

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 5, 2026

IN RE MYLEE P. ET AL.

Appeal from the Chancery Court for Claiborne County
No. 20296 Elizabeth C. Asbury, Chancellor

No. E2025-01082-COA-R3-PT

FILED

10/09/2026

Clerk of the
Appellate Courts

A father appeals the termination of his parental rights. The chancery court found clear and convincing evidence of four statutory grounds for termination and that termination was in the children’s best interest. Based on our review, we conclude that the evidence was less than clear and convincing for two of the statutory grounds relied on by the chancery court. However, because the record contains clear and convincing evidence to support the remaining grounds for termination and that termination is in the children’s best interest, we affirm the termination of the father’s parental rights.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and THOMAS R. FRIERSON, II, J., joined.

Jordan Long, Tazewell, Tennessee, for the appellant, Joshua P.

Thomas J. Tabor, Jr., Tazewell, Tennessee, for the appellees, Angela J. and Trevor J.

OPINION

I.

A.

In 2012, Joshua P. (“Father”) moved in with Angela J. (“Mother”) and her two daughters from a prior marriage. Later Father and Mother married and had three children of their own (the “Children”). The relationship between Father and Mother effectively ended in 2023 when Father was charged with aggravated sexual battery and continuous

sexual abuse of one of his stepdaughters. He pleaded guilty to the lesser offense of sexual battery and received a three-year sentence.

The allegations against Father led the Tennessee Department of Children's Services to file a petition for dependency and neglect. A juvenile court found that the stepdaughters were dependent and neglected in the care of Father. It also found that Father had committed severe child abuse based on his guilty plea to sexual battery "for offenses related directly to the [stepdaughters]." And the court prohibited Father from having contact with the stepchildren.

While he was still serving his jail sentence for sexual battery, Mother divorced Father and married Trevor J. ("Stepfather"). Just over a year after the marriage, Stepfather filed a "Petition for Involuntary Termination of [Father's] Parental Rights and Petition for Adoption of Non-Related Children." *See* Tenn. Code Ann. § 36-1-113(b)(1) (Supp. 2024) (granting a prospective adoptive parent standing to file a petition to terminate parental rights). Mother joined in the petition to give consent to the adoption. *See id.* § 36-1-117(f) (Supp. 2024) (providing that "the co-signing of the petition by the child's parent who is the spouse of the petitioner shall not affect the existing parent/child legal relationship between that parent and the parent's child who is the subject of the adoption petition by the stepparent of the child").¹ The petition alleged several statutory grounds for termination: abandonment by failure to support; abandonment by failure to visit; persistence of conditions; severe child abuse; a sentence of more than two years for conduct against a child constituting severe child abuse; severe child sexual abuse; and failure to manifest an ability or willingness to parent.

At trial, Mother, Stepfather, and Father testified. In their testimony, Mother and Stepfather addressed their relationship, household, and the care of the Children. According to Mother, Father had spoken to the Children only once since his incarceration, a phone call in December 2023. But Mother conceded that Father had a relationship with the Children and supported them before he went to jail. He had also been a good parent to the Children. When asked whether the Children missed Father, Mother testified that they did not ask about or mention him. The Children, who were eleven, nine, and five at the time of trial, were unaware of Father's abuse of their half-sibling. Mother speculated that only the oldest child might be aware that Father was in jail. Although the Children had a relationship with the half-sibling who was the victim of Father's abuse, she was now an adult and no longer lived in the home.

Mother also described the Children's relationship with Stepfather. Since the marriage, Stepfather had assumed the role of father for the Children, and they referred to him as "dad." The oldest of the Children desired to be adopted by Stepfather; the two

¹ On appeal, we apply the law in effect at the time the petition to terminate parental rights was filed. *See In re Braxton M.*, 531 S.W.3d 708, 732 (Tenn. Ct. App. 2017).

younger children had not been informed of the proposed adoption.

Father, who was transported from jail to testify, acknowledged that he pleaded guilty to sexual battery of his stepdaughter. *See* Tenn. Code Ann. § 39-13-505(a) (2025). And, as part of his plea, Father agreed that he would be placed on the Tennessee Sexual Offender Registry and stipulated that “[c]lear and convincing evidence exist[ed] based on the circumstances that there [wa]s a present danger of substantial harm to minor children if [he] [wa]s allowed to reside in the home with minor children.” But when asked if he had any remorse, he denied committing a crime and explained that he only pleaded guilty “cause that’s what my [l]awyer advised me to do.”

As for the Children, Father “thought [he] had a pretty good relationship with the kids.” He had lived with them in the same household until he was incarcerated. He testified to a particularly strong bond with the oldest of the Children. Before going to jail, Father had been a convoy escort driver, which kept him away from home at times, but he claimed that he spent as much time as he could with the Children when he was not on the road.

The chancery court terminated Father’s parental rights. The court found four of the alleged statutory grounds for termination were supported by clear and convincing evidence. First, the court found persistence of conditions due to Father’s continued incarceration. Second, it found that Father had committed severe child abuse based on the prior order of the juvenile court. Third, it found that Father had been sentenced to more than two years for conduct against a child that was found to be severe child abuse. Finally, the court determined that Father had committed severe child sexual abuse based upon his guilty plea in criminal court.

Having found grounds to terminate Father’s parental rights, the court next considered whether termination was in the Children’s best interest. After analyzing the statutory best interest factors, the court found clear and convincing evidence that termination of Father’s parental rights was in the Children’s best interest.

II.

A parent has a fundamental right, based in both the federal and state constitutions, to the care and custody of their child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996); *In re Adoption of Female Child*, 896 S.W.2d 546, 547 (Tenn. 1995). But parental rights are not absolute. *In re Angela E.*, 303 S.W.3d at 250. The government’s interest in the welfare of a child justifies interference with a parent’s constitutional rights in certain circumstances. *See* Tenn. Code Ann. § 36-1-113(g).

Tennessee Code Annotated § 36-1-113 describes both the grounds and procedures for terminating parental rights. *In re Kaliyah S.*, 455 S.W.3d 533, 546 (Tenn. 2015). First,

parties seeking termination of parental rights must prove the existence of at least one statutory ground for termination. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); Tenn. Code Ann. § 36-1-113(c)(1). If they prove the existence of one or more statutory grounds, they then must prove that termination is in the child’s best interest. Tenn. Code Ann. § 36-1-113(c)(2).

Because of the constitutional dimension of the rights at stake in a termination proceeding, parties seeking to terminate parental rights must prove both the grounds and the child’s best interest by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (first citing Tenn. Code Ann. § 36-1-113(c); then citing *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808-09 (Tenn. 2007); and then citing *In re Valentine*, 79 S.W.3d at 546). This heightened burden of proof serves “to minimize the possibility of erroneous decisions that result in an unwarranted termination of or interference with these rights.” *Id.* “Clear and convincing evidence” leaves “no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). It produces a firm belief in the fact-finder’s mind regarding the truth of the facts sought to be established. *In re Bernard T.*, 319 S.W.3d at 596.

We review the trial court’s findings of fact “de novo on the record, with a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise.” *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013) (citing TENN. R. APP. P. 13(d)). We then “make [our] own determination regarding whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, provide clear and convincing evidence that supports all the elements of the termination claim.” *In re Bernard T.*, 319 S.W.3d at 596-97 (citations omitted). We review the trial court’s conclusions of law de novo with no presumption of correctness. *In re J.C.D.*, 254 S.W.3d 432, 439 (Tenn. Ct. App. 2007).

A.

On appeal, Father challenges only one of the grounds for termination of his parental rights, persistence of conditions. Still, we “must review the trial court’s findings as to each ground for termination . . . regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d 507, 525-26 (Tenn. 2016) (citation omitted).

1. Persistent Conditions

The trial court found termination of parental rights appropriate under Tennessee Code Annotated § 36-1-113(g)(3), a ground commonly referred to as “persistence of conditions.” *In re Audrey S.*, 182 S.W.3d 838, 871 (Tenn. Ct. App. 2005). Under this ground, the question before the court is “the likelihood that the child can be safely returned to the custody of the [parent].” *In re K.A.H.*, No. M1999-02079-COA-R3-CV, 2000 WL

1006959, at *5 (Tenn. Ct. App. July 21, 2000). A “threshold requirement” is that the children at issue have been removed from the home for at least six months by a court order in a dependency and neglect proceeding. *In re Jude M.*, 619 S.W.3d 224, 241 (Tenn. Ct. App. 2020). It must then find that the “conditions that led to the child’s removal still persist . . . or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect.” Tenn. Code Ann. § 36-1-113(g)(3)(A). There must be little likelihood that those conditions will be remedied at an early date, and a continued relationship with the parent will diminish the chances of a safe and stable home for the child. *Id.* Each of the statutory factors must be established by clear and convincing evidence. *In re Valentine*, 79 S.W.3d at 550.

We conclude that evidence is less than clear and convincing as to each of the statutory factors. Although Father’s stepchildren were the subject of a dependency and neglect proceeding, the record contains no indication that the Children were. The proof shows instead that Mother removed Father from the home when she was advised of the allegations against Father. Even had the Children been removed from Father’s custody by court order, the chancery court relied upon “the fact that [Father is] still in jail right now” as the persistent condition. But this Court has previously held that the legislature did not intend the incarceration of a parent to constitute a persistent condition under this ground for termination “except under specified circumstances,” which are not present here. *State v. C.H.K.*, 154 S.W.3d 586, 592 (Tenn. Ct. App. 2004).

2. Severe Child Abuse

The chancery court also found Father committed severe child abuse based on the juvenile court’s order in the dependency and neglect proceeding involving his stepchildren. Tenn. Code Ann. § 36-1-113(g)(4). A final order that includes a finding of severe child abuse has “serious consequence[s].” *In re Samaria S.*, 347 S.W.3d 188, 201 (Tenn. Ct. App. 2011) (quoting *Tenn. Dep’t of Child. & Servs. v. M.S.*, No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *10 (Tenn. Ct. App. Mar. 8, 2005)). Chief among them is that the finding effectively establishes a statutory ground for termination of the responsible parent’s parental rights. *Id.*; see Tenn. Code Ann. § 36-1-113(g)(4). The court order must have found that the parent “knowingly or with gross negligence either committed severe child abuse or failed to protect the child from severe child abuse” based on the definition of severe child abuse found in Tennessee Code Annotated § 37-1-102. Tenn. Code Ann. § 36-1-113(g)(4).

Here, the adjudicatory and disposition order in the dependency and neglect proceeding included just such a finding.² Thus there was clear and convincing evidence

² The juvenile court’s finding relied on the judgment entered in Father’s criminal case. But the offense that Father pleaded guilty to, sexual battery under Tennessee Code Annotated § 39-13-505, is not among the criminal offenses listed in the statutory definition of “severe child abuse.” See Tenn. Code Ann.

that Father knowingly or with gross negligence committed severe child abuse as defined by Tennessee Code Annotated § 37-1-102.

3. Sentence of More Than Two Years for Conduct Against a Child

Under Tennessee Code Annotated § 36-1-113(g)(5), a parent's rights may be terminated where a parent "has been sentenced to more than two (2) years' imprisonment for conduct against a child that has been found under any prior order of a court . . . to be severe child abuse, as defined in § 37-1-102." *Id.* Alternatively, the court hearing the termination proceeding can find the conduct for which the parent was sentenced constituted severe child abuse. *Id.* As originally enacted, this ground could be differentiated from the ground of severe child abuse under Tennessee Code Annotated § 36-1-113(g)(4) in several respects.³ With amendments over the years, the two grounds now largely overlap, with subsection 36-1-113(g)(5) only adding the requirement that the conduct constituting severe child abuse result in a sentence for the offender of more than two years' imprisonment. So if this ground is proven by clear and convincing evidence, the ground of severe child abuse under Tennessee Code Annotated § 36-1-113(g)(4) will also be proven, but the converse is not true.

The chancery court correctly concluded that the sentence of more than two years ground applied to Father. The criminal court sentenced Father to three years imprisonment for sexual battery of his stepdaughter. Sexual battery is not among the criminal offenses listed in the statutory definition of "severe child abuse." *See id.* § 37-1-102(b)(27)(C)

§ 37-1-102(b)(27)(C) (Supp. 2024). However, because Father did not appeal the juvenile court's order, the finding of severe child abuse is res judicata and, thus, conclusive on the issue. *See In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012) (applying the doctrine of res judicata to a prior court's finding of severe abuse).

³ When enacted in 1995, the grounds provided as follows:

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

(5) The parent or guardian has been sentenced to more than two (2) years imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, which has been found under any prior order of a court or which is found by the court hearing the petition to be severe child abuse as defined by § 37-1-102[(b)](19).

1995 TENN. PUB. ACTS 952, 986 (ch. 532).

(Supp. 2024). But the juvenile court found that the conduct to which Father pleaded guilty amounted to severe child abuse as defined by Tennessee Code Annotated § 37-1-102.

4. Severe Child Sexual Abuse

Finally, the chancery court found that Father, based on his guilty plea and criminal court judgment, had committed severe child sexual abuse. *Id.* § 36-6-113(g)(11)(A)(i). This ground for termination of parental rights applies only when a criminal court has found the parent committed one of the criminal offenses listed in the statute. As noted above, Father was convicted of sexual battery under Tennessee Code Annotated § 39-13-505, which is not among the offenses listed as constituting severe child sexual abuse. Because a criminal court did not find Father to have committed severe child sexual abuse within the meaning of the statute, clear and convincing evidence does not support this ground for termination.

B.

As Stepfather and Mother proved two grounds for termination of parental rights against Father, we next consider whether termination is in the best interest of the Children. Father contends that the evidence is less than clear and convincing that termination of his parental rights is in the Children's best interest. Because "[n]ot all parental misconduct is irredeemable," our parental termination "statutes recognize the possibility that terminating an unfit parent's parental rights is not always in the child's best interests." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). The best interest analysis should consider "the impact on the child of a decision that has the legal effect of reducing the parent to the role of a complete stranger." *In re C.B.W.*, No. M2005-01817-COA-R3-PT, 2006 WL 1749534, at *6 (Tenn. Ct. App. June 26, 2006). The focus of this analysis is on what is best for the child, not what is best for the parent. *In re Marr*, 194 S.W.3d at 499.

Tennessee Code Annotated § 36-1-113(i) lists twenty factors for courts to consider in determining whether termination of parental rights is in the child's best interests. The "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 Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (citation omitted). Although "[f]acts relevant to a child's best interests need only be established by a preponderance of the evidence, . . . the combined weight of the proven facts [must] amount[] to clear and convincing evidence that termination is in the child's best interests." *In re Carrington H.*, 483 S.W.3d at 535 (citation omitted).

The first three best-interest factors emphasize the children's need for stability and continuity. Factors (A) and (B) analyze "the effect a termination of parental rights will have on the child's critical need for stability and continuity of placement . . ." and "[t]he effect a change of caretakers and physical environment is likely to have on the child's

emotional, psychological, and medical condition.” Tenn. Code Ann. § 36-1-113(i)(1)(A)-(B). Factor (C) looks to whether the parent has demonstrated continuity and stability in meeting the children’s basic needs. *Id.* § 36-1-113(i)(1)(C). The chancery court found that Mother and Stepfather had created “continuity and stability to make sure that these children’s needs were met.” So it found that factors (A) and (C) favored termination of parental rights.

The next four factors focus on the children’s relationship with the parent. Factors (D) and (E) question whether the parent and the children have or can reasonably create a healthy attachment and whether the parent has used contact with the children to create a positive relationship. *Id.* § 36-1-113(i)(1)(D)-(E). Factors (F) and (G) look to whether the children are fearful of living in the parent’s home and whether the parent or parent’s home exacerbates the children’s experience of trauma. *Id.* § 36-1-113(i)(1)(F)-(G). The chancery court found that factors (D) and (E) favored termination, finding that the children call Stepfather “dad,” the Children have not asked any questions about Father, and Father’s only contact with the Children since his incarceration was a Christmas card. But the court found no evidence that the children were fearful of Father or that Father triggered any experience of trauma for the children.

Factors (H) and (I) consider the children’s significant relationships in the absence of the parent. *Id.* § 36-1-113(i)(1)(H)-(I). The court gave great weight to these factors and found that the Children had “created a healthy parental attachment” to the Stepfather in Father’s absence. The court did acknowledge that the Children maintained some relationship with the paternal grandmother and hoped it would continue.

The next factors look at whether the parent has made a lasting adjustment to his circumstances such that the children could be safe in his care and whether he has demonstrated a sense of urgency in doing so. *Id.* § 36-1-113(i)(1)(J), -113(i)(1)(M). They also consider what resources were available to assist the parent in making a lasting change. *Id.* § 36-1-113(i)(1)(K)-(L). The chancery court found no evidence that Father had made any effort to improve his circumstances or conduct by taking advantage of any parenting programs or services while incarcerated.

Factor (N) considers any history of physical, sexual, emotional, or psychological abuse toward the children or any other adult or child. *Id.* § 36-1-113(i)(1)(N). The court again acknowledged the sexual battery offense against the Children’s half-sibling and noted that it gave great weight to this factor.

Factors (O), (P), (Q), and (R) focus on the parent’s ability to create a safe and healthy environment for the children. *Id.* § 36-1-113(i)(1)(O)-(R). Factors (O) and (P) address whether the parent has ever provided safe, stable care or demonstrated an understanding of the basic needs of the children. *Id.* § 36-1-113(i)(1)(O)-(P). Factors (Q) and (R) focus on the parent’s ability to create a home that meets the children’s needs where

the children can thrive. *Id.* § 36-1-113(i)(1)(Q)-(R). The chancery court found that Mother and Stepfather provided “an appropriate home where all [the children’s] needs are met.” It further found that the children are healthy, safe, and thriving.

Factor (S) addresses whether the parent has consistently provided financially for the children. *Id.* § 36-1-113(i)(1)(S). The court found that Father has not been able to pay support since his incarceration but did support his children before he was placed in custody.

Lastly, Factor (T) considers whether the parent’s mental and emotional fitness would be detrimental to the children or prevent the parent from consistently and effectively providing safe and stable care and supervision of the children. *Id.* § 36-1-113(i)(1)(T). The court found no proof regarding Father’s mental fitness but found Mother and Stepfather do appear to be fit because they were currently parenting.

Based on our review, the evidence preponderates against only one of the court’s findings. The court found that Father’s contact with the Children since his incarceration had been limited to a single Christmas card, but Mother testified that Father also spoke to the Children by telephone in December 2023. Still, even taking this fact into consideration, we conclude the combined weight of the proven facts amounts to clear and convincing evidence that termination is in the Children’s best interest.

III.

We affirm the termination of Father’s parental rights. The record contains clear and convincing evidence to support two statutory grounds for termination and that termination of Father’s parental rights is in the Children’s best interest. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE