

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 4, 2026

IN RE JAYDEN B.¹Appeal from the Juvenile Court for Cocke County
No. 2025-JT-02 Mark Blaine Strange, Judge

No. E2025-01288-COA-R3-PT

The trial court terminated a mother's parental rights to her minor child. The trial court found clear and convincing evidence of the grounds of abandonment by failing to establish a suitable home, persistent conditions, and failure to manifest an ability and willingness to assume custody of the child. Finally, the trial court found that termination of the mother's parental rights was in the best interests of the child. The mother appeals. We vacate the trial court's ruling as to the second ground and affirm its rulings as to the first and third grounds and as to best interests. Consequently, we affirm the trial court's overall ruling that the mother's parental rights must be terminated.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JEFFREY USMAN and VALERIE L. SMITH, JJ., joined.

Tammy N. Barry, Morristown, Tennessee, for the appellant, Barbara B.

Jonathan Skrmetti, Attorney General and Reporter, and Alison E. Potterfield, 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 cases involving termination of parental rights to protect their privacy and identities.

OPINION

BACKGROUND

Jayden B. (the “Child”), born in December 2021, is the minor child of Barbara B. (“Mother”) and Daniel B. (“Father”).² On February 23, 2023, the Tennessee Department of Children’s Services (“DCS” or the “Department”) filed an application for an ex parte order allowing DCS to investigate the family with the Cocke County Juvenile Court (the “trial court”). In the application, DCS alleged that Father passed away in the family’s home on February 16, 2023, following a prolonged illness, and when responders arrived to remove Father’s remains, they observed the home to be “deplorable” with “a significant amount of clutter, toys, go karts, old lawnmowers, and approximately twenty-five to thirty bags, assumed to be garbage.” DCS further averred that when Mother opened the door to let the responders in, “two dogs ran out of the home with several cats. When asked how many animals Mother owned, [] she responded seven dogs, but never disclosed how many cats.” The responders purportedly noted that the home smelled strongly of animal feces and urine, including “a strong odor of ammonia from the cats.” The trial court granted the requested ex parte order that same day.

On February 24, 2023, DCS filed a petition to adjudicate the Child dependent and neglected and for transfer of temporary legal custody of the Child to the Department. In the petition, DCS averred that when two of its case managers visited the home, they observed

over twenty bags of trash on a trailer outside of the home. There were tires, a go cart, lawnmowers, metal frames, a kid’s car, fencing, and other miscellaneous items. At least three cats were discovered outside. There was a trash bin filled with many bags of trash sat beside the porch. A recliner and two knives were observed on the porch. The front door was not completely shut and there was what appeared to be a rag holding the door shut.

Mother came home to meet with the case managers and was alleged to have “a strong ammonia odor.” She reportedly told the case managers that she had been through this before and that DCS would not take the Child “for a dirty house again.” The Department alleged that Mother stated that there was “animal feces inside the home, and she just needed two days to clean it up. Mother alleged she would take the child to her brother’s home to stay for a few days until she gets the home cleaned up.” Mother reportedly also stated that the only running water in the home was in one of the bathrooms. The case managers were unable to inspect Mother’s bedroom and one of the bathrooms in the home because there were aggressive dogs closed up in those rooms; however, they

² Father is deceased and is mentioned only as necessary for context.

allegedly observed “items piled up approximately halfway to the ceiling” behind a curtain, including “a portable toilet, a garbage bag full of unknown items, a wheelchair, tables, furniture, and a baby walker.” They also purported to observe “exposed wires throughout the home and missing wall plate covers.” Both case managers claimed that they “struggled being in the home due to” a “strong odor of urine, feces, and ammonia . . . which caused their eyes to burn and sting.” DCS alleged that Mother admitted to using Delta-8 and tested positive for THC. Based upon these allegations, the trial court entered a protective custody order placing the Child in the Department’s temporary legal custody.

On March 21, 2024, the trial court entered an order noting that Mother waived an adjudicatory hearing and “stipulate[d] to clear and convincing evidence of dependency and neglect [] for all of the reasons set out in the Petition,” which were specifically incorporated into the order. The trial court also found that “[a]ll of Mother’s criminal charges were placed on the retired docket[;³] however, the home was in severe disrepair at [the] time of removal.” Mother was awarded supervised visitation and ordered to pay \$50 per month in child support.

On February 26, 2025, the Department filed a petition with the trial court seeking to terminate Mother’s parental rights. The termination petition alleged grounds of abandonment by failure to establish a suitable home, persistent conditions, and failure to manifest an ability and willingness to assume custody. The trial court heard the termination petition on July 10, 2025.

Tabitha Collins testified that she is employed by Youth Villages, which is “on a contract with DCS to carry DCS Foster Care cases.” She stated that she was the Child’s case manager for six months before transitioning to Team Leader for the following six months. She testified that the Child was removed from Mother’s custody in February 2023 due to environmental neglect. She explained that the Department offered Mother “housing resources” but that Mother said she did not want to move again because she had already moved from the home that the Child was removed from to another home during the custodial period. She said that Mother was also offered “[h]omemaker [s]ervices to help her with organization and learning how to keep a tidy home and to kind of help with the clutter and keeping it organized” but that Mother denied those services because “she has a lot of anxiety surrounding people entering her home.” When asked about Mother’s efforts to establish a suitable home, Ms. Collins testified that Mother tried to do some repairs on the home but that those repairs had taken “an extensive amount of time[.]” Ms. Collins explained that she visited Mother’s home in September 2024, at which time there was

immense amounts of clutter in the back room particularly. The bathroom had kind of a huge wall of items that you could not actually see the bathroom.

³ Upon the Child’s removal from the home, Mother was arrested for aggravated child abuse and neglect.

She had pointed out to me that there was actually a bathroom behind the wall of items that I had not been able to see from the doorway where I was standing. The home kind of had on the exterior walls stuff kind of -- just stuff in the house. . . . And then inside the door, there were two holes. And at the time, her child was two years old. So, the holes were large enough that the child's foot could probably get stuck inside the hole. The stairs were broken and very weak. I had to brace myself to kind of go up and down them just to make sure that I was going to be safe going up and down them.

Ms. Collins testified that since that time, Mother had replaced the stairs, but they were "very wobbly" and "not stabilized yet." She alleged that Mother had not provided any proof to the Department that the clutter in the home had been cleared and never proactively reached out to the Department to show that she had made any changes to the home. Ms. Collins explained that various DCS workers attempted to visit the home for "random pop-ins" between September 2024 and the trial but that the workers would receive no response when they knocked on the door. Ms. Collins testified that she would sometimes call Mother during or after these attempts but that Mother would not answer or call her back. On cross-examination, Ms. Collins conceded that Mother's home at the time of trial was "better than the removal home was" and that she had observed during her attempted visits that Mother had improved the stairs. She also testified that at the time he was removed from Mother's custody, the Child appeared to be healthy, well-fed, well-cared for, relatively happy, and bonded to Mother. She alleged he was dirty but only to the extent typical for a child his age.

Monika Knizley, the Child's case worker at the time of trial, also testified about her unsuccessful attempts to visit Mother's home in the months leading up to the trial. Ultimately, she conceded on cross-examination that the Department did not know what the condition of Mother's home was at the time of trial.

The Child's foster mother ("Foster Mother") testified that the Child was placed with her family in February 2023 when he was two years old and had continuously been in their care since that time. When asked about her relationship with the Child, Foster Mother stated: "Uhm, he's my child and [Mother's] child if that makes sense." She testified that he calls Foster Mother "Mom," calls her husband "Dad," and treats them like they are his parents. When asked about her relationship with Mother, Foster Mother said, "We're actually more like family than anything. My kids all know who she is. She cooks for us. We spend holidays together." She testified that in the six months leading up to trial, Mother did not have transportation and was only visiting "maybe once a month." Foster Mother explained that the Child "gets excited as soon as" Mother arrives for a visit and will run out to meet Mother and take her by the hand to show her a new toy or something else. However, she also explained that the Child will follow the foster father "anywhere[,] even if Mother is there for a visit. She stated that the Child has recently begun asking whether Foster Mother is "his actual mom" and asks Mother "why he has two moms." Foster

Mother, who was pregnant at the time of trial, testified that she has four other adopted children in her home and that all the children see themselves as siblings. She also stated that the Child loves Mother and Mother's adult son, whom the Child calls "Bubba," and will ask where Bubba is if Mother comes to visit without him.

Foster Mother explained that when he came into their care, the Child "could stand leaning on things" but could not sit up independently without falling forward. She testified that the Child has since received physical therapy, occupational therapy, and speech therapy, has made significant progress, and does not currently have any special needs. When asked whether she had any concerns about the Child returning to Mother's custody, Foster Mother explained that she was concerned about others that Mother may allow to live in the home:

She doesn't have reliable transportation. That's her only -- I've never been to her home. I don't know anything about her home. I know she loves him. I know he loves her. I know people use her and put her in situations that would be -- She has a big heart and she -- people walk all over her.

* * *

She lets people live with her that are worse off and their kids. And they're not the best people for him to be around sometimes.

Foster Mother said that she loves the Child and that she and her husband wish to adopt him. She also testified that "the plan" is for the foster family to still be a part of the Child's life even if he is returned to Mother's custody and for Mother to still be a part of the Child's life if he remains with the foster family. She explained that she believes the Child would be "confused" if he is removed from his foster home because he was so young when he was removed from Mother's custody that the foster home is "all he's known."

Mother testified that she owns her current home but rents the land that it is on. She stated that the Child was removed from her custody because her house "was a mess" and had "weak spots in the floor." She conceded that at the time of the Child's removal, her house "was not suitable for him" and that he needed to be removed from the home for his safety. However, she testified that between October 26, 2024 and February 25, 2025, her home was "appropriate[.]" She stated that she believes that her home is now safe for the Child because she "fixed everything[.]" Specifically, she testified that she fixed

[t]he holes in the floor in the front of the door. The septic is reconnected. It's been pumped. The -- There's no more holes in the floor or anything like that. The rest room that was in his bathroom is all fixed. All that clutter that I was storing for the girl that had the four -- the three kids -- well, she technically has four, but her mama keeps one of them. But all of their stuff is gone.

She also alleged that within the year preceding trial, DCS approved her home for three children under five years old to live in.⁴ However, she explained that those children and their mother had moved out of the home by the time of trial after living with her for “at least a year.” She further explained that she refused in-home homemaker services offered by DCS because she has “severe anxiety and depression” and “it freaks [her] out for people to be in [her] house.” She stated that DCS then offered virtual homemaker services, which she accepted, but that DCS never sent her any link or other way to access those services. Mother testified that she did not reach out to DCS to provide updated photos of her home because she did not realize she was supposed to, and she thought that DCS was supposed to come to the house. When asked about why she did not reach out to DCS to schedule a home visit when a neighbor told her that a DCS worker came by when Mother was not there, Mother responded that she “assumed that she would show back up because they usually do.”

Mother testified that she was not in therapy for her depression or anxiety at the time of trial because she had been unemployed and without insurance. However, she stated that when she submitted to a mental health evaluation required by DCS, the evaluator told her that she “could do therapy or not” but that “he didn’t recommend it.” Ultimately, however, Mother conceded that she is “not trying to get custody” of the Child. She explained that she “believe[s] that he should have both [] families[,]” but she “want[s] him to be able to come and stay with [her] when he wants to.”

The trial court entered an order terminating Mother’s parental rights on August 14, 2025, and Mother timely appealed. This Court determined that the trial court’s order did not contain sufficient findings of fact and conclusions of law to permit meaningful appellate review. On March 24, 2026, we entered an order suspending the appeal and remanding the case to the trial court with instructions to make specific findings of fact with respect to all the grounds pled in the termination petition. The trial court entered an amended order on May 26, 2026, finding that the Department proved by clear and convincing evidence the grounds of abandonment by failure to establish a suitable home, persistent conditions, and failure to manifest an ability and willingness to assume custody. The trial court also found that it is in the Child’s best interests for Mother’s parental rights to be terminated.

ISSUES

Mother raises three issues on appeal, which we restate slightly:

1. Whether the trial court erred in finding that Mother failed to establish a suitable home and that the Department provided reasonable efforts to assist Mother in so doing.

⁴ It is unclear who these other referenced children are.

2. Whether the trial court erroneously shifted the burden of proof to Mother.
3. Whether the trial court erred in finding that it is in the Child's best interests to terminate Mother's parental rights.

Mother does not challenge the trial court's findings that DCS proved the grounds of persistent conditions and failure to manifest a willingness and ability to assume custody. Nevertheless, we must "review the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests, regardless of whether the parent challenges these findings on appeal." *In re Carrington H.*, 483 S.W.3d 507, 525–26 (Tenn. 2016).

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 at 522 (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 Child by failing to provide a suitable home. 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).⁵ When reviewing 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 simply a proper physical space; a suitable home should be, at a bare minimum, a home that is safe, clean, and nurturing to these children.” *In re Chelsea B.*, No. E2014-00758-COA-R3-PT, 2014 WL 12651021, at *6 (Tenn. Ct. App. Nov. 25, 2014) (internal quotations omitted). 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. Aug. 30, 2022) (quoting *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *9 (Tenn. Ct. App. June 10, 2014)). 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.*

Mother first argues that the trial court erred because DCS’s witnesses did not testify about the Department’s reasonable efforts in the four months immediately following the removal of the Child from her home and DCS never defined the four-month period upon which it was relying to satisfy this ground. However, at the outset of trial, the Department stated that the relevant four-month period for the abandonment ground was October 26, 2024 to February 25, 2025. Moreover, section 36-1-102(1)(A)(ii)(c) does not require that the trial court consider any specific four-month period, and this Court may affirm a trial court’s judgment that considers the Department’s efforts during any four-month period. *In re Edward C.*, 684 S.W.3d 410, 428 (Tenn. Ct. App. 2023) (citing *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at *13 (Tenn. Ct. App. Dec. 15, 2016); *State, Dep’t of Children’s Servs. v. V.E.F.*, No. M2008-01514-COA-R3-PT, 2009 WL 605146, at *5 (Tenn. Ct. App. Mar. 9, 2009)). The trial court considered the Department’s efforts during the entire custodial period, and this does not conflict with the plain language of the statute. *See id.* Therefore, this argument has no merit.

⁵ 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 February 26, 2025.

Mother next argues that the trial court erroneously shifted the burden of proof to her to show that she made the necessary improvements in her home, rather than requiring DCS to prove that Mother's housing was unsuitable. "It is well settled that the burden of proof in a termination of parental rights action lies with the petitioner seeking to terminate a parent's rights." *In re Amora S.*, No. E2021-00338-COA-R3-PT, 2021 WL 4704674, at *7 (Tenn. Ct. App. Oct. 8, 2021) (citing *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808–09 (Tenn. 2007)). As such, the burden of establishing that statutory grounds existed to terminate Mother's parental rights remained with DCS. Consistent with this burden and the requirements of section 36-1-102(1)(A)(ii)(a)–(c), the trial court found that DCS proved that (a) the Child was removed from Mother's home pursuant to a court order in a proceeding in which he was alleged to be dependent and neglected, and he was placed in the custody of DCS; (b) during the dependency and neglect proceeding, the trial court found that DCS had made reasonable efforts to prevent the Child's removal; and (c)

[i]n the 29 months since removal, DCS provided [Mother] with housing resource guides, mental health assessments, and homemaker services. However, [Mother] failed to provide evidence that she remedied the circumstances and environment that led to the removal of the [C]hild. Evidence was presented that she would not accept homemaker services and allow them into her home to help her remedy the condition of the home due to her reported anxiety. In an effort to accommodate Mother, virtual homemaker services were offered to Mother but she did not follow through with them. Although Mother reported that she attempted to repair the home herself, she did so slowly, even though the [C]hild had been in State's custody for twenty-eight months at the time of trial. During the last visit in which DCS was allowed in the home, there was a huge wall of items that were hiding a bathroom, clutter throughout the home, holes in the wall and floor, and wobbly/unsafe stairs. Mother did not provide any proof that these conditions were ever remedied to the [c]ourt or DCS. The [c]ourt finds that the efforts that DCS made were minimal but are reasonable in that they were equal to or exceeded the efforts by [Mother]. Despite the efforts of DCS, [Mother] has been unable to provide proof of suitable housing for the [C]hild.

Mother is correct that DCS did not present evidence of the actual condition of her home at the time of the termination trial. However, this was not for lack of trying. Ms. Collins testified that the last time she was able to view the inside of Mother's home, it was unsuitable. Mother does not dispute this. That home visit was in September 2024, approximately nineteen months after the Child entered DCS custody. Ms. Collins also testified that between September 2024 and January or February 2025, she had attempted to visit Mother's home "a few times," but no one ever answered the door, and she was only able to view the outside of the home. She explained that during one of these attempts, "there was still trash[] piled outside the home." She testified that she would sometimes call Mother during or after these attempts but that Mother would not answer or call her

back. Similarly, Ms. Knizley testified that between when the case was assigned to her in March 2025 and the termination trial in July 2025, she attempted to call Mother twice. After one of those attempts, she left a voicemail asking Mother to return her call; Mother never did. She also explained that she visited Mother's home once, took photos, and knocked on the door, but no one answered the door. Finally, Mother testified that she did not reach out to DCS to provide updated photos of her home because she did not realize she was supposed to, and she thought that DCS was supposed to come to the house. Despite this, when asked about why she did not reach out to DCS to schedule a home visit when a neighbor told her that a DCS worker came by when Mother was not there, Mother simply responded that she "assumed that she would show back up because they usually do."

The burden of proving that Mother did not establish a suitable home remains with DCS. However, this Court has repeatedly held that a parent's failure to cooperate with DCS is relevant to whether the parent made "reasonable efforts" to establish a suitable home. *In re T.R.*, No. E2017-02115-COA-R3-PT, 2018 WL 4441359, at *9 (Tenn. Ct. App. Sept. 17, 2018) (collecting cases). As in *In re T.R.*, we conclude "that the trial court did not improperly shift the burden of proof to [M]other merely by taking into account her perpetual unavailability." *See id.* The Department's efforts equaled or exceeded Mother's efforts and were reasonable. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c). However, Mother failed to make reciprocal reasonable efforts. Moreover, Mother's failure to reach out to DCS when she knew that the condition of her home was what led to the Child's removal and she knew that DCS was attempting to conduct a home visit demonstrates a lack of concern for the Child and a lack of interest in regaining custody.

Ultimately, we agree with the trial court's findings. DCS proved this ground by clear and convincing evidence, and we affirm.

II. Persistent conditions

Next, the trial court found that clear and convincing evidence supported the termination of Mother'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 Nevada 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). Regarding this ground, the trial court found that when the Child was removed from Mother’s custody,

Mother’s home was in deplorable condition Since that time, [Mother] has provided zero proof that she has remedied the issues in her current home nor provided proof during the relevant time period of October 26, 2024 to February 25, 2025. The [c]ourt finds that there is nothing in the record and nothing provided through testimony to indicate that Mother has corrected all of these issues despite DCS offering services that would have helped her remedy the condition in her home. The [c]ourt finds that Mother did nothing to ensure the conditions were remedied in order for the [C]hild to return home safely and chose to consistently blame other people for the issues that were present in her home. The [c]ourt finds that Mother could have easily provided pictures of the home to show that she had remedied the issues of environmental neglect, but she would not and did not. Mother testified she was only willing to provide pictures of one room but did not provide them.

When analyzing this ground, the trial court inappropriately shifted the burden to Mother. Mother's failure to cooperate with DCS is relevant to whether she made reasonable efforts to provide a suitable home and demonstrated a lack of concern for the Child. However, her actions do not relieve DCS of its burden to prove by clear and convincing evidence that *at the time of trial*, conditions existed that prevented the Child's safe return to Mother's care. See *In re T.R.*, 2018 WL 4441359, at *13; *In re Serenity S.*, No. M2022-01091-COA-R3-PT, 2023 WL 4884040, at *6 (Tenn. Ct. App. Aug. 1, 2023). All the trial court's factual findings in support of this ground were related to the condition of Mother's home; however, Ms. Knizley conceded at trial that DCS did not know what the condition of Mother's home was at that time. Without more, we cannot conclude that DCS met its burden to prove this ground by clear and convincing evidence, and we must vacate the trial court's ruling as to this ground.

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

Finally, the trial court found clear and convincing evidence that Mother failed to manifest an ability and willingness to assume legal and physical custody of or financial responsibility for the Child. 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.*

The trial court found in relevant part that

since the [C]hild has come into state's custody [Mother] manifested no ability to parent the [C]hild. At the time of trial the [C]hild had been in custody for twenty-eight months, and during that time [Mother] failed to manifest an ability to parent. Mother never provided any plan to the Department regarding what her plans to care for the [C]hild would be going forward. Although Mother visited semi-regularly, she would cancel when she had car trouble. Mother did not have a reliable means of transportation. Mother had no plan to financially care for the [C]hild and had lost her job as

an in-home caretaker and had only started a new job two days prior to trial. The [c]ourt finds that any support she may have provided to the [C]hild by cooking for him at the foster parent's home was minimal. The court finds there has been no evidence that Mother can provide a stable environment for the [C]hild. The [c]ourt finds that visiting the [C]hild is not enough to prove she can safely parent the [C]hild long-term and that when she would visit the [C]hild he would follow his foster father instead of visiting with her. The [c]ourt finds that the [C]hild referred to Mother as his "other mom." Throughout this case, Mother has provided no proof through her actions, pictures, video evidence, or by even allowing DCS to walk through her home that she has or can provide a safe and stable home for the [C]hild.

The trial court also found that Mother "has not fully addressed the mental health issues she has as a result of her husband passing away and that if continued to go untreated [those issues] would be detrimental to the [C]hild." And at the termination trial, Mother conceded that she was not trying to regain custody of the Child.

The first prong of this ground 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 Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, *13 (Tenn. Ct. App. June 20, 2018)). As the trial court found, the record shows that Mother is unable to provide the Child with a safe and stable home, she does not have reliable transportation, it is not clear that she would be able to provide for the Child financially, and she has failed to address her mental health issues. Given these facts and Mother's concession that she was not seeking to regain custody, 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)). Mother testified that her severe anxiety and depression contributed to her being unable to provide

a suitable home for the Child, leading to his removal. However, she has not meaningfully engaged in therapy to address her mental health, and she has not shown that she can provide a safe and suitable home for the Child. In our view, returning the Child to Mother's care would risk substantial harm to the Child. *See In re Kaylene J.*, No. E2019-02122-COA-R3-PT, 2021 WL 2135954, at *17 (Tenn. Ct. App. May 26, 2021) (finding a risk of substantial harm when the parents had not shown "an ability to provide essential necessities for the children, such as a suitable home"); *In re Noah A.*, No. E2019-01633-COA-R3-PT, 2020 WL 6538461, at *14 (Tenn. Ct. App. Nov. 6, 2020) (finding a risk of substantial harm when the parents had not shown an ability to consistently provide the child with "necessities or a safe and proper home").

There is clear and convincing evidence to support the trial court's ruling that Mother failed to manifest an ability and willingness to assume custody. Accordingly, we affirm the trial court's termination of Mother's parental rights on this ground.

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). When a ground for termination has been proven, "the interests of the parent and the child diverge," and the focus of the proceedings shifts to the best interests of the child." *In re Audrey S.*, 182 S.W.3d at 877. 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." *In re Marr*, 194 S.W.3d 490, 498 (Tenn. Ct. App. 2005). However, "[t]he child's best interests must be viewed from the child's, rather than the parent's, perspective." *In re Audrey S.*, 182 S.W.3d at 878. 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:

(A) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that [foster parents'] home will provide for the [C]hild's critical need for stability and continuity throughout his minority.

(B) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that the [C]hild has been in the care of the [foster parents] for over two years and a change in caretake[r]s and

environment at this point would have a great effect on the [C]hild's psychological and emotional wellbeing.

(C) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that [Mother] through act or omission failed to demonstrate stability in meeting the [C]hild's basic, material, educational, housing, and safety needs.

(D) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that the [C]hild has a healthy parental attachment to [Mother], but the attachment is not secure. The [c]ourt additionally finds that it is not reasonable to believe a secure attachment can be formed.

(E) The [c]ourt finds that this factor does NOT weigh in favor of termination.

(F) The [c]ourt finds that this factor does not apply.

(G) The [c]ourt finds that this factor does not apply.

(H) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that the [C]hild has a very significant attachment to the [foster parents].

(I) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that the [C]hild has significant emotional relationships with other people in the [foster] family. The [c]ourt additionally finds that the [foster parents] intend to continue to allow a relationship between [Mother] and the minor child.

(J) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that [Mother] made some changes and improvements but there has been nothing to show that those changes are a lasting adjustment of those circumstances.

(K) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds [Mother] did not take advantage of available programs, services, or community resources.

(L) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds although efforts by the Department were minimal, they were reasonable under the law.

(M) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that [Mother] made efforts, but her efforts were not urgent considering the [C]hild remained in foster care for two years after removal.

(N) The [c]ourt finds that this factor does not apply.

(O) The [c]ourt finds that this factor does NOT weigh in favor of termination. The [c]ourt specifically finds that [Mother] did provide safe and stable care for the [C]hild, but it changed when the father of the [C]hild fell ill and passed away.

(P) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically finds that [Mother] understands the needs that the [C]hild has but she is unable to provide for them.

(Q) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically [finds] that Mother did not demonstrate the ability and commitment to maintain a home for the [C]hild to thrive.

(R) The [c]ourt finds that this factor does not apply.

(S) The [c]ourt finds that this factor does NOT weigh in favor of termination. The [c]ourt specifically finds that [Mother] has been paying child support and contributing things such as food and gifts.

(T) The [c]ourt finds that this factor does weigh in favor of termination. The [c]ourt specifically [finds] that [Mother] has not fully addressed the mental health issues she has as a result of her husband passing away and that if continued to go untreated it would be detrimental to the [C]hild.

The trial court's findings as to these factors are apt and supported by the record. Mother argues that such findings "were incorrectly weighted" and that "this is not a balancing test to determine where [the Child] would have the best life." Although this is certainly not a balancing test to determine where the Child would have the "best life," "when 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) (effective July 1, 1998 to present). Nearly all the best interest factors favor terminating Mother's parental rights. How Mother has determined that the interests were improperly weighted when very few are in her favor is unknown. There is no evidence of a suitable home for the Child to live in, nor is there evidence that being in Mother's custody would be emotionally or physically safe for the Child. Conversely, it is undisputed that the Child has bonded with the foster parents, who wish to adopt him. By

all accounts, the Child is safe, and it is clear from the record that a change in caregivers at this point would have a detrimental effect on the Child's emotional and psychological welfare.

It is also clear that Mother loves the Child, and we commend Mother and the foster parents for creating a situation that allows the Child to continue having a relationship with Mother. However, the Child deserves the permanency that only the termination of Mother's parental rights can provide. The evidence is clear and convincing that termination of Mother's parental rights is in the Child's best interests. We affirm.

CONCLUSION

The judgment of the Juvenile Court for Cocke County is affirmed in part and vacated in part, and the case is remanded for proceedings consistent with this opinion. Costs on appeal are assessed to the appellant, Barbara B., for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE