

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 1, 2026

IN RE SERENITY S., ET AL.¹Appeal from the Chancery Court for Giles County
No. 314 M. Caleb Bayless, Judge

No. M2025-01000-COA-R3-PT

This action involves the termination of a mother's parental rights to her minor children based upon the statutory grounds of substantial noncompliance with the permanency plan, the persistence of conditions which led to removal, and failure to manifest an ability and willingness to assume custody of the children. A panel of this court reversed the trial court's initial determination, holding that the petitioners proved no statutory grounds for termination by clear and convincing evidence. *In re Serenity S.*, No. M2022-01091-COA-R3-PT, 2023 WL 4884040 (Tenn. Ct. App. Aug. 1, 2023) ("*Serenity I*"). Upon remand from this court, the petitioners amended their termination petition to include the statutory ground of abandonment. The trial court conducted a new hearing and found that clear and convincing evidence established abandonment by failure to remit child support and the persistence of conditions which led to removal. The court also found that clear and convincing evidence established that the termination of the mother's parental rights was in the best interest of the children. We now reverse and vacate the order of termination, holding that the petitioners have again proved no statutory grounds for termination by clear and convincing evidence.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Vacated; Case Remanded**

JOHN W. MCCLARTY, P.J., E.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., C.J. and J. STEVEN STAFFORD, P.J., W.S., joined.

Robert W. Curtis, III, Pulaski, Tennessee, for the appellant, Heather B.

James R. Potter, Clarksville, Tennessee, for the appellees, Tina S. and John S., Jr.

¹ This court has a policy of protecting the identity of children by initializing their last name in certain proceedings.

OPINION

I. BACKGROUND

Serenity S. was born to Heather B. (“Mother”) and John S., III (“John”) in 2011. John was not involved and had no meaningful relationship with Serenity. Mother, together with Raymond R. (“Father”),² had three additional children, Harmony, Mellody, and Angel (together with Serenity, “the Children”), in 2012, 2014, and 2017, respectively.

The Tennessee Department of Children’s Services (“DCS”) received approximately 16 referrals regarding the Children between 2012 and 2017 based upon ongoing allegations of drug exposure, homelessness, and environmental neglect. As to this action, DCS removed the Children on January 25, 2017, based upon a finding of environmental neglect. “The caseworkers found the home full of trash and infested with cockroaches. The Children’s beds had holes and no sheets. The water pipes were broken, and the home lacked running water.” *Serenity I*, 2023 WL 4884040, at *1. At that time, Mother was pregnant with Angel, who was removed by DCS following his birth in 2017.

For his part, Father had a long history with domestic violence against Mother. In *Serenity I*, we noted,

He was first arrested for domestic assault in 2013 and received a judicial diversion. He pled guilty to another domestic assault charge in 2016. In August of 2017, [Father] pointed a weapon at Mother and was charged with aggravated assault. He pled guilty on February 12, 2018, and received supervised probation.

Id. Due to Mother’s environmental neglect and Father’s unavailability as a result of his incarceration at the time of removal, the Children were placed in foster care. A permanency plan was created for Mother, who was tasked with a number of requirements related to her relationship with Father and her ability to maintain a home free from environmental neglect. A trial home placement was approved for October 2017; however, the Children were removed a few weeks into the trial home visit.

A second permanency plan was created that tasked Mother with the following:

completing homemaker services, having a minimum four hours of visitation per month, being on time for visitation, participating in domestic violence classes, maintaining contact with DCS, on-time payment of rent and utilities, maintaining minimal housekeeping standards, making child support

² Father is not a party to this appeal but will be discussed as necessary to establish the factual background of the case.

payments, and completing a mental health assessment with a parenting component.

Id. On October 24, 2018, the Children were approved for a relative placement with John's parents, Tina S. and John S., Jr. (collectively "the Petitioners"). At that time, John lived with the Petitioners, along with the Petitioners' adult daughter and her two minor sons. The Petitioners lived in a mobile home with four bedrooms, (1) with the Petitioners sharing a room, (2) John sharing a room with Angel and the other two minor boys in the home, (3) the minor girls sharing a room, and (4) the adult daughter in her own room. The court order placing the Children with the Petitioners advised Mother that she was permitted to petition for custody upon her completion of the permanency plan requirements.

On April 9, 2021, the Petitioners filed a petition for termination of Mother and Father's parental rights, along with John's parental rights to Serenity, and requested to adopt the Children. John voluntarily surrendered his parental rights to Serenity to facilitate the adoption of the Children. Mother, who had since given birth to another child³ with Father, objected to the termination of her parental rights.

The action proceeded to a hearing in July 2022, after which the trial court found clear and convincing evidence to establish the following statutory grounds of termination: substantial noncompliance with the permanency plan, the persistence of conditions which led to removal, and failure to manifest an ability and willingness to assume custody of the Children. The court also found that termination of Mother's rights was in the best interest of the Children. Mother appealed to this court.

In *Serenity I*, a panel of this court vacated the judgment of termination, holding (1) that the trial court applied the wrong standard in finding that termination was warranted based upon Mother's substantial noncompliance with the permanency plan; (2) that the trial court inappropriately shifted the burden to Mother to establish the safety of her home in finding the persistence of conditions which led to removal; and (3) that the evidence was insufficient to establish the third ground, namely the failure to manifest an ability and willingness to assume custody of the Children because the trial court did not expound upon what substantial harm the Children might be at risk of in Mother's custody. *Id.* at *4–9. This court noted, "because the record contains essentially no evidence regarding Mother's current living situation or circumstances, there is no way we can evaluate whether the record supports the trial court's conclusion." *Id.* at *9. This court vacated the judgment of the trial court and remanded for further proceedings. In reference to the second ground, the persistence of conditions which led to removal, this court advised, "Inasmuch as the trial court's order suggests that it inappropriately shifted the burden of proof at trial to

³ This was Mother's seventh child. Two additional children born before the Children at issue were removed from Mother's care and ultimately adopted by their biological father and stepmother.

Mother, we deem it prudent to vacate the trial court's ruling on this ground for termination and remand for consideration within the appropriate legal framework." *Id.* at *7.

During the pendency of the appeal, the chancellor assigned to the action retired. The Honorable M. Caleb Bayless was appointed in her stead. Upon remand, the trial court determined that a new termination hearing was needed to properly assess witness credibility and issue findings of fact and conclusions of law in accordance with this court's directive. The Petitioners had also requested to amend the termination petition to allege abandonment in accordance with Tennessee Code Annotated section 36-1-102(1)(L). Over Mother's objection, the court granted the request to amend the petition.

In November 2023, the Petitioners filed an amended termination petition, in which they alleged the following statutory grounds of termination: (1) substantial noncompliance with the permanency plans; (2) the persistence of conditions which led to removal; (3) the failure to manifest an ability and willingness to assume custody of the Children; and (4) abandonment. The Petitioners did not specify in their petition whether they sought abandonment by failure to support or failure to visit. Mother denied the allegations contained in the amended termination petition, and the action proceeded to a hearing on April 4 and April 15, 2024.

Father testified that he completed a Batterer's Intervention Program offered by West Kentucky Drug and Alcohol Intervention Services. He likewise maintained that he has completed anger management and parenting classes. He currently lives in Kentucky and has been employed since 2022. He submitted proof of his residence and his compliance with his current rental agreement. He stated that he and Mother communicate through a third party to facilitate his visitation with the new child without coming into contact with each other. He admitted that he has not visited the Children since his release in 2022 but asserted that he was unaware of his ability to facilitate such visitation after his rights had been terminated in July 2022.

Mother testified that she completed the requirements of the permanency plan but that she had not yet petitioned for the return of custody of the Children because she wanted to secure and maintain employment and suitable housing. She is currently living in Kentucky and has maintained the same housing since December 2021. She professed that she has a two-bedroom apartment and will obtain a three-bedroom if the Children are returned to her. In the event of their return, Angel would share a bedroom with his new brother and the girls would share the second bedroom, leaving her to stay in the living room until a larger apartment is available. She stated that she has also recently obtained employment through Instacart and receives approximately \$967 per month in Supplemental Security Income for her youngest child. She confirmed that she and Father are no longer together and that they facilitate his visitation with their youngest son through a third-party, which has allowed them to avoid contact with each other since 2023.

As to the Children, Mother testified that she did not believe they were in a safe place with the Petitioners. The Children had visible bruises during visitation and would cry to come back home. She believed the Children are mentally, physically, and sexually abused in the Petitioners' care. She maintained that John S., Jr. ("Grandfather") raped her and that one of her daughters also alleged that he had sexually abused her. She acknowledged that DCS had investigated the allegations and determined that they were unfounded.

As to child support, Mother admitted that she did not regularly remit child support before or after the termination of her parental rights in July 2022.

Tina S. ("Grandmother") testified that the Children receive regular medical care. Serenity, Harmony, and Mellody have been diagnosed with ADHD, while Serenity and Harmony have additional diagnoses of anxiety and separation disorder. They receive regular counseling and medication to assist them with their diagnoses. Grandmother stated that Serenity and Harmony have struggled with school but are receiving the necessary support to assist them. She professed that Angel was doing well in general.

Grandmother stated that they are reliant on Grandfather's disability income in the amount of \$1,246 per month, her disability income in the amount of \$1,515 per month, food stamps in the amount of \$480 per month, and regular financial contributions from John and their daughter. She also recently received an additional check in the amount of \$20,000 for back pay and back child support in the amount of \$10,000. She confirmed that they all lived together in the four-bedroom mobile home, with John sharing a room with three minor boys. She explained that his bed was "partitioned off" by a blanket. She agreed that visitation between Mother and the Children went well but that she ultimately withheld visitation after filing the termination petition because their behavior improved without Mother's involvement. She agreed that Mother maintained contact with her and regularly asked about the Children. However, she refused to facilitate communication between them because the Children were "doing too good."

Grandfather described the family home as chaotic but functional. He confirmed that he has been diagnosed with depression that he manages with medication and that he was approved for disability as a result of his diagnosis of explosive personality disorder.

Following the hearing, the trial court granted the termination petition based upon (1) abandonment by failure to remit child support and (2) the persistence of conditions which led to removal.⁴ The trial court found that termination of Mother's parental rights was in the best interest of the Children. This appeal followed.

⁴ At the conclusion of the Petitioners' proof, the court granted Mother's motion for involuntary dismissal of the statutory ground of substantial noncompliance with the permanency plan. At the close of all evidence, the court also did not find sufficient evidence to sustain the ground of failure to manifest an ability and willingness to assume custody of the Children.

II. ISSUES

We consolidate and restate the issues pertinent to this appeal as follows:

- A. Whether the court erred in determining that a new termination hearing was needed to comply with this court's directive upon remand.
- B. Whether the court erred in permitting the amendment of the termination petition upon remand.
- C. Whether clear and convincing evidence supports the court's finding of statutory grounds for termination.
- D. Whether clear and convincing evidence supports the court's finding that termination was in the best interest of the Children.

III. STANDARD OF REVIEW

Parents have a fundamental right to 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). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations' of the parent." *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 36-1-113(I)(1)). "[F]ew consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787 (1982)).

Although parental rights are superior to the claims of other persons and the government, they are not absolute and may be terminated upon statutory grounds. *See In Re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds. *In re Drinnon*, 776 S.W.2d at 97. A parent's rights may be terminated only upon

- (1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) [t]hat termination of the parent's or guardian's rights is in the best interest[] of the child.

Tenn. Code Ann. § 36-1-113(c). "[A] court must determine that clear and convincing

evidence proves not only that statutory grounds exist [for the termination] but also that termination is in the child's best interest." *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court's decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000), *abrogated on other grounds by In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). "Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *In re Audrey S.*, 182 S.W.3d at 861 (citations omitted). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

In 2016, the Tennessee Supreme Court provided guidance to this court in reviewing cases involving the termination of parental rights:

An appellate court reviews a trial court's findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its 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. 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. Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness.

In re Carrington H., 483 S.W.3d 507, 523–24 (Tenn. 2016) (citations omitted); *see also In re Gabriella D.*, 531 S.W.3d 662, 680 (Tenn. 2017).

In the event that the "resolution of an issue [] depends upon the truthfulness of witnesses, the trial judge, who has had the opportunity to observe the witnesses and their manner and demeanor while testifying, is in a far better position than this Court to decide those issues." *In re Navada N.*, 498 S.W.3d 579, 591 (Tenn. Ct. App. 2016) (citing *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957

S.W.2d 834, 837 (Tenn. Ct. App. 1997)). “[T]his court gives great weight to the credibility accorded to a particular witness by the trial court.” *In re Christopher J.*, No. W2016-02149-COA-R3-PT, 2017 WL 5992359, at *3 (Tenn. Ct. App. Dec. 4, 2017) (citing *Whitaker*, 957 S.W.2d at 837).

IV. DISCUSSION

A. & B.

Mother argues that the trial court impermissibly granted the motion to amend the termination petition and erroneously conducted a new termination hearing that was outside the scope of this court’s instructions upon remand in *Serenity I*. This court has explained that “the scope of a trial court’s authority upon remand” is limited to “the directions contained in the mandate from the appellate court.” *Raleigh Commons, Inc., v. SWH, LLC*, 580 S.W.3d 121, 129–30 (Tenn. Ct. App. 2018) (internal citations and quotations omitted). The mandate instructed the trial court to proceed with the execution of our judgment “by such further proceedings in your Court as shall effectuate the objects of this order on remand and attain the ends of justice.”

As stated previously, in *Serenity I*, this court vacated the trial court’s findings of clear and convincing evidence in support of the statutory grounds of termination, e.g., (1) substantial noncompliance with the permanency plans; (2) the persistence of conditions which led to removal; and (3) failure to manifest an ability and willingness to assume custody of the Children. 2023 WL 4884040 at *4–9. In vacating the judgment, we noted that the evidence either did not support the statutory ground of termination relied upon or that the trial court applied the wrong standard in review of the evidence. We remanded with instruction to specifically review the evidence submitted in support of the persistence of conditions which led to removal within the appropriate legal framework. Time had understandably marched on during the pendency of our appellate review, resulting in the appointment of the Honorable M. Caleb Bayless, who was not familiar with the action and had not made his own credibility determinations throughout the first termination proceeding. Accordingly, we hold that the trial court did not abuse its discretion upon remand in conducting its own hearing and in granting the amendment to the termination petition to consider the current circumstances of the parties. *See generally Thornton v. Massey*, No. W2013-01022-COA-R3-CV, 2014 WL 2472206, at *12 (Tenn. Ct. App. May 30, 2014) (providing that a trial court’s decision on whether to reopen the proof upon remand is discretionary in the absence of a specific directive on the issue).

C.

As indicated above, the trial court granted the termination petition based upon the following statutory grounds: (1) abandonment by failure to remit child support and (2) the persistence of conditions which led to removal.

1. Abandonment for failure to remit child support

Abandonment can occur when a parent has “failed to support or [] failed to make reasonable payments toward the support of the child” for a period of four consecutive months immediately before the filing of a petition to terminate parental rights. Tenn. Code Ann. § 36-1-102(1)(A)(i). The statute defines failure to support as a parent’s 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.” Tenn. Code Ann. § 36-1-102(1)(D). By statute, parents are expected to offer more than “token support,” which “means that the support, under the circumstances of the individual case, is insignificant given the parent’s means.” Tenn. Code Ann. § 36-1-102(1)(B). “Every 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).

The motion to amend or supplement the termination petition to include an additional ground of abandonment was filed on September 7, 2023. The relevant four-month period is from May 7, 2023, through September 6, 2023. *See* Tenn. Code Ann. § 36-1-102(1)(L) (providing that an amended pleading alleging a new period of abandonment must be calculated from the date the motion to amend or supplement was filed); *see also In re Jacob C.H.*, No. E2013-00587-COA-R3-PT, 2014 WL 689085, at *6 (Tenn. Ct. App. Feb. 20, 2014) (providing that the statutory four-month period covers four months preceding the day the termination petition was filed and does not include the day petition was filed).

The record reflects that Mother’s parental rights were terminated on July 18, 2022. Inasmuch as the Petitioners gained the parental rights and obligations related to the Children on that date, Mother correspondingly lost such rights and obligations. *See* Tenn. Code Ann. § 36-1-113(l)(1) (providing that an order terminating parental rights “shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted”). Accordingly, Mother was not required to remit child support from July 18, 2022, through August 1, 2023, the date the termination order was vacated. With these considerations in mind, we cannot affirm the trial court’s order terminating Mother’s parental rights on the ground of abandonment when she was not legally required to remit child support for the majority of the applicable time period. This conclusion does not end our inquiry because only one ground of termination is necessary to support a termination decision. Tenn. Code Ann. § 36-1-113(g).

2. Persistence of conditions

Under Tennessee law, a trial court may terminate parental rights 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 petition has been filed in the juvenile court alleging that a child is 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). Termination of parental rights requires clear and convincing evidence of all three factors. *In re Valentine*, 79 S.W.3d at 550.

The record reflects that the conditions which led to removal in January 2017 were child safety concerns due to environmental neglect. The record before this court contains no evidence establishing that Mother's current residence is unhealthy or unsafe. To the contrary, the only evidence offered established that Mother has resided in the same apartment for several years with her youngest child without issue. The trial court's order focuses on the years prior to Mother's current circumstances, specifically, the six months following the Children's removal. Such is not required or contemplated by the statute. The six-month period is only relevant as to the minimum period of removal before the court may consider whether such conditions that led to the removal persist.

Further, no evidence was offered to establish that the continuation of Mother's relationship with the Children greatly diminished their chances of early integration into a safe, stable, and permanent home. The record reflects that two of the Children are struggling academically and emotionally in their current placement and that Grandfather has been diagnosed with explosive personality disorder without further explanation. Further, the minor son is sharing a bedroom with an unrelated adult male and two additional unrelated minors. With these considerations in mind, we cannot affirm the court's

termination of Mother's parental rights on the ground of the persistence of conditions which led to removal.

Having found no evidence supporting at least one statutory ground of termination, we vacate the order of termination in its entirety. Any additional issues not specifically addressed are pretermitted by this court's decision. Upon remand, we direct the trial court to conduct a review of the Children's current placement and to make a determination as to whether reconciliation efforts may begin between the Children and Mother following a review of her current residence and circumstances.

V. CONCLUSION

For the reasons stated above, we vacate the judgment of the trial court and remand for such further proceedings necessary and consistent with this opinion. Costs of the appeal are taxed equally to the appellees, Tina S. and John S., Jr.

s/John W. McClarty
JOHN W. McCLARTY, JUDGE