

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 1, 2026

FILED

08/25/2026

Clerk of the
Appellate Courts

IN RE BRIELLA F.¹

Appeal from the Chancery Court for Maury County
No. A-023-22 Christopher V. Sockwell, Chancellor

No. M2024-01820-COA-R3-PT

Brandie A. (“Mother”) appeals the termination of her parental rights to Briella F. (“Briella”). She contends she was denied due process because the trial court granted her attorney leave to withdraw during the eleventh day of a fifteen-day trial. She also challenges the grounds upon which termination was based and the finding that termination of her parental rights was in the child’s best interest. We affirm.

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

FRANK G. CLEMENT JR., C.J., delivered the opinion of the Court, in which KRISTI M. DAVIS and VALERIE L. SMITH, JJ., joined.

McKenzie Lynch Parks, Columbia, Tennessee, for the appellant, Brandie A.

Cara E. Lynn, Columbia, Tennessee, for the appellees, Jesse O. and Marisa O.

Jonathan Skrmetti, Attorney General and Reporter, and Katherine P. Adams, Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

OPINION

FACTS AND PROCEDURAL HISTORY

Mother and Porcesha R. (“Father”) are the biological parents of Briella, born in April of 2019. Two days after her birth, the Department of Children’s Services (“DCS”)

¹ This court has a policy of protecting the identity of children by initializing the last names of the children, parents, close relatives, and pre-adoptive parents and by not providing the children’s exact birth dates.

received a referral from the hospital where Briella was born that Briella was born drug exposed. Mother tested positive for benzodiazepines at delivery and Briella's meconium and her post-birth drug screens tested positive for benzodiazepines and other drugs not prescribed for Mother.

On April 26, 2019, DCS filed a petition in the Juvenile Court for Giles County alleging Briella to be a dependent and neglected child based on allegations that Mother and Briella had tested positive for drugs at Briella's birth and that Mother could not parent Briella. Pursuant to an *ex parte* order entered on the same day, the juvenile court awarded legal and physical custody of Briella to DCS. Shortly thereafter, DCS placed Briella in a foster home with Jesse O. and Marissa O.

In an order entered on February 18, 2020, the juvenile court adjudicated Briella dependent and neglected and the victim of severe child abuse perpetrated by Mother by exposing Briella to benzodiazepines in utero. The juvenile court found that Mother was aware of the risk of taking nonprescription drugs while pregnant as evidenced by her attempts to falsify a drug screen. Nevertheless, Mother was granted a 90-day trial home visit which was later extended to 120-days. At the conclusion of the home visit, custody of Briella was divested back to Mother in June 2020.

In August 2020, Mother gave birth to another child, Aria. Soon thereafter, there were multiple abuse or neglect referrals made to DCS concerning Mother's treatment of Briella and Aria.² Then, on December 27, 2020, Mother was arrested on two charges of domestic assault. The following day, Mother's neighbors found her unresponsive on the floor of her apartment, due to a suspected overdose, with Briella in her care.

On December 29, 2020, Briella was removed from Mother's custody under an immediate protection agreement. Then, on January 11, 2021, DCS filed a new petition for dependency and neglect which resulted in the second removal of Briella from Mother's custody at which time Briella was again placed in DCS legal custody. Briella has remained in the care and physical custody of the foster parents ever since.³

On April 5, 2022, while the second dependency and neglect action was pending, the foster parents, Jesse O. and Marissa O., (collectively "Petitioners") filed a petition to

² *Inter alia*, in September, Mother was found unresponsive in her car in the parking lot of a grocery store with, Aria, an infant, in the backseat; the same month, Mother accidentally dropped Aria and caused a hairline skull fracture; in October 2020, Mother had a rollover car accident with Aria in the car.

³ Briella has resided with the foster parents since she was nine days old except for a span of ten months, from February 2020 to December 2020, during which she mostly resided with Mother.

terminate the parental rights of Mother and Father and to adopt Briella.⁴ Because DCS was the legal custodian of Briella, DCS was named as a respondent along with the parents. Father died during the pendency of the termination petition. After a certified death certificate was filed with the chancery court, Father was dismissed as a respondent.

The petition was tried over fifteen days, starting on July 6, 2023, and ending on August 19, 2024.⁵ Mother was represented by attorney William C. Barnes Jr. from the commencement of the termination proceedings until the eleventh day of trial, March 25, 2024. During the proceedings on this day, Mother and attorney Barnes announced in open court that they agreed to have Mr. Barnes relieved as counsel for Mother. Mother further stated that she wanted to represent herself and did not want representation by counsel. The court then explained to Mother her right to an attorney, the consequences of the parental termination proceeding, and the possible consequences of proceeding unrepresented. Nevertheless, Mother insisted upon proceeding without counsel. The court therefore granted the motion.⁶

Immediately thereafter, and during the same hearing, counsel for Petitioners moved the court to appoint advisory counsel (i.e., “elbow counsel”) to assist Mother. Following a discussion in open court, Mother agreed to the appointment of advisory counsel. The court appointed attorney McKenzie Lynch Parks to advise and assist Mother. The trial resumed one month later, on April 26, 2024, with Ms. Parks participating as advisory counsel for Mother.⁷

During the fifteen-day trial, the court heard testimony from numerous witnesses, including Mother, Petitioners, multiple law enforcement officers who had encounters with

⁴ Petitioners filed an amended petition to terminate Mother’s rights on December 15, 2023, adding one additional statutory ground for termination, severe abuse by Mother pursuant to Tennessee Code Annotated Sec. 36-1-113(g)(4).

⁵ Trial took place on: July 6, 2023; July 7, 2023; September 11, 2023; October 20, 2023; November 22, 2023; December 15, 2023; December 19, 2023; January 31, 2024; February 12, 2024; March 22, 2024; March 25, 2024; April 26, 2024; May 3, 2024; July 18, 2024; August 9, 2024; and August 19, 2024.

⁶ The order granting the joint motion reads: “The Court finds the relationship between Attorney and client has deteriorated and both Counsel and Respondent are not able to communicate in a manner which appears to be in the best interest of the Respondent, therefore, the Court feels the joining oral motion for Counsel to Withdraw is proper course.”

⁷ Ms. Parks assisted Mother through the conclusion of the trial court proceedings and continues to represent Mother in this appeal.

Mother,⁸ Mother's father, and multiple DCS employees. The parties also submitted what the court described as "voluminous proof via exhibits." Although the proof was closed on May 3, 2024, Petitioners filed a motion on July 18, 2024, to reopen the proof to introduce evidence that Mother had been brought up on additional charges and was currently incarcerated in a federal prison for violating probation on two criminal convictions. The court granted the motion. The order, entered on September 13, 2024, states:

ORDERED, ADJUDGED and DECREED that the proof shall be reopened for the limited purpose of entering the certified copies of [Mother's] warrants and the certified copies of the disposition of the charges that occurred after the final day of trial. Said certified topics have been submitted to the court and are hereby incorporated into this order by reference as if fully set out herein.

In its final Memorandum and Order, entered on November 8, 2024, the court found that five grounds for termination had been proven and that the termination of Mother's parental rights was in Briella's best interest. Based on these findings, the court terminated Mother's parental rights.

This appeal followed.

Standard of Review

"Parents have a fundamental constitutional interest in the care and custody of their children under both the United States and Tennessee constitutions." *Keisling v. Keisling*, 92 S.W.3d 374, 378 (Tenn. 2002). "[T]his right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)).

"To terminate parental rights, a court must determine that clear and convincing evidence proves not only that statutory grounds exist but also that termination is in the

⁸ The final order notes that Mother had the following police interactions:

September 21, 2020, regarding a welfare check and naked pictures taken of the Respondent when she was intoxicated and passed out on the toilet; December 27, 2020, regarding a domestic assault against her sister; December 28, 2020, regarding overdose; May 3, 2021, regarding overdose; May 3, 2021, regarding a fight and alleged theft of the Respondent's suboxone; May 4, 2021, the Respondent was arrested for possession of marijuana, Clonazepam, and public intoxication, and the Respondent pleaded guilty to illegal possession of Clonazepam and received two years suspended to probation; March 19, 2021, regarding a domestic dispute with her Mother regarding her Mother's missing Klonopin; April 3, 2021, regarding burglary and theft of Respondent's suboxone. At each incident, every police officer found that the Respondent was intoxicated.

child's best interest." *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (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, and eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010) (citation omitted). "The clear-and-convincing-evidence 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 507, 522 (Tenn. 2016).

In an appeal, "this [c]ourt is required 'to review thoroughly the trial court's findings as to each ground for termination and as to whether termination is in the child's best interests.'" *In re Connor B.*, 603 S.W.3d 773, 779 (Tenn. Ct. App. 2020) (quoting *In re Carrington H.*, 483 S.W.3d at 525). In doing so, we must "determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence." *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). Stated another way, we must make our "own determination as to 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.

The trial court's findings of fact are reviewed de novo upon the record, accompanied by a presumption of correctness unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d). Questions of law, however, are reviewed de novo with no presumption of correctness. *In re Carrington H.*, 483 S.W.3d at 524. A trial court's ruling regarding whether the evidence sufficiently supports termination is a conclusion of law, which we review de novo with no presumption of correctness. *See id.* Furthermore, a trial court's determinations regarding witness credibility are entitled to great weight on appeal and will not be disturbed "absent clear and convincing evidence to the contrary." *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007).

ANALYSIS

I. GROUNDS FOR TERMINATION

To terminate parental rights, a court must find that at least one statutory ground for termination has been proven by clear and convincing evidence. *In re Carrington H.*, 483 S.W.3d 507, 535 (Tenn. 2016) (citing Tenn. Code Ann. § 36-1-113(c)). Here, the trial court found that Petitioners proved five grounds: (1) severe child abuse; (2) abandonment by failure to visit; (3) substantial noncompliance with the permanency plan; (4) failure to manifest an ability and willingness to assume custody; and (5) persistence of conditions. We will discuss each in turn.

A. Severe Child Abuse

The statutory ground for termination of parental rights based on severe abuse states:

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 . . . to have committed severe child abuse against any child[.]

Tenn. Code Ann. § 36-1-113(g)(4). In turn, Section 37-1-102 defines “severe child abuse” as follows:

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[.]

Tenn. Code Ann. § 37-1-102(b)(27)(A)(i).

Our courts have repeatedly held that exposure of a child to drugs in utero can constitute severe child abuse. *See In re P.T.F.*, No. E2016-01077-COA-R3-PT, 2017 WL 2536847, at *5 (Tenn. Ct. App. June 12, 2017) (“This Court has consistently upheld termination of a mother’s parental rights on the ground of severe child abuse when she has used drugs during pregnancy.”); *In re Garvin M.*, No. E2013-02080-COA-R3-PT, 2014 WL 1887334, at *5 (Tenn. Ct. App. May 9, 2014) (“[T]here are numerous cases holding that a mother’s use of drugs while pregnant can constitute severe child abuse.”); *In re Shannon P.*, No. E2012-00445-COA-R3-PT, 2013 WL 3777174, at *5 (Tenn. Ct. App. July 16, 2013) (“[T]here is substantial case law supporting a finding of severe child abuse for a parent exposing a child to drugs in utero.”); *In re Ethin E.S.*, No. E2011-02478-COA-R3-PT, 2012 WL 1948817, at *8 (Tenn. Ct. App. May 31, 2012) (“[T]his Court has repeatedly held that a mother’s prenatal drug use can constitute severe child abuse in termination of parental rights cases.”). These and other cases “demonstrate the uniform view of this Court that prenatal drug use does, in fact, constitute severe child abuse.” *In re P.T.F.*, 2017 WL 2536847, at *4.

In its final order, the trial court ruled that “it is obvious [Briella] is the victim of severe abuse. It is undisputed [she] was exposed to drugs in utero.” The record before us fully supports this finding. As noted above, Briella was born drug exposed which is proven by the fact that Mother tested positive for benzodiazepines at delivery and Briella’s meconium and her post-birth drug screens tested positive for benzodiazepines and other drugs not prescribed for Mother.

The trial court also found that the Giles County Juvenile Court, in an order entered on February 14, 2020, case number 19 JV 804, found “after a hearing, that Ms. Frank had committed severe child abuse against [Briella].” The trial court noted that no appeal had been taken from the juvenile court order. Thus, it constituted a final judgment. As such, the issue of severe child abuse by Mother is res judicata because an existing final judgment

rendered upon the merits by a court of competent jurisdiction is “conclusive of rights, questions and facts in issue as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.” *In re Heaven L.F.*, 311 S.W.3d 435, 439 (Tenn. Ct. App. 2010) (quoting *Galbreath v. Harris*, 811 S.W.2d 88, 90 (Tenn. Ct. App. 1990)). Stated another way, the doctrine of res judicata “prevent[s] a parent from re-litigating whether she committed severe child abuse in a later termination of parental rights proceeding, when such a finding had been made in a previous dependency and neglect action.” *Id.*

Accordingly, we affirm the trial court’s determination that Petitioners established by clear and convincing evidence the ground of severe child abuse by Mother.

B. Abandonment

One of the grounds for termination of a parent’s parental rights is “abandonment by the parent . . . has occurred[.]” Tenn. Code Ann. § 36-1-113(g)(1). Section 36-1-102 provides five definitions of “abandonment.” Under the first of these, abandonment occurs when the parent failed to visit or support the child “[f]or a period of four (4) consecutive months immediately preceding the filing of [the] petition.” *Id.* § 36-1-102(1)(A)(i).

The only findings of fact the trial court made concerning abandonment are as follows:

As to [Mother], she was granted six hours of supervised visitation per month in November 2021. [She] failed to exercise visitation in December 2021 and January 2022. [Mother] has failed to assert or present an affirmative defense for her failure to do so.

The Court finds the Respondent has abandoned the child by failure to visit.

As such, the Court finds that the Petitioners have proven by clear and convincing evidence that the parental rights of [Mother] should be terminated on the ground of abandonment.⁹

Respectfully, we are unable to conclude that the foregoing factual findings clearly and convincingly establish the ground of abandonment. This is due, in part, to the fact the ruling does not make any findings concerning her visitation during two of the four months we are required to consider. This is problematic because the appellate courts “may not

⁹ We acknowledge that the trial court provided an extensive summary of the relevant statutory authority and case law on the issue of abandonment, but the foregoing are the only findings of fact concerning this ground.

conduct de novo review of the termination decision in the absence of such findings.” *In re Carrington H.*, 483 S.W.3d 507, 523 (Tenn. 2016) (citing *In re Angela E.*, 303 S.W.3d at 255 (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n. 15 (Tenn. Ct. App. 2007))).

The statutory definition of “abandonment” requires that the “four (4) consecutive months period immediately preceding the filing of a proceeding or pleading to terminate the parental rights” be considered.¹⁰ Tenn. Code Ann. § 36-1-102(1)(A)(i). The petition at issue here was filed on April 5, 2021. Thus, the four-month period we are required to consider is December 4, 2021, to April 4, 2022. The court found that Mother failed to exercise visitation in December 2021 and January 2022 but there are no findings concerning the extent of her visitation during February and March, which represent half of the period the courts are required to consider.

Tennessee Code Annotated § 36-1-113(k) requires that the trial court enter an order making specific findings of fact and conclusions of law in termination of parental rights proceedings. *In re Maddox F.*, No. M2020-00241-COA-R3-PT, 2020 WL 7861370, at *4 (Tenn. Ct. App. Dec. 23, 2020). Indeed, each “parental termination order must set forth the findings of fact that underlie the conclusions of law.” *In re K.J.G.*, No. E2015-00087-COA-R3-PT, 2016 WL 1203800, at *3 (Tenn. Ct. App. Mar. 28, 2016) (citing *In re Adoption of T.L.H.*, 2009 WL 152475, at *5 (citing *In re K.N.R.*, No. M2003-01301-COA-R3-PT, 2003 WL 22999427, at *4 (Tenn. Ct. App. M.S., filed Dec. 23, 2003))). Because the trial court’s findings of fact only address half of the four-month period required to be considered, we are left to ponder the relevance or significance of Mother’s visitation during the other two months, and the evidence indicates that Mother exercised her visitation during those months.

¹⁰ Tennessee Code Annotated § 36-1-102(1)(A)(i) defines “abandonment,” in relevant part as:

(1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, “abandonment” means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the a [sic] parent or parents or a 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 a guardian or guardians either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child[.]

Accordingly, we reverse the trial court's ruling concerning the ground of abandonment.¹¹

C. Substantial Noncompliance with Permanency Plan

The trial court also found that Petitioners proved the ground of substantial noncompliance with the permanency plan.

On appeal, DCS concedes the ground of substantial noncompliance with the permanency plans. While Petitioners support the trial court's ruling on this ground, the record fails to establish by clear and convincing evidence all the essential elements of the ground of substantial noncompliance with the permanency plan and we see no need to analyze this ground in depth.

Accordingly, we reverse the trial court's holding that Petitioners proved the ground of substantial noncompliance with the permanency plan.

D. Failure to Manifest an Ability and Willingness

The trial court found that Petitioners proved by clear and convincing evidence that Mother failed to manifest an ability and willingness to assume custody or financial responsibility of the child. *See* Tenn. Code Ann. § 36-1-113(g)(14). Mother contends this was error.

Parental rights may be terminated when

[a] parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

Tenn. Code Ann. § 36-1-113(g)(14). This is a two-part test, and both prongs must be proven by clear and convincing evidence to terminate parental rights on this ground. *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020).

First, the petitioner must prove "by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness." *Id.* at 677 (citing *In re Amynn K.*, No. E2017-01866-COA-R3-PT, 2018 WL 3058280, at *13 (Tenn. Ct. App. June 20, 2018)). "Ability focuses on the parent's lifestyle and circumstances," while willingness

¹¹ We also note, as stated in its appellate brief, that "On appeal, DCS concedes the grounds of abandonment by failure to visit and substantial noncompliance with the permanency plans."

revolves around a parent's attempts "to overcome the obstacles" preventing the parent from assuming custody. *In re Serenity W.*, No. E2018-00460-COA-R3-PT, 2019 WL 511387, at *6 (Tenn. Ct. App. Feb. 8, 2019).

Second, the petitioner must prove that placing the child in the parent's custody poses "a risk of substantial harm to the physical or psychological welfare of the child." Tenn. Code Ann. § 36-1-113(g)(14). We have previously explained that the circumstances that pose a risk of substantial harm "are not amenable to precise definition because of the variability of human conduct." *In re Greyson D.*, No. E2020-00988-COA-R3-PT, 2021 WL 1292412, at *8 (Tenn. Ct. App. Apr. 7, 2021) (quoting *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001)). But the modifier "substantial" indicates that the risk must be both "a real hazard or danger that is not minor, trivial, or insignificant," and "more than a theoretical possibility." *Id.* (quoting *Ray*, 83 S.W.3d at 732).

Concerning the first prong, the trial court made the following findings:

The minor child went into the custody of DCS on two separate occasions, April 2019, and then again in December 2020. [Mother] never provided a copy of her lease, testified to multiple living arrangements, provided no proof of aftercare drug treatment, did not maintain stable employment, had multiple encounters with law enforcement, failed to communicate with the Department, failed to take drug screens as requested by DCS, failed to follow recommendations of the psychological evaluation, and received additional criminal charges while the minor child was in the legal custody of the Department. Finally, after the final hearing in this matter, [Mother] was arrested again on drug related charges and, subsequently, a federal probation violation. [Mother] is currently being held in federal custody.

There is little doubt in this Court's perspective that [Mother] has absolutely no ability or willingness to assume legal or physical custody of the child currently. Not only has [Mother] failed to overcome the obstacles that prevent her from assuming custody of the child, but she has largely ignored the fact that there are obstacles that exist and has denied any wrongdoing or even an admission to abusing drugs. [Mother] has demonstrated this by her refusal to obtain stable housing and stable employment, continued drug use, and criminal activity. As well, [Mother] failed to admit to drug addiction regardless of the fact that she attend[ed] drug rehabilitation. [Mother] denies that she abused drugs and that every incident with police was not her fault and that she was not using drugs or abusing her prescription medication.

The Court finds the first prong of the two-prong test has been satisfied.

The record fully supports the foregoing findings and conclusion. The evidence shows that Mother has not shown the ability or willingness to care for Briella or for her other two children, one of whom is older and one younger than Briella. During the lengthy trial, Mother did not have custody of any of her three children. The maternal grandfather had retained custody of her oldest child since he was three years old; he was eleven when the trial started. And Aria, her youngest, was removed from Mother's custody with Briella in January 2021 and remained in her father's custody at trial.

As for the second prong of the test, "risk of substantial harm," the trial court made the following findings:

that placing [Briella] in the custody of [Mother] would pose a risk of substantial harm to the physical or psychological welfare of the child. [Mother] has continued to abuse drugs, failed to have stable housing, and has continued to be involved in criminal behavior and receive criminal charges. In addition, [Briella] has resided with the Petitioners for most of her life. It is paramount that a child has stability, and [Mother] is unable to provide said stability. [Briella] needs to be in the care and custody of safe, appropriate, and attentive caregivers who can articulate and implement measures to meet the child's needs. It is clear [Mother] is not that caregiver. Furthermore, the Court finds [Mother] is not willing to be considered as such, and any hope of [the] same lies with placement with the Petitioners. [Mother] poses a risk as she has not taken the necessary steps to resume custody of [Briella] and has continued to have criminal activity.

The Court finds the Petitioners have carried the burden relative to the second prong, and placing [Briella] in the custody of [Mother] would pose a certain risk of immediate and irreparable harm to [Briella].

Based on the foregoing findings, the trial court concluded that Petitioners had proven this ground. We agree.

Accordingly, we affirm the trial court's ruling that Mother failed to manifest an ability and willingness to assume custody or financial responsibility of Briella.

E. Persistence of Conditions

The trial court found that Petitioners proved the ground of persistence of conditions as set forth in Tennessee Code Annotated § 36-1-113(g). Mother contends this was error.

The ground for termination known as "persistence of conditions" applies when:

(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[.]

Tenn. Code Ann. 36-1-113(g)(3)(A).

Regarding this ground, the trial court made the following findings:

[Briella] was removed on two separate occasions from [Mother] for dependency and neglect. On the first occasion, [Briella] was removed on April 17, 2019, due to in utero drug exposure and was returned to [Mother] on February 14, 2020. [Briella] was removed a second time due to drug exposure on December 28, 2020. The Court specifically finds that all requirements of T.C.A. § 36-1-113(g)(3) have been shown by the Petitioners. The conditions that led to removal of the minor child's removal from [Mother's] custody are all related to drug use on behalf of the Respondent and criminal charges. [Briella] has been removed from the home twice due to the same allegations. The Mother continued to have criminal charges related to drugs after removal, the Mother has failed to follow any after care drug treatment, and the Mother has failed to submit to drug screens as requested by DCS. The Mother has indicated that she does not have stable housing. The Mother now has pending criminal charges in Giles County and is being held in Federal custody due to a federal probation violation. These actions show that there is not a likelihood these conditions will be remedied quickly to allow a quick return of [Briella] to [Mother's] home because they have been continuously occurring for the majority of [Briella's] life.

Finally, the continuation of the parent or guardian and child relationship greatly diminishes [Briella's] chances of early integration into a safe, stable, and permanent home. [Briella] has resided a majority of her life with the Petitioners, and continuing the relationship with [Mother] will just further the amount of time before she will have a safe, stable, and permanent home.

The Court finds that the Petitioners have established by clear and convincing evidence the parental rights of [Mother] shall be terminated on the ground "persistence of conditions."

Having reviewed the record, we find that evidence fully supports the foregoing findings of fact and the conclusion of the trial court. Accordingly, we affirm the trial court's ruling that the ground of persistence of conditions as set forth by Tennessee Code Annotated § 36-1-113(g) was proven.

II. BEST INTEREST ANALYSIS

Once a court has found clear and convincing evidence of one or more grounds for termination, "the interests of parent and child diverge." *In re Jude M.*, 619 S.W.3d 224, 244 (Tenn. Ct. App. 2020) (citations omitted). "While the parent's interests do not evaporate upon a finding of unfitness, the focus of the proceedings shifts to the best interests of the child." *In re Audrey S.*, 182 S.W.3d at 877 (citation omitted).

"Facts considered in the best interest analysis must be proven by 'a preponderance of the evidence, not by clear and convincing evidence.'" *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (citations omitted). After a court makes its factual findings regarding the grounds for termination, it must consider the combined weight of the best interest factors to determine whether it amounts to clear and convincing proof that termination is in the child's best interests. *See id.*; *see also In re Kaliyah S.*, 455 S.W.3d 533, 555–56 (Tenn. 2015).

In determining whether termination of parental rights is in a child's best interest, courts must consider the non-exhaustive list of statutory factors in Tennessee Code Annotated § 36-1-113(i)(1). *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). These statutory factors are not exclusive, and courts are free to consider any other proof offered at a termination proceeding that is relevant to the best interest analysis. *In re Neveah M.*, 614 S.W.3d at 679 (citations omitted).

The factors in § 36-1-113(i) generally fall into three categories: (1) those related to the child's emotional needs; (2) those related to the child's general needs, physical environment, and wellbeing; and (3) those related to Mother's efforts.

We consider first Briella's emotional needs. *See* Tenn. Code Ann. § 36-1-113(i)(1)(A) (concerning the need for stability); *id.* § 113(i)(1)(B) (concerning how

changes in caretakers affect wellbeing); *id.* § 113(i)(1)(C) (concerning continuity and stability in meeting Briella's basic material, educational, housing, and safety needs); *id.* § 113(i)(1)(D) (concerning the parent-child attachment); *id.* § 113(i)(1)(E) (concerning visitation); *id.* § 113(i)(1)(H) (concerning attachment to others); and *id.* § 113(i)(1)(I) (concerning relationships with others).

With respect to these factors, the record shows that Briella has been with the same foster family, Petitioners, most of her life. In fact, Briella has lived with Petitioners for all but the nine months that Mother had custody. Moreover, during those nine months, Briella stayed 97 days with Petitioners with Mother's consent. Significantly, Briella has developed a strong, healthy bond with Petitioners. She is also thriving and the trial court found that a change in this environment would have a negative effect on Briella. As the trial court found:

The continued legal relationship between [Briella] and [Mother] does not inure to the benefit of the minor child and has created an unstable situation. This legal relationship presently requires DCS intervention in [Briella] home and life.

Furthermore, since the final day of the hearing, [Mother] has been arrested for theft, possession of drugs, and tampering with evidence. Her charges were bound over to the grand jury. Upon said disposition, the federal government took [Mother] into federal custody and she is being held in Bowling Green, Kentucky, with no timeline as to the finality of her current legal problems.

The Court finds that termination of [Mother's] parental rights is critical to protect [Briella's] need for stability and continuity of placement through her remaining minority and, therefore, finds that this factor is applicable and weighs heavily in favor of termination.

We turn next to Briella's general needs, physical environment, and well-being. *See id.* § 36-1-113(i)(1)(N) (concerning abuse or neglect); *id.* § 113(i)(1)(O) (involving the parent's prior provision of safe and stable care to Briella or any other child); *id.* § 113(i)(1)(P) (whether the parent has demonstrated an understanding of the basic and specific needs required for Briella to thrive); *id.* § 113(i)(1)(Q) (whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets Briella's basic and specific needs required to thrive); and *id.* § 113(i)(1)(S) (addressing the parent providing more than token support).

With respect to these factors, the trial court stated that "[Mother] has been found responsible for severe abuse in the Juvenile Court against the minor child. Additionally, [Mother] has been previously found to have neglected her oldest minor child and her youngest minor child." The court also found:

[Mother] has failed to attend almost every doctor's appointment for [Briella] and has refused to follow the doctor's recommendations. [Mother] has further testified to multiple different living arrangements. [Mother] has failed to admit that she has been addicted to drugs or abused drugs since [Briella] was born. [Mother] has testified that all police interactions were not her fault and that she was not abusing her prescriptions or any other drug. [Mother] was arrested after the final day of trial and is in the being held in Federal custody. This demonstrates no understanding of [Briella's] basic and specific needs.

Next, we consider Mother's efforts. *See id.* § 36-1-113(i)(1)(M) (concerning the parent's sense of urgency in seeking custody). The trial court found that

[Briella] has been in foster care from the date of birth until the present, except for 10 months and 15 days (of which the child still spent approximately three months with her foster parents upon request by Mother). Since that time, the steps to reunify with parents have been largely unchanged. [Mother] has had pending criminal charges. [Mother] testified to over ten different jobs in the span of a few years demonstrating she did not have stable employment. [Mother] has not provided a copy of her lease to DCS, [Mother] testified that she lived with her mother, lived in multiple halfway houses, and stays with her boyfriend indicating she does not have stable housing. [Mother] demonstrated no sense of urgency regarding providing a safe and stable home for [Briella]. After the final hearing, [Mother] was again arrested for possession of drugs, tampering with evidence, and theft. [Mother] is currently being held in federal custody.

After considering the relevant factors and the combined weight of these factors, the trial court concluded "To date, except for a brief window of time, [Mother] has only offered chaos and instability. Clearly, termination is in this child's best interest."

Having conducted our own de novo review of the record, we have determined that the evidence preponderates in favor of the trial court's factual findings. We also hold that the combined weight of the relevant factors amounts to clear and convincing evidence that termination of Mother's parental rights is in the best interest of Briella. *See In re Carrington H.*, 483 S.W.3d at 535; *see also In re Kaliyah S.*, 455 S.W.3d at 555–56. Accordingly, we affirm the trial court's determination that termination of Mother's parental rights is in Briella's best interest.

IN CONCLUSION

Because we have affirmed the trial court's determination that a ground for termination of Mother's parental rights was proven and that termination of Mother's parental rights is in Briella's best interest, we affirm the termination of Mother's parental rights to Briella.

Accordingly, we affirm the judgment of the trial court. Costs of appeal are assessed against the appellant, Brandie A.

FRANK G. CLEMENT JR., C.J.