

FILED

08/31/2026

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 1, 2026

IN RE SAMUEL H. ET AL.

Appeal from the Juvenile Court for Wilson County
No. 2024-JT-4 C. Barry Tatum, Judge

No. M2025-01188-COA-R3-PT

Father appeals the termination of his parental rights. The trial court found two grounds for termination: severe child abuse and failure to manifest an ability and willingness to assume custody. The trial court also concluded that terminating Father's parental rights was in the children's best interest. However, the trial court's best interest analysis extensively addressed not only the circumstances of the children in the present case but also the circumstances of other children in an entirely different parental termination proceeding. We affirm the trial court's findings as to the grounds for termination. We vacate, however, the trial court's best interest determination, and we remand for the trial court to make a best interest determination for the children in the present case and findings appropriate to the present case.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which JOHN W. MCCLARTY, P.J., E.S., and VALERIE L. SMITH, J., joined.

Kimberly E. Wright, Lebanon, Tennessee, for the appellant, David H.

Jonathan Skrmetti, Attorney General and Reporter; and Clifton Wade Barnett, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

OPINION

I.

This appeal arises from the termination of the parental rights of David H. (Father) and Charlene H. (Mother) to their three minor sons, Samuel H., David H., Jr., and Ezekiel H. (the Children), who were born in 2014, 2016, and 2021, respectively. Father, but not Mother, appealed the termination of his parental rights. The family had resided with the Children's paternal grandparents (Grandmother and Grandfather) in Castalian Springs, Tennessee. Grandfather testified that, while the family was living with the grandparents, Mother "had nothing to do with" the Children and that Father was the "more primary caregiver of the boys."

Father, however, had also been struggling with drug addiction to opiates for more than a decade. During periods of drug withdrawal, Father suffered seizures. Grandfather testified that when the seizures occurred, Grandfather and Grandmother would have to "get down on the floor and hold him, try to help him as best we could." The Children were "usually close by" during these seizures, leaving them with deep-seated, traumatic memories of witnessing Father in physical distress.

The family's situation worsened in 2022. Grandmother passed away in August of that year. Grandfather's health seriously declined, resulting in plans for him to relocate to Iowa to live with another son and near a Veterans Affairs Hospital facility. Mother was incarcerated for a significant part of 2022. With Grandmother's passing, Grandfather's health declining, and Mother's incarceration, Father struggled to work and care for the Children. Father placed the Children in the care of an aunt. Following a domestic violence incident involving the aunt's husband, the aunt and the Children moved to Iowa. Around December 2022, Mother was released from jail, and she separated from Father. When caring for the Children became too much for the aunt, she returned the boys to the care of Mother in Tennessee. Mother moved with the Children into a room that she shared with her boyfriend. Mother and her boyfriend abused drugs. With the Children primarily in Mother's care during this time, Father remained living with Grandfather in order to care for him and to prepare for Grandfather's relocation to Iowa.

The catalyst for the removal of the Children by the Tennessee Department of Children's Services (DCS) was an event that occurred on March 9, 2023. Father arrived at Mother's hotel room late at night to drop off the Children. Upon his arrival, Father found that Mother appeared to have overdosed. She "was on the bed" and seemingly "was not breathing." Father administered CPR until paramedics arrived. Mother survived.

Father, however, had an outstanding arrest warrant for failure to appear and the arrival of law enforcement at the scene resulted in his arrest. Father had been charged with various criminal offenses over the years. In 2022, he was cited for public intoxication, to which he pled guilty. Father also had shoplifting charges in August 2022, November 2022, and January 2023. He had trespassing charges connected with these shoplifting charges due to returning to businesses from which he had been banned for shoplifting. The arrest warrant related to failure to appear in connection with the January 2023 charges related to

shoplifting and trespassing for a third time. In April 2023, after the incident leading to the removal of the Children, Father was charged again with trespassing at a business from which he had been banned.

With Mother having been transported, unresponsive, to the hospital and Father having been arrested on an outstanding warrant, the Children were taken to the Lebanon Police Department. Officers discovered multiple bruises and a head hematoma on the youngest child, Ezekiel, and had him taken to the hospital.

The Children indicated they had not had enough to eat and that their home was unclean and infested with mice. The Children were treated for lice and were discovered to be behind on vaccinations. The Children were behind educationally with Mother and Father having not properly tended to their education. The older two children had missed a significant amount of school. DCS obtained an emergency protective custody order placing the Children in state custody.

Following his arrest on his outstanding warrant, Father was incarcerated for 21 days. Upon his release, Father, who was in the process of being evicted, discovered that his eviction had been finalized and that all of his belongings were gone. Father was homeless for several months. He lived in the woods. He relapsed into drug abuse, including fentanyl use. DCS attempted to secure drug treatment services for Father, but Father failed to appear for scheduled assessments and delayed in setting up the services. In October 2023, he again tested positive for drugs. Later that month, Father finally admitted himself to an inpatient substance abuse treatment program. He successfully completed the inpatient program in November 2023.

Since his discharge, Father has maintained his sobriety. Father's case manager confirmed that Father passed every subsequent drug screen, including multiple hair follicle analyses. Under the terms of his permanency plan and the court's orders, Father's therapeutic supervised visits with the Children were set to begin upon his completion of two clean urine drug screens. Father submitted his first clean screen on January 12, 2024.

That same date, the Juvenile Court held a dependency and neglect hearing. Mother failed to appear, but Father was present and represented by counsel. The court heard testimony from a Child Protective Services worker, a Social Services Team Leader, the responding Officer of the Lebanon Police Department, and Father. At the conclusion of the hearing, the court adjudicated the Children dependent and neglected and found that both Mother and Father committed severe child abuse by clear and convincing evidence. The order was entered on March 18, 2024. Father did not appeal this order.

Father obtained employment working as a chef. He asked DCS when the second screen would take place "on multiple occasions." DCS failed to schedule the second drug

screen until April 19, 2024 — 10 days after the department filed the petition to terminate Father’s parental rights.

Once visitation commenced, the visitation supervisor observed that Father was consistently on time, appropriately dressed, and provided meals and games for the boys. However, the parties presented conflicting evidence as to the visits’ impact on the children. Some testimony indicated that the visits went well, but DCS also highlighted that these visits precipitated periods of behavioral regression and increased conflict among the Children following the visits. Foster Mother and the Children’s therapists reported that the visits, while not traumatic, were “triggering” and caused the Children stress and confusion. Ezekiel regressed significantly, exhibiting “more meltdowns, tantrums, and increased clinginess,” to Foster Mother, as well as aggressive behaviors such as hitting. Samuel experienced “big emotions” and anxiety after visits, often staying up late to process his thoughts rather than sleeping. Samuel’s therapist testified that these post-visit anxieties were rooted in Samuel’s past memories of Father’s medical issues, noting that Samuel expressed ongoing fear regarding Father’s history of seizures in connection with drug withdrawal. Samuel’s therapist testified that the mere physical proximity of Father during visits acted as a trigger, evoking these traumas and leaving Samuel with a persistent fear that Father would be unable to care for him. Furthermore, David found the visits “very stressful,” as he struggled with anger and felt he had to compete with his older brother for Father’s attention. This behavior escalated after visits into arguments, name-calling, and physical altercations. Samuel and David told Foster Mother that she “would be embarrassed” if she saw how they behaved during visits. Foster Mother observed that once “visits were implemented, we really started to see higher increases of conflict between the boys,” around visitation times, but “typically, if [she is] tracking behaviors and we have a long gap between visitation, [they] see a decrease,” and that “after about two weeks of a gap, [they] will see a decrease in behaviors.”

The Children’s foster placement, meanwhile, had introduced them to a stable and structured environment. Foster Mother, an educator by profession, worked with the boys to address their educational and developmental deficits. Ezekiel was born with Neonatal Abstinence Syndrome (NAS) and faced global developmental delays. He attends five to seven therapeutic appointments every week, including occupational, physical, developmental, and speech therapies. David struggles with dyslexia and anxiety, requiring biweekly therapy and medication to manage emotional dysregulation. Samuel struggles with ADHD, anxiety, and learning delays. To address the Children’s individual emotional and behavioral trauma responses, Foster Parents privately enrolled each child in individual play therapy, where each child was paired with their own therapist.

On April 9, 2024, DCS filed its petition to terminate parental rights. DCS alleged two grounds for termination: severe child abuse and failure to manifest an ability and willingness to assume custody. The trial on the termination petition was held across four separate days over a six-month period: November 1, 2024; February 28, 2025; April 15,

2025; and April 16, 2025. The trial court heard testimony from Father, the DCS Case Manager, Foster Mother, the therapeutic supervised visitation facilitator, Father's employer, the Children's three individual play therapists, and Grandfather.

Much of the testimony focused on Father's struggle to establish an independent home. At the commencement of the trial in November 2024, Father resided with Grandfather in a Clarksville townhome. Grandfather was evicted during the pendency of the trial; Father was not on the lease. By the third day of trial in April 2025, Father had relocated to Bowling Green, Kentucky, to reside with his girlfriend in a two-bedroom apartment leased in her name. Father was listed on the lease as an "occupant" rather than a lessee. The DCS Case Manager testified on the final day of trial that Father had informed her of this move just one day prior. Father's girlfriend refused to cooperate with background screening, so DCS was unable to perform a home study or inspect the residence. Indeed, the DCS Case Manager testified that she was unable to perform a full background check on Father's girlfriend because the girlfriend "would not provide DCS with her social security number," and the lack of cooperation meant that "DCS has not seen this apartment."

Other testimony indicated ongoing instability in Father's life. Father testified that he was trying to get engaged and married to his girlfriend but that he was still married to Mother at the time of trial. With respect to his finances and transportation, Father explained that his wages were being garnished, which he believed was for ongoing child support. He later learned that the garnishment was actually being applied toward a civil judgment entered against him in 2017. Father had, in fact, made only token child support payments for the Children. Father also owed fees, fines, and court costs in connection with his prior criminal offenses. He lacked a functioning vehicle and had lost his driver's license. He had not completed all requirements for getting the license reinstated. Father was largely unaware of the schedule and scope of the Children's therapies. Furthermore, as noted above, Foster Parents and the Children's therapists reported that visits with Father triggered emotional regression and aggressive behaviors in the Children, particularly between Samuel and David.

On July 9, 2025, the Wilson County Juvenile Court entered its Final Order terminating the parental rights of Mother and Father. The court determined that the prior March 18, 2024 dependency and neglect finding of severe child abuse was final and *res judicata* because Father had not appealed that order, thereby establishing the ground of severe child abuse. The trial court also concluded that DCS established there was clear and convincing evidence that Father failed to manifest an ability and willingness to assume custody of the Children and that placing them in his care would pose a risk of substantial harm to the Children.

Having found statutory grounds for termination of parental rights, the trial court proceeded to consider the statutory best interest factors to determine whether Father's

parental rights should be terminated. The trial court concluded that ten factors supported termination, two did not, three were neutral, and five were inapplicable. However, the trial court's order also incorporated extensive findings in its best interest analysis from an entirely unrelated case. This section of the trial court's order referenced children who are not subjects of this proceeding and made findings that are simply not applicable to this case. Ultimately, the trial court concluded that by clear and convincing evidence termination of Father's parental rights was in the Children's best interests. The court terminated Father's parental rights to Samuel, David, and Ezekiel. Father timely appealed.

II.

Parents have a fundamental constitutional interest in the care and custody of their own children. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). This fundamental interest is "far more precious than any property right." *In re Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016) (quoting *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982)). "[P]ublic policy strongly favors allowing parents to raise their biological or legal children as they see fit, free from unwarranted governmental interference." *In re Bernard T.*, 319 S.W.3d 586, 597 (Tenn. 2010). However, a parent's rights are not absolute and may be terminated on clear and convincing evidence that statutory grounds for termination exist and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c)(1)-(2); *In re Adoption of Angela E.*, 402 S.W.3d 636, 639 (Tenn. 2013).

In a termination of parental rights case, we review a trial court's findings of fact de novo on the record with a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; see Tenn. R. App. P. 13(d). "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." *In re Carrington H.*, 483 S.W.3d at 524 (citing *In re Bernard T.*, 319 S.W.3d at 596-97). The grounds for termination and the determination that termination is in the children's best interest must be established by clear and convincing evidence, that is, evidence that "enables the fact-finder to form a firm belief or conviction regarding the truth of the facts" and that "eliminates any serious or substantial doubt about the correctness of these factual findings." *In re Bernard T.*, 319 S.W.3d at 596; Tenn. Code Ann. § 36-1-113(c). "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." *In re Carrington H.*, 483 S.W.3d at 524 (citing *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009)).

III.

The trial court terminated Father's parental rights on two grounds: severe child abuse under Tennessee Code Annotated section 36-1-113(g)(4) and failure to manifest an

ability and willingness to personally assume legal and physical custody under Tennessee Code Annotated section 36-1-113(g)(14). Regarding the severe abuse ground, Father notes that he “did not appeal the dependency and neglect order to the circuit court. That order is therefore a final judgment, and the severe abuse finding is *res judicata* for purposes of this appeal.” While Father endeavors to concede the severe abuse termination ground, “the Court of Appeals must review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal.” *In re Carrington H.*, 483 S.W.3d at 525-26. Accordingly, pursuant to the charge to this court under *In re Carrington H.*, we nevertheless must assess this ground for termination. *See, e.g., In re Danielle V.*, No. W2023-01023-COA-R3-PT, 2024 WL 342518, at *8 (Tenn. Ct. App. Jan. 30, 2024); *In re Lijah D.*, No. E2019-02297-COA-R3-PT, 2020 WL 5888143, at *5 (Tenn. Ct. App. Oct. 5, 2020). We consider each ground in turn below.

A. Severe Child Abuse

The trial court determined that Father committed severe child abuse against the Children. Tennessee Code Annotated section 36-1-113(g)(4) (effective July 1, 2023 to June 30, 2024)¹ provides that a parent’s rights may be terminated if “[t]he parent or guardian has been found to have committed severe child abuse, as defined in [Tennessee Code Annotated] § 37-1-102, under any prior order of a court.” Tenn. Code Ann. § 36-1-113(g)(4). Tennessee Code Annotated § 37-1-102 defines “severe child abuse” as, *inter alia*, 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(27)(A)(i) (effective May 5, 2023 to June 30, 2024).

As noted above, the juvenile court held a dependency and neglect hearing, with Father present and represented by counsel. At the conclusion of the hearing, the court found the Children dependent and neglected and found by clear and convincing evidence that both Mother and Father committed severe child abuse. The order was entered on March 18, 2024. Father did not appeal the dependency and neglect order, making it a final judgment.

In its termination order, the trial court found:

The Adjudicatory finding of severe abuse in the March 18, 2024 order is *res judicata* as to both Respondents herein, and is sufficient for this Court to find that the ground of severe abuse (Ground I on the TPR Petition) is proven by clear and convincing evidence.

¹ *See In re J.S.*, No. M2022-00142-COA-R3-PT, 2023 WL 139424, at *6 (Tenn. Ct. App. Jan. 10, 2023) (“This court applies the versions of the parental termination statutes in effect on the date the petition was filed.”).

On appeal, Father does not challenge this ground, and DCS contends that the prior finding of severe child abuse is *res judicata*. This court has repeatedly addressed the *res judicata* impact of such determinations. *See, e.g., In re Colten B.*, No. E2024-00653-COA-R3-PT, 2025 WL 252663, at *5-6 (Tenn. Ct. App. Jan. 21, 2025) (citing cases). As this Court has previously explained, *res judicata* is a doctrine that treats “an existing final judgment rendered upon the merits . . . by a court of competent jurisdiction, [as] conclusive of rights, questions and facts in issue as to the parties . . . 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)). In the context of severe child abuse, *res judicata* permits a trial court to treat a prior finding of severe child abuse in a dependency and neglect proceeding as conclusive evidence establishing the ground of severe child abuse in ruling upon a subsequent termination of parental rights petition. *Id.* at 439-40. Accordingly, the trial court’s finding of the termination ground of severe child abuse by clear and convincing evidence was not in error.

B. Failure to Manifest an Ability and Willingness to Assume Custody

The trial court also terminated Father’s parental rights pursuant to Tennessee Code Annotated section 36-1-113(g)(14). The statute provides that a parent’s rights may be terminated if

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

Tenn. Code Ann. § 36-1-113(g)(14).

In support of its conclusion to terminate parental rights pursuant to this section, the trial court made the following findings:

After a considerable period of non-involvement, Father has been involved in the case. He has made an effort and has made some progress[;] however, he has failed to demonstrate enough stability to assume custody of the children, as detailed heretofore in the findings of facts above. Father does not have a driver’s license, does not have independent housing, and does not have a working vehicle. Father has only had therapeutic visitation with the children. Father has failed to pay child support as ordered and still ha[s] considerable outstanding debts, fees, fines, and costs associated with his criminal history during this case and prior to. The children have bonded with the resource

parents and their extended family, while the bond between the children and the Father has been limited by the limitations of therapeutic visitation. In sum, Father has failed to manifest an ability and willingness to assume custody and placing the children with the Father would pose a substantial risk of physical or psychological harm to the children.

The trial court made numerous additional findings relevant to its conclusion as to this ground for termination. For example, the trial court found as follows:

The Court also finds that while Father expressed to the Court his emphasis on education, the children's educational needs were not appropriately seen to by Mother or Father when they had custody of the children. Upon entering DCS custody the children were behind a grade level, and did not have the basics needed to achieve academically.

[] Father testified that although he received help raising the children from Mother and his parents, he was primarily responsible for ensuring the children were developing educationally, and he failed in that respect.

The trial court was unpersuaded that Father was able to meet the Children's significant special educational needs.

Furthermore, the trial court also found the following:

The Court does find that Father has completed a number of tasks on the permanency plan and by the proof shown, has maintained sobriety for a significant period of time. This conduct is commendable. However, in totality, Father has had in excess of 2 calendar years to address his substance abuse issues, legal issues, marital issues, and ultimately, attain sufficient stability to assume custody of the children. Despite his efforts and some progress, the Court finds that placing the children in the custody of Father would pose a substantial risk to them physically and psychologically.

Two prongs must be proven by clear and convincing evidence to support a finding of termination: "(1) the parent or legal guardian failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and (2) placing the child in the parent's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child." *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020); see Tenn. Code Ann. § 36-1-113(g)(14).

The Tennessee Supreme Court has clarified that, regarding the first prong, this ground "places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility

for the child.” *In re Nevaeh M.*, 614 S.W.3d at 677. Failure of the parent to manifest either ability or willingness will satisfy the first prong. *Id.* “Ability focuses on the parent’s lifestyle and circumstances,” while willingness revolves around a parent’s attempts “to overcome . . . 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). A parent’s express desire to reunite with the child is insufficient to establish a willingness to assume custody. *See In re Nicholas C.*, No. E2019-00165-COA-R3-PT, 2019 WL 3074070, at *17 (Tenn. Ct. App. July 15, 2019). To the contrary, “[w]hen evaluating willingness, we look for more than mere words.” *In re Jonathan M.*, No. E2018-00484-COA-R3-PT, 2018 WL 5310750, at *5 (Tenn. Ct. App. Oct. 26, 2018). This court considers a parent’s efforts to overcome any obstacles standing in the way of assuming custody or financial responsibility. *In re Jaxx M.*, No. E2018-01041-COA-R3-PT, 2019 WL 1753054, at *9 (Tenn. Ct. App. Apr. 17, 2019) (citing *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at *8 (Tenn. Ct. App. Mar. 22, 2019)).

On appeal, Father contends that the evidence does not clearly and convincingly establish that he failed to manifest an ability and willingness to personally assume legal and physical custody of the Children. Father highlights the “documented rehabilitation” he achieved during the pendency of this case, pointing out that he voluntarily checked himself into and successfully completed the inpatient substance abuse treatment program, receiving his completion certificate in November 2023. He emphasizes his sustained and documented sobriety, noting that the Case Manager confirmed Father never failed another drug screen after inpatient treatment. Father further points out that he completed an intensive outpatient program, successfully finished a parenting skills class, and secured employment as a chef. Finally, Father contends that DCS hindered his reunification efforts by waiting over three months after he passed his first drug screen on January 12, 2024, to conduct the second drug screen, meaning his first therapeutic visit did not occur until May 24, 2024. Father asserts that once visits commenced, they went well.

In response, DCS argues that Father’s personal steps toward sobriety cannot overshadow his persistent financial and housing instability. DCS points out that “Father has never attained independent housing and has not achieved financial stability.” DCS notes that Father moved over the course of the trial following an eviction, and Father is currently living in Bowling Green, Kentucky, as an occupant, rather than lessee, in his girlfriend’s apartment, meaning he had “no indication that he would have any recourse should she ask him to leave.” Additionally, DCS has not received his girlfriend’s Social Security number and was unable to inspect the house as of the last day of trial as a result of lack of cooperation. DCS also asserts that Father is financially unequipped to care for three young Children, as he owes child support arrears, court costs, and probation fees, and his wages are being garnished related to a civil judgment. DCS further argues that Father’s lack of a driver’s license prevents him from managing the Children’s schedules which involve significant therapeutic special needs.

We begin with the first prong of section 36-1-113(g)(14) — whether Father failed to manifest an ability and willingness to personally assume custody. Father’s efforts to rehabilitate himself are commendable. After a period of addiction and homelessness, Father successfully completed inpatient substance abuse treatment, finished after-care assessments, maintained prolonged and documented sobriety, and secured employment as a chef. These affirmative steps demonstrate a genuinely admirable improvement from Father.

However, our inquiry does not end there. As noted, section 36-1-113(g)(14) requires both a willingness and the ability to assume custody. *In re Nevaeh M.*, 614 S.W.3d at 677. We note that “[a]bility focuses on the parent’s lifestyle and circumstances.” *In re Serenity W.*, 2019 WL 511387, at *6. In this case, we must conclude that clear and convincing evidence establishes that Father lacks the ability to personally assume legal and physical custody of the Children.

First, Father lacks stable, independent housing. The record establishes that Father has never obtained housing in his own name. After his release from incarceration, he lived with friends, in a recommended halfway house, in a hotel, and in Grandfather’s Clarksville townhouse. Grandfather was evicted from the townhouse. During the course of the trial, Father then relocated out of state to Bowling Green, Kentucky, to live with his girlfriend. Father testified that this residential arrangement was a strategic choice to “significantly reduce his cost of living” and enable him to manage his debts. While this Court recognizes the economic logic of Father’s plan, Father failed to establish a secure or stable physical environment for the Children. Father is listed on the lease only as an occupant rather than a lessee. Furthermore, his girlfriend did not testify at trial, has never met the Children, and refused to provide her Social Security number to DCS, preventing DCS from performing background checks or completing a home study.

Second, Father’s unresolved financial debts compromise his ability to manage the day-to-day care of three young Children. Father owes child support arrears, court costs, and probation fees, and his wages are being garnished. Father testified that he now maintains a budget, and he explained that his failure to pay child support arose from a misunderstanding. Father indicated that he believed his wage garnishments were being directed toward child support when, in reality, they were satisfying a 2017 civil judgment. Father’s driver’s license is suspended, and he testified that he could not afford the \$215 fee to reinstate it. Although Father testified that he possessed the necessary paperwork for reinstatement, he had not submitted the paperwork or paid the fee as of the time of trial. Meanwhile, the Children are each actively enrolled in regular therapy appointments to address their special needs.

Third, and most critically, Father has not demonstrated the ability to meet the specialized educational and developmental needs of the Children. The Children have significant special needs. Ezekiel suffers from global developmental delays and requires

five to seven therapeutic appointments every week. David and Samuel both struggle with ADHD, anxiety, and learning delays, requiring biweekly therapies and medications. Father remains largely unaware of the schedule and scope of these therapies, testifying that he only has a “general sense” of the services they require. Father’s demanding work schedule as a chef, regarding which he testified he “practically live[s] there right now,” and which requires a commute from Kentucky, further undermine his physical ability to coordinate and manage this intensive therapeutic regimen. Furthermore, because he lacks a driver’s license and independent transportation, Father is unequipped to ensure that the Children are transported to school and their therapeutic appointments. Noting “the significant needs of the children,” the trial court found Father’s “inability to lay out a plan to the Court on how he would meet the children’s needs . . . concerning.” While Father suggests that he can rely on work friends or Grandfather for transportation, Grandfather’s health is in severe decline. Additionally, the trial court also noted a lack of testimony from Father’s purported support network regarding their ability and willingness to provide support.

Accordingly, while Father’s rehabilitation with regard to drug abuse is admirable, we must conclude that Father’s lifestyle and circumstances demonstrate that he lacks the present ability to assume custody of the Children. The trial court correctly determined that the first prong of section 36-1-113(g)(14) was established by clear and convincing evidence.

The petitioner must also prove that placing the child in the parent’s custody would pose a risk of substantial harm to the child’s physical or psychological welfare. A substantial risk of harm requires “a real hazard or danger that is not minor, trivial, or insignificant” and requires the harm to be more than a “theoretical possibility” and to be “sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.” *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2002); *see In re Maya R.*, No. E2017-01634-COA-R3-PT, 2018 WL 1629930, at *8 (Tenn. Ct. App. Apr. 4, 2018). This Court has identified multiple circumstances, among others, that support a substantial harm finding, including the parent’s lack of stable housing, the child’s lack of a bond to the parent, the child’s negative behaviors following contact with the parent, the parent’s engaging in repeated criminal conduct requiring incarceration, and the parent’s significant, recent history of substance abuse. *See In re Brianna B.*, No. M2019-01757-COA-R3-PT, 2021 WL 306467, at *6 (Tenn. Ct. App. Jan. 29, 2021); *In re Draven K.*, No. E2019-00768-COA-R3-PT, 2020 WL 91634, at *14 (Tenn. Ct. App. Jan. 7, 2020).

On appeal, Father contends that placing the Children in his custody would not pose a risk of substantial harm to their physical or psychological welfare. Regarding his physical environment, Father notes that the trial court found that his “physical home is appropriate.” We note this finding is made in part of the trial court’s best interest findings that are related to a completely separate termination proceeding involving different parents and children. We address the effect of this error below. Father further asserts that the ground “cannot be sustained by bootstrapping the res judicata severe abuse finding” into a finding of long-

term inability. Father contends that because he has achieved sustained sobriety and maintains an appropriate residence, he poses no threat of harm to the Children. He argues that the Children's anxieties regarding his seizures and food insecurity do not rise to the level of substantial harm, and that these concerns are manageable rather than dangerous.

In response, DCS argues that placing the Children in Father's custody would pose a risk of substantial physical and psychological harm. DCS contends that Father remains largely ignorant of the Children's severe special needs with Ezekiel attending five therapies a week for global delays and David and Samuel attending biweekly therapy and require medications. Despite the importance of these therapies, Father's knowledge of their treatments is limited. Furthermore, DCS asserts that uprooting the Children from their structured foster placement—where they have made significant academic and emotional progress—and placing them in an unvetted environment would trigger severe psychological and developmental regression.

The record establishes that placing the Children in Father's custody would expose them to a severe risk of psychological regression and emotional harm. Although Father's personal progress is admirable, we cannot ignore the toll that the transition would take on the Children's psychological welfare. The Children's play therapists and Foster Mother testified that visitation with Father consistently triggered behavioral regression and emotional stress. Ezekiel's therapist reported a significant uptick in tantrums, younger behaviors, and non-compliance following visits. David's therapist noted an escalation in anger and sibling aggression, as David felt he had to compete with his older brother for Father's attention. Samuel's therapist noted that Samuel experienced anxiety after visits, often staying up late to process his thoughts rather than sleeping. Samuel specifically expressed a fear to Foster Mother that Father would be unable to care for him, burst into tears, and asked: "if I go back to my dad, [what if] he won't be able to take care of me?" These anxieties reflect present emotional vulnerabilities that would complicate a transition to Father's care.

Furthermore, Ezekiel has no secure bond with Father and has spent the majority of his formative development in his foster placement. We do not discount Father's diligent efforts to build a relationship, noting that he was prepared for visits, brought home-cooked meals, and engaged Ezekiel by playing on the floor with toy cars. Here, however, the Children's present emotional vulnerabilities are tied to their specialized developmental needs. The trial court emphasized that the Children, Ezekiel in particular, have significant medical and therapeutic needs requiring "diligent attention from [their] caregiver." Ezekiel has global developmental delays and NAS, attending five to seven therapeutic appointments every week, while David and Samuel struggle with ADHD, learning disabilities, and severe emotional dysregulation. As noted above, while Father has made significant progress during the intervening period, the trial court found "concerning" Father's "inability to lay out a plan to the Court on how he would meet the children's needs," particularly given his demanding work and living conditions and his lack of a

driver's license. Moreover, the trial court evaluated the consequences of uprooting the Children from their structured, stable foster home—where they have overcome educational and developmental deficits through the efforts of Foster Parents—and placing them in a new environment where lack of basic cooperation has prevented DCS investigation of the physical living environment and Father's girlfriend. We note the trial court's findings that the Children's academic delays and physical neglect occurred while they were under Father's care. Under these conditions, we conclude this disruption in their progress is "sufficiently probable to prompt a reasonable person to believe that the harm will occur." *Ray*, 83 S.W.3d at 732.

Therefore, we conclude that the record supports by clear and convincing evidence that placing the Children in Father's custody would pose a risk of substantial physical and psychological harm to their welfare. The trial court did not err in finding this ground for termination.

IV.

Having determined that at least one statutory ground for termination has been shown against Father by clear and convincing evidence, our focus now shifts to what outcome is in Samuel's best interest. *In re Audrey S.*, 182 S.W.3d 838, 876-77 (Tenn. Ct. App. 2005). The Tennessee Supreme Court has summarized the law regarding the best interest analysis as follows:

Facts considered in the best interest analysis must be proven by "a preponderance of the evidence, not by clear and convincing evidence." "After making the underlying factual findings, the trial court should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child's best interests." When considering these statutory factors, courts must remember that "[t]he child's best interests [are] viewed from the child's, rather than the parent's, perspective." Indeed, "[a] focus on the perspective of the child is the common theme" evident in all of the statutory factors. "[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child. . . ."

Ascertaining a child's best interests involves more than a "rote examination" of the statutory factors. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. Simply put, the best interests analysis is and must remain a factually intensive

undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated.

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017) (citations omitted).

On appeal, Father contends that the trial court's best-interest determination is fundamentally flawed and must be vacated because the written Final Order contains extensive findings from an entirely different termination of parental rights proceeding. Specifically, Father points out that the extensive findings of the Final Order mistakenly addressed the circumstances of three children who are not subjects of this proceeding, a person named "Mr. Parker" who is not Father, and a resource family, "the Smiths," who are not the foster parents in this case. This paragraph includes damaging and inflammatory findings that Father "routinely physically and emotionally abused" a child named "Remington" and that the Children are "fearful of Father" and "consistently expressed they are fearful of Father," none of which have a basis in the record of the present case.

Indeed, DCS concedes that the trial court's Final Order contains findings of fact that appear to have been taken from a separate termination proceeding and mistakenly made part of the termination order in the present case. DCS agrees that, based on this error, the trial court's best-interest determination should be vacated and the case remanded for the entry of a new order containing case-specific findings.

We agree with the parties that the trial court's extensive findings from another termination proceeding require us to vacate and remand the best-interest determination. The termination of parental rights is one of the most severe and irrevocable actions a court can take, permanently severing the legal relationship between a parent and their child. *In re Audrey S.*, 182 S.W.3d at 860. Because of the gravity of these proceedings, a termination decision must be based upon evidence actually presented concerning the specific parents and children before the court. *See Santosky*, 455 U.S. at 758 ("A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one." (quoting *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27 (1981))). Tennessee Code Annotated section 36-1-113(c) requires that any termination of parental rights be based upon a finding by clear and convincing evidence that grounds exist and that termination is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Carrington H.*, 483 S.W.3d at 524.

In this case, the extensive findings in the Final Order from another proceeding taint the entire best-interest analysis. Although the Final Order contains substantial findings of fact that pertain to this case, we cannot determine with sufficient confidence how the trial court would have weighed the statutory factors had it not relied on the imported findings from another case involving termination of parental rights. When a trial court's order fails to comply with the statutory mandate to make sufficient, case-specific findings of fact and conclusions of law, the appropriate remedy is to vacate the flawed determination and

remand the case for the entry of a compliant order. *See In re Bentley E.*, 703 S.W.3d 298, 303-04 (Tenn. 2024); *see also* Tenn. R. Civ. P. 52.01.

Accordingly, we vacate the trial court's best-interest determination and remand this matter to the trial court for the limited purpose of entering a new order, based upon the evidence already presented, containing findings of fact and conclusions of law regarding the Children's best interests. These findings should be grounded in the record of this proceeding.

V.

For the aforementioned reasons, we affirm in part and vacate in part the judgment of the Juvenile Court for Wilson County. Costs of this appeal are taxed to the Appellee, the Tennessee Department of Child Services, for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE