

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 15, 2026 Session

IN RE PRESTON H.

Appeal from the Chancery Court for Crockett County
No. 11037 Michael Mansfield, Chancellor

No. W2026-00214-COA-R3-PT

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

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and VALERIE L. SMITH, JJ., joined.

W. Lewis Jenkins, Jr., Dyersburg, Tennessee, for the appellant, Lara G.

Vanedda P. Webb, Dyersburg, Tennessee, for the appellees, Michael H., and Brooke H.

OPINION¹

I. FACTS & PROCEDURAL HISTORY

This appeal involves the termination of the parental rights of Lara G. (“Mother”) to her son, Preston H. Preston was born in January 2018. He spent the first four years of his life in Mother’s custody. Mother was married at the time of Preston’s birth, and her husband was listed as Preston’s father on his birth certificate. However, Mother and her husband were “not together” at the time of Preston’s conception and later divorced. Mother acknowledged at the time of Preston’s birth that Michael H. (“Father”) was Preston’s

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

biological father. Father took no steps to officially establish his paternity of Preston at this point, but he consistently visited him at Mother's home. Eventually, Preston began to go to Father's home for visits and spent more time in his care as he aged. On June 7, 2022, when Preston was four, Father filed a petition for emergency custody in the Dyer County Juvenile Court.² The petition stated that Father "was told by someone close with [Mother] that she [was] using meth" and detailed several concerning incidents Father had observed. The court entered an *ex parte* order granting Father custody the same day.

Subsequently, the juvenile court entered an order requiring both Mother and Father to undergo drug testing. The court later entered a permanent custody order in which it awarded Father full custody of Preston. The order noted that Father underwent a drug screen and tested negative for all substances. However, Mother failed to provide the court with the results of a drug screen. Nevertheless, the order granted Mother one hour of supervised visitation to be exercised at her request every other weekend.

On March 21, 2024, Mother's father ("Grandfather") and mother ("Grandmother") filed a petition for grandparent visitation rights in the Dyer County Juvenile Court. *See* Tenn. Code Ann. § 36-6-306. Meanwhile, Father and his wife ("Stepmother") filed a petition for the termination of Mother's parental rights and for adoption in the Crockett County Chancery Court on May 30, 2024.³ The petition alleged the following grounds for termination of Mother's parental rights existed: (1) abandonment by failure to visit and (2) abandonment by failure to support. The petition also alleged that the termination of Mother's parental rights would be in Preston's best interest. Additionally, the petition sought "an [o]rder allowing [Stepmother] to adopt [Preston]" if Mother's rights were terminated. Subsequently, the parties agreed to consolidate the grandparent visitation and termination proceedings in the chancery court. The juvenile court entered an order transferring the grandparent visitation matter to the chancery court on September 9, 2024.

Shortly thereafter, the chancery court appointed a guardian ad litem to represent Preston's interests throughout the proceedings. The chancery court also entered an order requiring Mother to undergo a drug screen. It appears that Mother never submitted the results of a drug screen to the chancery court. A two-day trial was held on both petitions in September 2025.

Grandmother was the first witness to testify. She explained that she and Grandfather helped care for Preston during the early stages of his life. Grandmother stated that she and Grandfather were "very close" to Preston and Mother during the first six

² Father also sought to establish his paternity of Preston in this petition and named Mother and her former husband as respondents. Mother's former husband did not contest the petition and acknowledged that Father had acted as Preston's father since his birth. Father provided DNA test results that demonstrated a "more than 99.99% probability that he" was Preston's biological father. Ultimately, the juvenile court entered an order establishing Father as Preston's biological and legal father.

³ Father and Stepmother began dating shortly after Preston's birth and were married in May 2019.

months of his life. She stated that, during this time, Father did not “help” much with Preston. She acknowledged that he visited Preston and provided gifts and diapers. However, she stated that he did not have overnight visitation during the first six months of Preston’s life. Grandmother noted that, after Father married Stepmother, they “started getting [Preston] more regularly[.]”

Grandmother explained that Mother has five other children ranging in age from 18 years old to 4 years old. However, Mother did not have custody of any of the children at the time of trial. Grandmother testified that she and Grandfather had custody of the oldest child until he turned 18 years old. At the time of trial, they had custody of Mother’s two youngest children. The two remaining children lived with their respective fathers. She stated that Preston was very close to his maternal half-siblings, and they each loved one another. However, she and Grandfather had seen Preston far less often since Father obtained permanent custody.

Grandmother also discussed her relationship with Mother at the time of trial. She stated that Mother was not “welcome in [her] home.” She explained that Mother had last been in her home the preceding May. After Mother left, Grandmother noticed certain items were missing, and she “reported them as stolen[.]” Grandmother testified that Mother was incarcerated at the time of trial based on the reported theft. Grandmother noted that Mother had previously lived in a home provided by her parents “free of charge.” Mother had also been permitted to reside in Grandmother and Grandfather’s home “sometimes” but was no longer welcome as Grandmother was “not ever going to put the children in danger.”

Father was the next witness to testify. He explained that he and Mother had never been married. He noted that Mother had been sober at the time of Preston’s birth. He testified that after Preston was born, he visited Mother’s home “on her terms, and anytime that she said it was okay for [him] to [go] over and see [Preston].” He began dating Stepmother a few months after Preston was born and quickly moved into her home. Father testified that he then began to take Preston to this home for visitation approximately “every other weekend[.]” Over the ensuing years, while Preston remained primarily in Mother’s custody, Father began caring for him more frequently. He testified that he filed the petition for emergency custody in 2022 because he was concerned that Mother “was dealing in drugs.” However, he attempted to facilitate visitation with Mother and the grandparents while he had temporary custody.

Father noted that the permanent custody order permitted Mother an hour of supervised visitation every other weekend upon her request. He testified that Mother only requested one such visit in 2023 “around Easter.” He had also taken Preston to the funeral visitations for Mother’s grandparents who both died after the entry of the permanent custody order. Father testified that Mother had not had any contact with Preston during the four months immediately preceding the filing of the termination petition. He also stated that Mother had not paid child support since he obtained custody of Preston. Father

acknowledged that he did not pay child support while Preston was in Mother's custody but maintained that he provided items and paid for his daycare. He also acknowledged that he did not take steps to establish his paternity of Preston until he filed the 2022 custody petition.

He explained that Preston enjoys playing baseball and is involved in church activities. He stated that the family also has a drag racing team in which Preston participates. Father is a member of the National Guard and also works as a maintenance technician for the Department of Defense. Stepmother is also employed. Father noted that his parents, Stepmother's parents, and Stepmother's grandmother all live near their home, and Preston visits them often. Likewise, he has extended family members with whom they are close. He has one other son with Stepmother, and he and Preston have a fantastic relationship. Additionally, Preston is comfortable at school and has "always brought home good grades." Conversely, Father testified that some of Preston's physical needs had not been met while he was in Mother's custody. He recalled that when he and Stepmother "got custody of him, [they] took him to the dentist, and his mouth was really bad." Likewise, Father took Preston to the doctor for a physical shortly after he came into their custody, and he "had to have shots."

Stepmother was the next witness to testify. She met Preston when he was a few months old, shortly after she began dating Father. She stated that she and Preston have developed a very close relationship, and he views her as his "security blanket." Likewise, her father and Preston have a close relationship. She also stated that she maintains contact with some of Preston's maternal half-siblings and had spoken to his older sister the week before trial. She agreed that it was important for Preston to maintain relationships with his maternal half-siblings and his maternal grandparents. Stepmother testified that, after the permanent custody order had been entered, she and Father permitted Preston to visit the grandparents. She noted that she invited the grandparents to Preston's birthday party the preceding year. The grandparents attended, and it appears they brought some of Preston's maternal half-siblings as well. Likewise, Stepmother testified that she took Preston to his oldest half-brother's football game, where he spent time with his maternal half-siblings.

However, she testified that Preston becomes uncomfortable when Mother is discussed. She also noted that Mother had not inquired about Preston's housing, education, or safety since he came into Father's custody. Additionally, Mother had never visited her and Father's home. She also stated that she and Father had never "received any child support from [Mother.]" Stepmother testified that Mother contacted her during the summer of 2023 while she was involved in a rehab program. She stated that she scheduled times for Mother to call and speak to Preston. However, Mother only "did [this] for a couple of weeks." Subsequently, "sometime around July . . . she just stopped contacting [them]."

Mother also testified. Mother explained that Preston lived with her during the first four years of his life. During this time, they resided in a home next to the home of her

grandparents, with whom she and Preston were very close. Mother later explained that her grandparents owned the house in which she lived and allowed her to live in it for free. Her other children also lived in the home at this time. She maintained that she cared for her children “in a safe, loving environment.” Mother stated that she owned a “baby boutique” and ran an in-home daycare for many years. However, she acknowledged that, even when these businesses were operating, her parents and grandparents helped to support her financially. She indicated that these businesses closed around the beginning of 2022. Afterward, she relied totally on her grandparents to support her financially.

She claimed that Preston was removed from her custody because her current husband told Father and Stepmother “a bunch of hearsay and rumors, which escalated into them filing the emergency custody [petition].”⁴ After Preston was removed from her custody, Mother’s best friend, grandfather, and grandmother each died between October 2022 and June 2023. Mother testified that the stress of these incidents caused her to have “a mental breakdown.” She has since been diagnosed with “severe depressive disorder and severe anxiety disorder.” Mother testified that she later became homeless. She stated that she remained homeless between December 2023 and June 2024. She claimed that “the things that had happened” left it impossible for her “to hold a job and be productive.” However, she admitted that she also made “some poor choices” and had “substance abuse problems” during this period of time.

Mother acknowledged that her parents retained an attorney for her when the custody action was filed in juvenile court. She also acknowledged that she was ordered to submit the results of a drug screen to the court during those proceedings. She claimed that she did complete the drug screen and was “not sure” why the results were not submitted to the juvenile court. She also stated that she had not seen the results of the drug screen and was “not sure” what substances she would have tested positive for at that time. Mother acknowledged that each of her other children had been placed in the custody of their respective fathers or her parents. She admitted that a concerning “series of events” occurred in her home shortly before the custody proceedings began. The first incident involved her boyfriend at the time who lived in the home. Mother explained that she was called by the police to unlock her home because her boyfriend was hiding in the attic. She complied, and her boyfriend was located and arrested. She acknowledged that her boyfriend had substance abuse issues and a criminal history. The second incident involved another man, whom she claimed to have met shortly before the incident occurred. She claimed that the man stopped by her home to pick up a friend who had visited her, and the police appeared and arrested him while he was on the premises. She was not sure what the man had been specifically charged with but did know that the charges were “drug related.” However, Mother maintained that none of her children were present when either incident occurred. She acknowledged that the children, including Preston, lived in the home at the

⁴ Mother married her current husband approximately six months after Preston was born. She was still married to this husband at the time of trial, but it appears that they had been separated for some time.

same time as her boyfriend and when these incidents occurred. She clarified that they “weren’t home that night[.]” She acknowledged that it was common for people to “come and go” from her home and noted many of the people who did so used drugs.

Mother testified that she attempted to seek help after losing custody of Preston. She said she “tried to complete a rehab and had gone to, maybe, Pathways.” Mother explained that she attended an inpatient rehab program in Nashville but did not complete the program because she “ended up making a bad decision and drinking.” She admitted that she used methamphetamine and alcohol. Mother stated that she consistently used drugs or alcohol aside from “bouts where [she] would [try] to get clean[.]” She acknowledged that she had “not yet” become sober at the time of trial. She attended a few alcoholics anonymous meetings but only while she was enrolled in the inpatient rehab program. She also briefly participated in a “detox” program in California. She did not complete the program. She explained that she left the program because she “thought that [she] could do better on [her] own.” However, she instead “relapsed.” She acknowledged that Grandmother and Grandfather attempted to help her throughout this period of time. She moved into their home after leaving the California detox program but left in May 2025 because they were not “seeing eye to eye.” She explained that the conflict stemmed from her decision to “start[] drinking again and stuff[.]”

Mother acknowledged that she had not attempted to visit Preston since learning the termination petition had been filed. She stated that she had not contacted Father about visitation since the summer of 2023. She stated that her interactions with Father and Preston at her grandfather’s funeral visitation led her to determine “it just was clear that it wasn’t going to get any better.” She claimed that, while Father did bring Preston to the visitation, he did not permit Preston to hug or spend any time alone with her. Additionally, she testified that she did not know the juvenile court awarded her visitation when it entered the permanent custody order. Mother was asked if she had ever “ask[ed] anyone whether [she] had visitation[.]” She responded that she “did not” because her prior attempts at visitation were “always such a hassle,” and the situation “was hopeless.” Mother also stated that she believed her parents would have helped her to contact Preston had she asked. However, she acknowledged that she did not seek their assistance because of her “lifestyle choices.”

Mother invoked her Fifth Amendment privilege when asked why she was incarcerated at the time of trial. She also invoked this privilege when asked what substances she would have tested positive for at the time of trial. She explained that she was no longer speaking to her parents.⁵ Nevertheless, she claimed that she would rely on her parents for transportation upon her release. She acknowledged that she did not have any housing or a source of income. Mother also acknowledged that she had not provided

⁵ Despite the tensions that resulted in Mother not speaking to her parents, Mother, Grandmother, and Grandfather were all represented by the same attorney during the trial.

any independent care for any of her children since 2022.

Preston, who was seven years old at the time of trial, was also permitted to testify. Preston stated that he enjoys school and his favorite class is math. He noted that he refers to Stepmother as “mom.” He stated that his maternal half-siblings “were nice brothers and sisters.” Preston explained that when he gets scared, he goes to Father and Stepmother because they make him feel safe. He also described his Father’s parents and Stepmother’s parents as nice and stated he enjoyed spending time with them as well as cousins who are a similar age to him. However, he claimed that Grandmother and Grandfather were “never nice.” He also stated that he did not want to see them or Mother again. Preston acknowledged that he had seen Grandfather and Grandmother a few times during the preceding year. He stated that they were not mean to him during those encounters. Rather, he claimed that they had been mean “a long time ago.”

The chancery court entered its final order on January 14, 2026. The court noted that counsel for Mother and the grandparents objected to Preston testifying at trial. However, the court admitted the testimony pursuant to the grandparent visitation statute. *See* Tenn. Code Ann. § 36-6-307(3). The court found that Preston had “obviously been told things about [Mother’s] side of the family that he otherwise could not have known.” The court found that his memories regarding his relationships with Grandmother and Grandfather did “not comport with what the remaining evidence” showed about those relationships. Notably, the court found that the evidence demonstrated Grandmother and Grandfather were not “mean” to Preston but were instead “loving” and “doting” grandparents. Accordingly, the court assigned Preston’s testimony little weight.

The chancery court determined that the grounds of abandonment by failure to visit and abandonment by failure to support had been proven by clear and convincing evidence. The court noted that, while Mother had not raised the affirmative defense of willfulness in her pleadings, the issue had been tried by consent. Nevertheless, the court found that both Mother’s failure to visit and failure to support Preston were willful. It also held that the termination of Mother’s parental rights was in Preston’s best interest. Additionally, the court found that Grandmother and Grandfather “failed to carry their burden” to establish they were “entitled to court-ordered visitation” pursuant to Tennessee Code Annotated section 36-6-606. Mother filed this appeal regarding the termination of her parental rights. Grandmother and Grandfather did not appeal the court’s ruling regarding their petition for visitation rights.⁶

⁶ We note the following, however:

Except for proceedings concerning allegations of delinquency, unruliness, or truancy of the child under title 37, any proceedings that may be pending seeking the custody or guardianship of the child or visitation with the child who is in the physical custody of the petitioners on the date the petition is filed, or where the petitioners meet the requirement of § 36-1-111(d)(6), shall be suspended pending the court’s orders in the adoption

II. ISSUES PRESENTED

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

1. Whether the chancery court erred when it determined that grounds for termination were proven by clear and convincing evidence and that Mother failed to establish the defense of lack of willfulness.
2. Whether the chancery court erred when it determined that the termination of Mother's parental rights was in Preston's best interest.

In addition to answering Mother's issues, the petitioners present the following issue on appeal:

1. Whether the petitioners are entitled to attorney's fees on appeal for defending against an appeal that is frivolous.

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

III. STANDARDS APPLICABLE TO TERMINATION PROCEEDINGS

“A parent's right to the care and custody of [his or] her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *In re Neveah M.*, 614 S.W.3d 659, 674 (Tenn. 2020) (quoting *In re Carrington H.*, 483 S.W.3d 507, 521 (Tenn. 2016)). “Parental rights have been described as ‘far more precious than any property right.’” *Id.* (quoting *In re Carrington H.*, 483 S.W.3d at 522). “No civil action carries with it graver consequences than a petition to sever family ties irretrievably and forever.” *In re Kaliyah S.*, 455 S.W.3d 533, 556 (Tenn. 2015). Nevertheless, parental rights are not absolute. *In re Carrington H.*, 483 S.W.3d at 522.

proceeding, and jurisdiction of all other pending matters concerning the child and proceedings concerning establishment of the paternity of the child shall be transferred to and assumed by the adoption court; provided, that until the adoption court enters any orders affecting the child's custody or guardianship as permitted by this part, all prior parental or guardian authority, prior court orders regarding custody or guardianship, or statutory authority concerning the child's status shall remain in effect. *Actions suspended by this section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child, even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.*

Tenn. Code Ann. § 36-1-116(f)(2) (*emphasis added*).

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

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

IV. DISCUSSION

A. Grounds for Termination

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

- (i)(a) If the child is four (4) years of age or more, for a period of four (4) consecutive months immediately preceding the filing of a proceeding,

pleading, petition, or amended or supplemental petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child;

Tenn. Code Ann. § 36-1-102(1)(A)(i)(a) (2023).^{7, 8} The petitioners alleged abandonment by both failure to visit and failure to support pursuant to this definition. As the petition was filed on May 30, 2024, the relevant four-month period ran from January 29, 2024, until May 29, 2024.⁹ As noted above, while Mother did not raise the defense of lack of willfulness in her answer, the chancery court determined that the defense was tried by consent. The petitioners do not challenge that determination on appeal. This defense is set forth in Tennessee Code Annotated section 36-1-102(1)(I) and, at the time the petition was filed, provided:

(I) For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure;

Tenn. Code Ann. § 36-1-102(1)(I) (2023). This Court has previously explained “willfulness” in regard to both failure to visit and failure to support as follows: “[f]ailure to visit or support a child is ‘willful’ when a person is aware of his or her duty to visit or support, has the capacity to do so, makes no attempt to do so, and has no justifiable excuse for not doing so.” *In re Audrey S.*, 182 S.W.3d at 864. With these principles in mind, we address both definitions of abandonment in turn.

First, we consider the chancery court's ruling regarding abandonment by failure to

⁷ Throughout this opinion, we utilize the versions of the statutes in effect when the petition was filed on May 30, 2024.

⁸ It appears that the chancery court applied an older version of the statute when analyzing this ground for termination. *See* Tenn. Code Ann. § 36-1-102(1)(A)(i)(a) (2022). However, the differences in these versions of the statute do not affect the underlying analysis in this instance because Preston was more than four years old at the time the termination petition was filed. Accordingly, this error was harmless. *See In re Bentley E.*, 703 S.W.3d 298, 301 (Tenn. 2024).

⁹ The chancery court assessed a four-month period ranging from January 30, 2024, through May 30, 2024. This range included the date on which the termination petition was filed, rather than the four months immediately preceding the filing of the petition. However, this error was harmless as nothing in the record indicates Mother attempted to visit or support Preston on January 29, 2024, the only day omitted from the chancery court's assessment.

visit. In addition to the definition of abandonment set forth above, the statute in effect at the time provided:

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

Tenn. Code Ann. § 36-1-102(1)(E) (2023). Mother does not dispute that she failed to visit Preston during the relevant time period. At trial, Mother stated that the last time she requested visitation had been sometime during the summer of 2023, well before the relevant statutory period began on January 29, 2024. Mother maintained that she did not know the juvenile court awarded her visitation. When asked whether she inquired about visitation, she stated that she did not do so because it was “always such a hassle,” and she viewed the situation as “hopeless.” However, Mother claims that her failure to visit was not willful. She claims that a “serious mental and physical setback” as well as “homeless[ness] and destitut[ion]” rendered her failure to visit not willful. The chancery court determined that Mother’s failure to visit was willful. We agree.

Mother essentially argues that her mental health issues, substance abuse issues, and unemployment justified her failure to visit Preston. However, Mother did not put forth evidence at trial demonstrating that these issues prevented her from visiting Preston. She did not testify that her mental health issues left her without capacity or otherwise prevented her from understanding how to initiate visitation. *See In re S.Y.*, 121 S.W.3d 358, 369 (Tenn. Ct. App. 2003) (determining a mother’s claim that her mental health “prevented her from knowing how to contact” the Department of Children’s Services in order to arrange visitation was “belied by her testimony” indicating she had previously contacted “DCS to arrange” two visits). Further, she did not testify that she was unable to visit because she was receiving treatment or was acting under the advice of a health care provider. Rather, she testified that she did not even inquire about visitation because of the “hassle,” and her own opinion that the situation was “hopeless.” Likewise, Mother did not submit evidence establishing any adverse effects her mental health had on her ability to function. Instead, she acknowledged that her “poor choices” and “substance abuse problems” resulted in her homelessness and inability to function. Mother simply failed to explain what barrier her mental health issues created that prevented her from visiting Preston during the relevant statutory time period. *See In re Audrey S.*, 182 S.W.3d at 864.

Likewise, Mother’s claimed ignorance of her visitation rights does not render her failure to visit not willful. *See In re Jaylah W.*, 486 S.W.3d 537, 551 (Tenn. Ct. App. 2015) (holding a mother’s “alleged belief that a No Contact Order unequivocally prohibited visitation” did not support her claim that her failure to visit her child was not willful where the order at issue was supplanted by subsequent orders that “provided a mechanism for

[her] to regain visitation”); *In re Kiara C.*, No. E2013-02066-COA-R3-PT, 2014 WL 2993845, at *6 (Tenn. Ct. App. June 30, 2014) (holding a father’s claim that he did not know an order of protection entered against him had expired did not render his failure to visit his child not willful because he knew what court entered the order and “certainly could have accessed that court record to discover the expiration date”). Mother participated in the juvenile court custody proceedings and certainly had enough information available to enable her to inquire about her visitation rights. We emphasize that Mother explained she did not make any attempts to “ask anyone whether [she] had visitation” because of the “hassle” and her opinion that the situation was “hopeless.” Additionally, Mother acknowledged that her parents would have helped her to contact Preston if she had asked. She stated that her “lifestyle choices” prevented her from asking for their help. We find those same choices to abuse drugs and alcohol resulted in her failing to visit Preston.

Accordingly, we agree with the chancery court that Mother did not meet her burden of establishing a lack of willfulness defense. Mother has not identified a justifiable excuse for failing to visit Preston or demonstrated she put forth any significant effort to do so that was obstructed. *See In re Audrey S.*, 182 S.W.3d at 864.

Turning now to abandonment by failure to support, the statute, as written at the time, provided that:

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

Tenn. Code Ann. § 36-1-102(1)(D) (2023). Additionally, “[o]ur statutes provide that ‘[e]very parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent’s legal obligation to support such parent’s child or children.’” *In re Bentley E.*, 703 S.W.3d at 303 (quoting Tenn. Code Ann. § 36-1-102(1)(H)).

The chancery court determined that this definition of abandonment was proven by clear and convincing evidence. This is supported by the testimony of Father and Stepmother who both stated that Mother had never paid child support. Mother does not dispute that she failed to support Preston during the relevant four-month period. Rather, she again claims that her failure to do so was not willful. *See* Tenn. Code Ann. § 36-1-102(1)(I). To support this argument, she claims that, during the relevant four-month period, she lacked transportation and “was unable to work and did not have a job” due to her “mental state and living situation[.]”

We have previously determined that a parent's failure to pay child support was not willful when the parent lost her job and was unable to find work due to a medical diagnosis. *See In re Bryson C.*, No. M2015-02428-COA-R3-PT, 2016 WL 3952000, at *23 (Tenn. Ct. App. July 18, 2016) (holding under a previous version of the statute, which required a petitioner to prove a parent's failure to support was willful, that a mother who lost her job due to a diagnosis of Hepatitis C and testified she had been unable to find work since receiving her diagnosis, did not willfully fail to support her child). However, Mother put forth no evidence demonstrating that her mental health issues rendered her unable to support Preston. Importantly, she did not discuss any attempts to procure employment that were thwarted by her mental health issues. Similarly, she did not discuss any attempts to procure employment that were obstructed by her lack of housing or lack of transportation. Notably, Mother testified that her boutique and daycare businesses both closed prior to the deaths of her grandparents and best friend. Accordingly, the loss of this employment was not caused by her purported "serious mental and physical setback" or her homelessness, as she testified those conditions did not arise until after her grandmother's death in the summer of 2023. The chancery court determined the only "physical or mental limitations" that prevented Mother from working were her "alcoholism and illegal drug addictions[.]" We agree. Mother has simply failed to explain how her issues prevented her from obtaining employment or otherwise excused her from paying reasonable child support. *In re Audrey S.*, 182 S.W.3d at 864. She failed to demonstrate that she made any effort to do so. Accordingly, we affirm the chancery court's determination that Mother failed to establish the defense of lack of willfulness as to this definition of abandonment.

We have determined that clear and convincing evidence is contained in the record demonstrating Mother failed to visit and support Preston during the four months immediately preceding the filing of the termination petition. Mother has failed to establish that her failure to visit or support Preston was not willful. Therefore, we affirm the chancery court's determination that grounds for termination were proven against Mother by clear and convincing evidence.

B. Best Interest of the Child

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

(i)(1) In determining whether termination of parental . . . rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court. Those factors may include, but are not limited to, the following:

(A) The effect a termination of parental rights will have on the child's critical

need for stability and continuity of placement throughout the child's minority;

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

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

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

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

(F) Whether the child is fearful of living in the parent's home;

(G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;

(H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;

(I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

(K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;

(L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;

(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;

(N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;

(O) Whether the parent has ever provided safe and stable care for the child or any other child;

(P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;

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

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

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

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

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

First, we consider those interrelated factors concerning the child's need for stability and continuity of placement, the effect the potential change of caretakers and physical environment would have on the child, and his parental attachments and emotionally significant relationships with persons other than parents and caregivers. Tenn. Code Ann. § 36-1-113(i)(1)(A), (B), (H), and (I). Preston has experienced stability while residing with Father and Stepmother. He has strong relationships with Father, Stepmother, and his half-brother. Preston enjoys playing baseball and participates in his family's drag racing team.

Likewise, he is involved in church activities and is performing well at school. Stepmother intends to adopt Preston if Mother's parental rights are terminated. Further, Preston has enjoyed bonded relationships with Father's parents, Stepmother's parents, and a litany of other relatives, including cousins who are a similar age to him.

One of Mother's primary contentions on appeal is that the termination of her parental rights is not in Preston's best interest because it would sever his relationships with his maternal half-siblings. This argument is without merit. Stepmother acknowledged that it is important for Preston to maintain healthy relationships with his maternal half-siblings and his maternal grandparents. She testified that she had spoken to one of Preston's maternal half-siblings the week preceding the trial. Likewise, Grandmother and Grandfather were invited to and attended Preston's birthday party the year preceding the trial. It appears that some of Preston's maternal half-siblings also attended this birthday party. Additionally, Preston was permitted to attend his oldest half-brother's football game, where he saw several of his maternal half-siblings. Importantly, at the time of the trial, Mother did not have custody of any of Preston's half-siblings and was not welcome in Grandmother and Grandfather's home. Accordingly, the evidence reflects that the termination of Mother's parental rights would have no effect on Preston's relationships with his other maternal relatives because Mother has separated herself from those relationships through her drug and alcohol abuse.

Similarly, Mother points to the chancery court's finding that Preston's testimony demonstrated he had been "told things" about his interactions with his grandparents that did not "comport" with the remaining evidence. She claims that this demonstrates Father and Stepmother "do not have [Preston's] best interest at heart[.]" Notably, despite this finding, the chancery court determined that Father and Stepmother brought the petition with the intention "to protect what they believe[d] [were] [Preston's] best interests." We agree. This argument simply does not demonstrate that termination of Mother's parental rights would not be in Preston's best interest. At the time of trial, Mother had not visited or spoken to Preston since the summer of 2023 when she called consistently "for a couple of weeks" and then stopped. While it appears that a parental attachment existed between Mother and Preston at one point, Mother has destroyed that attachment through her drug and alcohol abuse. Therefore, factors (A), (B), (H), and (I) weigh in favor of termination.

Next, we consider the interrelated factors concerning Preston's interest in stable and secure housing and parenting. Tenn. Code Ann. § 36-1-113(i)(1)(C), (D), (E), (F), (G), and (O). Mother's testimony indicates that she was last employed sometime around the beginning of 2022, at which point her boutique and in-home daycare businesses closed. Mother acknowledged that, even when she ran the boutique and in-home daycare, she relied on her parents and grandparents to support her financially. Mother submitted no evidence indicating that she would be able to provide for Preston financially if he was placed in her custody. Rather, Mother was incarcerated at the time of trial and did not testify regarding her plans to produce income upon release. Additionally, Mother testified

that she had not cared for any of her children since 2022. Notably, she acknowledged that she permitted a boyfriend with substance abuse problems to live in her home while she had custody of Preston and the other children. This boyfriend was arrested at her home. Additionally, Mother failed to make any child support payments after Preston was removed from her custody.¹⁰ Conversely, Father and Stepmother have provided a stable environment for Preston. Father and Stepmother both have stable employment and, by all accounts, have provided for Preston financially since obtaining custody of him. Additionally, both have strong parental attachments with Preston, who refers to Stepmother as “mom.” Conversely, there is simply no evidence contained in the record that demonstrates Mother would be likely to cultivate a healthy relationship with Preston in the future. Therefore, we find that factors (C), (D), (E), and (O) weigh in favor of termination. Factors (F) and (G) also pertain to Preston’s interest in a stable home. However, while Preston expressed during his testimony that he does not desire to see Mother, the evidence did not establish that he feared her or feared living in her home. Accordingly, these factors are neutral in this case.

Factor (K) concerns the parent’s proclivity to participate in or use available programs, services, or resources to assist in making a lasting adjustment to his or her circumstances, conduct, or conditions. Mother testified that she participated in an inpatient rehab program and a “detox” program in attempts to become sober. However, she did not complete those programs. She failed to complete the rehab program because she “ended up making a bad decision and drinking.” Similarly, she left the “detox” program because she “thought that [she] could do better on [her] own.” When asked what substances she would have tested positive for at the time of the trial, Mother invoked her Fifth Amendment privileges and did not answer. Mother was incarcerated at the time of trial based on allegations that she had stolen items from Grandmother and Grandfather. She acknowledged that she left Grandmother and Grandfather’s home because she was continuing to “deal[] with substance abuse problems.” Mother has clearly failed to take proper advantage of rehabilitation programs and the generosity of her family members. Therefore, we find that this factor weighs heavily in favor of termination.

Factor (L) concerns the reasonable efforts of the Department of Children’s Services to assist the parent. The Department of Children’s Services has never been involved in these proceedings. Therefore, factor (L) is neutral in this case. Factor (N) considers whether the parent or a person residing with the parent has ever exhibited brutality, physical, sexual, emotional, or psychological abuse toward others. No evidence was

¹⁰ Mother argues that “the overall clear and convincing picture was affected by the fact that [Father] paid no support and made no effort to legitimate [Preston] during the first four years of the child’s life.” However, this argument does not focus on her conduct as a parent or whether it is in Preston’s best interest that her parental rights be terminated. Notably, while Father acknowledged that he did not pay child support at the beginning of Preston’s life, he did provide items such as diapers and paid for Preston’s daycare. Further, he clearly participated in Preston’s life and provided care for him consistently throughout the time Preston was in Mother’s custody. This argument is plainly without merit.

entered demonstrating that Mother perpetrated any physical or sexual abuse against others. Accordingly, this factor does not weigh in favor of termination.

Regarding factor (S), Mother has made no financial contribution to Preston's support since he was placed in Father's custody. As explained above, while Mother claimed that she did not willfully fail to support Preston, we agree with the chancery court that she did not identify an excuse justifying her failure to do so. Therefore, this factor weighs heavily in favor of termination.

Finally, we consider the interrelated factors concerning the parent's adjustment of circumstances detrimental to the environment, health, and psychosis of the child. Tenn. Code Ann. § 36-1-113(i)(1)(J), (M), (P), (Q), (R) and (T). Mother has not taken any substantial steps toward repairing the circumstances preventing her from caring for Preston. She was incarcerated at the time of trial based on allegations that she stole items from Grandmother and Grandfather. Likewise, she has not completed any rehabilitation programs or otherwise demonstrated that she has properly addressed her substance abuse issues. Mother did not explain her plan for employment upon release from jail. Mother has not inquired about Preston's educational progress, housing needs, or safety needs since he was placed in Father's custody. Mother has not completed the adjustment of circumstances necessary for Preston to be placed in her custody. Therefore, factors (J), (M), (P), (Q), and (R) weigh in favor of termination. Finally, concerning Mother's emotional maturity, the chancery court determined that this factor weighed in favor of termination because of Mother's "mental state and significant issues with drug and alcohol abuse[.]" We agree. Therefore, factor (T) also weighs in favor of the termination of Mother's parental rights.

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

C. Attorney's Fees

The petitioners claim that Mother's appeal was frivolous and seek an award of reasonable attorney's fees and costs incurred litigating this appeal. Attorney's fees may be awarded when an appeal is frivolous or taken solely for delay. Tenn. Code Ann. § 27-1-122. "A frivolous appeal is one that is 'devoid of merit,' [] or one in which there is little prospect that it can ever succeed." *Indus. Dev. Bd. of City of Tullahoma v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995) (quoting *Combustion Eng'g., Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978)). An appellate court has discretion when determining whether an appeal is frivolous and justifies an award of attorney's fees. *Chiozza v. Chiozza*, 315 S.W.3d 482, 493 (Tenn. Ct. App. 2009). "This discretion is exercised 'sparingly so as not to discourage legitimate appeals.'" *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn.

2017) (quoting *Whalum v. Marshall*, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006)).

We obviously found more than ample evidence to support the chancery court's ruling. However, due to the seriousness of the determination of whether a parent's rights to his or her child should be terminated, "we are loathe to consider an appeal of a trial court's judgment terminating a parent's rights to be frivolous." *In re M.L.D.*, 182 S.W.3d 890, 898 (Tenn. Ct. App. 2005). Given the nature of the proceedings, we will not exercise our discretion to award attorney's fees in this case.

V. CONCLUSION

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

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE