

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs October 4, 2016

IN RE: DILLON E.

**Appeal from the Juvenile Court for Montgomery County
No. 15-JV-1825 Tim Barnes, Judge**

No. M2016-00880-COA-R3-PT – Filed November 15, 2016

This appeal concerns termination of a mother’s parental rights. The Tennessee Department of Children’s Services (“DCS”) filed a petition in the Juvenile Court for Montgomery County (“the Juvenile Court”) seeking to terminate the parental rights of Autumn N. (“Mother”) to her minor child, Dillon E. (“the Child”). The central issue of this parental rights case is Mother’s alleged prescription drug abuse. After a trial, the Juvenile Court found that four grounds were proven against Mother sufficient to terminate her parental rights to the Child, and that termination of her parental rights was in the Child’s best interest.¹ Mother appeals the termination of her parental rights to this Court. DCS argues that the Juvenile Court erred in declining to find one additional ground for termination. We affirm the judgment of the Juvenile Court in its entirety.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which W. NEAL MCBRAYER and BRANDON O. GIBSON, JJ., joined.

Elizabeth D. Rankin, Clarksville, Tennessee, for the appellant, Autumn N.

Herbert H. Slatery, III, Attorney General and Reporter, and, M. Cameron Himes, Assistant Attorney General, for the appellee, the Tennessee Department of Children’s Services.

¹ DCS also petitioned to terminate the Child’s father’s parental rights. Due to an issue regarding notice, the father’s parental rights were not adjudicated, and only Mother’s parental rights are addressed in this appeal.

OPINION

Background

The Child was born to Mother in July 2004. In March 2013, the Child was taken into DCS custody following an incident where Mother, after having taken prescription drugs, was found passed out in a vehicle at a Taco Bell parking lot with the Child as a passenger in the car. Mother was charged with DUI, a charge that later was dismissed. DCS filed a petition for dependency and neglect. The Child subsequently was found to be dependent and neglected. Mother requested that an Aunt care for the Child, but DCS apparently contacted the wrong person, a mistake Mother cites in her argument on appeal. The Child remained with the state. In June 2015, DCS filed a petition seeking to terminate Mother's parental rights to the Child. The case was tried over the course of several days in December 2015, and January and March of 2016.

Mother testified that she visited the Child whenever she was permitted. Mother stated that DCS was difficult to communicate with and, at times, ignored her calls. Mother's visitations with the Child often were marked by problems such as Mother dozed off or her speech was slurred. Mother testified that during the applicable four-month period, she worked at the Sportman's Bar and earned \$150 per week. Mother had attempted to obtain disability income but had been unsuccessful. Mother testified that she gave the Child various gifts including a Lego set worth \$100, clothing, and toys. Mother also made a single child support payment of \$85.64 in November 2014, even though she was required by order to pay \$339 per month. The evidence reflects that earlier Mother paid \$1,075 per month for her prescription medication in Clarksville. Mother later had her prescriptions filled for \$275 per month in Paris, Tennessee. In the relevant four month period, Mother purchased approximately \$2,000 worth of prescription drugs.

Mother's second caseworker, Cotrena Jones, never visited Mother's home unannounced because she did not feel safe around Mother. Nevertheless, certain of DCS's permanency plans reflected that Mother had provided a good home. Mother gave up her housing to go to a rehab center called Renewal House. According to Mother, a DCS caseworker then told her they no longer wanted her to attend that program, and Mother was left without a home. The DCS caseworker contradicted that account, stating instead that Mother was evicted from her home.

Mother suffered from back problems which led to her taking prescription drugs. Mother testified that she completed all of the requirements of her first permanency plan, including having a suitable home, a job, and visiting the Child. Mother attended rehab at Genesis Rehabilitation in Kentucky. Mother, however, stopped

providing pill counts to DCS after a DCS worker allegedly dropped Mother's pills on a bathroom floor. Mother testified:

Q. Were you making your pills available for pill counts?

A. Yes, until they dropped them all over the floor.

Q. Excuse me?

A. Yes, I did, until they dropped them all over the floor and they went everywhere.

Q. Who dropped them all over the floor? Could you explain what happened?

A. She was counting my pills and dropped --

Q. Who is "she"?

A. I'm trying to think of who it was. I've had so many caseworkers. Whoever the caseworker was at this time.

Q. At which time?

A. At the time of this permanency plan.

Q. Of this second permanency plan?

A. I believe so.

Q. Okay. So what did the caseworker at this time allegedly do with your pills?

A. Dropped them.

Q. Okay.

A. They went everywhere.

Q. Okay. Did you recover them? Did you pick them up?

A. As best as I could.

Q. Okay. And from that point --

A. Hopefully nobody else found them, a child or anything. I don't know.

Q. So from that point forward, you never again provided your pills for DCS to --

A. Not really, no. That's the only thing I didn't do.

Q. And why not?

A. Because I was probably missing some. I don't remember at the time if I was missing pills when she dropped them or not.

No DCS worker at trial corroborated that the pill dropping incident ever took place. Mother denied she had a problem with prescription drugs. However, Mother testified that when she does not take her medication, she gets the shakes, hot and cold sweats, and cannot move. DCS workers testified to various excuses Mother made for refusing drug tests: she did not have a ride; she could not walk because of a bad knee; even that a spider bit her.

Angela Brown, a family service worker for DCS, testified:

Q. From the time that this permanency plan – the new permanency plan from August 2014 was created until you transferred the case in January of 2015, what efforts did you make to assist [Mother] to comply with those tasks?

A. For her outpatient to meet the terms of following the recommendations of her release from Genesis. I requested funding for intensive outpatient with Health Connect, and it was approved.

Q. Did [Mother] attend?

A. No.

Q. Was she made aware that you had obtained funding for that?

A. Yes.

Q. Do you have any idea why she didn't attend that?

A. Initially, she was happy to do it, but when we left court one day and I was talking to her about it, she had reservations about why she did not want to do it. To her -- she explained to me that she felt that, you know, she had completed inpatient and she should not be required to do anything else.

Q. And during this time period, did you continue to conduct the random drug screens?

A. Yes, I did try to.

Q. Okay. And I'm sorry if I've already asked this. Was she compliant with drug screens on a regular basis?

A. No.

Q. And what efforts did you make to conduct those drugs -- those drug screens?

A. I called her by phone; I went to the house; I, you know, explained that I could transport her to the office, and she declined that.

Q. While you were -- the process of attempting to conduct these screens and assist [Mother] with the tasks on the permanency plan, did you ever have any incidents of -- with [Mother] that led you to be concerned?

A. Can you explain that a little bit more?

Q. Did you have a good working relationship with [Mother] in the entire time you were the caseworker for this case?

A. No, I did not.

Q. Why do you say you did not?

A. During the second perm plan, the January 17th, 2014 permanency plan, when I attempted to engage [Mother], she was very hostile with me. Maybe it was from February until April time frame, and at one point, she even threatened me when I went out to her house to conduct a drug screen.

Q. When you say she threatened you, what did she do, Ms. Brown --

A. She –

Q. -- or say? I'm sorry.

A. -- pointed a finger at my head and in a motion of a gun when I arrived at her home to do a drug screen.

Q. Did she say anything while she made that gesture?

A. She said, I'm not doing a drug screen, and then she pointed her finger at my head and I took it as a threat.

Q. Do you recall around when that incident happened?

A. I do not recall. It was around the time at the beginning of the January 17th, 2014 perm plan. So it was between February and April.

At one point, a caseworker contacted the police fearing that Mother was driving under the influence after a visit. Althea Bradshaw, a family service worker in the Child's case since April 2015, testified. Bradshaw testified:

Q. So when you say [Mother] had not completed the tasks on that permanency plan, are you referring to that permanency plan from August of 2014?

A. Yes.

Q. And in the entirety of the time you have had this case, Ms. Bradshaw, how many drug screens have you been able to complete of [Mother]?

A. Probably one or two.

Q. Do you recall what the results of those drug screens were?

A. One drug screen was positive for benzos and oxycodone.

Q. Were you provided pills to count that would account for that positive?

A. No.

Q. Did you discuss the positive drug screen with [Mother]?

A. I did, and [Mother] said she had a prescription. I asked her to bring the prescription in, and she did not.

Q. And how many attempts would you say you have made to conduct random drug screens, if you can approximate? If you can't, don't try to guess.

A. I would say between 14 to 16 attempts.

Q. And what efforts did you make to attempt the drug screens?

A. Would you repeat?

Q. Actually, I will strike the question. I had already asked the question.

Did you maintain regular communication with [Mother]?

A. It was difficult for me to maintain contact with [Mother], but I tried telephone contact, I went out to the home, and I sent letters.

Q. Why was it difficult for you to maintain contact with her? What were the barriers?

A. [Mother] wouldn't respond to telephone calls or messages left on her voice mail. When I went to the home, sometimes she is not there or would not answer the door. And when I sent a letter, I got no response.

Q. Were there occasions where you did get ahold of [Mother] and asked her to come in for drug screens?

A. Yes. One -- one occasion I went to the home unannounced, and she was there, and I asked her, you know, I'll transport her back and forth to the Department to get a drug screen and take her back home, and she said she couldn't come, she was working in the yard, she was -- she will come the next day, but she failed to show up that day also.

Mother failed to appear for the last two days of trial. In Mother's last appearance before the Juvenile Court, she was instructed to take a drug test right then in order to have visitation with the Child. Mother exclaimed to the Juvenile Court: "I ain't doing a drug screen right now; no, I'm not. I ain't going to do [expletive]."

The Juvenile Court terminated Mother's parental rights to the Child pursuant to its April 2016 final judgment. The Juvenile Court found and held in its detailed final order as follows, in relevant part:

On March 29, 2013, the Department of Children's Services filed a petition for dependency and neglect and emergency temporary custody of the child, Dillon [], in the Montgomery County Juvenile Court. This Court signed a protective custody order placing the child in the Department's custody on that same day. An adjudicatory hearing was held on July 23, 2013, and the child was found to be a dependent and neglected child. [Mother] did not appeal said order.

At the time Dillon was removed from [Mother's] care in March of 2013, she had been found passed out and foaming at the mouth in a local Taco Bell parking lot. At the time, Dillon was a passenger in the vehicle. [Mother] was charged with driving under the influence and child abuse/neglect. These charges were later dismissed.

Cotrena Bonds Jones was one of Dillon's first Family Service Workers (FSW). She was assigned the family's case for case management in May of 2013 and remained the FSW until October of 2013, when she transferred to another DCS office and another position. Ms. Jones testified that when she received the case, the initial permanency plan, dated April 10, 2013, had already been created. The initial permanency plan required that [Mother] have an intake at a Nashville alcohol and drug treatment center (Meharry) and follow the recommendations of the assessment, attend visits with Dillon regularly and refrain for being under the influence of

alcohol or drugs for the visits, provide copies of her prescriptions, submit to random drug screens, allow DCS to conduct a walkthrough of her home, and sign a release of information for DCS, to obtain information regarding her progress with the tasks. The plan was ratified by the Montgomery County Juvenile Court on September 23, 2013, and at that time this Court found that the responsibilities outlined in the plan were reasonably related to the achievement of the goal, related to remedying the conditions which necessitated foster care and were in the best interest of the child. From the time Ms. Jones received the case until July 29, 2013, Ms. Jones coordinated an alcohol and drug assessment at Bradford, supervised visitation between Dillon and [Mother], completed a walkthrough of [Mother's] residence and made repeated attempts to conduct random drug screens. The alcohol and drug assessment from Bradford recommended that [Mother] complete inpatient treatment, yet Ms. Jones explained that at the time, [Mother] was refusing to attend an inpatient drug rehabilitation program, despite the recommendation. In addition to the services coordinated and paid for by DCS in the first four months after Dillon was placed in foster care, between August and October of 2013, Ms. Jones coordinated and transported [Mother] to an inpatient drug and alcohol rehabilitation program at Meharry twice, continued to provide supervised visitation by obtaining therapeutic visitation, and continued to attempt random drug screens and pill counts, which she deemed necessary since [Mother] continued to test positive for prescription medications on the few drug screens she was able to complete. [Mother] was difficult to contact for the random drug screens and refused to bring her pills in to be counted as requested, making it difficult to ascertain whether or not she was taking her medications as prescribed. [Mother's] failure to maintain contact with DCS and complete regular, random drug screens and pill counts also led to her having few visits with Dillon.

Angela Brown was assigned as [Mother's] FSW in October of 2013. She continued to make efforts to assist [Mother] to comply with the tasks on the April 10, 2013, permanency plan until the plan was revised in January of 2014. Between October of 2013 and January of 2014, Ms. Brown assisted [Mother] to complete an additional drug and alcohol assessment at Bradford, since [Mother] continued to refuse to complete inpatient treatment, and she supervised visits between Dillon and [Mother].

The permanency plan was revised on January 17, 2014. The plan was ratified by this Court on March 20, 2014 and at that time the Court found that the responsibilities outlined in the plans were reasonably related to the achievement of the goal, related to remedying the conditions which necessitated foster care and were in the best interest of the child. Ms. Brown was the FSW at the time this plan was modified and again for this

permanency plan the primary tasks were related to addressing [Mother's] substance abuse problem. In addition, this plan required [Mother] to make her pills available for pill counts, complete a new alcohol and drug assessment and follow the recommendations, follow the recommendations of a clinical assessment, provide a copy of her lease, have legal means of supporting Dillon, maintain stable housing, attend inpatient treatment and follow any aftercare recommendations.

Ms. Brown made efforts to assist [Mother] with the permanency plan tasks of this plan until the plan was revised in August of 2014. From January until August of 2014, Ms. Brown made numerous attempts to get [Mother] into three different inpatient programs to address her substance abuse, she supervised visits between Dillon and [Mother], coordinated to include a mental health provider at a Child and Family Team Meeting (CFTM) to provide information to [Mother] to complete her clinical assessment, provided a bus pass to allow [Mother] to seek employment and attend visits and appointments, referred [Mother] to Goodwill Industries for employment, personally obtained a copy of her lease and spoke to the landlord to assist [Mother] to maintain her housing, offered financial assistance to [Mother] to prevent her from being evicted and made regular attempts to complete random drug screens and pill counts.

As she did with Ms. Jones, [Mother] again made consistent efforts to avoid the random drug screens and pill counts. She did not complete treatment before the permanency plan was revised, was evicted from her home in July of 2014, did not complete the recommendations of her clinical assessment and provided no proof of income.

Ms. Brown was the case manager when the permanency plan was again revised in August of 2014 and ratified on October 30, 2014. At the time this plan was made, [Mother] had finally entered into an inpatient treatment program at Genesis, over a year after Dillon came into foster care. [Mother] participated in the creation of this plan by phone, and the majority of the tasks from the prior permanency plan remained on this plan. This plan also required [Mother] to complete the recommendations of her inpatient treatment program and the relapse prevention program, attend AA/NA meetings, continue random drug screens, and complete a new clinical assessment with a domestic violence component and follow the recommendations. [Mother] completed the program at Genesis, yet she continued to fail to participate in regular drug screens, and appeared to be under the influence at visits with Dillon. Ms. Brown continued to assist [Mother] until January of 2015, when she transferred to another office. At the time the case was transferred, [Mother] had not completed the aftercare recommendations from her inpatient program, did not provide proof she

attended AA/NA meetings, continued to make random drug screens and pill counts difficult, did not complete the new clinical assessment, failed to make her new home available for inspection, and at times, continued to appear intoxicated during visits with Dillon. Ms. Brown also described [Mother's] visitation with Dillon as very inconsistent, having long periods of time where she would not visit him at all.

Althea Bradshaw is Dillon's current FSW. She testified that [Mother] had only one visit with Dillon in the four month period immediately preceding the filing of the petition in this matter. Ms. Bradshaw has attempted to assist [Mother] to comply with the tasks on the August 2014 permanency plan by coordinating multiple appointments for an intake for a new alcohol and drug assessment at Meharry, providing [Mother] forms to have completed when she attends AA/NA meetings, and continuing in vain to attempt to conduct random drug screens and pill counts. [Mother] had not, at the time of the hearings in this matter, satisfactorily addressed her substance abuse issues, she was unemployed at the date of the first hearing and provided no proof she had employment at any of the subsequent hearing dates, lacked housing as of the first hearing date in this matter and was believed to be residing out of state at the conclusion of this matter, in addition to not completing a number of the other permanency plan tasks. There is also an outstanding warrant for [Mother's] arrest in Montgomery County.

[Mother] did not pay any support or provide any of Dillon's basic needs directly to DCS or the foster parents. [Mother] did make one child support payment in October of 2014 for approximately \$85, despite there being an existing child support order that required [Mother] to pay over \$300 a month. In addition to this one support payment, [Mother] provided gifts for Dillon for his birthdays and once for Christmas. Other than some snacks or meals during visits, [Mother] provided nothing else for Dillon in the three years he has remained in foster care, with the exception of some gifts and other items provided at the January 19, 2016 hearing. [Mother] signed the criteria and procedures for termination of parental rights form on at least two occasions and admitted she was aware of the child support order entered against her in November of 2014.

Michele [G.] is Dillon's current foster mother. She has been caring for Dillon since July of 2013. Ms. [G.] has supervised all phone calls between Dillon and his mother since July of 2013. [Mother] was often hard to understand during these calls and Ms. [G.] frequently had to try to get her attention. [Mother's] words were often slurred and she gave the impression of being under the influence. Dillon did not enjoy these calls and would often express his desire not to have to make the calls any longer.

Ms. [G.] also prepares Dillon for all of his visits, and categorized the visitation as inconsistent. She recalls [Mother] had no visits with Dillon at all from November of 2014 until May of 2015.

Dillon is thriving in the foster home and has become a member of the family. Ms. [G.] provides for all of Dillon's needs and loves him as one of her own. She is capable of continuing to provide him with a loving, stable home and intends to adopt him if he were to be available for adoption.

B. Conclusions of Law: Under Tennessee law, termination of parental rights must be based on a finding by the court by clear and convincing evidence that (1) the grounds for termination of parental rights have been established; and (2) termination of the parent's or guardian's rights is in the best interest of the child. Tenn. Code Ann. §36-1-113(c).

This Court finds that it has jurisdiction pursuant to Tenn. Code Ann. §36-1-113(a) and Tenn. Code Ann. §36-6-201, and that this is the proper venue for this action pursuant to Tenn. Code Ann. §36-1-113(d)(4). That all necessary parties have been joined in this matter and have received proper notice of the proceedings, that the putative father registry was consulted with as required by Tenn. Code Ann. §36-1-113(d)(3)(A)(i) and there are no others entitled to notice in this action.

Having found that DCS met all of the above statutory requirements, the Court concludes that there is clear and convincing evidence to support grounds for termination of [Mother's] parental rights under Tenn. Code Ann. §36-1-113(g). In addition, the Court concludes, based on clear and convincing evidence that termination of [Mother's] parental rights is in the child's best interest. Each ground is discussed in turn.

1. Abandonment by Mother for failure to visit or support

Under Tenn. Code Ann. §36-1-113(g)(1), the Court may terminate a parents parental rights when she has committed abandonment through a willful failure to visit with her child on more than a token basis or a willful failure to support her child or make reasonable payments towards the support of her child for a period of four consecutive months immediately preceding the filing of a petition to terminate the parent's parental rights.

In this case, the Court finds that there is clear and convincing evidence that [Mother] has abandoned the child by failing to support him. From February 19 through June 19, 2015, the four month period immediately preceding the filing of the petition in this matter, [Mother] paid no support for Dillon. [Mother] was employed at various periods of time, including her employment at the Sportsman Bar and Grill. [Mother] herself testified that she earned \$275 a week and also worked cleaning homes making \$150 a week. In the entire time Dillon was in foster care,

[Mother] made one payment of \$85 for her child's care, all the while she testified she paid between \$1075 and \$275 a month for prescription medications. None of the money she saved when she was able to find a pharmacy to provide her medications at a significant savings went for the care of her son. [Mother] was aware of the child support order and signed the criteria and procedures for termination of parental rights form that advised her of her duty to support the child.

[Mother's] limited gifts to the child are nothing more than token support, and insufficient to overcome the ground of abandonment by willful failure to support the child. Therefore, the Court finds by clear and convincing evidence that the mother failed to pay or paid only token support for the child during the statutory period, and therefore, termination of [Mother's] parental rights based on this ground is granted.

Regarding the ground of willful failure to visit, there has been some visitation between Dillon and [Mother] and, therefore, this Court does not find she abandoned the child by her willful failure to visit. The quality of the visits was abysmal in many instances and often harmful and hurtful to the child; however, termination of [Mother's] parental rights is not granted based on her willful failure to visit.

2. Abandonment by Mother by failure to provide a suitable home, despite DCS efforts

Tenn. Code Ann. §36-1-102 defines abandonment of a child in (ii) and provides for termination of parental rights when, despite reasonable efforts by DCS to assist a parent in establishing a suitable home for the child, the parent has made no reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the child to such a degree that it appears unlikely the parent will be able to provide a suitable home for the child at an early date.

In this matter, the child has been removed from [Mother's] care pursuant to a dependency and neglect finding by this Court and placed in DCS custody, which attempted to assist the child's mother for over 35 months. This Court found that DCS made reasonable efforts to avoid removal of the child, and this Court finds that DCS did make reasonable efforts to assist [Mother] to regain custody of the child. In the first four months after the child was placed in foster care, DCS made reasonable efforts by referring [Mother] to Bradford for an alcohol and drug assessment, attempting to complete random drug screens and pill counts of [Mother], despite her lack of cooperation in this respect, and supervising visits between Dillon and [Mother]. The services provided to [Mother] subsequent to the four month period after the child was placed in foster care include multiple attempts to ensure [Mother] participated in an inpatient

treatment program, efforts to complete random drug screens and pill counts, efforts to assist [Mother] to obtain mental health treatment, providing her a bus pass to seek employment and attend appointments and drug screens, and supervising visitation, including providing therapeutic visitation.

The Court also finds that, notwithstanding the DCS efforts to assist [Mother], she has not proven that she has made reasonable efforts to properly care for the child and provide a safe, stable home. [Mother] had a residence where she could have cared for the child when he was placed in foster care, which she lost despite DCS offering to help her pay the rent to avoid being evicted. After obtaining a new home that required repair, she never made the home available for inspection by DCS to ascertain the home was safe for the child and she refused to provide the information of other adults in the home to ensure they did not present a safety concern for the child. In addition, [Mother] failed to avail herself of the numerous inpatient treatment programs coordinated by DCS, and only attended a program she chose over a year after Dillon's placement in foster care.

On the basis of the foregoing findings of facts, the Court concludes that [Mother] has abandoned her child pursuant to Tenn. Code Ann. §36-1-113(g)(1), as such term is defined in Tenn. Code Ann. §36-1-102(1)(A)(ii).

3. Persistence of Conditions

Under Tenn. Code Ann. §36-1-113(g)(3)(A), the Court may terminate a parent's parental rights if clear and convincing evidence shows a child has been removed from the custody of the parent for a period of more than six (6) months and it is probable that the child will be subjected to further abuse or neglect if he is returned to the custody of his parents. Further, it must be shown that prolonging the relationship will diminish the child's chances of early integration into a safe and stable home. This Court finds that clear and convincing evidence supports termination of [Mother's] parental rights based upon this ground.

[Mother] had not yet, at the time of the hearing in this matter, completed the required tasks on the permanency plans that would have made it safe for the child to return home. Dillon was removed from his mother's care due to [Mother] overdosing on prescription medications while in the Taco Bell drive through with the child in the car. To ensure Dillon was safe in his mother's care, [Mother] was asked to complete an alcohol and drug assessment and follow the recommendations, submit to random drug screens which require her to complete a pill count to ensure she is taking her medications as prescribed, refrain from being under the influence during visits and provide a stable residence. [Mother] did not complete an inpatient program until more than a year after Dillon's placement in foster care, despite many efforts by DCS to ensure her

participation, she provided no proof of completing her relapse prevention program, including AA/NA meetings and aftercare recommended by Genesis, and she refused to cooperate with drug screens and pill counts after completing treatment, which made her completion of treatment irrelevant. As late as one of the hearing dates in this matter, [Mother] continued to deny having a substance abuse problem, yet she also described the significant symptoms she suffered if she did not take her prescription medications.

In the two days she participated in the hearings conducted in this matter, [Mother] could not even keep her eyes open. She was often nodding, even on the witness stand, and had to be admonished to sit straight up and try to stay awake. In the end, she did not even make the effort to appear for the final hearing in this matter. The Court finds most notable that at the conclusion of the second hearing date on January 19, 2016, after requesting a visit with Dillon, [Mother] refused to complete a drug screen that would have allowed this Court to provide her a visit with the child, after having advised this Court that she was no longer taking prescription medications. She said, "I don't have time for that (expletive)." We have not seen [Mother] since that date.

Based on the above, clear and convincing evidence proves that the conditions that necessitated foster care for Dillon persist. The evidence does not show that [Mother] will be in a position to provide for the child's care at an early date, and prolonging Dillon's time in DCS custody is not in his best interest. Therefore, prolonging the parent/child relationship clearly diminishes the child's chances of early integration into a safe, stable home. Termination is granted based on this ground.

4. Substantial Noncompliance by Mother with the Permanency Plan Responsibilities

In Tennessee, the court may terminate parental rights upon finding clear and convincing evidence that a parent is in "substantial noncompliance...with the statement of responsibilities in a permanency plan or a plan of care...". Tenn. Code Ann. §36-1-113(g)(2). When a decision to terminate parental rights is based on a parent's substantial non-compliance, the trial court must find that the requirements of the permanency plan are reasonable and related to remedying the conditions that necessitated foster care placement.

At the outset, the Court finds that the requirements under the permanency plans for [Mother] were clearly reasonable and related to remedying the conditions that warranted foster care for Dillon. This Court made such a finding on three occasions between September of 2013 and October of 2014, ratifying the permanency plans created on April 10, 2013,

January 17, 2014 and August 13, 2014. The child was removed from [Mother's] care in March of 2013 due to [Mother's] substance abuse issues. Requesting that [Mother] complete an alcohol and drug assessment and follow the recommendations, submit to random drug screens and once she continued to test positive for prescription medications, require that she provide her pills to be counted, more generally speaking, maintain her sobriety, were reasonable means to reduce the risk to the child. Since Dillon's placement of foster care in March of 2013, the tasks on the permanency plan have changed somewhat, but the requirement to complete an alcohol and drug assessment and complete the recommended treatment have remained unchanged. This Court finds that this requirement was the most significant task because it is a threshold remedy, meaning she needed to be sober to be able to complete the other tasks. [Mother] has had almost three years to complete the tasks on the permanency plan, to prove to this Court that she was sober, and has failed to do so. In addition, [Mother] lacked stable housing at the time the hearings on the petition for termination of parental rights commenced and are unknown at this time. The Court therefore finds that [Mother] has made no verifiable progress towards accomplishing the tasks under the permanency plan. DCS clearly made reasonable efforts, as described above, to assist her. [Mother] is, therefore, in substantial noncompliance with the permanency plan obligations.

5. Termination of [Mother's] Parental Rights is in the Child's Best Interest

Under Tennessee law, the Court is required to find that termination of parental rights is in the child's best interest. Tenn. Code Ann. §36-1-113(i)(1).

Here, the Court concludes that termination is in the child's best interest. [Mother] has not made any adjustment of circumstances, conduct or conditions as to make it safe and in the child's best interest to return to her care. [Mother's] current circumstances are entirely unverifiable. It is unknown whether she has a home for the child to reside in and, in the event she did, she has not addresses the concerns that led to Dillon's placement in foster care by not proving she is sober. [Mother] did not even appear for the final hearing dates in this matter, telling her current Family Service Worker that she is now in Florida. [Mother] has provided no proof that her circumstances have changed to make it safe for the child to return to her care and, to the contrary, has continued to behave during this trial in ways that lead this Court to believe that she continues to struggle with substance abuse. All of this despite reasonable efforts by DCS to assist her to provide a safe ho[m]e for Dillon.

Since Dillon was placed into custody, [Mother] has failed to make consistent efforts to maintain regular visitation with the child, engaging in limited visitation with the child. She has not even been capable of engaging in meaningful phone conversations with the child, for ten minutes, two times a week. [Mother] also has failed to provide more than token support for Dillon.

The testimony of the witnesses was consistent that Dillon is well adjusted in the foster home and is well loved and cared for by his foster parents, who wish to adopt him. Returning to [Mother's] care is certainly not safe or in the child's best interest. Therefore, the Court concludes that termination of [Mother's] parental rights is in the child's best interest.

Mother timely filed an appeal to this Court.

Discussion

Although not stated exactly as such, Mother raises the following issues on appeal: 1) whether the Juvenile Court erred in finding that the ground of willful failure to support was proven; 2) whether the Juvenile Court erred in finding that the ground of failure to provide a suitable home was proven; 3) whether the Juvenile Court erred in finding that the ground of substantial noncompliance with the permanency plan was proven; 4) whether the Juvenile Court erred in finding that the ground of persistent conditions was proven; and, 5) whether the Juvenile Court erred in finding that termination of Mother's parental rights was in the Child's best interest. For its part, DCS argues that the Juvenile Court erred in declining to find the ground of willful failure to visit.

As our Supreme Court recently instructed:

A parent's right to the care and custody of 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.² *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d

² U.S. Const. amend. XIV § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .”). Similarly, article 1, section 8 of the Tennessee Constitution states “[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”

573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. *In re Angela E.*, 303 S.W.3d at 250. “[T]he [S]tate as *parens patriae* has a special duty to protect minors” Tennessee law, thus, upholds the [S]tate’s authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child.” *Hawk*, 855 S.W.2d at 580 (quoting *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); *see also Santosky v. Kramer*, 455 U.S. 745, 747, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Angela E.*, 303 S.W.3d at 250. “When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.” *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388. “Few consequences of judicial action are so grave as the severance of natural family ties.” *Id.* at 787, 102 S.Ct. 1388; *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are “far more precious than any property right.” *Santosky*, 455 U.S. at 758-59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(l)(1); *see also Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is “*final* and irrevocable”). In light of the interests and consequences at stake, parents are constitutionally entitled to “fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

Among the constitutionally mandated “fundamentally fair procedures” is a heightened standard of proof – clear and convincing evidence. *Santosky*, 455 U.S. at 769, 102 S.Ct. 1388. This standard minimizes the risk of unnecessary or erroneous governmental interference with fundamental parental rights. *Id.*; *In re Bernard T.*, 319 S.W.3d 586, 596 (Tenn. 2010). “Clear and convincing evidence enables the fact-finder to form a firm belief or conviction regarding the truth of the facts, and eliminates any serious or substantial doubt about the correctness of these factual findings.” *In re Bernard T.*, 319 S.W.3d at 596 (citations omitted). The clear-and-convincing-evidence standard ensures that the facts are established as highly probable, rather than as simply more probable than not. *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re M.A.R.*, 183 S.W.3d 652, 660 (Tenn. Ct. App. 2005).

Tennessee statutes governing parental termination proceedings incorporate this constitutionally mandated standard of proof. Tennessee Code Annotated section 36-1-113(c) provides:

Termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) That termination of the parent's or guardian's rights is in the best interests of the child.

This statute requires the State to establish by clear and convincing proof that at least one of the enumerated statutory grounds³ for termination exists and that termination is in the child's best interests. *In re Angela E.*, 303 S.W.3d at 250; *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination." *In re Angela E.*, 303 S.W.3d at 254. Although several factors relevant to the best interests analysis are statutorily enumerated,⁴ the list is illustrative, not exclusive. The parties are free to offer proof of other relevant factors. *In re Audrey S.*, 182 S.W.3d at 878. The trial court must then determine whether the combined weight of the facts "amount[s] to clear and convincing evidence that termination is in the child's best interest." *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). These requirements ensure that each parent receives the constitutionally required "individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away." *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Furthermore, other statutes impose certain requirements upon trial courts hearing termination petitions. A trial court must "ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child." Tenn. Code Ann. § 36-1-113(k). A trial court must

³ Tenn. Code Ann. § 36-1-113(g)(1)-(13).

⁴ Tenn. Code Ann. § 36-1-113(i).

“enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” *Id.* This portion of the statute requires a trial court to make “findings of fact and conclusions of law as to whether clear and convincing evidence establishes the existence of each of the grounds asserted for terminating [parental] rights.” *In re Angela E.*, 303 S.W.3d at 255. “Should the trial court conclude that clear and convincing evidence of ground(s) for termination does exist, then the trial court must also make a written finding whether clear and convincing evidence establishes that termination of [parental] rights is in the [child’s] best interests.” *Id.* If the trial court’s best interests analysis “is based on additional factual findings besides the ones made in conjunction with the grounds for termination, the trial court must also include these findings in the written order.” *Id.* Appellate courts “may not conduct de novo review of the termination decision in the absence of such findings.” *Id.* (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n.15 (Tenn. Ct. App. 2007)).

B. Standards of Appellate Review

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). 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 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. *In re M.L.P.*, 281 S.W.3d at 393 (quoting *In re Adoption of A.M.H.*, 215 S.W.3d at 810). Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d at 246.

In re Carrington H., 483 S.W.3d 507, 521-24 (Tenn. 2016) (footnotes in original but renumbered).

Clear and convincing evidence supporting any single ground will justify a termination order. *E.g.*, *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). Our Supreme Court, however, has instructed “that in an appeal from an order terminating parental rights 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 526-27 (footnote omitted). As such, we review each of the grounds for termination.

We first address whether the Juvenile Court erred in finding that the ground of willful failure to support was proven. As pertinent, Tenn. Code Ann. § 36-1-113(g)(1) provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

Tenn. Code Ann. § 36-1-113(g)(1) (Supp. 2016).⁵

As pertinent to this appeal, Tenn. Code Ann. § 36-1-102 provides:

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

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have willfully

⁵ We cite herein to the Tennessee Code Annotated 2016 Supplement. No material changes were made to the relevant portions of Tenn. Code Ann §§ 36-1-113 or 36-1-102 since the events of or hearing in this matter.

failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent or parents or the guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

Tenn. Code Ann. § 36-1-102(1)(A)(i-ii) (Supp. 2016).

Mother argues on appeal that the evidence is that she worked low wage jobs during the applicable four month window and that DCS failed to prove she willfully withheld support from the Child. Mother also notes the testimony reflecting that she tried unsuccessfully to obtain disability income. The Juvenile Court found that Mother earned \$275 per week working at a bar and \$150 per week cleaning houses. Mother was under a child support order entered January 2014 requiring her to pay \$339 per month toward the Child's support. On the surface, Mother would appear to have a meritorious argument regarding her ability to pay. However, a deeper look at the record reveals that Mother spent a relatively exorbitant amount on prescription drugs. Through 2014, Mother paid \$1,075 per month for drugs. Mother later paid \$275 per month for prescription drugs. Despite this decrease in her prescription drug costs, Mother still made no additional support payments. An exhibit contained in the record shows that Mother paid approximately \$2,000 for prescription drugs during the four month period relevant to this ground. It, therefore, was appropriate for the Juvenile Court to consider, as it did, this

massive discrepancy in Mother's stated ability to pay and her spending habits in determining that she had the ability to pay at least some child support and chose not to do so. We find, as did the Juvenile Court, that the ground of willful failure to support was proven against Mother by the standard of clear and convincing evidence. We affirm the judgment of the Juvenile Court as to this ground.

We next address whether the Juvenile Court erred in finding that the ground of failure to provide a suitable home was proven. Throughout this case, Mother has had a place to stay of one form or another. However, Mother appears to confuse a physically sound house for a "suitable home" under the statute. Mother's home could not be deemed suitable so long as she refused to cooperate fully regarding her abuse of prescription drugs. The Child was removed from Mother's home in early 2013. Mother did not complete in-patient treatment until August of 2014. The testimony of the DCS workers is that, throughout this case, Mother was aggressive and combative when dealing with them. The evidence in the record on appeal indicates that DCS's efforts to assist Mother were reasonable, and Mother's own efforts were inconsistent at best. We find, as did the Juvenile Court, that the ground of failure to provide a suitable home was proven against Mother by the standard of clear and convincing evidence. We affirm the judgment of the Juvenile Court as to this issue.

We next address whether the Juvenile Court erred in finding that the ground of substantial noncompliance with the permanency plan was proven. As pertinent, Tenn. Code Ann. § 36-1-113(g)(2) provides:

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4;

Tenn. Code Ann. § 36-1-113(g)(2) (Supp. 2016).

The paramount task for Mother in this case was for her to achieve and maintain sobriety. The permanency plans required that Mother complete goals toward that end. Mother failed to comply in key ways. Mother stopped providing pill counts in mid-2014. Mother's excuse that a DCS worker dropped her pills on the floor is extraordinarily unpersuasive. Even if true, that would not relieve her of her responsibility to provide pill counts because her prescription drug abuse was the central barrier to Mother's reunification with the Child. Mother also refused drug screening at different times. Mother once again provided a litany of excuses for her failure to comply with drug screens, including that a spider bit her. To the extent Mother complied with other aspects of her permanency plans, those instances of compliance are dwarfed by Mother's failure to comply substantially with the most important responsibility she had in this

case—to cease abusing prescription drugs. Perhaps the most serious of the Juvenile Court’s numerous findings by clear and convincing evidence is that “[Mother] again made consistent efforts to avoid the random drug screens and pill counts.” We find, as did the Juvenile Court, that the ground of substantial noncompliance with the permanency plan was proven against Mother by the standard of clear and convincing evidence. We affirm the Juvenile Court as to this issue.

We next address whether the Juvenile Court erred in finding that the ground of persistent conditions was proven. As pertinent, Tenn. Code Ann. § 36-1-113(g)(3) provides:

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child’s removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child’s safe return to the care of the parent or parents or guardian or guardians, still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or parents or the guardian or guardians in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child’s chances of early integration into a safe, stable and permanent home;

Tenn. Code Ann. § 36-1-113(g)(3) (Supp. 2016).

The condition leading to the Child’s removal in this case was Mother’s problem with prescription drugs, as first reflected by her passing out in the parking lot at a Taco Bell with the Child in the vehicle. The Child was found to be dependent and neglected, and the Child had been removed from Mother’s home for well over six months at the time of the trial. The question, then, is whether the condition that led to the Child’s removal “or other conditions. . .” still persists. The answer, based upon the evidence at trial, is yes. As we have discussed above and as found by the Juvenile Court, Mother did not satisfactorily attend to her problem with prescription drugs. She did not even acknowledge her drug problem. Mother cursed at the Juvenile Court, refused a drug test, and fled before the trial ended. None of this suggests Mother has resolved her drug issues. We find, as did the Juvenile Court, that the ground of persistent conditions was

proven against Mother by the standard of clear and convincing evidence. We affirm the Juvenile Court as to this issue.

We next address DCS's argument as to whether the Juvenile Court erred in declining to find the ground of willful failure to visit. The Juvenile Court found that Mother engaged in certain visitation in the relevant four month period. There was some testimony from Mother that DCS ignored her efforts to set up visitation. We find Mother's explanations wanting, and it appears that the quality of her visits were poor. Nevertheless, we do not find that the evidence preponderates against the Juvenile Court's findings relative to this issue, and we do not disturb the Juvenile Court's declining to find what would be, at any rate, the additional cumulative ground of willful failure to visit.

The final issue we address is whether the Juvenile Court erred in finding that termination of Mother's parental rights was in the Child's best interest. Tennessee courts are to consider the factors contained in Tenn. Code Ann. § 36-1-113(i) in reaching a determination regarding whether it is in a child's best interest for his or her parent's parental rights to be terminated. The Juvenile Court made detailed findings as quoted above, and the evidence does not preponderate against those findings. The Child is flourishing in foster care. Meanwhile, Mother never has successfully confronted her prescription drug problem, and indeed fled by the time trial ended after having refused a drug screen in her last appearance before the Juvenile Court. We hold, as did the Juvenile Court, that the evidence is clear and convincing that termination of Mother's parental rights to the Child is in the Child's best interest. We affirm the judgment of the Juvenile Court terminating Mother's parental rights to the Child in its entirety.

Conclusion

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Autumn N., and her surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE