

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 1, 2026

IN RE MIAH M.

Appeal from the Probate Court for Cumberland County
No. 2023-PF-9304 Amanda Magan Worley, Judge

No. E2025-01728-COA-R3-PT

This appeal involves a petition to terminate the parental rights of a mother to her daughter. The trial court found that the grounds of abandonment by failure to visit and abandonment by failure to support were proven by clear and convincing evidence. The court also determined that the termination of parental rights was in the best interest of the child. The mother appeals. We affirm.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., C.J., and KRISTI M. DAVIS, J., joined.

Tia E. Jensen, Crossville, Tennessee, for the appellant, Ashley M.

Howard L. Upchurch and Stacy H. Farmer, Pikeville, Tennessee, for the appellee, Tammy E.

Sherrill Rhea, Crossville, Tennessee, Guardian ad Litem.

OPINION¹**I. FACTS & PROCEDURAL HISTORY**

This appeal involves the termination of the parental rights of Ashley M. (“Mother”) to her daughter, Miah M. The rights of Miah’s biological father (“Father”) and legal father were terminated in the same action, but neither has appealed. Miah was born in December

¹ In cases involving termination of parental rights, it is the policy of this Court to redact the parties’ last names to protect their identities.

2014. Miah went home from the hospital with Mother and Father.² Days later, Mother went to the home of a family friend to do laundry and wash bottles. There, she met Tammy E., who was the aunt of Father's ex-wife. Tammy offered to allow Miah to spend the night at her home. Approximately one week later, Mother permitted Miah to do so. Miah was approximately two weeks old at the time. Miah spent the majority of the following two months in Tammy's care. Subsequently, Tammy learned that there were issues in Mother's home. At some point, the Department of Children's Services ("DCS") opened an investigation on Mother and Father due to drug use. Around that time, Tammy filed a petition seeking temporary custody of Miah and was awarded custody on February 19, 2015. Subsequently, Mother completed a drug and alcohol assessment and participated in an inpatient rehabilitation program. Mother regained custody of Miah in September 2015. Tammy received weekend visitation.

In early 2016, one-year-old Miah became sick and was admitted to the hospital. During her stay, Mother and Father had a physical altercation that resulted in Father biting Mother. There were also concerns of drug use in Miah's hospital room and other erratic behavior. Mother and Father submitted to drug screens and tested positive for THC and oxycodone. Nonetheless, Miah returned home with Mother and Father. Shortly thereafter, the police were called to the residence in response to a domestic incident. Mother and Father denied that domestic violence had occurred and no charges were filed. A dependency and neglect petition was filed against Mother and Father on May 18, 2016, and Miah was returned to Tammy's custody. Subsequently, Miah was adjudicated dependent and neglected as to both Mother and Father. Tammy filed a motion to be named Miah's permanent guardian. An order to that effect was entered on May 30, 2017, when Miah was two. Around this time, Mother was restricted to supervised visitation.

Tammy filed a petition to terminate the parental rights of Mother, Father, and Miah's legal father on April 13, 2023. By that time, Miah was eight. The petition alleged the following grounds for termination against Mother: (1) abandonment by failure to visit and (2) abandonment by failure to support. The petition also alleged that the termination of parental rights would be in Miah's best interest. A guardian ad litem was appointed to represent Miah's interests throughout the proceedings. Mother was appointed counsel and filed an answer in which she raised the affirmative defense of lack of willfulness against both grounds for termination.

A hearing was held on the termination petition on August 15, 2025. At the beginning of the hearing, Mother's counsel made an oral motion for a continuance. Counsel stated that Mother wished for her son ("Son") to testify "that she is a good mother" and had "heard things around [Tammy's] house that, her name['s] not used and that sort of

² It was determined that Miah's legal father was not her biological father at some point, and it appears he has never met her.

thing[.]”³ Counsel stated that additional witnesses could be called as well. Counsel explained that Mother “did not understand that today was everything” and had not arranged for these witnesses to testify. The trial court noted that three months had passed since the matter had been set for final hearing and denied the motion.

Tammy was the first witness to testify. She stated that she had been Miah’s “caretaker and guardian” since she was approximately two weeks old. She explained that she met Miah when she was approximately one week old at her then mother-in-law’s home. She stated that, “[she], just in conversation, asked if [Miah] could spend the night with [her]” and “a week later, the parents were willing to let [her] take Miah for the night.” She continued to care for Miah for “the majority of the time” throughout the following two months. She explained that she had become “concerned about [Miah’s] well-being” because Mother and Father had no heat in their car or water in their home.

Shortly thereafter, Miah became sick. She was hospitalized for three days. Tammy stated that she informed Mother of the situation. Mother responded that “there was no way that she could go” to the hospital because she was caring for Son and he was “hyperactive.” Tammy stated that Mother did not visit Miah at the hospital despite her offer to provide transportation. Subsequently, Tammy filed a petition for temporary custody and made a referral to DCS. She received temporary custody and Miah remained with her until September 2015, at which point, Mother regained custody. Miah remained in Mother’s care until May 2016. Tammy discussed the circumstances that resulted in Miah returning to her custody. She explained that Miah had additional health issues in April 2016, which again resulted in her being hospitalized. While she was in the hospital, Mother and Father had several issues with “drugs and fighting” that led to DCS once again becoming “involved.” DCS filed the dependency and neglect petition in May 2016, and Tammy regained custody of Miah.

Tammy described Mother’s visitation. She stated that Mother consistently participated in supervised visitation twice per month throughout 2017, 2018, 2019, and 2020.^{4, 5} However, in October 2021, issues began to arise. Until that point, Miah’s great grandmother (“Great Grandmother”) had typically supervised visits. Unfortunately, Great Grandmother was sick on the date of Mother’s first October 2021 visit. Accordingly, Tammy supervised the visit, during which she, Miah, Mother, and Son went to lunch and a movie. She stated that “[t]he visit was crazy.” She testified that Mother appeared to be “under the influence” as her eyes were “very bloodshot” and “she went out while [they] were having lunch multiple times to either take a phone call, or whatever, or smoke.” She also left the movie theater multiple times. After the movie concluded, the party went for

³ Son is the minor child of Mother and is Miah’s half-brother.

⁴ It appears that Mother had unsupervised visitation in 2016. This was suspended in February 2017 and was never reinstated.

⁵ Tammy noted that a brief pause in visitation occurred during the COVID-19 pandemic.

ice cream. Tammy stated that Mother called her father “like, 50 minutes early to pick her up versus spending that time with Miah.”

After this, Mother’s visitation became “[v]ery limited.” Tammy offered to supervise a visit during the latter part of October, but Mother “denied” the visit because Great Grandmother remained unable to supervise. Mother did not visit Miah in November and missed her first scheduled visit in December. Mother did participate in the second scheduled December visit. Mother’s final visit took place on January 29, 2022. Afterward, Great Grandmother informed Tammy that she would no longer supervise visits. Tammy stated that, on the date of the next scheduled visit, she and Miah arrived at the standard meeting location and waited for 45 minutes, but Mother did not appear. Mother later texted Tammy and informed her that she did not wish for her to supervise visits because she did not feel “comfortable” with her or at her home. She suggested that Son or Grandfather could supervise visits instead. However, Tammy did not agree to this arrangement and noted the court order governing visitation did not authorize Son or Grandfather to supervise visits. She noted that Mother never filed a petition to lift the supervision requirement or to regain custody of Miah.

Tammy stated that Mother and Miah had not communicated since January 29, 2022, over a year prior to the filing of the termination petition in April 2023. The only encounter with Mother that she and Miah had after this point occurred by chance at a McDonald’s restaurant in the spring of 2022. She stated that, once Miah saw Mother, she “instantly asked if [they] could leave.” Likewise, she noted that Mother had not attended school events or doctor visits since approximately 2015. She had also never requested information regarding Miah’s doctor, dentist, teachers, or grades.

Tammy also described the home in which she and Miah live. The home is a family home that Tammy has lived in since she was a teenager. It has four bedrooms and three bathrooms. She noted that her adult daughter and uncle also live in the home. She works full-time. Additionally, she noted that she works with Great Grandmother. Great Grandmother has had custody of Son for many years, and they visit Miah often. Additionally, Miah has several adult half-siblings on Father’s side and other biological relatives with whom Tammy facilitates relationships and visits. Tammy stated that Miah does “great” in school. She “makes A-B Honor Roll” and “has never ever missed a day of school.” She also participates in sports. She stated that she and Miah have a very good relationship. They enjoy traveling, cooking, cleaning, doing their hair and makeup, and being involved at their church. Further, Miah has formed close relationships with Tammy’s adult daughter, uncle, and mother.

Tammy stated that Mother did not make a child support payment between October 2020 and July 2023. This was confirmed by a custodial parent payment summary generated by the Tennessee Department of Human Services. Tammy stated that Mother currently had an arrearage of more than \$37,000. She noted that Mother was unemployed

for a long period of time “around 2020.” Despite this, she maintained that she routinely discussed Mother with Miah and asked her whether she wanted to visit. She explained that Miah “doesn’t want to talk about it.” She also tells Miah that she does “feel like [her] mother loves [her]” and would support her if she wanted to visit. Likewise, she stated that she never denied Mother visitation. However, she acknowledged that she did not offer visits or respond to text messages after the missed February visit. She stated that she had never seen Mother be physically abusive but had seen her be emotionally abusive. She recounted an incident in which Miah returned from a visit and called her “mom” when she saw her. At hearing this, Mother “grabbed her by the arm and told her, ‘No, that is not your mother, I’m your mother.’”

Great Grandmother was the next witness to testify. She has had custody of Son for 13 years as he was removed from Mother’s custody by DCS in 2012 due to drug use. She testified that Son visits Mother about once per week but had “never spent the night in 13 years.” She stated that she supervised visits between Mother and Miah for many years. However, she stopped supervising visits because Mother “cussed [her] all the time, and she would steal from [her].” Nevertheless, she continues to visit Miah and takes Son to visit her as well. She also noted that Mother has a drug problem. She was concerned that this problem persisted because Mother’s speech was “concerning.” She explained that she had seen other people with drug problems exhibit similar behaviors and stated she could “just tell.” She stated that Mother also has a boyfriend who had “caused [her] concern” in the past. The boyfriend lives in Mother’s home. She explained that Mother does “not like” Tammy and refused to go to her home for visitation. She also noted that Mother has seizures. She believed that Miah “could not stand” a change in caretakers and “would absolutely go crazy” if a change occurred. She maintained that Miah is well taken care of and “spoiled rotten” in her home and “couldn’t be at a better place.”

Mother also testified. She claimed that she provided a safe and stable home for Son between the years of 2016 and 2017. She acknowledged that he had been in Great Grandmother’s custody during this time period. She claimed that she hired an attorney in 2022 and filed a petition to regain custody of Son. However, “it never went nowhere else.” She acknowledged that, while she had hired an attorney to regain custody of Son, she had not hired one to regain custody of Miah. She claimed that she did so because she felt Son was “in danger.” She claimed to have videos of Great Grandmother admitting that she abused Son but never presented those videos or testified to the circumstances in any detail.⁶

Mother discussed the circumstances leading to Miah living with Tammy. She claimed that she had permitted Miah to stay with her because she had been in “a poor situation.” She acknowledged that she did not visit Miah during her 2015 stay in the hospital but claimed it was because she did not have transportation. She stated that, after

⁶ Great Grandmother acknowledged that Mother had raised this allegation previously and flatly denied having abused Son.

Tammy was awarded temporary custody, she underwent an alcohol and drug assessment and participated in an inpatient rehabilitation program. She also complied with the items listed on her permanency plan and eventually regained custody. She claimed that she and Miah became very attached to one another while she had custody. However, DCS became reinvolved due to allegations of domestic violence and drug use. She admitted to using drugs during this period of time. She stated that she was currently drug free and had passed several drug tests during the preceding year. Mother also acknowledged that she had pled guilty to a charge of driving under the influence stemming from an April 2023 arrest. She claimed that she had done “everything she had to do” to move on and learned “people who are around you or the people who are in your vehicle, it does matter a lot.” She admitted that heroin was involved but claimed it belonged to a passenger in the car. However, she also admitted that she knew the passenger was giving her drugs to hold and “thought it was a crushed-up pill.” She stated that she had since begun attending a methadone clinic for weekly treatment. She testified that she was preparing to regain her driver’s license but needed to pay a reinstatement fee.

She described the visits that she had with Miah in 2021 as “a blast.” She claimed that Miah had never been uncomfortable around her. Additionally, she testified that she did not “grab” Miah during the incident Tammy described. She maintained that she did not want to leave the October 2021 visit early but did so “[b]ecause Tammy had said that they had been on the road all day” and Miah was tired. She also claimed that Tammy “blocked [her] number on” Miah’s telephone and informed her she “could only communicate with [Miah] on [Tammy’s] phone.”

She claimed she informed Tammy by text message that she wanted to visit Miah in January 2023. She stated that she got “nothing back.” She acknowledged that she had previously refused to visit Miah at Tammy’s home because she did not feel “comfortable” there as they had “never gotten along.” She felt that Tammy would accuse her of something, and she “would get in trouble.” Mother was asked what “legal steps” she took to visit or regain custody of Miah. She explained that she contacted DCS to reinstate visitation but, because no case was active, DCS did not assist her. She claimed that she could not afford to hire an attorney to pursue visitation but acknowledged she had previously hired an attorney in an attempt to regain custody of Son. She later claimed that she “didn’t know” she could file a petition for unsupervised visitation. Moreover, she claimed that she had requested visitation several additional times through text message but did not “have proof of it.” Notably, Mother acknowledged that she knew the location of Tammy’s home. However, she admitted that had not sent Miah cards and/or letters or attempted to visit her at the home.

Mother also testified regarding her circumstances at the time of trial. She stated that she owns a home, which has four bedrooms and two bathrooms. She noted that the home is “across the road” from Great Grandmother’s home, and Son visits often. She acknowledged that her boyfriend lives in the home as well. Mother indicated that Miah

had not been in the home for approximately ten years. She testified that she was working at McDonald's and had been for almost three years. She was making \$12 per hour. She typically worked between 25 and 30 hours per week. She was asked whether she could support Miah financially and answered, "I think I would be able to, honestly." However, she acknowledged that she did not pay child support "for a long time." When asked why she failed to pay child support, she responded, "[w]ell, I did file for disability." Her application was denied. When she resumed working, child support payments were "garnished from [her] check."

Mother agreed that removing Miah from Tammy's home would be difficult for her as "she would miss her and . . . loves her." She also stated that she was "thankful for them being good to her." She maintained that she would permit Tammy to visit Miah if she regained custody.

The trial court entered its final order on October 10, 2025. The trial court found that the grounds of abandonment by failure to visit and failure to support had been proven against Mother by clear and convincing evidence. The court found that Mother and Great Grandmother were credible witnesses but found Mother was not credible. The court held that Mother had failed to establish the defense of willfulness as to either ground of abandonment. It also noted that, while Mother claimed to have sought visitation after January 29, 2022, any issues regarding that visitation were moot as it would have amounted to merely token visitation. Likewise, the trial court held that the termination of Mother's parental rights was in Miah's best interest. Mother filed this appeal.

II. ISSUES PRESENTED

Mother has presented the following issues for review on appeal, which we have slightly reframed:

1. Whether the trial court erred by denying Mother's motion for a continuance.
2. Whether the trial court erred when it determined that grounds for termination were proven by clear and convincing evidence and the defense of lack of willfulness was not established by a preponderance of the evidence.
3. Whether the trial court erred when it determined that the termination of Mother's parental rights was in Miah's best interest.

For the following reasons, the judgment of the trial court is affirmed.

III. STANDARDS APPLICABLE TO TERMINATION PROCEEDINGS

"A parent's right to the care and custody of [his or] her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions." *In re Neveah M.*, 614 S.W.3d 659, 674

(Tenn. 2020) (quoting *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016)). “Parental rights have been described as ‘far more precious than any property right.’” *Id.* (quoting *In re Carrington H.*, 483 S.W.3d at 522). “No civil action carries with it graver consequences than a petition to sever family ties irretrievably and forever.” *In re Kaliyah S.*, 455 S.W.3d 533, 556 (Tenn. 2015). Nevertheless, parental rights are not absolute. *In re Carrington H.*, 483 S.W.3d at 522.

Tennessee Code Annotated section 36-1-113 “sets forth the grounds and procedures for terminating the parental rights of a biological parent.” *In re Kaliyah S.*, 455 S.W.3d at 546. Pursuant to this statute, the petitioner seeking termination of parental rights must prove two elements. *Id.* at 552. First, the petitioner must prove the existence of at least one of the statutory grounds for termination set forth in Tennessee Code Annotated section 36-1-113(g). *Id.* Second, the petitioner must prove that termination of parental rights is in the child’s best interest pursuant to the factors set forth in Tennessee Code Annotated section 36-1-113(i). *Id.* Due to the constitutional dimension of the rights at stake, the petitioner seeking termination must prove both elements by clear and convincing evidence. *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citing Tenn. Code Ann. § 36-1-113(c)). “Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005), and eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596 (citing *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *State, Dep’t of Children’s Servs. v. Mims (In re N.B.)*, 285 S.W.3d 435, 447 (Tenn. Ct. App. 2008)).

We review a trial court’s factual findings *de novo* in accordance with Rule 13(d) of the Tennessee Rules of Appellate Procedure, presuming each factual finding to be correct unless the evidence preponderates otherwise. *In re Carrington H.*, 483 S.W.3d at 523-24. However, “[w]hen 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.” *In re Markus E.*, 671 S.W.3d 437, 457 (Tenn. 2023). We make our own determination regarding “whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights.” *In re Carrington H.*, 483 S.W.3d at 524 (citing *In re Bernard T.*, 319 S.W.3d at 596-97). “The trial court’s ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review *de novo* with no presumption of correctness” as are any additional questions of law. *Id.* (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)).

IV. DISCUSSION

A. Motion to Continue

Prior to addressing the grounds for termination and whether termination is in Miah's best interest, we consider whether the trial court erred when it denied Mother's motion for a continuance. "This court reviews a trial court's decision to deny a motion for a continuance under the abuse of discretion standard of review." *In re A'Mari B.*, 358 S.W.3d 204, 213 (Tenn. Ct. App. 2011). Under this standard, "a trial court's ruling will be upheld so long as reasonable minds can disagree as to propriety of the decision made." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). "A trial court abuses its discretion only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" *Id.* (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)). As we have previously explained:

[t]he party seeking a continuance bears the burden of establishing the circumstances that justify the continuance. *Osagie v. Peakload Temp. Servs.*, 91 S.W.3d 326, 329 (Tenn. Ct. App. 2002). Decisions regarding the grant or denial of a continuance are fact-specific and "should be viewed in the context of all the circumstances existing" at the time of the request. *Nagarajan v. Terry*, 151 S.W.3d 166, 172 (Tenn. Ct. App. 2003). The circumstances include: "(1) the length of time the proceeding has been pending, (2) the reason for the continuance, (3) the diligence of the party seeking the continuance, and (4) the prejudice to the requesting party if the continuance is not granted." *Id.*

In re Paetyn M., No. W2017-02444-COA-R3-PT, 2019 WL 630124, at *5 (Tenn. Ct. App. Feb. 14, 2019). Mother claims that each of these circumstances weighed in favor of granting her motion for a continuance.

First, Mother essentially claims that because the proceeding had been pending for more than two years, the first factor weighed in favor of granting her motion. She points to Tennessee Code Annotated section 36-1-113(k), which provides, "[t]he court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child." She does not explain why the passage of more than six months supports her motion for a continuance. In our view, the delay supports the trial court's decision to deny the motion for a continuance. The statutory objective is for the prompt resolution of termination proceedings. Granting the motion for a continuance would have contradicted that policy objective. Similarly, Mother did not provide a compelling reason for the continuance. She claimed that she wished for Son and additional unnamed witnesses to testify she "was a good mother." While this testimony may have supported Mother's arguments regarding the best interest factors, the reason she requested the continuance was merely that she wished for witnesses who were not present to testify. She did not inform her attorney of her desire to call these witnesses until the day of the final hearing, despite it having been scheduled approximately three months earlier. We cannot say that the trial court abused its discretion when it determined this was not a compelling reason to grant

the motion for a continuance. *See In re Ember H.*, No. E2023-00687-COA-R3-PT, 2024 WL 829765, at *10 (Tenn. Ct. App. Feb. 28, 2024) (finding that a trial court did not abuse its discretion by denying a motion for a continuance where the moving party “simply sprang a list of witnesses on counsel at the last minute”). In the same way, Mother was not diligent by waiting until the date of trial to request those witnesses. Her excuse was merely that “she did not understand that” the hearing date would be the date “everything[] was going to be done.” Lastly, Mother claims that she was prejudiced by the decision to deny her motion for a continuance because she “did not get to call her son” to testify. Here, “[a]ny potential prejudice to Mother was the result of her own actions.” *In re Rome W.*, No. E2024-00621-COA-R3-PT, 2024 WL 4949057, at *6 (Tenn. Ct. App. Dec. 3, 2024). Therefore, Mother failed to demonstrate that the trial court abused its discretion when it denied the motion for a continuance.

B. Grounds for Termination

Tennessee Code Annotated section 36-1-113(g)(1) provides that one ground for the termination of parental rights exists if “[a]bandonment” has occurred within the meaning of Tennessee Code Annotated section 36-1-102. Here, Tammy alleged abandonment under the following definition:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child;

Tenn. Code Ann. § 36-1-102(1)(A)(i) (2022).⁷ Tammy alleged abandonment by both failure to visit and failure to support pursuant to this definition. As the petition was filed on April 13, 2023, the relevant four-month period ran from December 12, 2022, until April 12, 2023. Notably, Mother admits that she neither visited nor paid child support to Miah during the relevant four-month period. Instead, Mother raised the affirmative defense of lack of willfulness as to both grounds. This defense is set forth in Tennessee Code Annotated section 36-1-102(1)(I), which states:

(I) For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian’s failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must

⁷ Throughout this opinion, we utilize the versions of the statutes in effect when the petition was filed on April 13, 2023.

be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure;

Tenn. Code Ann. § 36-1-102(1)(I) (2022). This Court has previously explained “willfulness” in regard to both failure to visit and failure to support as follows:

[f]ailure to visit or support a child is “willful” when a person is aware of his or her duty to visit or support, has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so. Failure to visit or to support is not excused by another person’s conduct unless the conduct actually prevents the person with the obligation from performing his or her duty, or amounts to a significant restraint of or interference with the parent’s efforts to support or develop a relationship with the child.

In re Audrey S., 182 S.W.3d at 864 (internal citations and footnotes omitted). With these principles in mind, we address each definition of abandonment in turn.

First, we consider the trial court’s ruling regarding abandonment by failure to visit. In addition to the definition for abandonment set forth above, the statute in effect at the time provided:

[f]or purposes of this subdivision (1), “failed to visit” means the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant four-month period;

Tenn. Code Ann. § 36-1-102(1)(E) (2022). As stated above, Mother acknowledges that she “did not visit during” the relevant four-month period. This is supported by Tammy’s testimony that Mother and Miah have had no visitation or contact since January 29, 2022. However, Mother claims that her failure to visit was not willful. She claims that she made at least two attempts to schedule visitation during the relevant time period by text message. She alleges that Tammy ignored those text messages and therefore prevented her from visiting Miah. She also claims that Tammy interfered with her visitation by refusing to agree to a different supervisor for visitation, blocking her telephone number on Miah’s phone, and “speaking negatively” about her. The trial court acknowledged that Tammy admitted to not responding to the text messages but nonetheless found the ground of abandonment by failure to visit had been established. We agree. None of these imputations “actually prevent[ed]” Mother from visiting or “amount[ed] to a significant restraint or interference with” her effort to develop her relationship with Miah. *See In re Audrey S.*, 182 S.W.3d at 864.

The only text message contained in the record that was sent during the relevant time period was sent on January 21, 2023. In the message, Mother stated that she wanted “to see and talk to” Miah and threatened to “go to the police.” There is an additional text message partially depicted in the same screen capture of the text messages requesting a phone call, but the date on which it was sent is not visible. Tammy responded to neither message. Even assuming that both text messages were sent during the relevant four-month time period, we do not believe Tammy’s failure to respond to those messages “actually prevent[ed]” Mother from visiting Miah. *In re Braxton M.*, 531 S.W.3d 708, 726-27 (Tenn. Ct. App. 2017), we held that a guardian’s failure to respond to a parent’s social media messages did not constitute a significant restraint or interference with a parent’s attempts to visit his children. We noted that the parent had not been told he could not visit the children and had failed to attempt to physically visit or initiate legal proceedings to establish visitation rights. *Id.* at 727. Likewise, there had been no evidence of “any thwarted attempts to call” the guardians’ and/or children’s telephone numbers the parent alleged had been changed. *Id.*

Similarly, Tammy never told Mother that she could not visit. In fact, when Great Grandmother stopped supervising Mother’s visits, Tammy and Miah went to the next scheduled visit but Mother never came. Mother later told Tammy that she did not want her to supervise visits because she did not feel “comfortable” with her. Mother admitted at trial that she had previously refused to visit Miah at Tammy’s home because she did not feel “comfortable” there as they had “never gotten along.” Mother suggested that Son or Grandfather supervise visits, but Tammy noted the court order governing visitation did not authorize them to supervise. Simply put, Mother insisted on supervised visits on her own terms. So, even though she may have sent some text messages stating that she wanted to see Miah, there is nothing to suggest that she intended to do so in a manner that was compliant with the court order regarding supervised visitation.

In addition, Mother never took any additional steps to establish visitation with Miah or to enforce her visitation rights through the legal system. She acknowledged that she never sent Miah cards and/or letters or attempted to visit her despite knowing the location of Tammy’s home. While her text messages indicate that she wished to visit, they do not contain any actual attempts to schedule or facilitate visitation. Additionally, although Mother testified that Tammy “blocked [her] number on” Miah’s telephone and informed her she “could only communicate with [Miah] on [Tammy’s] phone,” Mother clearly had Tammy’s telephone number but has not put forth evidence demonstrating that she called this telephone number in an attempt to speak with Miah. *See id.* She has not put forth any evidence of her attempts to establish communication using alternative means. Her excuse for not utilizing the legal system to obtain unsupervised visitation was that she “didn’t know [she] could.” However, she acknowledged that she had previously hired an attorney to file a petition to regain custody of Son but claimed she was not able to afford one to seek custody of Miah. While Mother did “go to DCS,” she made no real effort to pursue legal action regarding her visitation rights. As to her claims that Tammy interfered with her

relationship with Miah by “speaking negatively” about her, there simply is not evidence in the record sufficient to support this assertion. Mother’s only evidence was her own testimony that she felt like Tammy had “talked bad about [her].” Conversely, Tammy testified that she frequently discusses Mother with Miah and “tell[s] her all the time” that she believes Mother loves her. The trial court determined that Tammy’s testimony was credible while Mother’s was not credible. That credibility finding was not challenged on appeal. Accordingly, we detect nothing that amounts to a justifiable excuse for failing to visit Miah. Therefore, the trial court did not err when it determined that Mother abandoned Miah by failing to visit or by holding the defense of lack of willfulness was not established.

Turning now to abandonment by failure to support, the statute provides that:

(D) For purposes of this subdivision (1), “failed to support” or “failed to make reasonable payments toward such child’s support” means the failure, for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child. That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant four-month period;

Tenn. Code Ann. § 36-1-102(1)(D) (2022). Additionally, “[o]ur statutes provide that ‘[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.’” *In re Bentley E.*, 703 S.W.3d 298, 303 (Tenn. 2024) (quoting Tenn. Code Ann. § 36-1-102(1)(H) (Supp. 2022)).

The trial court determined that this definition of abandonment was proven by clear and convincing evidence. This is supported by the child support payment summary contained in the record, which demonstrates no payments were made between October 2020 and July 2023. As noted above, Mother acknowledges that she did not pay child support during the relevant four-month period. Rather, she raises the defense of lack of willfulness. *See* Tenn. Code Ann. § 36-1-102(1)(I) (2022). To support this argument, she claims only that she “stopped working because of seizures.” She maintains that she applied for disability benefits, but the application was denied.

Mother’s argument regarding the denial of her application for disability benefits is unconvincing. We have previously stated that the denial of an application for disability benefits was evidence of a parent’s ability to work, rather than evidence of an inability to do so. *See In re Quadavon H.*, No. E2015-02001-COA-R3-PT, 2016 WL 3453379, at *6 (Tenn. Ct. App. June 16, 2016) (stating that “[w]ith respect to the issue of willfulness, there was testimony that Mother’s application for disability benefits had been denied by the Social Security Administration, which is evidence of her ability to work”). Accordingly, her decision to apply for disability benefits does not demonstrate that her failure to support

Miah was not willful. While Mother states that “she stopped working because of seizures” she failed to put forth evidence sufficient to prove her medical conditions rendered her unable to support Miah. Further, Mother provided no evidence of her financial situation or of any attempts to obtain employment or otherwise support Miah during the relevant time period. Rather, the remainder of the evidence and brief focused on her employment and financial situation at the time of the termination proceeding. While certainly relevant to the best interest analysis, these items are not relevant to explain what “significant restraint of or interference with [her] efforts to support” Miah existed. *In re Audrey S.*, 182 S.W.3d at 864. Accordingly, we affirm the trial court’s determination that Tammy proved both definitions of abandonment by clear and convincing evidence. Likewise, we affirm the trial court’s determination that Mother failed to establish the defense of lack of willfulness as to both definitions of abandonment.

C. Best Interest of the Child

Having determined that the trial court did not err when it found Tammy proved grounds for termination existed, we now consider whether the termination of Mother’s parental rights is in Miah’s best interest. The factors to be considered are set out in Tennessee Code Annotated section 36-1-113(i), which states:

(i)(1) In determining whether termination of parental . . . 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:

(A) The effect a termination of parental rights will have on the child’s critical need for stability and continuity of placement throughout the child’s minority;

(B) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition;

(C) Whether the parent has demonstrated continuity and stability in meeting the child’s basic material, educational, housing, and safety needs;

(D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;

(E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;

- (F) Whether the child is fearful of living in the parent's home;
- (G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;
- (H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;
- (I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;
- (J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;
- (K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;
- (L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;
- (M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;
- (N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;
- (O) Whether the parent has ever provided safe and stable care for the child or any other child;
- (P) Whether the parent has demonstrated an understanding of the basic and

specific needs required for the child to thrive;

(Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;

(R) Whether the physical environment of the parent's home is healthy and safe for the child;

(S) Whether the parent has consistently provided more than token financial support for the child; and

(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

Tenn. Code Ann. § 36-1-113(i)(1). Many of these factors are interrelated. Therefore, we address several of them in concert.

First, we consider those interrelated factors concerning the child's need for stability and continuity of placement, the effect the potential change of caretakers and physical environment would have on the child, and her parental attachments and emotionally significant relationships with persons other than parents and caregivers. Tenn. Code Ann. § 36-1-113(i)(1)(A), (B), (H), and (I). Miah has experienced stability in her home. She has resided there for most of her life and has created bonded relationships with Tammy and Tammy's adult daughter, mother, and uncle. Likewise, Tammy has helped Miah maintain relationships with Son, Great Grandmother, her adult half-siblings, and other relatives. Miah is, by all accounts, thriving in her current home. She has made the "A-B Honor Roll" and has "never ever missed a day of school." Additionally, Miah is provided for financially and participates in sports and church activities. Great Grandmother testified that she believed Miah "would absolutely go crazy" if removed from Tammy's home. Tammy intends to adopt Miah if Mother's parental rights are terminated. Conversely, Mother has failed to maintain a healthy parental relationship with Miah. She has not visited or spoken to Miah since January 29, 2022. Mother has prevented the formation of a stable attachment with Miah through her drug use. Mother acknowledged that she pled guilty to a charge of driving under the influence stemming from an arrest, which occurred in April 2023. Likewise, her failure to consistently visit Miah has also prevented her from forming a stable attachment. While Mother appears to have made some effort to overcome her drug addiction, she has not made significant progress in restoring her relationship with Miah. Therefore, factors (A), (B), (H), and (I) weigh in favor of termination.

Next, we consider the interrelated factors concerning Miah's interest in stable and secure housing and parenting. Tenn. Code Ann. § 36-1-113(i)(1)(C), (D), (E), (F), (G),

and (O). Mother has not demonstrated any continuity in parenting Miah or stability in meeting her needs. Mother has not visited Miah since January 29, 2022. Additionally, Mother failed to make any child support payments between October 2020 and July 2023. The subsequent child support payments were made only because her wages were garnished. While Mother stated that she believed she could provide for Miah financially, she did not provide any financial information supporting this claim. Additionally, while Mother claimed that she provided a safe and stable home for Son sometime “in between” 2015 and 2017, she acknowledged that Son was living with and in the custody of Great Grandmother during that time. Similarly, while it does appear that Mother cares for Miah, there are no facts contained in the record indicating she would be able to cultivate a healthy relationship with her in the future. Therefore, we find that factors (C), (D), (E), and (O) weigh in favor of termination. Factors (F) and (G) pertain to Miah’s interest in a stable home. However, because she has not resided with Mother or been in Mother’s home for many years, these factors are neutral in this case.

Factor (K) concerns the parent’s proclivity to participate in or use available programs, services, or resources to assist in making a lasting adjustment to his or her circumstances, conduct, or conditions. Mother testified that she has attempted to overcome her drug addiction by taking weekly treatments at a methadone clinic. However, she did not submit proof demonstrating that she regularly passed drug tests and did not describe her participation in any counseling or therapeutic programs. Accordingly, given the lack of substantial evidence presented, we find that this factor is neutral in this case. Factor (L) concerns the reasonable efforts of DCS to assist the parent, and the parent’s inclination to engage in DCS offered services. While DCS was involved during the early stages of these proceedings, it has not been involved in many years. Therefore, factor (L) is also neutral in this case.

Factor (N) considers whether the parent or a person residing with the parent has ever exhibited brutality, physical, sexual, emotional, or psychological abuse toward others. No evidence was entered demonstrating that Mother or her boyfriend perpetrated any physical or sexual abuse against others. Tammy did testify that Mother had been emotionally abusive toward Miah by “grabb[ing] her by the arm and [telling] her” she was not her mother. Mother denied that the incident constituted abuse. The trial court did not deem this evidence sufficient to prove that Mother had perpetrated emotional abuse. We agree. Accordingly, factor (N) is neutral in this case.

Regarding factor (S), Mother made no financial contribution to Miah’s support between October 2020 and July 2023. As explained above, while Mother claimed that she did not willfully fail to support Miah, we agreed with the trial court that she did not identify an excuse justifying her failure to do so. Since July 2023, Mother’s wages have been garnished, but this does not constitute the consistent and substantial financial contribution necessary to support Miah. Notably, Mother had an arrearage of more than \$37,000 at the time of the proceedings. Therefore, this factor weighs in favor of termination.

Finally, we consider the interrelated factors concerning the parent's adjustment of circumstances detrimental to the environment, health, and psychoses of the children. Tenn. Code Ann. § 36-1-113(i)(1)(J), (M), (P), (Q), (R) and (T). While Mother appears to have taken some steps toward repairing the circumstances preventing her from caring for Miah, she has not completed that process. She testified that she attends a methadone clinic for treatment but did not explain the breadth of any additional treatment or submit evidence demonstrating she had consistently passed drug screens. Likewise, while Mother was employed at the time of trial, it was not the type of substantial employment necessary to support a healthy environment for Miah. Despite claiming that she wished to work more, she did not testify that this was likely to occur or regarding any strategy for obtaining more substantial employment. Further, Mother has never inquired about Miah's doctors, dentist, teachers, or grades. We sincerely hope that Mother will succeed in her attempts to become drug free, but at this stage, we cannot say she has completed the adjustment of circumstances necessary for Miah to be placed in her custody. Therefore, factors (J), (M), (P), (Q), and (R) weigh in favor of termination. Finally, concerning Mother's emotional maturity, we find that Mother still struggles to communicate and relate to others in a mature and functional way. Mother was combative and uncooperative throughout the trial and continued to blame Tammy and Great Grandmother for issues that occurred instead of taking responsibility for her actions. Therefore, factors (J), (M), (P), (Q), (R), and (T) each weigh in favor of the termination of Mother's parental rights.

Having carefully reviewed the record, we conclude that the facts amount to clear and convincing evidence that termination of Mother's parental rights is in Miah's best interest. *See In re Neveah M.*, 614 S.W.3d at 680. Therefore, the trial court's determination that termination of Mother's parental rights is in Miah's best interest is affirmed.

V. CONCLUSION

For the foregoing reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to the appellant, Ashley M., for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE