

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 1, 2026

IN RE CAYMAN T. ET AL.

Appeal from the Circuit Court for Polk County
No. 24-CV-18 Michael E. Jenne, Judge

No. E2025-01710-COA-R3-PT

The trial court found four statutory grounds to terminate a mother's parental rights to her three children: (1) substantial noncompliance with permanency plan; (2) persistent conditions; (3) severe child abuse; and (4) failure to manifest an ability to assume custody. The trial court also found termination to be in the best interest of the children. The mother appeals. Discerning no error, we affirm the decision of the trial court.

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

WILLIAM E. PHILLIPS II, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and VALERIE L. SMITH, JJ., joined.

Wencke West, Athens, Tennessee, for the appellant, Hallie T.¹

Jonathan Skrmetti, Attorney General and Reporter; and Alison E. Potterfield, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

Matthew L. Dunn, Athens, Tennessee, Guardian ad Litem for the minor children, Cayman T., Oaklyn T., and Oden T.

OPINION**FACTUAL AND PROCEDURAL BACKGROUND**

In June 2022, the Tennessee Department of Children's Services ("DCS" or "Department") received a referral alleging that the three minor children – Cayman T., born

¹ In cases involving minor children, it is the policy of this Court to redact the parties' names to protect their identities.

in 2016; Oaklyn T., born in 2019; and Oden T., born in 2020 – were being exposed to illegal drugs, lacked stable housing, and were present in a home where domestic violence occurred between their mother, Hallie T. (“Mother”), and Corey M. (“Father M.”). In July 2022, Child Protective Services’ (“CPS”) investigator Jack William Faison located the children at the home of Father M.’s mother, Connie M. At that time, the children were intermittently being left in the care of Connie M., who reported that the children were frequently dropped off without notice. The children were in Connie M.’s home without either parent present.

In the course of its investigation, DCS learned that Mother had recently been staying at a residence in Turtletown, Tennessee, where law enforcement records reflected domestic disturbances and a prior drug raid, during which methamphetamine and drug paraphernalia consistent with the sale of drugs was found. When contacted by the investigator, Mother reported that she had recently been evicted from housing in Georgia, lacked transportation and income, and admitted to using marijuana. She declined to submit to a drug screen. Mother also reported that she was still married to Buell T. (“Father T.”) but had been estranged from him for several years. She identified Father M. as the biological father of Oaklyn and Oden and acknowledged domestic violence in their relationship. Most recently, Father M. had attempted to assault her with a pipe. Investigator Faison invited Mother to a child and family team meeting at the local DCS office at the end of the week to address Mother’s lack of transportation, income, and stable housing. Mother did not appear for the meeting.

In early August 2022, Investigator Faison located the children again at the home of Connie M., where they were under the supervision of Father M. He declined drug screening and, during the encounter, became increasingly agitated. DCS did not remove the children at that time. Approximately a week later, law enforcement responded to a domestic violence incident at Connie M.’s residence, during which Mother attempted to retrieve the children and was involved in an altercation with Father M. Law enforcement transported Mother and the children to an apartment in McCaysville, Georgia.

Again approximately one week later, DCS received another referral reporting that Mother and the children were staying at a residence in Copperhill, Tennessee, where drug activity was suspected and the children were observed outside on the road without supervision. When Investigator Faison arrived, two female occupants (neither of whom were Mother) denied the children were inside, though the investigator observed one of the children looking out the window. The property owner later reported that he had not authorized Mother or the children to live there, had observed Mother unconscious beside a substance he believed was methamphetamine, and intended to initiate eviction proceedings.

The next day there was another referral. Mother and the property owner had a confrontation, and law enforcement was called to the home. Mother was arrested at that

time on an outstanding warrant for failure to appear. The following day, she submitted to a drug screen that was positive for methamphetamine and THC. Mother reported that the children were with Father M. Based on the investigative findings, DCS filed a Petition for Temporary Legal Custody on September 6, 2022. The juvenile court entered an ex parte protective custody order that same day, and DCS took custody of the children.

When DCS and law enforcement arrived to take the children into custody, Father M. attempted to leave the area with Cayman in a vehicle but was stopped by law enforcement. All three children were transported for medical evaluation and hair-follicle testing. Each child tested positive for methamphetamine and THC. At that time, the children were ages five, three, and one.

On November 22, 2022, the Polk County Juvenile Court adjudicated the children dependent and neglected and found them to be victims of severe abuse while in Mother's care due to their exposure to methamphetamine. The adjudicatory order explicitly identified Mother as the perpetrator. The order also noted that Mother was the full custodian at the time of removal. The juvenile court's order finding Mother to be the perpetrator of severe child abuse is final.

Following removal, Mother and Father M. were assigned permanency plan responsibilities, which included maintaining stable housing, obtaining an alcohol and drug assessment and following recommendations, submitting to drug screens, participating in parenting and domestic violence services, maintaining contact with DCS, and visiting the children regularly. DNA testing excluded Father T. as the biological father of Oaklyn and Oden, and he executed a denial of paternity for those two children on April 5, 2024.

Mother's participation in services was limited. She completed an alcohol and drug assessment in January 2023 but did not comply with the recommended counseling or medication management. In January 2023, she tested positive for fentanyl and THC. Mother was incarcerated from March 21, 2024, until June 18, 2025, after being indicted on multiple drug-related charges, including trafficking and sale of controlled substances. She ultimately pled guilty to the sale of a controlled substance and received a fifteen-year sentence to be served on probation. During her probation, she was required to undergo twice-weekly drug testing and tested positive once for alcohol. Following her release in June 2025, Mother lived in a residence owned by her boyfriend's father, without a lease. She did not provide proof of employment, and did not provide child support. Mother last visited the children in March 2024.

Father M. began certain services through Blended Recovery in March 2023 but did not complete them and did not provide releases for DCS to obtain records. He avoided drug screens on multiple occasions and did not complete domestic violence, parenting, or substance-abuse services. He was ordered to pay child support for Oden in December 2023 and made three payments totaling \$495 between May and July 2024. He visited the

children sporadically – approximately nine to eleven times – and last visited on May 1, 2024. He did not contact DCS after that date, did not attend medical appointments, and did not appear at trial. He was periodically incarcerated on charges including obstruction of justice, possession of controlled substances, and theft.

DCS ultimately determined that Father T. could not be located for substantial periods of the custodial episode. DCS contacted him in jail in late 2024, at which time he indicated an interest in surrendering his parental rights to Cayman. Although he later executed surrender paperwork, he withdrew his surrender at the execution hearing. He did not visit Cayman at any point during the custodial episode and did not provide child support or gifts. He was periodically incarcerated in both Polk County, Tennessee, and Fannin County, Georgia, on charges including DUI, violations of probation, and failure to appear.

On March 11, 2024, DCS filed in the Polk County Circuit Court a Petition to Terminate the Parental Rights of Mother, Father T., and Father M. The fathers were served in March and April 2024. Mother, who was incarcerated in Georgia at the time, was served on April 8, 2024. The case experienced several continuances, including one requested by Mother due to her incarceration. New counsel was appointed for Mother in December 2024. The guardian ad litem was substituted in April 2025.

The Circuit Court conducted a termination of parental rights trial on August 18, 2025. Mother was present with counsel. Neither Father T. nor Father M. appeared. The State appeared through counsel, and the guardian ad litem was present.

DCS presented testimony from five witnesses: CPS Investigator Jack Faison; Mother; DCS Family Service Worker Leann Rains; Youth Villages specialist Robin Richardson; and Youth Villages specialist Yvette Sullivan. The court admitted multiple exhibits, including juvenile court records, drug-screen results, arrest records, child support records, birth certificates, and service returns.

Investigator Faison testified regarding the 2022 investigation, the children's living arrangements before removal, the condition of the homes he visited, Mother's refusal to submit to drug screening, his contact with Connie M., and the sequence of domestic violence incidents involving Mother and Father M. He also described the circumstances of the children's removal and the positive hair-follicle results obtained thereafter.

At the time of trial, Mother had been out of jail for exactly two months. Mother testified that she had a stable home, but acknowledged she lived with her boyfriend in a home owned by his father and that she did not have a lease. Mother also testified that she was employed, maintaining two jobs in mowing and cleaning cabins. She acknowledged her history of drug use (though denied consciously using methamphetamine and fentanyl despite drug screens to the contrary), and that she was currently on probation for a conviction for selling drugs for which she received a 15-year sentence – a sentence which

she would be required to flatten if she failed a probationary drug screen. Mother also admitted a history of domestic violence with Father M., at times in the presence of the children. She acknowledged that her life with the children had been unstable, and that she had not lived in one place for more than a year since Cayman's birth. She also testified that she had been adjudicated as the perpetrator of severe child abuse against the children due to their drug exposure. Mother testified that she was thankful to DCS for stepping in when they did because she was unstable, and that her time in jail allowed her to reflect on what was most important – putting her children's needs first. She stated she was ready to do that now, and was willing to do whatever the court required.

Family Service Worker Leann Rains testified that she became the children's foster-care worker in December 2022. She explained that the children were placed in separate homes: Cayman was placed in a "potentially" pre-adoptive home in Cleveland, Tennessee; Oden was in a pre-adoptive home in Knoxville; and Oaklyn was also in a foster home in Knoxville, which was not pre-adoptive. Cayman and Oaklyn receive therapy and medication management for ADHD and PTSD. Ms. Rains also testified regarding the parents' permanency plan responsibilities, and the services offered to each parent. She stated that neither Mother nor Father M. completed the required tasks and that both parents avoided drug screens on multiple occasions. Ms. Rains testified that, prior to her incarceration, Mother visited the children sporadically and had not visited since March 2024, and that Father M. last visited on May 1, 2024. She further testified regarding child support orders, service referrals, and the parents' lack of consistent contact.

Youth Villages foster care specialist Robin Richardson, a licensed master social care worker, testified that she had been assigned to work with Cayman for the last year. She meets with Cayman one to two times per week in the foster home and provides counseling to address trauma. She testified that Cayman experienced significant trauma from his experiences living with his birth family, and then from his removal from his birth family. She testified that Cayman was placed with a treatment mother and a treatment father, and that he had been in the same home for two and a half years and that it was a pre-adoptive placement. She described Cayman's bond with his foster parents as very strong and close. She opined that removing Cayman from the home would destroy him and really hurt him. She also described the children's interactions during sibling visits.

Yvette Sullivan, also a foster care specialist with Youth Villages, testified that she had been assigned to work with Oaklyn and Oden. She also sees Oaklyn and Oden in their respective foster homes one to two times per week. Ms. Sullivan provides therapy to the children and assists the foster parents with school and medical appointments. She works with the children to address behaviors associated with trauma. She testified that Oaklyn and Oden were initially placed in the same foster home, but subsequently had to be moved and placed in separate homes. Oden's foster placement is pre-adoptive; Oaklyn's is not. Oden is doing well, and has a very healthy bond with his foster parents. They are continuing to address Oden's behavioral and therapeutic needs. The same is true for

Oaklyn. While her placement is not pre-adoptive, Oaklyn has responded well to her foster mother, who works in special education, and they have a good and healthy bond. Ms. Sullivan opined that both children were doing extremely well individually.

On October 2, 2025, the Circuit Court entered its Final Order of Termination. The trial court found that the Department proved four statutory grounds for the termination of Mother's parental rights by clear and convincing evidence: (1) substantial noncompliance with the permanency plan; (2) persistent conditions; (3) severe child abuse; and (4) failure to manifest an ability and willingness to assume physical custody or financial responsibility for the children. The trial court also found by clear and convincing evidence that the termination of Mother's parental rights was in the children's best interests. The court terminated Father M.'s parental rights on grounds applicable to him. The petition as to Father T. was dismissed as moot due to his death four days after the trial. Only Mother now appeals.

ISSUES PRESENTED FOR REVIEW

Mother presents only one issue for this court's review: Whether the trial court erred in finding clear and convincing evidence that the termination of her parental rights was in the children's best interest. Even so, we remain obligated to review the trial court's findings as to the statutory grounds for termination. In re Carrington H., 483 S.W.3d 507, 511 (Tenn. 2016) (“[A]ppellate courts must review a trial court's findings regarding all grounds for termination and whether termination is in a child's best interests, even if a parent fails to challenge these findings on appeal.”).

STANDARD OF REVIEW

It is long and rightly settled that parents have a liberty interest in the care, custody, and control of their children. Stanley v. Illinois, 405 U.S. 645, 651 (1972); In re Drinnon, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right “is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions.” In re M.J.B., 140 S.W.3d 643, 652–53 (Tenn. Ct. App. 2004). Our Supreme Court has observed:

“When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.” Santosky [v. Kramer], 455 U.S. [745] at 758-59, 102 S.Ct. 1388[, 71 L.Ed.2d 599 (1982)]. Few consequences of judicial action are so grave as the severance of natural family ties.” Id. at 787, 102 S.Ct. 1388; *see also* M.L.B. v. S.L.J., 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are far more precious than any property right.” Santosky, 455 U.S. at 758-

59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(I)(1); *see also Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is *final* and irrevocable”). In light of the interests and consequences at stake, parents are constitutionally entitled to fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; *see also Lassiter v. Dep’t of Soc. Servs. Of Durham Cnty., N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981).

In re Carrington H., 483 S.W.3d 507, 522 (Tenn. 2016).

Accordingly, trial courts must find by clear and convincing evidence that the grounds for termination of parental rights have been established. Tenn. Code Ann. § 36-1-113(c)(1) (effective July 1, 2023 to June 30, 2024). “The clear and convincing evidence standard eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. Clear and convincing evidence must produce a firm belief or conviction in the fact finder’s mind about the truth of the facts to be established.” In re Markus E., 671 S.W.3d 437, 456-457 (Tenn. 2023) (internal quotations and citations omitted). The standard “ensures that the facts are established as highly probable, rather than as simply more probable than not.” In re Carrington H., 483 S.W.3d at 522 (citing In re Audrey S., 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005)).

Regarding this court’s review of a trial court’s decision to terminate one’s parental rights, our Supreme Court has instructed:

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 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.

GROUND

The trial court found that DCS proved all alleged grounds against Mother by clear and convincing evidence. We address each in turn.

A. Substantial Noncompliance with Permanency Plan

Tennessee Code Annotated section 36-1-113(g)(2) provides that one's parental rights to her child may be terminated if "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan[.]" A trial court's weighing of this ground requires "more than merely counting up the tasks in the plan to determine whether a certain number have been completed[.]" In re Carrington H., 483 S.W.3d at 537 (citing In re Valentine, 79 S.W.3d 539, 547 (Tenn. 2002)).

This ground is not established simply by showing "that a parent has not complied with every jot and tittle of the permanency plan." In re Ronon G., No. M2019-01086-COA-R3-PT, 2020 WL 249220, at *8 (Tenn. Ct. App. Jan. 16, 2020) (quoting In re M.B.J., 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004)). "Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance." In re M.B.J., 140 S.W.3d at 656.

DCS bears the burden of showing “that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent’s custody in the first place[.]” Id. (citing In re Valentine, 79 S.W.3d at 547; In re L.J.C., 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003)). DCS must also establish “that the parent’s noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met.” Id. (citations omitted). If the trial court does not make a finding with respect to the reasonableness of the parent’s responsibilities under the permanency plan, the appellate court reviews this issue de novo. *See In re Valentine*, 79 S.W.3d at 547.

In re Micah N., No. M2024-01297-COA-R3-PT, 2025 WL 2556543, *6 (Tenn. Ct. App. Sept. 5, 2025).

Regarding this ground, the trial court held in its Final Order of Termination:

Mother has failed to comply with the permanency plan requirements. Even though Mother did complete an A&D assessment, it occurred prior to another failed drug screen. Also Mother did not follow the assessment recommendations. Mother has not completed the other permanency plan requirements, and it has been 3 years since removal.

It appears the trial court did not make a finding with respect to the reasonableness of Mother’s responsibilities under the parenting plan, or that said responsibilities were related to remedying the conditions that led to the initial removal of the children from her custody. Accordingly, we must review this question de novo.

With regard to Mother, the Department’s initial Petition for Temporary Legal Custody contained allegations that the children were drug exposed² and lacked supervision; that there was domestic violence in the presence of the children; that Mother lacked stable housing, transportation, and income; that Mother herself was using drugs³; and that Mother was incarcerated at the time the petition was filed. The adjudicatory order of the Polk County Juvenile Court held that the children were dependent and neglected “due to the children being drug exposed while in the care of their mother.” The juvenile court also

² A hair follicle drug screen on each of the three children was positive for methamphetamine and THC.

³ On or about September 4, 2022, Polk County Jail officers completed a drug screen on Mother which was positive for methamphetamine, amphetamine, and THC.

“determined that the [] children are victims of severe child abuse, with [Mother] as the perpetrator[.]”

The record before us contains three permanency plans with respective dates of March 14, 2023, September 11, 2023, and March 4, 2024. Mother’s stated responsibilities are the same in each of the plans, which include the following:

- (1) Obtain an alcohol and drug assessment and follow all recommendations, including therapy and medication management;
- (2) Submit to random drug screens, and upon any relapse or failed drug screen submit to a new assessment;
- (3) Maintain sobriety and refrain from associating with known drug users/dealers;
- (4) Provide proof of income or steady employment;
- (5) Pay child support “as ordered by the court;”
- (6) Provide proof of a valid lease and working utilities;
- (7) Maintain safe and adequate housing to meet the needs of the family for a minimum of six months, and no illegal activity to be allowed in the home;
- (8) Attend domestic violence and anger management classes;
- (9) Resolve all pending criminal charges and avoid incurring new charges;
- (10) Participate in the children’s school meetings and medical appointments;
- (11) Complete parenting classes and provide proof to the Department;
- (12) Provide to the Department a copy of a current driver’s license, proof of car insurance, vehicle registration, or a transportation plan;
- (13) Attend scheduled visitation with the children; and
- (14) Maintain contact with the caseworker.

(Some action steps have here been separated into two for clarification).

We conclude that the responsibilities and action steps set forth in the permanent parenting plans are reasonable and that they were related to remedying the conditions that led to the initial removal of the children from Mother’s custody. We also agree with the trial court that clear and convincing evidence established that Mother did not comply with the permanency plans, and that said noncompliance was substantial.

From the time the children were taken into custody on September 6, 2022, Mother completed an alcohol and drug assessment. Unfortunately, Mother’s compliance with the

permanency plans ends there. Mother did not follow the recommendations from the assessment which included individual counseling and medication management. *See In re Travis H.*, No. E2016-02250-COA-R3-PT, 2017 WL 1843211, at *11 (Tenn. Ct. App. May 5, 2017) (finding substantial noncompliance where the parent completed the required assessments but did not follow the recommendations from the assessments). After the assessment Mother failed a drug screen, which was contrary to her responsibilities under the plan, and she did not submit to another assessment as required. Mother admitted that she had not enrolled in either parenting classes or domestic violence classes. Most importantly, Mother did not maintain regular visitation with the children. In fact, at the time of trial, Mother had not seen the children for more than 15 months. We are mindful that for the vast majority of that time Mother was incarcerated in the Polk County jail. Still, Mother was incarcerated as a result of choices she made. Specifically, she continued to be involved in illegal drug activity, which violated the terms of the plan. It is important to note that the children had already been in the State's custody for approximately 18 months at the time Mother was incarcerated.

We are encouraged by Mother's testimony that she had remained drug free in the two months since her release, though we regret that the possibility of flattening a 15-year prison sentence seems to be the impetus for this lifestyle change rather than a sense of responsibility for her children. Recall that Mother could have made this same choice during the 18 months prior to her incarceration. We are also encouraged by Mother's testimony that she has found work and a place to live, though we note she has not provided proof of employment or a written lease to DCS. *See In re Bravon K.*, No. M2024-01029-COA-R3-PT, 2026 WL 1584624, *7 (Tenn. Ct. App. Jan. 7, 2026) (holding: "While the failure to provide proof of a written lease may or may not be a minor failure to comply with the permanency plan, whether a parent has housing that is safe, suitable, and dependable for a child is not trivial." Concluding that the uncertainty of a parent's, and, more importantly, a child's right to reside in a given residence is significant.).

While it was Mother's uncontradicted testimony that she had taken steps to improve her situation since being placed on probation, these efforts do not evidence substantial compliance with the permanency plan. Mother's failure to meet her responsibilities were not just trivial, minor, or technical deviations from the plan. The responsibilities that Mother did not meet were substantial and were related to the reasons the children were removed. Accordingly, DCS proved this ground by clear and convincing evidence. We therefore affirm the trial court as to this ground.

B. Persistent Conditions

The trial court also concluded that DCS proved by clear and convincing evidence the ground of persistent conditions as to Mother. Parental rights may be terminated upon the statutory ground of persistent conditions when:

(3)(a) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a 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;

(B) The 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) (effective July 1, 2023, to June 30, 2024).

Regarding the ground of persistent conditions:

“A parent's continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent's care.” In re A.R., No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008) (citing In re T.S. & M.S., No. M1999-01286-COA-R3-CV, 2000 WL 964775, at *7 (Tenn. Ct. App. July 13, 2000)). The failure to remedy the conditions which led to the removal need not be willful. In re T.S. & M.S., 2000 WL 964775, at *6 (citing State Dep't of Human Servs. v. Smith, 785 S.W.2d 336, 338 (Tenn. 1990)). “Where . . . efforts to provide help to improve the parenting ability, offered over a long period of time, have proved ineffective, the conclusion [] that there is little likelihood of such improvement as would allow the safe return of the child to the parent in the near future is justified.” Id. 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 A.R., [2008 WL 4613576 at *20] (quoting In re D.C.C., No. M2007-01094-COA-R3-PT, 2008 WL 588535, at *9 (Tenn. Ct. App. Mar. 3 2008)).

In re Nevada N., 498 S.W.3d 579, 605-606 (Tenn. Ct. App. 2016). Accordingly, “this termination ground is not dependent on a parent’s efforts to improve the circumstances that led to a child’s removal. Rather, the focus lies on the results of those efforts.” In re Jeremiah B., No. E2022-00833-COA-R3-PT, 2023 WL 2198864, at *8 (Tenn. Ct. App. Feb. 24, 2023); *see also* In re Audrey S., 182 S.W.3d 838, 874 (Tenn. Ct. App. 2005).

With respect to this ground, the trial found:

The minor children have been removed for 3 years. Mother continued to use illegal drugs after the minor children were removed, and she was convicted of a drug related crime for which she received a 15-year jail sentence. She has been incarcerated for approximately 15 months since removal, and she has only been out of jail since June 2025.^[4] Furthermore, after removal, Mother continued to fail drug screens and/or refused to take drug screens. She refused to follow the recommendations of the A&D assessment. Mother has never completed the permanency plan requirements and responsibilities. Mother currently lives with another man with a criminal history and convictions who is also on probation. Mother has shown no stability, and resides in [a] home without a lease. She does not have a driver’s license and must borrow a vehicle for transportation.^[5] If Mother fails in her probation, Mother could go back to jail for a very long time. The Court further finds that there is little likelihood that these conditions will be remedied at an early date so that the children can be safely returned [to] Mother in the near future. Again, it has been 3 years since removal. The Court also finds that the continuation of Mother’s relationship with the minor children greatly diminishes the children’s chances of early integration

⁴ Again, two months at the time of trial.

⁵ Mother’s uncontradicted testimony at trial was that she did have a valid driver’s license, though she did not own a car and presented no proof of insurance.

into a safe, stable, and permanent home. The minor children need stability and the minor children are in stable and loving homes. The children also witnessed a lot of abuse and domestic violence while in Mother's care which has adversely affected them.

As we have noted, Mother did not challenge the trial court's finding of this ground by clear and convincing evidence on appeal. The theme of Mother's testimony at trial, however, was that since her release from detention, and at the time of trial, her circumstances had changed, and the conditions which led to the children's removal from her custody no longer persisted. She emphasized that in the two months since her release she was not using drugs, she was working two jobs, and she had a place to live.

We agree, nonetheless, with the trial court's assessment of this factor. The record reflects that the conditions which led to the children's removal were Mother's drug abuse, the children's drug exposure, criminal activity, housing instability, lack of transportation, and lack of income. The trial court correctly emphasized that almost three years had passed since the children's removal. Even if Mother remained drug free since her release, that represents only two months out of the 36 since the children were removed from Mother's custody.⁶ Mother admitted at trial that she still did not have housing or transportation of her own. She had not provided proof of employment to DCS. In short, having been out of jail for only two months, Mother's situation may have been *changing*, but the clear and convincing evidence is that it had not *changed* in such a manner that would allow the children to be safely returned to Mother in the near future. In an exchange at trial, Mother testified:

- Q. Do you think your attachment to them, them to you, is secure and healthy at this time?
- A. I feel like it would need to be built back up, but –
- Q. So that's a no, it's not at this time?
- A. No, it's not at this time.
- Q. How long do you think it would take to create that?
- A. Probably take months.
- Q. Do you realize they've already been in foster care lingering for three years?
- A. Yes, ma'am.
- Q. Okay. Do you think they should wait for you?
- A. Not anymore, no.

⁶ We decline to give Mother credit for her period of incarceration. One should not receive a benefit for one's criminal behavior and resulting incarceration. This is particularly true here, where there was no evidence that Mother availed herself of any programs or classes while incarcerated. Perhaps none were available, but it does not affect our reasoning. We also note that Mother received at least two more criminal charges during her incarceration.

- Q. Okay. Do you think it would be triggering to them at all, triggering their trauma at all to be placed back with you?
- A. As far as placing them – taking them away from people they’ve gotten comfortable with, yes.

Mother’s last answer touches on whether the continuation of her parental relationship with the children diminishes their chances of early integration into a safe, stable, and permanent home. The undisputed testimony was that two of the three children were in pre-adoptive homes. Children are not eligible for adoption (except by a stepparent) while a parent’s rights remain intact. As noted by the examining attorney, the children had already lingered in foster care for three years. *See In re A.R.*, 2008 WL 4613576, at *20.

Clear and convincing evidence established that (1) the children had been removed from Mother’s custody for more than six months; (2) the conditions that led the children’s removal continued to persist throughout the custodial period; (3) it was unlikely said conditions would be remedied at an early date allowing the safe return of the children to Mother’s custody; and (4) the continuation of Mother’s parental rights diminishes the children’s chances of early integration into safe, stable, and permanent homes. Accordingly, we affirm the trial court as to this ground.

C. Severe Child Abuse

Tennessee law provides that a parent’s rights may be terminated if:

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 any child.

Tenn. Code Ann. § 36-1-113(g)(4) (effective July 1, 2023, to June 30, 2024). Severe child abuse is defined, in pertinent part, as:

- (A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a child that is likely to cause serious bodily injury or death;
- (E) Knowingly or with gross negligence allowing a child under eight (8) years of age to ingest an illegal substance or a controlled substance that results in the child testing positive on

a drug screen, except as legally prescribed to the child; . . .

Tenn. Code Ann. § 37-1-102(b)(27) (effective May 5, 2023, to June 30, 2024). This court has held:

Tennessee Code Annotated § 37-1-102(b)(27)(A)(i) provides that a parent commits severe child abuse when his or her actions result in “[t]he knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death . . .” This Court has consistently interpreted this subsection to include a parent’s knowing exposure of a child to drugs or his or her failure to protect the child from such exposure. *See In re A.L.H.*, No. M2016-01574-COA-R3-JV, 2017 WL 3822901, at *5 (Tenn. Ct. App. Aug. 31, 2017) (“This Court has repeatedly held that exposure of a child to drugs constitutes severe child abuse.”). Citing to subsection (A)(i), the Court has state that “[c]lear and convincing evidence of severe child abuse is present when a child is exposed to methamphetamine.” *In re Caydan T.*, No. W2019-01436-COA-R3-PT, 2020 WL 1692300, at *5 (Tenn. Ct. App. Apr. 7, 2020).

In 2019, the General Assembly added subsection (E), which provided an additional definition of severe child abuse. *See* Tenn. Pub. Acts, Ch. 510, § 4 (H.B. 509). Subsection (E) provides that a parent commits severe child abuse when he or she “[k]nowingly or with gross negligence” allows a child under the age of eight to ingest an illegal or controlled substance not legally prescribed to the child, which results in the child testing positive for the substance on a drug screen . . .

The evidence presented supports the Juvenile Court’s finding by clear and convincing evidence that Mother committed severe abuse against [the children] based on their exposure to methamphetamine in the family home as shown by, among other things, their subsequent drug test results being positive for methamphetamine.

In re Rufus C., 660 S.W.3d 725, 743 (Tenn. Ct. App. 2022) (quoting *In re Kailey A.*, 2022 WL 773617, at *10 (Tenn. Ct. App. March 14, 2022)).

As we have already noted, all three children were transported for medical evaluations and hair follicle drug testing when they were taken into custody. Each child tested positive for methamphetamine and THC. At the time, the children were one, three, and five years old. On November 22, 2022, the Polk County Juvenile Court adjudicated the children to be dependent and neglected and found them to be victims of severe child abuse while in Mother's care due to their exposure to methamphetamine. The adjudicatory order explicitly identified Mother as the perpetrator. Mother did not appeal, and acknowledged as much at trial. We affirm the trial court as to this ground.

D. Failure to Manifest an Ability and Willingness to Assume Custody and Financial Responsibility

Tennessee law provides that a parent's parental rights may be terminated if:

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, 2023, to June 30, 2024). This ground for termination requires the petitioner to prove two elements by clear and convincing evidence: “(1) the parent or legal guardian failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child; and (2) placing the child in the parent's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.” In re Neveah M., 614 S.W.3d 659, 674 (Tenn. 2020).

1. Ability and Willingness

With regard to the first element, our Supreme Court has held:

[W]e conclude that § 36-1-113(g)(14) places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility for the child. If a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest *either* ability or willingness, then the first prong of the statute is satisfied.

Id. at 677. Regarding the distinction between ability and willingness, this court has held:

Ability focuses on the parent's lifestyle and circumstances, and willingness focuses on the parent's attempts to overcome the obstacles that prevent him or her from assuming custody or financial responsibility for the child. Thus, a parent's mere desire to reunite with his or her child is insufficient to demonstrate an ability or willingness.

In re Kamyiah H., No. M2021-00834-COA-R3-PT, 2022 WL 16634404, *7 (Tenn. Ct. App. Nov. 2, 2022) (citation modified). "Many of the same facts relevant to a parent's willingness apply to our analysis of a parent's ability inasmuch as both of these concepts may relate to a parent's lifestyle." In re Elizabeth Y., E2023-01448-COA-R3-PT, 2024 WL 3738701, *4 (Tenn. Ct. App. Aug. 9, 2024). Unlike abandonment for failure to visit or support, the statute does not provide a specific time period from which a court should consider evidence to support the ground of failure to manifest. This Court has well established, however, that while the time preceding the filing of the petition to terminate is the most relevant timeframe for assessing the ground of failure to manifest, trial courts "may also consider the parent's actions following the filing of the petition and up to the time of trial." In re Brooklyn M., No. M2023-00024-COA-R3-PT, 2024 WL 65218, *10 (Tenn. App. Jan. 5, 2024) (internal citations omitted).

a. Mother's Ability

Regarding Mother's ability to personally assume custody and financial responsibility for the children, the trial court found:

Although Mother maintains that she is now gainfully employed, she must rely upon others for her housing and transportation needs. Mother has been incarcerated on and off since removal. She is also on probation for a 15-year prison sentence, and she may have to return to incarceration if her probation fails. Mother has failed to pay any financial support for the minor children even after she got out of jail. Mother has also made no attempt to visit the minor children since she was released from jail. The last Mother saw the minor children was in March of 2024 well over a year ago. Mother has never completed the permanency plan requirements. The Court finds that based on the proof, Mother's current circumstances, and Mother's history including illegal drug use, she simply doesn't have the ability to adequately care for and support the minor children in a consistent way.

We agree with the trial court's overall conclusion regarding Mother's lifestyle and

circumstances. Mother admitted that she and the children lacked stable housing, transportation, and income prior to their removal on September 6, 2022. Between the children's removal and the filing of the petition to terminate on March 11, 2024, Mother tested positive for methamphetamine, fentanyl, and THC. During that 18-month period Mother continued to lack stable housing and continued to participate in illegal activity. Mother made no effective progress on her parenting plan responsibilities and goals. Mother received a 15-year prison sentence for selling drugs, and was incarcerated from March 21, 2024, to June 18, 2025, with the remainder to be served on probation. In the two months between her release and trial, Mother testified that she still did not have secure housing, but was living with a boyfriend, who was also on probation, in a house owned by the boyfriend's father. She did not have a lease. She did not have a vehicle of her own. Again, while we are mindful that long periods of incarceration can pose an obstacle to quickly achieving stability upon release, Mother's incarceration was a product of her own choices – choices she made while her children were in DCS custody. We affirm the trial court's conclusion as to mother's ability.

b. Mother's Willingness

Regarding Mother's willingness, the trial court held:

Mother has paid no support and has not seen the minor children in well over a year. She has made no effort to see or contact the children since she was released from jail in June of 2025. Again, Mother has failed to complete the permanency plan. Mother has simply [not] done much of anything to manifest a willingness to resume custody of these children and financially support these children. Mother admits that she has not shown a track record of stability.

While the evidence preponderates against the trial court's finding that Mother made no effort to see or contact the children since her release (her uncontradicted testimony was that she had attempted to set up visits),⁷ the fact remains that Mother had not seen the

⁷ We think the following exchange suggests the Department declined to arrange visitation after Mother's release from jail:

- A. I feel like since I've been released from jail, I've texted to try to schedule some hair follicles or schedule visits and stuff like that. And Leann said she'd just have to talk with the foster parents to get a date set to be able to visit them.
- Q. Okay. Because they haven't seen you; right --
- A. Yeah.
- Q. -- in what, 15 months?
- A. Yes.
- Q. And they're young?
- A. Yeah.

children in more than a year at the time of trial – primarily, of course, due to her incarceration for selling drugs. Also, as we have noted many times, Mother made no progress on her action steps in the permanency plan in the 18 months the children were in DCS custody prior to her incarceration, nor in the two months after her release. Mother also never paid child support during the three years the children were in custody. When asked if she thought she had actively worked to regain custody of her children, Mother replied: “Not before I was incarcerated, no ma’am.” The petition to terminate was filed before her incarceration, and the time preceding said filing is the most relevant timeframe for assessing failure to manifest. In re Brooklyn M., 2024 WL 65218, *10. Mother has not made sufficient attempts to overcome the obstacles that prevent her from assuming custody and financial responsibility of the child.

2. Risk of Substantial Harm

Regarding the second element, whether placing a child in the parent’s custody would pose a risk of substantial harm to the physical or psychological welfare of the child, this court has held:

The 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 Brooklyn M., 2024 WL 65218, *8 (quoting Ray v. Ray, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)). “In evaluating this second prong, this court has previously placed emphasis on facts revealing emotional harm and instability.” In re Elizabeth Y., 2024 WL 3738701, *6 (Tenn. Ct. App. Aug. 9, 2024). We have also held that “forcing a child to

-
- Q. So it would take a little effort to have you come right back into their lives.
A. Right.
Q. And you knew today’s date was a TPR; right?
A. Yes.
Q. So it didn’t make any sense, did it, to –
A. No.
Q. -- start up visiting if your rights could possibly be terminated?
A. Yes, ma’am.

begin visitation with a near-stranger would make psychological harm sufficiently probable.” In re Brianna B., 2021 WL 306467, *6 (Tenn. Ct. App. Jan. 29, 2021); *see also* In re Antonio J., 2019 WL 6312951, *9 (Tenn. Ct. App. Nov. 25, 2019).

The question then is whether DCS proved by clear and convincing evidence that placing the children in Mother’s physical custody would likely cause “substantial harm.” *See* In re Manning H., 2021 WL 2935047, *7 (Tenn. Ct. App. July 13, 2021). As we have already noted, “[c]lear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of the factual findings.” In re Bernard T., 319 S.W.3d 586, 596 (Tenn. 2010).

With regard to this element, the trial court held:

The children witnessed domestic violence while in the care of Mother which has adversely affected them. Mother is currently living with a man on probation with a history of criminal conduct and illegal drug use. The minor children are currently in stable and loving environments. Per Ms. Richardson, Caymen would be “destroyed” if he were removed and placed back with either parent. Furthermore, due to Mother’s illegal drug use and criminal history, there is a risk that the minor children would be exposed to drugs while in Mother’s care. These young minor children need stability which Mother just can’t provide based upon the proof at trial and her unstable history.

We agree with the trial court that placing the children with Mother would pose a risk of substantial harm to the physical or psychological welfare of the children. The children were one, three, and five years old when they were ordered into the State’s custody. Oaklyn and Oden have spent more than half their lives in DCS custody and apart from their mother. Cayman and Oden are in pre-adoptive homes. Family Service Worker Ms. Raines testified that Cayman considers himself as part of his foster family, and that he calls his foster parents mom and dad. Foster care specialist Ms. Richardson testified that Cayman had been with his foster family for two and a half years; that they shared a very close relationship; and that he looks to them for his safety and his needs. When asked what affect it would have on Caymen if he were removed, Ms. Richardson testified: “I think it would destroy him really, and really hurt him. He is very settled there. I don’t think he realizes – he thinks he’s part of their family, and he is part of their family. And I think it would be detrimental to his wellbeing given his stability there.” She also discussed the trauma suffered by Cayman when in Mother’s custody due to witnessing domestic violence.

Foster care specialist Ms. Sullivan testified that Oden has a healthy bond with his

foster parents and that he is thriving in the home. She continues to work with Oden to address trauma induced behaviors. While not in a pre-adoptive home, Oaklyn has a “really wonderful connection” with her foster mother, who is a special education teacher. She is actively involved in taekwondo, and she is doing well in school where she is well liked by her teachers. Still, Oaklyn continues to also require therapy to address behavioral issues associated with past trauma. Even so, Ms. Sullivan testified: “At this time both [Oaklyn and Oden] are doing extremely well individually.”

Given the trauma already suffered by the children while in Mother’s care, and the years they have already lived apart from Mother, returning them to her custody would likely cause substantial harm to their psychological welfare. Accordingly, we affirm the trial court’s findings as to this element of this ground.

BEST INTEREST

Once clear and convincing evidence has established at least one statutory ground for termination of parental rights, the trial court must then consider whether clear and convincing evidence exists that the termination of a parent’s rights is in the best interest of the child. “While the combined weight of the evidence must meet the clear and convincing standard, facts considered in the best interest analysis need be proven only by a preponderance of the evidence, not by clear and convincing evidence.” In re Jonathan M., 591 S.W.3d 546, 560 (Tenn. Ct. App. 2019) (internal citations omitted).

A trial court’s assessment, and our assessment, of a child’s best interests as they relate to the termination of parental rights is directed by statute:

In determining whether termination of parental or guardianship rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court. Those factors *may* include, but *are not limited to*, the following [statutory factors].

Tenn. Code Ann. § 36-1-113(i)(1) (effective July 1, 2023, to June 30, 2024) (emphasis added). Our Supreme Court has further advised:

When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interest of the child . . .”

Ascertaining a child's best interests involves more than a "rote examination" of the statutory factors. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated.

In re Gabriella D., 531 S.W.3d 662, 681-682 (Tenn. 2017) (internal citations omitted). This court has further held that "[t]he relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstance of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis." In re Audrey S., 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005) (citing White v. Moody, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004)). Per our directive, we review the trial court's findings regarding whether termination is in the children's best interest. In re Carrington H., 483 S.W.3d at 511. We address each factor in turn.

(A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority. The children have not been in Mother's custody or care for more than three years – more than half the lives of Oaklyn and Oden. Cayman has been in his pre-adoptive home for approximately three years. Oaklyn and Oden had been in their respective foster homes for approximately eight months at the time of trial. Oden's foster placement was pre-adoptive; Oaklyn's was not. As the trial court observed: "While the minor children are in different homes, their current living environment is far more stable than prior to their removal." We agree. This factor weighs in favor of termination.

(B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition. Considering the trauma already suffered by the children while in Mother's care, being removed from their current foster placements, where the uncontradicted testimony was that they were thriving, and returned to Mother, would likely have a detrimental effect on their emotional and psychological condition. Regarding this factor, the trial court found:

The minor children suffered trauma and have been adversely affected due to what they witnessed while in the Mother's care, including Father M[.]'s domestic violence towards Mother. The minor children have now been removed for 3 years. The children are in loving, stable, and healthy environments. The

minor children and their foster parents have strong bonds and attachments. The foster parents are meeting the minor children's needs. Due to Mother's and Father M[.]'s instability, and for the reasons set forth herein, placing the minor children back in the care with Mother and/or Father M[.] is likely to have a detrimental effect on the minor children's emotional, psychological and medical wellbeing. Neither Mother nor Father M[.] have seen the minor children in over a year.

The record supports the trial court's findings. This factor weighs in favor of termination.

(C) Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs. Mother acknowledged at trial that her life with the children, prior to their removal, was unstable. During the 18 months after the children were taken into custody and before Mother was incarcerated for a lengthy period, Mother lacked stability, continued to use drugs, and continued to engage in illegal activity. At the time of trial, Mother continued to lack stable housing. Simply put, Mother has not demonstrated continuity and stability in meeting the children's basic material, educational, housing, and safety needs. This factor weighs in favor of termination.

(D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment. The children were one, three, and five years old when they were ordered into the State's custody on September 6, 2022. They have been in DCS custody for almost four years. The trial court noted: "Neither parent has been in the minor children's lives for over a year." While Mother was incarcerated for a majority of that time, it was the result of Mother's own illegal activity – activity in which she engaged while the children were in DCS custody. Mother and the children do not currently have a secure and healthy parental attachment, and, considering the children's trauma, it is not reasonable to expect that such an attachment can be created. This factor weighs in favor of termination.

(E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child. At the time of trial, it had been more than a year since Mother had visited the children. We have noted that Mother was incarcerated during the majority of that time due to her illegal activity. Even if we were to credit Mother with attempting to schedule visits in the two months between her release and trial, it does not change the fact that there were no visits in more than a year, and we are required to consider this factor from the perspective of the children, not Mother. In re Gabriella D., 531 S.W.3d at 681-682. Additionally, Mother's visitation was sporadic during the 18 months between when the

children were taken into custody and her incarceration. This ground weighs in favor of termination.

(F) Whether the child is fearful of living in the parent's home. The trial court found: "The minor children have been adversely affected and traumatized by the conduct they witnessed while in the care of Mother including Father M[.]'s domestic violence directed toward Mother." This conclusion is supported by the record. This factor weighs in favor of termination.

(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms. Regarding this factor, the trial court held:

[D]ue to the trauma that the minor children experienced as set forth in factor (F) above, there is certainly a risk that if the minor children were returned to Mother and/or Father M[.], this could trigger and/or exacerbate the minor children's experiences of trauma suffered while with Mother and in her care.

Uncontradicted testimony from multiple witnesses established that the children continue to require therapy due to trauma related behavioral issues. The record supports the trial court's conclusion regarding this factor. Accordingly, this factor weighs in favor of termination.

(H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent. The undisputed evidence at trial was that the children have healthy and positive bonds with their respective foster parents. As the trial court observed, "Cayman and Oden are in pre-adoptive homes. Although Oaklyn is not in a pre-adoptive home, her foster mother serves as a positive influence for Oaklyn." This factor weighs in favor of termination.

(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage. The only testimony regarding this factor involved the children's sibling relationship with one another. While we observe that it is unfortunate that the children cannot now be placed together in one home, we also observe that their current placements are far more stable and beneficial than when they remained in Mother's care. We are also encouraged that the Department and the foster parents are committed to arranging regular visitation between the children so that they may continue to maintain their inherently important sibling bond. This factor weighs in favor of termination.

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner. The record before us supports the trial court's finding that Mother has not demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the children to be in her custody. During the 18 months between removal of the children and her incarceration, Mother continued to test positive for drugs and continued to engage in illegal behavior. The record supports the conclusion that said criminal activity was more important to Mother at that time than the needs of the children. We remain hopeful for the continued progress Mother demonstrated during the two months between her release from jail and trial. We also hope she continues to be motivated to become the person her children would want her to be. Unfortunately, those two months of progress do not outweigh the previous 34 months when Mother was not actively engaged in the lives or needs of her children. This factor weighs in favor of termination.

(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions. As we have already noted, Mother completed effectively none of her action steps and responsibilities as set forth in the children's permanency plan. This factor weighs in favor of termination.

(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department. The record supports the trial court's finding that the Department made reasonable efforts to assist Mother in making a lasting adjustment to the circumstances that led to the children's removal. During her testimony, Mother acknowledged having been given resources to complete parenting classes, which she did not do. This factor weighs in favor of termination.

(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest. The children had been in custody of the State for three years at the time of trial. Prior to Mother's incarceration, she had 18 months to demonstrate a sense of urgency in regaining custody of her children. Instead, she chose to continue to abuse drugs and engage in illegal activity. This factor weighs in favor of termination.

(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological

abuse or neglect toward the child or any other child or adult. Regarding this factor, the trial court found, “the minor children witnessed domestic violence by Father M[.] against Mother. Again, the minor children have been adversely affected by the events that they witnessed.” The uncontradicted testimony at trial was that the children had witnessed and been traumatized by domestic violence in their home. This factor weighs in favor of termination.

(O) Whether the parent has ever provided safe and stable care for the child or any other child. Mother testified that she had never lived anywhere with the children for more than a year. During the course of the Department’s investigation which led to the removal of the children, they resided in at least three different residences. Mother testified that she did briefly have a stable apartment in 2021, but that Father M. continued to appear and cause disturbances requiring her to move. The record establishes domestic violence followed Mother and the children wherever they moved. Additionally, the children tested positive for methamphetamine and THC. This factor weighs in favor of termination.

(P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive. Mother has not demonstrated an understanding of the basic and specific needs required for the children to thrive. Had she done so, the children would not have remained in the State’s custody for three years. This factor favors termination.

(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child’s basic and specific needs and in which the child can thrive. Regarding this factor, the trial court observed the children’s “home was one of illegal drug use and domestic violence. Mother’s drug use increased after the minor children [were] removed which led to her incarceration and a 15-year jail sentence. She currently lives in a home without a lease with someone that also has criminal and illegal drug use histories.” The record supports the trial court’s findings regarding this factor. Accordingly, this factor weighs in favor of termination.

(R) Whether the physical environment of the parent’s home is healthy and safe for the child. No evidence was presented regarding the physical environment of Mother’s residence at the time of trial, other than Mother’s testimony that the home had three bedrooms and one bath. This factor weighs neither in favor of nor against termination.

(S) Whether the parent has consistently provided more than token financial support for the child. The undisputed testimony at trial was that Mother has not paid child support. Mother did testify that she was unaware that she was required to pay child support, and there is no court order in the record ordering child support. Still, “[e]very parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent’s legal obligation to support such parent’s child or children.” Tenn. Code Ann. § 36-1-102(1)(H) (effective July 1, 2023, to June 30, 2024). This factor weighs in favor of

terminating Mother's parental rights.

(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child. There was no specific evidence introduced at trial regarding Mother's mental or emotional fitness, other than general testimony regarding her history of drug abuse and criminal activity. This factor weighs neither in favor of nor against termination.

In her brief, Mother argues: "The best-interest order in this record reads as though the court treated the grounds findings – drug exposure, incarceration, lack of visitation, and plan noncompliance – as dispositive of best interest, rather than undertaking the child-focused, factor-by-factor weighing required by In re Gabriella D.[,531 S.W.3d 662 (Tenn. 2017)] and its progeny." We disagree. Trial courts are not required to exclude from their consideration of best interest those facts which established a ground for termination. Indeed, "[o]ften the findings of fact supporting the grounds for termination are also relevant to the issue of whether termination is in the child's best interest." In re Adoption of C.A.M., No. W2008-02003-COA-R3-PT, 2009 WL 3739447, at *7 (Tenn. Ct. App. Nov. 9, 2009).

The trial court considered each statutory best interest factor individually, and made specific findings of fact regarding each factor. After its methodical examination of the best interest factors, the trial court concluded:

Upon analyzing the factors set forth in Tennessee Code Annotated [section] 36-1-113(i)(1), the Court finds by clear and convincing evidence that termination of Mother's and Father M[.]'s parental rights is in the best interests of the minor children. . . . Additionally, and as set forth above, the Court finds that Mother and Father M[.] do not have stability to care for the minor children and to meet the children's needs. . . . Mother is living with another man without a lease. Mother and Father M[.] have not seen the young minor children in well of a year. The termination of the Respondents' parental rights and adoption will promote stability for these young minor children and, allow the children to thrive in stable home environments. Since, removal, the minor children's needs have been met and they are doing well. The children have a right to stable, safe and continuity of placement, and the children have a right to be free from neglect and to be nurtured by appropriate caregivers. Mother and Father M[.] cannot rest on their rights while ignoring the rights of their children.

We agree. Nearly all of the best interest factors weigh in favor of termination; none weigh against. Simply put, the two younger children have been in foster care for the majority of their lives. The oldest child has been with his pre-adoptive foster family for approximately three years. For the 18 months prior to Mother's most recent incarceration, the children were in the custody of the State; Mother's visits were sporadic; her efforts to comply with her responsibilities as set forth in the permanency plan were effectively non-existent; and she continued to abuse drugs and engage in illegal activity. Mother had not visited with the children for more than a year at the time of trial. Perhaps Mother's long-term incarceration and subsequent probationary restrictions have her on a positive trajectory. We hope so. It is, however, simply too late to restore the parent child relationship during the children's minority. The children have each been on their own positive trajectories towards permanency, stability, and safety. It is not in their best interest to derail that now. Accordingly, the trial court correctly concluded that termination of Mother's parental rights is in the children's best interest.

CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment. Costs of the appeal are assessed to the appellant, Hallie T., for which execution may issue if necessary.

s/ William E. Phillips II
WILLIAM E. PHILLIPS II, JUDGE