

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 1, 2026

IN RE DAVID T.¹ ET AL.

Appeal from the Juvenile Court for Jefferson County
No. 45JC1-2024-JT-10 Dennis Roach II, Judge

No. E2025-00967-COA-R3-PT

The trial court terminated the appellants' parental rights to their three minor children. As to the mother and the father, the trial court found clear and convincing evidence of the grounds of persistent conditions and failure to manifest an ability and willingness to assume custody of the children. The trial court also found that the mother abandoned the children by failing to establish a suitable home. Finally, the trial court found that termination of the mother's and father's parental rights was in the best interests of the children. The mother and father both appeal. Upon diligent review of the record, we find no reversible error and affirm the judgment of the trial court.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and W. NEAL MCBRAYER, J., joined.

Gregory E. Bennett, Seymour, Tennessee, for the appellant, Koltan T.

Matthew M. Lorah, Knoxville, Tennessee, for the appellant, Jessica J.

Jonathan Skrmetti, Attorney General and Reporter, and Clifton Wade Barnett, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

¹ This Court has a policy of abbreviating the last names of children and other parties in matters involving minors to protect their privacy and identities.

OPINION

BACKGROUND

The appellants, Jessica J. (“Mother”) and Koltan T. (“Father”), appeal the termination of their parental rights to their three minor children: David T., born in December 2013; James T., born in July 2016; and Clara T., born in May 2019 (together, the “Children”). On May 23, 2023, the Tennessee Department of Children’s Services (“DCS” or the “Department”) filed a petition in the Jefferson County Juvenile Court (the “trial court”) to adjudicate the Children as dependent and neglected and transfer custody of the Children to the Department. The petition alleged that there had been “ongoing concerns for these [C]hildren and the home environment[.]” including an incident in 2016 when David “was reported out in the road and feces was observed in the home[;]” a 2020 report that the Children were “wearing the same clothes and smelling and being dirty with rats[;]” two separate reports made in January 2021 and December 2021 about the Children “being dirty[,] smelling of urine[,] and the home being dirty[;]” a February 2022 referral that the Children “were dirty and smell of urine[;]” and a November 2022 referral “for dirty home[.]”

The final referral was made on May 19, 2023, after James “was observed dirty at school” with dirt on his skin, face, and arms. The petition alleges that after James ate breakfast at school that morning, “he sat and cried[.]” and after being asked by staff what was wrong “[h]e eventually reported he was still hungry.” James allegedly “was sobbing and afraid to ask for more food.” The petition asserts that “[t]he past couple of weeks[,] James has had to get shoes and clothes from the nurse due to smell[.]” and “recently went to school with glass in his foot.” James purportedly “told the school that he stepped on glass playing outside[.]” As to David, the petition alleged that he “appeared dirty and had bad knots in his hair as if it hadn’t been brushed in a while” and was “still stealing.” School staff also reported that they had “seen the [C]hildren still playing in the road unaccompanied by an adult.” A home visit was completed to follow up on the May 2023 referral, during which DCS case managers observed “urine and feces throughout” and “were both bit by something in the home.”

A child and family team meeting (“CFTM”) was held on May 23, 2023, which Mother and the Children attended, but Father missed because he was meeting with his probation officer. The petition alleges that during the meeting, Mother appeared “to have no control over the [C]hildren,” who “were running back and forth.” Furthermore, one child purportedly “asked if he went to the bathroom if it would flood” and had a pencil sharpener in his mouth that he dropped and then put back in his mouth. The petition further avers the following:

The family has a dog and 9 puppies living in the home. One of the puppies used the bathroom on the couch while DCS was there. CPS workers were

also bitten. There are two holes in the children's bedroom in the ceiling. One child hit his head causing the hole. There is also wood covering the child's window because there is no window. There was a large hole leading to the ground and another hole in the floor from a leak. The parents stated they needed a couple hours to clean the home. . . . There was a bag of trash on the porch that may have caused the child to step on the glass. Mother stated she put peroxide on it. His foot looked like it could be possibly infected. . . .

The petition sets forth efforts made by DCS over the years to assist the family, including trying to find kinship placements for the Children; providing the family with mattresses and mattress covers for the Children, bedding, pest control services, and homemaker services; and requesting mental health assessments for the family. Ultimately the Department averred that it was reasonable to make no effort to maintain the Children in the home "due to the state of the home."

The trial court placed the Children in the Department's custody on May 23, 2023, where the Children remain at this time. Mother and Father were granted supervised visitation with the Children. The Children were adjudicated dependent and neglected by clear and convincing evidence adverse to Father in June 2023 and to Mother in August 2023.

On April 11, 2024, Mindy Seals, the guardian ad litem (the "GAL") at the time, moved to suspend Father's visitation with the Children due to such visitation not being in the best interests of the Children. The GAL stated that Mother had been having therapeutic visits with the Children since their placement into DCS custody in May 2023, and Father began having therapeutic visits with the Children in October 2023, after his release from jail for violation of probation.² The GAL averred that David began acting out aggressively after visits with Father and that it was not in David's best interests to continue visiting Father. Father continued therapeutic visits with the other Children, but Clara began having inappropriate behavior after visits with Father as well. Due to these instances, the GAL argued that it would be in the best interests of the Children to stop visits with Father until the Children's therapists opined that it would not be detrimental to the Children's well-being to have such visits. The trial court entered a no contact order as to Father on May 1, 2024.

On September 6, 2024, the Department filed a petition in the trial court to terminate both Mother's and Father's parental rights to the Children. As to both Mother and Father, the Department alleged three statutory grounds for termination: abandonment by failure

² Father pled guilty to attempted child abuse and neglect in 2016, is on the Tennessee Sex Offender Registry after pleading guilty to attempted aggravated sexual battery for digital penetration of an eleven-year-old child in 2019, pled guilty to child neglect and cruelty to animals in 2023, and as a result of the 2023 charges, pled guilty to a violation of probation.

to provide a suitable home, persistent conditions, and failure to manifest an ability and willingness to assume custody or financial responsibility of the Children. The termination petition was tried on March 10, 2025. Mother, Father, two DCS service providers, a DCS foster care case manager, a CASA volunteer, and the Children's foster mother testified. The trial court also admitted into evidence the deposition of another DCS foster care case manager.

The trial court first heard from the Children's foster mother ("Foster Mother"). Foster Mother testified that the Children live in the home with Foster Mother, the foster father, and their two other children. The Children had lived with the foster parents for twenty-two months as of the trial date. Foster Mother testified that the Children get along with their foster siblings and call them "brother" and "sister," that they call Foster Mother and the foster father "mom" and "dad," and that both of the foster parents' extended families are involved in the Children's lives. Foster Mother stated that the Children are doing well in school. She explained that two bedrooms have been added to their house for the Children, and she expressed that she and the foster father love the Children and intend to adopt the Children if they become available for adoption. She testified that she had met both Mother and Father and attended supervised visits with Mother. When asked about how Mother interacted with the Children, Foster Mother stated that "[s]he interacts with Clara a lot, the boys not so much. It's more so to take pictures and be, you know, just to prove that she was there." She also asserted that the Children's behaviors changed drastically after visiting with Father.

The trial court next heard from Abigail Snyder, a DCS service provider and behavioral counselor. Ms. Snyder testified that she worked with the Children, the foster family, and Mother and Father from October 2023 to January 2024. She testified that when she first assessed them, the Children engaged in self-harming behaviors, including hitting themselves, and they were physically and verbally aggressive. Ms. Snyder explained that Mother's parenting changed after Father was released, stating that Mother "was disengaged . . . would just sit there in those sessions and just let the kids kind of run amuck and be escalated [and she] tuned them out." Ms. Snyder shared that Mother threatened her after a CFTM during which she talked about what had been occurring during the visits between Mother and the Children. Ms. Snyder testified that the Children had disclosed many types of physical and verbal abuse to her and that David alleged that Father sexually abused him on one occasion. Ms. Snyder expressed that there was an instance where Mother and Father had a discussion with her about being in an open relationship, and she felt as though Father was coming onto her.

Next, DCS service provider Brandy West testified that she provided supervised therapeutic visitation and family support to Mother, Father, and the Children starting in September 2023 and still supervised therapeutic visits between Mother and the Children as of the trial date. Ms. West testified that Mother had over sixteen months of therapeutic visitation, whereas therapeutic visitation is normally only necessary for three to six months.

Ms. West shared that there were multiple instances where the Children threw up upon learning that they were to have a therapeutic visit with Mother or Father. Ms. West shared that she noticed a change in Mother's engagement in the visits with the Children after Father was released from jail. She testified that prior to Father's release from jail, Mother was engaging in hands-on play with the Children and was confirming visits but that after Father's release, she struggled to confirm visits and would be on her phone during the visits.

The trial court next heard from Delyn Seal, the Children's CASA volunteer. Ms. Seal testified that she was assigned to the Children's case in June 2023. She explained that she had observed the Children in the foster home and that the Children are loving and have a strong bond with the foster parents. Ms. Seal testified that she had recently visited the parents' home, which did not appear to be a safe location for the Children. Ms. Seal also stated that "CASA feels it's in the best interest to move forward with adoption of the [C]hildren at this time." She also stated that the Children came into the Department's custody with many issues but that after twenty-two months in the foster family's home, the Children are thriving.

Deborah Garrison, a foster care social worker with DCS and current case manager for the Children, testified next. She stated that she visited the parents' home in January 2025 and that it was not a suitable home for the Children. Ms. Garrison spoke on the best interests of the Children and stated that "[Mother and Father] haven't met their goals. [Mother and Father] haven't met the needs of the Permanency Plan. [Mother and Father] haven't yet provided a safe place for the [C]hildren to reside in and live in."

Mother testified that she has been in a relationship with Father since 2011, including in 2017 when Father was placed on the Sex Offender Registry for digital penetration of an eleven-year-old, and she expressly denied that Father did anything wrong or acted inappropriately with regard to this offense. When asked about Father's child abuse and neglect charge from 2016, Mother shared that Father got blamed for David being found in the street outside of the home. She elaborated that at the time that David got outside, her mother was supposed to be watching David. Mother therefore did not believe that Father was at fault for the charge, even though he was at home when the incident occurred. Mother also stated that Father should not have been charged with animal abuse and child neglect in 2023. Mother stated that she would never leave Father because "[Father] did not do anything to [the Children] whatsoever." When asked about David's alleged disclosure of sexual abuse from Father to his therapist, Mother stated that "[Father] has never touched [David] whatsoever" and that "[Father] has never touched a child." Mother testified that she and Father were buying a new trailer that was "supposed to come in by March 21st." However, she explained that at the time of trial, they were living in a camper that did not have running water and that they had to drive between five and twenty minutes to a family member's house to use the bathroom.

Lastly, the trial court heard from Father. Father testified that he suffers from anxiety and depression and is medicated for both. Father also testified that due to being on the Sex Offender Registry, he participates in weekly sexual rehabilitation courses and completes polygraphs biannually. Regarding David's purported disclosure of sexual abuse by Father, Father testified that he "never touched [his] children in any way for sexual gratification." Father said he believes that "because [Father is] on the registry that with [David's] age and [David] being impressionable, that you all³ have coerced [David] into saying [Father has] done it[.]" Father stated that he "take[s] full responsibility" for his offense that resulted in his placement on the registry. When discussing the safety of the home, Father conceded that the Children "would be better in a safer environment." Father expressed that because he is "on the registry, [he is] extremely limited [] on what [he] can actually do" with the Children.

The trial court reviewed the January 8, 2025 deposition for proof of Julia Gibson, a DCS foster care case manager for the Children, as she was not available to testify on the trial date. Ms. Gibson testified that she was assigned to the Children's case in May 2023. Ms. Gibson stated that the Department's goal was to reunite the family. Ms. Gibson testified that she understood the Children entered the Department's custody due to "lack of supervision, but the biggest one was residential [i]nstability and environmental neglect." Ms. Gibson stated that when she visited the home in January 2024, "[t]here was exposed wires . . . holes in the walls . . . [and] a lot of safety risks and safety concerns for any child to be in the home at that time." Ms. Gibson testified that she had given Mother two resource packets and advised Mother and Father to contact local housing authorities. Ms. Gibson stated that the Children have expressed that they want to stay with the foster family forever and want to change their last names to the foster family's last name.

The trial court found clear and convincing evidence that (1) the Children were removed from the home or the physical or legal custody of Mother by a court order in a proceeding in which the Children were alleged to be dependent and neglected, and the Children were placed in the custody of the Department; (2) the Department made reasonable efforts to prevent removal of the Children; and (3) for a period of four months following the removal, the Department made reasonable efforts to assist Mother to establish a suitable home for the Children, but Mother had not made reciprocal reasonable efforts to provide a suitable home and demonstrated a lack of concern for the Children to such a degree that it appears unlikely that she would be able to provide a suitable home for the Children at an early date.

As to both parents, the trial court found clear and convincing evidence that (1) the Children had been in the custody of the Department for more than six months when the termination petition was filed; (2) the conditions leading to the Children's removal still persisted and other conditions existed that, in all reasonable probability, would cause the

³ It is unclear to whom Father was referring.

Children to be subjected to further abuse or neglect, preventing the Children's safe return to Mother's or Father's care; (3) there is little likelihood that these conditions will be remedied at an early date so that the Children can be safely returned to Mother or Father in the near future; and (4) the continuation of the parent-child relationships greatly diminishes the Children's chances of early integration into a safe, stable, and permanent home. The trial court also found by clear and convincing evidence that Mother and Father failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the Children and that placing the Children in Mother's and Father's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the Children. Finally, the trial court found by clear and convincing evidence that it is in the Children's best interests that Mother's and Father's parental rights be terminated.

Mother and Father timely appealed.

ISSUES

Mother raises two issues on appeal, and Father raises three issues on appeal, which we consolidate and restate as follows:

1. Whether the trial court erred in finding by clear and convincing evidence that there were statutory grounds for termination of Mother's and Father's parental rights.
2. Whether the trial court erred in finding by clear and convincing evidence that the termination of Mother's and Father's parental rights was in the best interests of the Children.

STANDARD OF REVIEW

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

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

To review trial court decisions, appellate courts use a [] two-step process, to accommodate both Rule 13(d) of the Tennessee Rules of Appellate Procedure and the statutory clear and convincing standard. First, appellate courts review each of the trial court's specific factual findings de novo under Rule 13(d), presuming each finding to be correct unless the evidence preponderates against it. *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); *In re Justice A.F.*, [No. W2011-02520-COA-R3-PT,] 2012 WL 4340709, at *7 [(Tenn. Ct. App. Sept. 24, 2012)]. When a trial court's factual finding is based on its assessment of a witness's credibility, appellate courts afford great weight to that determination and will not reverse it absent clear evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re Justice A.F.*, 2012 WL 4340709, at *7 (citing *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005)).

Second, appellate courts determine whether the combination of all of the individual underlying facts, in the aggregate, constitutes clear and convincing evidence. *In re Taylor B.W.*, 397 S.W.3d at 112; *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re Justice A.F.*, 2012 WL 4340709, at *7. Whether the aggregate of the individual facts, either as found by the trial court or supported by a preponderance of the evidence, amounts to clear and convincing evidence is a question of law, subject to de novo review with no presumption of correctness. *See In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *see also In re Samaria S.*, 347 S.W.3d 188, 200 (Tenn. Ct. App. 2011). As usual, the appellate court reviews all other conclusions of law de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d [240,] 246 [(Tenn. 2010)].

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

DISCUSSION

Grounds for termination

I. Abandonment by failure to provide a suitable home

The trial court found clear and convincing evidence that Mother abandoned the Children by failing to provide a suitable home but that this ground was not proven by clear and convincing evidence against Father. This statutory ground applies when:

(a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a child is alleged to be a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;

(b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and

(c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department[.]

Tenn. Code Ann. § 36-1-102(1)(A)(ii)(a)-(c) (effective July 1, 2024 to May 4, 2025).⁴ With this ground, we “consider[] whether a child has a suitable home to return to after the child’s court-ordered removal from the parent.” *In re Adaleigh M.*, No. E2019-01955-COA-R3-PT, 2021 WL 1219818, at *3 (Tenn. Ct. App. Mar. 31, 2021). A suitable home requires “more than a proper physical living location.” *In re Daniel B.*, No. E2019-01063-COA-R3-PT, 2020 WL 3955703, at *4 (Tenn. Ct. App. July 10, 2020) (quoting *Tenn. Dep’t of Children’s Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at *3 (Tenn. Ct. App. Nov. 29, 2007)). A suitable home entails “[a]ppropriate care and attention” for the child and “must be free from drugs.” *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *7 (Tenn. Ct. App. Apr. 20, 2016) (citing *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *9 (Tenn. Ct. App. June 10, 2014)). DCS should utilize its superior resources in assisting with the establishment of a suitable home, but “[its] efforts do not need to be ‘Herculean.’” *In re Jamarcus K.*, No. M2021-01171-COA-R3-PT, 2022 WL 3755383, at *8 (Tenn. Ct. App.

⁴ In termination cases, we apply the version of the statute in effect at the time the petition was filed. See *In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017). The termination petition in this case was filed on September 6, 2024.

Aug. 30, 2022) (quoting *In re Hannah H.*, 2014 WL 2587397, at *9). Sole responsibility does not lie with DCS, and “[p]arents must also make reasonable efforts towards achieving the goals established by the permanency plan to remedy the conditions leading to the removal of the child.” *Id.*

Here, we agree with the trial court’s findings. The Children were removed from Mother’s and Father’s home and placed in DCS custody on May 23, 2023, and were later adjudicated dependent and neglected. The order removing the Children into DCS’s legal and physical custody found that DCS made reasonable efforts to prevent the removal of the Children, and the record shows that DCS made reasonable efforts to assist Mother after the Children were removed from the home. Mother and Father testified that they had a new trailer being moved to the property that was expected to arrive approximately eleven days after the trial date. However, we still have concerns about the condition of the property, including that the burned remainder of the family’s previous trailer that caught on fire in early 2024 remains on the property and that various other debris is on the property, making it unsafe for the Children. There was not a suitable home for the Children to return to at the time of the trial. Mother argues that “[t]o find affordable housing can take anywhere from eight months to over a year” and “[t]o state, too little to[o] late is not a solution to housing.” The record reflects that the Children were removed from the home nearly two years prior to the hearing due to concerns about the Children and that Mother had not demonstrated that she would be able to provide a suitable home for the Children at an early date. So yes, far too little and far too late.

Consequently, DCS proved this ground by clear and convincing evidence against Mother, and we affirm.

II. Persistent conditions

The trial court also found that clear and convincing evidence supported the termination of Mother’s and Father’s parental rights due to persistent conditions. This statutory ground applies when:

[t]he 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 child is alleged to be a dependent and neglected child, and:

- (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) (effective July 1, 2024 to June 30, 2025). “The purpose behind the ‘persistence of conditions’ ground for terminating parental rights is ‘to prevent the child’s lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.’” *In re Navada N.*, 498 S.W.3d 579, 606 (Tenn. Ct. App. 2016) (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008)). As this Court has explained,

this ground for termination may be met when either the conditions that led to the removal persist 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[.]” [Tenn. Code Ann. §] 36-1-113(g)(3)(A)(i). Thus, even if the initial reasons that the children were placed in DCS custody have been remedied, if other conditions continue to persist that make the home unsafe, this ground may still be shown.

In re Daylan D., No. M2020-01647-COA-R3-PT, 2021 WL 5183087, at *9 (Tenn. Ct. App. Nov. 9, 2021).

Here, the trial court correctly concluded that this ground is supported by clear and convincing evidence. The termination petition was heard on March 10, 2025. The proof shows that the Children were removed from Mother’s and Father’s physical and legal custody in May 2023⁵ and that the trial court later adjudicated the Children dependent and neglected. Mother argues that at the time of termination, she was “actively trying to find housing,” and “to simply make housing appear out of thin air is simply unrealistic.” Father argues that at the time of termination, they “were awaiting delivery of their new manufactured home.” Regardless of whether Mother and Father were expecting the delivery of a new home after trial, the conditions necessitating removal of the Children in May 2023 still persisted at the time of trial, nearly two years after their removal. Mother and Father had ample time after the removal to provide a safe home for the Children but ultimately failed to do so. Moreover, the circumstances of the parents’ home as of the trial

⁵ For purposes of section 36-1-113(g)(3), “[t]he six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard[.]” Tenn. Code Ann. § 36-1-113(g)(3)(B).

date cast doubt upon the parents' claims that they would be able to remedy these conditions at an early date.

The record also clearly supports the trial court's conclusion that a continuation of Mother's and Father's relationship with the Children would greatly diminish the Children's chances of being integrated into a safe, permanent home. The Children are currently in a safe and stable home with foster parents who have cared for them since they were taken into custody by DCS. They are thriving, and their foster parents hope to adopt them.

Considering the foregoing, we agree with the trial court that DCS proved persistent conditions by clear and convincing evidence.

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

The trial court also found by clear and convincing evidence that Mother and Father failed to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Children. This ground applies 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[.]

Tenn. Code Ann. § 36-1-113(g)(14) (effective July 1, 2024 to June 30, 2025). This ground requires clear and convincing proof of two elements. *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020). The petitioner must first prove that the parent has failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child. *Id.* The petitioner must then prove that placing the child in the parent's custody poses "a risk of substantial harm to the physical or psychological welfare of the child." *Id.*

Mother argues that "due to [Mother] believing her husband did not commit any of the crimes, the Court found [Mother] to be dangerous and therefore cannot have her own children" and that "what is dangerous is to impute danger to someone simply because of their beliefs." However, she does not argue that she has an ability to assume custody of the Children. Father argues that he "had completed all of the requirements contained on the Permanency Plan," and "[t]he only thing that he lacked was appropriate housing." Notably however, not only is Father a registered sex offender, the trial court order prohibiting him from having any contact with the Children remains in effect. This no contact order alone means that Father is unable to assume custody of the Children. Because the parents are still in a romantic relationship and living together, this also means that Mother is unable to assume custody of the Children, as she testified that she intends to

continue living with Father. Finally, their lack of suitable housing makes the parents unable to assume custody of the Children.

The statute requires “a parent . . . to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility for the child.” *In re Neveah M.*, 614 S.W.3d at 677. Therefore, if a party seeking termination of parental rights establishes that a parent or guardian “failed to manifest *either* ability or willingness, then the first prong of the statute is satisfied.” *Id.* (citing *In re Amyynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, *13 (Tenn. Ct. App. June 20, 2018)). We conclude that this prong has been satisfied. Regarding the second statutory prong,

[t]he courts have not undertaken to define the circumstances that pose a risk of substantial harm to a child. These circumstances are not amenable to precise definition because of the variability of human conduct. However, the use of the modifier “substantial” indicates two things. First, it connotes a real hazard or danger that is not minor, trivial, or insignificant. Second, it indicates that the harm must be more than a theoretical possibility. While the harm need not be inevitable, it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.

In re Virgil W., No. E2018-00091-COA-R3-PT, 2018 WL 4931470, at *8 (Tenn. Ct. App. Oct. 11, 2018) (quoting *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)).

The trial court found, in relevant part, that

[t]here is clear and convincing evidence that placing the [C]hildren in the care and custody of the parents would pose a risk of substantial harm to the physical and psychological welfare of the [C]hildren. In January 2024[,] the parents lost custody of a newborn child⁶ due to the continued conditions of their home. Foster care case manager Gibson had visited that home on an occasion with a Child Protective Services worker. On that visit more than a year ago Ms. Gibson had found the home of the parents to contain animal feces, exposed wires, and holes in the walls. Ms. Gibson found the home to be a fire trap and it subsequently burned down two months after the removal of that infant.

Mother [] testified that she had been with [Father] since 2011. [Father] was convicted of attempted aggravated sexual battery in 2017, but [M]other believes he did nothing wrong. In 2016 [F]ather pled guilty to child abuse and neglect related to one of [the C]hildren, but [M]other believes this was not [F]ather’s fault. In October of 2023, [F]ather was convicted of child

⁶ This child is not at issue in this case.

abuse and animal cruelty for which he was incarcerated during a portion of the pendency of these proceedings, but again [M]other denies that [F]ather did anything wrong. Mother denies David's allegations that [F]ather inappropriately touched him. In summary [M]other believes [F]ather has not done anything wrong to the [C]hildren despite two convictions for child abuse against two of [the C]hildren and one conviction for aggravated sexual battery against an unrelated child.

(Internal formatting and footnotes omitted). The trial court also noted that “[g]iven the history, [M]other’s refusal to take [David’s allegation that Father inappropriately touched him] seriously is itself a serious concern[,] whether [F]ather touched David inappropriately or not.” Having reviewed the record, the evidence preponderates in favor of the trial court’s factual findings regarding Mother and Father. We agree that Mother and Father have failed to manifest an ability to parent the Children. As discussed above, the living conditions of Mother’s and Father’s home were dangerous to the health and safety of the Children. We are also highly disturbed by Mother’s ongoing pattern of disregard for the inappropriateness of Father’s actions that have led to his criminal convictions. This disregard by Mother reflects her absolute unwillingness and inability to protect the Children from any harm.

For these reasons, we also conclude that the Department proved the second prong of section 36-1-113(g)(14) by clear and convincing evidence. Given the long period of time the Children have been in the Department’s custody, the no contact order between Father and the Children, and the Children disclosing inappropriate punishment and yelling in the home of Mother and Father, the Children would be at risk of substantial harm, both physical and psychological, if returned to Mother’s and Father’s custody. Again, Mother’s inability or unwillingness to recognize Father’s role in his previous charges, notably the fact that he is on the sex offender registry for digitally penetrating an eleven-year-old child, is particularly disturbing. Mother also denies one of the Children’s allegations that Father inappropriately touched him, and Mother’s refusal to consider that the child might be telling the truth gives us great concern about returning the Children to Mother and Father.

Consequently, the trial court correctly concluded that the Department proved this statutory ground by clear and convincing evidence.

Best interests

In addition to proving at least one statutory ground for termination, petitioners in a termination case must prove, by clear and convincing evidence, that termination serves the child’s best interests. Tenn. Code Ann. § 36-1-113(c). Indeed, “a finding of unfitness does not necessarily require that the parent’s rights be terminated.” *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005) (citing *White v. Moody*, 171 S.W.3d 187, 193 (Tenn. Ct. App. 2004)). Our termination statutes recognize that “[n]ot all parental misconduct is

irredeemable” and that “terminating an unfit parent’s parental rights is not always in the child’s best interests.” *Id.* As such, the focus of the best interests analysis is not the parent but rather the child. *Id.*; *see also White*, 171 S.W.3d at 194 (“[A] child’s best interests must be viewed from the child’s, rather than the parent’s, perspective.”). Further, “the prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” Tenn. Code Ann. § 36-1-113(i)(2).

When determining whether termination is in a child’s best interests, we refer to twenty non-exclusive factors found at Tennessee Code Annotated section 36-1-113(i)(1)(A)-(T) (effective July 1, 2024 to June 30, 2025). In this case, the trial court applied the correct statutory factors and engaged in a thorough analysis in its final order:

15. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(A) is applicable in this matter. The children are placed in a pre-adoptive home and have been in the same foster home since their removal. The children are well-bonded with the foster parents and the other children in the home. Furthermore, the children have stated to [Ms. West] that they are not interested in seeing their (biological) parents at this point. This first factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

16. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(B) is applicable in this matter. As stated in #15 above, the children are well-bonded with the foster parents and the other children in the home. The children have stated to [Ms. West] that they are not interested in seeing the parents at this point. Julia Gibson testified that the children remain in speech therapy. Ms. Gibson also testified that the children have improved to the point of being “completely different,” given where they were when they first entered DCS’ custody and needed so much therapy. Abigail Snyder testified that David [] has a history of acting out after visitations. The children are thriving in their current placement. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

17. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(C) is applicable in this matter. Father is a registered sex offender with multiple criminal convictions on his record. [Mother] believes [Father] has done no wrong, and this is very troubling to the court. The court does not believe the children would be safe in the custody of the parents. As to the home, case manager Garrison visited the home of the parents in January and experienced a strong scent of sewage, found burnt debris remaining on the property, found the bathroom sink to be without running water, and found a hole in the ceiling[. T]he camper does not have heat, and the parents have to leave the camper to find a bathroom. There is not adequate

room for food prep or storage. The court does not believe the parents have shown an ability to maintain a safe and stable residence. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

18. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(D) is applicable and relevant to this matter. [Father] has had very little contact with the children since 2023, and has a no contact order with these children. [Mother] has repeatedly been observed to make little progress with her parenting skills. The children are not interested in visiting with [Mother]. There is no reasonable expectation of a healthy relationship being developed at this stage. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

19. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(E) is applicable in this matter. [Mother] has maintained contact with the children, and [Father] has had very little contact with the children due to his incarceration and subsequent no contact order. This factor weighs in favor of the termination of parental rights of [Father] but it does not weigh in favor of terminating the parental rights of [Mother].

20. The Court finds that the best interest factor [] contained in T.C.A. § 36-1-113(i)(F) is applicable in this matter. Children do not wish to visit [Mother] and cannot visit [Father]. [Ms. West] testified that David and Clara have hidden behind furniture to avoid visits in the past. The children have spoken of hitting, choking, threats, and inappropriate punishment in the home of the parents. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

21. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(G) is applicable in this matter. The children have spoken about trauma or post traumatic events, namely hitting, choking, threats, and inappropriate punishment in the home of the parents. David and Clara have hidden to avoid visits with [M]other, and David has acted out after visits. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

22. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(H) is applicable in this matter. It is well established that the children are in loving stable and healthy relationships with their foster parents and they refer to the foster parents as “mom” and “dad.” This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

23. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(I) is applicable in this matter and weighs in favor of termination. In looking at whether the children have established emotionally significant relationships with persons other than parents or caregivers including foster siblings, and the likely impact of various available outcomes on these relationships, this court notes that the children refer to other children in their foster home as brother and sister. To disrupt these relationships would likely pose a significant threat of an emotional setback for the children. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

24. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(J) is applicable in this matter. [Father] has a history of criminal charges and is on the sex offender registry. [Mother] believes [Father] has done no wrong. The home of the parents at the time of removal and the home of the parents at the time of the termination hearing are unsafe and unsuitable for the children. Neither parent has demonstrated a lasting adjustment which would make it safe for the children to return to their care. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

25. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(K) is applicable in this matter. This factor requires the court to look at 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. Both parents have taken advantage of programs, classes, and resources to assist in their attempt at making a lasting adjustment. This factor weighs in favor of both [Mother] and [Father] and against termination.

26. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(L) is applicable to this matter. This factor requires the court to look at whether the department has made reasonable efforts to assist the parents and finds that DCS has made herculean efforts in helping both parents obtain services to assist in the parents['] attempt to make lasting adjustments. ...This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

27. The Court finds that the best interest factor contained in T.C.A. § 36-1-113 (i)(M) is applicable in this matter. This factor requires the court to look at whether the parents have demonstrated a sense of urgency in addressing those circumstances conduct or conditions that caused the removal. The court notes that while the parents have completed significant portions of their requirements, the primary and initial reason for removal still

remains after nearly two years, namely, unstable housing. The parents have not exhibited a sense of urgency in this respect. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

28. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(N) is applicable in this matter. This factor requires the court to look at whether a parent or another person residing in the home has shown brutality or physical sexual emotional or psychological abuse or neglect toward the child or any of the children. David disclosed hitting punching choking and threats in the home of the parents. [Father] is on the sexual offender registry and admitted digitally penetrating an 11-year-old female. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

29. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(O) is applicable in this matter. This factor requires the court to look at whether the parents have ever provided a suitable home [] environment for these children or any children. The court notes that these children were removed from the home of the parents due to environmental neglect, and the parents lost custody of another child in 2024 due to the same reason -environmental neglect. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

30. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(P) is not applicable in this matter.

31. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(Q) is applicable in this matter. In looking at this factor, the analysis also requires this court to look at the parents['] demonstrated ability and commitment to creating and maintaining a home that meets the children's basic needs and in which the children can thrive. Since removal in 2023 and with the help of DCS caseworkers, the parents have not successfully established a safe home to which the children may return. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

32. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(R) is applicable in this matter. This factor requires the court to look at the physical environment of the parents' home and whether it is healthy and safe for the children. To this the court cites specifically to the testimony of Deborah Garrison who visited the home of the parents in January of this year and observed a strong scent of sewage upon exiting her vehicle; She found burnt debris remaining on the property; She found the

bathroom and sink to [be] without running water and found a hole in the ceiling. Their camper does not have heat, and the parents have to leave the camper to find a bathroom[. T]here is not adequate room for food prep or storage. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

33. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(S) is not applicable in this matter.

34. The Court finds that the best interest factor contained in T.C.A. § 36-1-113(i)(T) is applicable in this matter. [Father] has admitted to digitally penetrating an 11[-]year[-]old female. He admitted that under oath during this trial, and [Mother] testified under oath during this trial that she still believed that [Father] has done nothing wrong. This Court accordingly believes [Mother] simply will not or cannot appreciate the wrongful nature of [F]ather's behaviors. Father is on the sexual offender registry and is currently being treated for anxiety and depression. This factor weighs in favor of the termination of parental rights of both [Mother] and [Father].

The trial court's findings of fact are apt and supported by the record. Mother argues that "the findings of facts as it relates to the best interest factors, that the Court made was very limited and did not address all facts of the case." Father makes arguments against each of the best interest factors, frequently using generalized and repetitive reasonings as to why the trial court erred in its decision to terminate his parental rights. We cannot agree with either of these arguments. Nearly all the best interest factors favor terminating Mother's and Father's parental rights. There is no evidence of a suitable home for the Children to live in, nor is there evidence that the Children will be integrated into emotionally or physically safe conditions if they were to return to the custody of Mother and Father. The two oldest children have also expressed fear of returning to the parents' home, and even therapeutic visits between the Children and Father were so stressful for the Children that they were discontinued by order of the trial court. As of the trial date, it had been nearly one year since the Children had any contact with the Father. Conversely, it is undisputed that the Children have bonded with the foster parents, who wish to adopt them. They have integrated well into their foster home and have bonded with the foster parents' other children. By all accounts, the Children are safe and well-adjusted, and it is clear from the record that a change in caregivers at this point would have a detrimental effect on their emotional and psychological welfare. From the totality of the circumstances, there is clear and convincing evidence to support the trial court's finding that termination of Mother's and Father's parental rights is in the Children's best interests.

CONCLUSION

The judgment of the Juvenile Court for Jefferson County is affirmed, and the case is remanded for proceedings consistent with this opinion. Costs on appeal are assessed jointly and severally to the appellants, Jessica J. and Koltan T., for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE