors to both parents simultaneously, noting distinctions as needed.

Factors (A), (C), and (J) are related by reason of their emphasis on the Child’s stability and safety. The trial court determined that factor (A) (the child’s critical need for stability and continuity of placement) weighed in favor of termination because it would “allow the child to remain in a loving and caring home where the child does not have to go through another placement change.” Similarly, the court found that factor (C) weighed in favor of termination because neither Father nor Mother had demonstrated continuity and stability in meeting the Child’s needs. Although the trial court’s conclusions as to factor (C) are stated solely in the statutory language of the best interest factor, the court also made the factual findings in its order that Father lacked stability in that he had “provided no proof of a home, no proof of employment, and no proof of a situation in which he could assume the role of ‘father.’” Concerning Mother, the court specifically found that the “employment situation” Mother had presented with D.K. lacked credibility. The court also expressed

“reservations that the \$600.00 paid to mother each month would be significant enough to care for a child,” noting that there had “not been a single payment made yet” and that as a co-lessee, D.K. was “under no legal obligation to the child and may leave the home.”

Regarding factor (J) (whether the parent has demonstrated a lasting adjustment), the trial court considered evidence that both parents had failed to resolve all criminal charges and had incurred new charges, as well as evidence that both parents had tested positive for controlled substances during the pendency of the case. We note also the court’s determination, affirmed in a prior section of this Opinion, that Father had failed to substantially comply with the permanency plan. The evidence presented supports the trial court’s findings regarding these statutory factors.

The trial court concluded that factor (B) weighed in favor of termination because “a change of caregivers and physical environment from the child’s current placement would likely have a negative effect on the child’s emotional, psychological, and/or medical condition.” The court found that the Child was “in a loving and stable foster home” and that Foster Father had indicated Foster Parents’ “desire to adopt the child.” We conclude that the evidence preponderates in favor of the trial court’s findings as to factor (B).

Factors (D), (E), (H), and (I) are related due to their emphasis on parental attachments and relationships. The trial court determined that factors (D), (H), and (I) weighed in favor of termination but that factor (E) was inapplicable. With respect to factor (D) (whether the parent and child have a secure and healthy attachment), the court concluded that “the parents and child do not have a secure and healthy parental attachment” and that there was “not a reasonable expectation that the parents [would] be able to create such an attachment.” Concerning factor (H), the trial court found that the Child had “created a healthy parental attachment with another person or persons in the absence of the parents.” Although the court did not specify this parental attachment in its conclusion regarding factor (H), the court found elsewhere in its order that the Child was “in a loving and stable foster home” and that Foster Parents wished to adopt her.

Likewise, regarding factor (I), the trial court found the statutory language applicable that the Child had “emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings,” and that the Child’s access to information about her heritage would not be negatively impacted by remaining in her foster home. Although the court did not specify the Child’s emotionally significant relationships with persons other than Foster Parents, the court did credit Foster Father’s testimony, which included a description of the Child’s close relationship as “part of the family” with Foster Parents’ two adult daughters and Foster Father’s parents, sister, and mother-in-law. The evidence preponderates in favor of the court’s findings as to factors (D), (H), and (I).

In determining factor (E) to be inapplicable, the trial court did not make any findings regarding the parents’ visitation with the Child. However, because the evidence

demonstrated Father's lack of visitation and Mother's attempts at visitation with the Child, we find factor (E) to be applicable in this case. Ms. Bennett testified that except for one letter he had sent to the Child, Father had not been in contact with the Child throughout the Child's time in protective custody. According to Ms. Bennett, Mother's situation was more nuanced in that she had participated in therapeutic visitation and some telephone calls with the Child, but the visits had been interrupted by Mother's new criminal charges and failed or delayed drug screens. We therefore determine that factor (E) should weigh in favor of termination as to both parents.

The trial court found that factor (F) (whether the child is fearful of living in the parent's home) and factor (G) (whether the parent, parent's home, or others in the parent's home exacerbate a child's experience of trauma) were inapplicable. It was not clear from the evidence whether the Child had ever lived in Father's home. According to the petition for emergency removal into protective custody, entered as an exhibit during the termination trial, the Child had been in Mother's legal custody, if not physical custody, from the approximate age of seventeen months until she was removed in July 2023 at almost three years of age. Neither DCS nor Mother presented any evidence regarding whether the Child feared living in either parent's home. Given the Child's young age when she was apparently in and out of Mother's home and the lack of evidence concerning any fear expressed by the Child, we determine that the trial court did not err in finding that factors (F) and (G) were inapplicable. *See In re Skyler M.*, No. M2024-00960-COA-R3-PT, 2025 WL 2400238, at *19 (Tenn. Ct. App. Aug. 19, 2025) ("Depending on the circumstances, this Court has classified a ground for which there was a lack of evidence as, variously, weighing against termination, being neutral, or being inapplicable." (citing *In re Colten B.*, No. E2024-00653-COA-R3-PT, 2025 WL 252663, at *9-10 (Tenn. Ct. App. Jan. 21, 2025), for its thorough discussion of the various approaches)).

Factors (K) and (L) both concern services and assistance offered to parents. With respect to factor (K), the trial court found that Father and Mother had "not taken advantage of available programs, services, or community resources to assist them in making a lasting adjustment of circumstances, conduct, and/or conditions." The court specifically found that Father had failed to complete any steps in connection with the permanency plan developed with DCS and that he had presented no proof at trial of housing, employment, or other progress that would enable him to act as a father to the Child. As to Mother, the court found that she had failed drug screens and had allowed a "substantial amount of time" to pass before submitting to "the most recent hair follicle drug screen." The court further found that although Mother had attempted to demonstrate housing and employment, she had done so too late to utilize DCS in investigating the situation before trial. We note that this situation and Mother's criminal charges, which were noted by the court, also interfered with DCS's ability to assist Mother with therapeutic visitation with the Child.

The trial court also weighed factor (L) in favor of termination, finding that DCS had "made reasonable efforts to assist the parents in making a lasting adjustment in their

conduct or circumstances, but, despite these efforts, the parents [had] made no change in their conduct or lifestyle.” In its order adjudicating the Child dependent and neglected and in its order finding that the Child had been severely abused by Mother, the court had also determined that DCS was “making reasonable efforts towards reunification or towards other permanent and appropriate placement” by “preparing permanency plans, attending court hearings, communication and notifying parties of staffings/court hearings and by finding appropriate care” for the Child.

Ms. Bennett testified that she had attempted to stay in contact with both parents, contacted providers for assessments, and conducted a home visit when Mother sought to have a living situation approved. Ms. Bennett stated that most of her communication with Father was via text messages and that she continued to communicate with him until her medical leave. Ms. Bennett related that when Father expressed a desire to send a letter to the Child, Ms. Bennett received the letter for him and previewed it before giving the letter to Foster Parents and the Child. Although Ms. Shoun acknowledged that she had no contact with Father while she worked on the case in Ms. Bennett’s absence, Ms. Shoun did testify that she had communicated repeatedly with Mother and attempted to set up the hair follicle drug screen that Mother needed before therapeutic visitation could resume. Ms. Bennett reported that even after the court’s order finding severe abuse had been entered, Ms. Bennett “wanted to continue to work with [Mother] to see if she could get her daughter back.”⁷ The evidence preponderates in favor of the trial court’s findings that factors (K) and (L) weighed in favor of termination.

Factors (M), (P), (Q), and (R) all relate to the parents’ actions to meet the Child’s needs. The trial court determined that factors (M) and (R) weighed in favor of termination, and we agree. With respect to factor (M), the court found that Parents had “not demonstrated a sense of urgency in seeking custody of the child and/or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child’s best interest.” The court specifically found that Father had taken no steps to complete the requirements of the permanency plan and had provided no proof of a home, employment, or readiness to “assume the role of ‘father’” to the Child. Although Mother had attempted to address the circumstances that made an award of custody to her unsafe, she also had not demonstrated a sense of urgency in completing required drug screens or presenting proof of a stable home and employment. As noted previously, the court did “not find a great deal of credibility with the employment situation [for Mother] as provided by [D.K.]” The above facts also apply to factor (R) (the physical environment of the parent’s home). The evidence preponderates in favor of the trial court’s findings that factors (M) and (R) weighed in favor of termination.

⁷ Although in the motion for a severe abuse finding, the GAL had requested that the trial court relieve DCS of the requirement to make reasonable efforts to assist Mother, the court did not address this request in its order finding severe abuse.

The facts related to Father's and Mother's difficulties in providing a stable home for the Child also apply to factor (P) (whether the parent demonstrated an understanding of the basic and specific needs required for the Child to thrive) and factor (Q) (whether the parent demonstrated the ability and commitment to creating a home that would meet the child's needs). However, the trial court found that factors (P) and (Q) were "not applicable in this matter and [did] not weigh in favor of, or against, termination" without further explanation. Upon review of the court's final order and the entire record, we determine that the evidence preponderates in favor of a finding that neither parent had demonstrated an understanding of the Child's basic and specific needs or the ability and commitment to creating a home that would meet those needs. Therefore, we conclude that factors (P) and (Q) weigh in favor of termination.

The trial court did weigh factor (O) (whether the parent has ever provided safe and stable care for a child) in favor of terminating Father's and Mother's parental rights. The court found that the parents had "never provided safe and stable care for the child." The court also made specific findings that neither parent had ever provided a safe and stable home, consistent income or financial support, or an environment free from criminal charges or substance abuse. Additionally, as DCS points out, the record demonstrates that T.V. and B.V. were removed from Mother's custody in July 2023 and remained in their paternal grandmother's care at the time of trial. We agree with the trial court's assessment of this statutory factor.

With respect to factor (S) regarding child support, the trial court determined that this factor weighed "substantially" in favor of termination "because the parents have failed to consistently provide more than token financial support for the child." Indeed, Mother acknowledged that she had provided no financial support for the Child during the pendency of this matter despite the trial court's directive in the permanency plan ratification order that each parent pay \$100.00 monthly in support. DCS presented child support records at trial indicating that Father had made two partial payments in March 2025, the month of trial, totaling \$92.30. Although no proof was presented at trial regarding Father's income, we note that Father had agreed to the support amount when he participated in development of the permanency plan and that on appeal, he has not challenged the court's finding that his payments were token. We therefore find no error in the trial court's determination that Father's last-minute payments were token in nature. *See* Tenn. Code Ann. § 36-1-102(1)(B) (West July 1, 2024, to May 4, 2025) (providing that support is considered "token" when "the support, under the circumstances of the individual case, is insignificant given the parent's means").

The trial court determined that factor (T) (the parents' mental or emotional fitness) was inapplicable and did "not weigh in favor of, or against, termination." Depending on the circumstances, this Court has previously affirmed a trial court's finding that factor (T) weighed in favor of termination when the parent had struggled with substance abuse throughout the pendency of the case. *See, e.g., In re Zaniyah C.*, No. E2025-00568-COA-

R3-PT, 2025 WL 3458901, at *8 (Tenn. Ct. App. Dec. 2, 2025) (affirming the trial court’s finding that the mother’s “mental and emotional fitness would be detrimental to the [C]hildren because of her drug use”); *In re Daxleigh F.*, No. E2023-00749-COA-R3-PT, 2024 WL 864773, at *16-17 (Tenn. Ct. App. Feb. 29, 2024) (affirming the trial court’s finding that factor (T) weighed in favor of terminating the mother’s parental rights because she had failed to resolve her “on-going substance abuse problems”). We note, however, that no proof was presented at trial regarding a mental disorder that would prevent either parent from providing safe and stable care to a child. We therefore conclude that the trial court did not err in finding that factor (T) weighed neither for nor against termination.

Finally, the trial court determined that factor (N) weighed in favor of terminating Father’s and Mother’s parental rights to the Child “because the parents have shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child.” We have previously concluded that the evidence supported this determination.

To summarize, we affirm the trial court’s findings regarding all fourteen factors that the court found weighed in favor of terminating Father’s and Mother’s parental rights to the Child, as well as the court’s findings that factors (F) and (G) were inapplicable and that factor (T) weighed neither for nor against termination. We have determined that three factors found by the trial court to be inapplicable—factors (E), (P), and (Q)—should have been weighed in favor of termination as to both parents. Given that this result adds weight to the trial court’s ultimate conclusion that it was in the best interest of the Child to terminate Father’s and Mother’s parental rights, we hold that that any errors in the trial court’s consideration of factors (E), (P), and (Q) were harmless. *See, e.g., In re Jaden H.*, No. E2024-01825-COA-R3-PT, 2026 WL 1694569, at *17 (Tenn. Ct. App. June 10, 2026) (affirming the trial court’s determination that it was in the child’s best interest for the father’s parental rights to be terminated when factors the trial court had not addressed were either neutral or militated in favor of termination); *In re Colten B.*, No. E2024-00653-COA-R3-PT, 2025 WL 252663, at *10 (Tenn. Ct. App. Jan. 21, 2025) (determining the trial court’s mislabeling of a single best interest factor to be harmless error when the ultimate conclusion of the best interest analysis was not affected). We therefore affirm the trial court’s determination by clear and convincing evidence that termination of Father’s and Mother’s parental rights to the Child was in the Child’s best interest.

VII. Conclusion

For the foregoing reasons, we reverse the trial court’s findings regarding the statutory ground of failure to manifest an ability and willingness to assume custody of or financial responsibility for the Child as to both parents and the statutory ground of persistence of the conditions that led to removal of the Child as to Mother. We affirm the trial court’s judgment in all other respects. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the trial court’s judgment terminating Father’s and

Mother's parental rights to the Child and collection of costs below. Costs on appeal are assessed to the appellants, Gino F. and Amanda F.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE