

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 19, 2015 Session

IN RE NOLAN G., ET AL.¹

**Appeal from the Juvenile Court for Davidson County
No. 179915 Sophia Brown Crawford, Judge**

No. M2014-01667-COA-R3-PT – Filed October 7, 2015

Two children came into the custody of the Department of Children’s Services in July 2012 after members of their extended family made allegations that their parents were abusing them. The children were adjudicated dependent and neglected, and subsequently, the Department instituted proceedings to terminate the parental rights of both parents. After a hearing, the court held that the parents had willfully abandoned their children by failure to support, substantial non-compliance, and persistence of conditions. Mother appeals the termination of her parental rights. Finding no error, we affirm the judgment of the Juvenile Court.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

L. Willis Jones, Nashville, Tennessee, for the appellant, Chelsea G.

Herbert H. Slatery, III, Attorney General and Reporter; and Jason I. Coleman, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

¹ This Court has a policy of protecting the identity of children in parental termination cases by initializing the last names of the parties.

OPINION

Two children, Nolan G. (born in 2009) and Allison L. (born in 2011), were born out of wedlock to Chelsea G. (“Mother”) and Richard L. (“Father”). The Department of Children’s Services (“the Department”) received a referral of suspected physical abuse of the children by their parents on May 1, 2012, after the children’s great-aunt, Stephanie W., observed numerous bruises on Allison’s body and took the children to the police station and subsequently to Vanderbilt Children’s Hospital. In the course of the Department’s investigation, Mother denied having any knowledge of Allison’s injuries, and the only explanation offered came from Father, who said that he threw a remote control into the air and it landed on Allison’s head.

On May 23, 2012, the Department filed an “Emergency Petition to Adjudicate Dependency/Neglect and Request for Court Ordered Services and Change of Custody” in the Juvenile Court for Davidson County. The parents entered into an immediate protection agreement (“IPA”), whereby the children were placed with Mother’s grandparents²; the agreement also provided that Mother could have supervised visits with the children and Father could have therapeutically supervised visits. Mother allowed Father to have contact with Allison in violation of the IPA and when questioned about the incident by the Department’s family services worker, demurred and indicated that neither parent was in agreement with the IPA. As a result, on July 20, 2012, the Department instituted a dependent and neglect proceeding pursuant to Tenn. Code Ann. § 37-1-102(b)(1) and (b)(12)(B), (F), & (G) and sought, *inter alia*, an immediate protective custody order placing the children in the custody of the Department. The juvenile court entered an order the same day granting the petition and placing the child in the temporary custody of the Department as of July 18. The children were adjudicated dependent and neglected on January 23, 2013, pursuant to Tenn. Code Ann. 37-1-102(b)(12)(B), (F), & (G). The order entered by the Juvenile Court set a dispositional hearing for February 8, 2013. There is no order in the record reflecting the disposition.

Because the children were in DCS custody, Tenn. Code Ann. § 37-2-403(a) required that a permanency plan be developed; the plan had to, *inter alia*, include a goal for each child and statements of responsibilities for the parents, the Department, and the Department’s caseworker. The first permanency plan was created on August 10, 2012, and ratified by the court on August 27. This plan listed a goal of “return to parent.” On that same day, Mother and Father signed an acknowledgment of receipt of a document titled “Criteria and Procedures for Termination of Parental Rights,” which was explained to them by DCS staff. A second permanency plan was created on May 28 and ratified on July 29; it added a goal of adoption “due to a lack of participation on the parents’ part.”

² Due to the grandfather falling ill in the course of proceedings, Mother’s aunt and uncle received sole custody of the children.

A third permanency plan dated November 8, 2013, was ratified by the court that same day; it specified new responsibilities during the parents' visitation due to Nolan's food allergies and the birth of Mother and Father's third child.

On September 19, 2013, the Department filed a petition in the Juvenile Court of Davidson County to terminate both parents' parental rights on the grounds of abandonment by failure to visit or support, abandonment by failure to establish a suitable home, substantial non-compliance with the permanency plan, and persistence of conditions; the petition also alleged that termination was in the children's best interests. The court held a hearing on the petition on April 9-10, May 29, and July 11, 2014,³ and thereafter entered an order terminating the parental rights of both parents on the grounds of abandonment by willful failure to support, substantial non-compliance with the permanency plan, and persistence of conditions. The court held that the termination of the parental rights would be in the best interest of the children.

Mother appeals,⁴ raising the following issues:

I. Whether the Trial Court erred in sustaining the Petition to Terminate the Mother's parental rights by clear and convincing evidence?

II. Whether the Trial Court erred in finding by clear and convincing evidence that the Mother abandoned her children by willfully failing to pay child support?

III. Whether the Trial Court erred in finding by clear and convincing evidence that the Mother failed to substantially comply with the reasonable responsibilities of the Permanency Plan developed by the Department of Children Services?

IV. Whether the Trial Court erred when it found by clear and convincing evidence that the conditions which led to the Children's removal still persist and there is little likelihood that these conditions can be remedied at an early date pursuant to T.C.A. 36-1-113(G)(3)?

V. Whether the Trial Court erred when it found that the termination of Mother's parental rights were in the best interest of the children?

³ The witnesses who testified at the hearing were Charity Kimbrell, the Department's Family Services Worker; Nancy Yelton, the Court Appointed Special Advocate; Father; LaTarra Ballard, the parent mentor; Craig Neilus, therapeutic visitation support provider; Mother; Stephanie W., the children's great aunt and foster parent; and Ronald Peak, a therapist at Mental Health Cooperative.

⁴ Father voluntarily dismissed his appeal.

I. STANDARD OF REVIEW

A party seeking to terminate the parental rights of a biological parent must prove at least one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(g); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). Secondly, the party must prove that termination of the parental rights of the biological parent is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). Because of the fundamental nature of the parent's rights and grave consequences of termination of those rights, courts require a higher standard of proof in deciding termination cases. *Santosky v. Kramer*, 455 U.S. 745, 766-69 (1982); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Thus, both the grounds for termination and the best interest inquiry must be established by clear and convincing evidence. Tenn. Code Ann. § 36-3-113(c)(1); *In re Valentine*, 79 S.W.3d at 546.

In light of the heightened standard of proof in these cases, a reviewing court must adapt the customary standard of review set forth by Tenn. R. App. P. 13(d). *In re M.J.B.*, 140 S.W.3d 643, 654 (Tenn. Ct. App. 2004). As to the court's finding of fact, our review is *de novo* with a presumption of correctness unless the evidence preponderates otherwise, in accordance with Tenn. R. App. P. 13(d). *Id.* We must then determine "whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate . . . parental rights." *Id.*

As Mother's first issue encompasses the other issues she raises, we begin by determining whether clear and convincing evidence supports the trial court's finding that Mother willfully abandoned her children by failure to pay child support and will then proceed to address the other grounds for termination.

II. WILLFUL ABANDONMENT BY FAILURE TO SUPPORT

Mother contends that her failure to support was not willful because of the following reasons: the permanency plan did not specify the amount of support, she did not have the capacity to pay support during the relative period, and she provided non-monetary support.

Tenn. Code Ann. § 36-1-113(g)(1) designates "abandonment," as defined in Tenn. Code Ann. § 36-1-102, as a ground for terminating parental rights. Tenn. Code Ann. § 36-1-102(1)(A)(i) defines "abandonment" in part pertinent as follows:

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

In order to sustain termination on the grounds of “abandonment,” there must be a “willful” failure to render support by the parent whose rights are being terminated. Tenn. Code Ann § 36-1-102(1)(A)(i); *In re Audrey S.*, 182 S.W.3d 838, 863 (Tenn. Ct. App. 2005). Failure to 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.” *Id.* at 864 (citing *In re M.J.B.*, 140 S.W.3d at 654). Of these four elements, Mother asserts that she had no awareness of the amount of support required of her, that she had no capacity to support her children due to taking maternity leave, and that she attempted to support her children by giving in-kind support. We will address each contention.

a.) Awareness of Duty to Support

Mother concedes that the permanency plans advised her of her duty to pay child support but argues that her failure to pay support was not willful because the permanency plan did not state the specific amount of support to be paid; further, she contends that she did not know that she had a duty to pay child support separate from that of Father.

Upon our review of the record, the evidence is clear that Mother was aware of her duty to pay support of \$40 per week. The permanency plan states “Chelsea G[] has originally agreed to help financially with the children but has not followed through. Both parents need to pay child support for their children” and lists as an action step that “[b]oth parents will provide child support to the family taking care of the children via court order or agreed upon in a meeting.” When asked by the court if she was giving her aunt any child support, Mother testified that “we [she and the aunt with whom her children were placed] agreed to \$40 cash a week. I did give her that for about two months, and then I started — instead of giving her cash, I started bringing boxes of diapers, clothes, wipes.”⁵

⁵ The testimony as to what Mother had provided was contradicted by Stephanie W., the aunt and foster mother, who testified as follows:

Q. Do [the parents] pay child support to you?

A. No.

Q. Do you get any money from them?

A. No. I don’t think that’s how it works. We do State with foster care. I don’t know what happens with their child support.

Q. I’m sorry, let me clarify that. Before DCS was involved, they were kind of staying with you a little bit?

A. No. They would on visits, up until the July before the new baby was born, bring diapers on visits and whatnot, but as far as child support, no.

Q. Okay. So what about now? Do they bring anything for the children’s care?

The Department's family services worker, Ms. Kimbrell, also testified that the parties had agreed to an amount of \$40 per week.

b.) Capacity to Provide Support

Mother contends that her failure to pay support was not willful because she took "maternity leave" and consequently did not have the capacity to pay child support.

The petition to terminate was filed on September 19, 2013; in accordance with Tenn. Code. Ann. § 36-1-102(1)(a)(i), the relevant four-month time period to evaluate Mother's support is May 19 through September 18, 2013. Mother testified that she worked at Ruby Tuesday's restaurant from late December 2012 or early January 2013 through May, June, and part of July 2013. Prior to that, she worked at Kohl's department store. She testified that, in addition to these jobs, she had a commission-based job where she could "sign people up" for service with AT&T. When asked if the job was lucrative, Mother testified, "[I]f you get a sale, you get extra money. It's not like -- I wouldn't call that another full-time job that I have. It's extra money that I can make." Mother did not testify as to when she began this job. Mother testified that she earned \$12,900 in 2013.

Mother gave birth to her third child in September 2013. She testified that she was seven and a half months pregnant in July and "started having some issues, and . . . went ahead and took [her] maternity leave" from Ruby Tuesday's.⁶ She later testified that she was on "bed rest" during that time. Mother did not identify these "issues" or submit any medical proof. Ms. Kimbrell testified that Mother did not work during her pregnancy "by choice."

There is no proof in the record that Mother was unable to work, proof of a condition which necessitated her resignation, or proof which leads us to conclude that she did not have the capacity to work. We conclude, as did the trial court, that her resignation and resulting failure to support were willful.

A. No. They will periodically get, like, Nolan an outfit or Allie an outfit if it's birthday time, but that's pretty much it.

Q. So no diapers or wipes or anything?

A. No.

Q. Just clothes, occasionally clothes?

A. Uh-huh, clothes.

Q. Food?

A. No.

⁶ Mother did not return to her employment at Ruby Tuesday's.

c.) Made No Attempt to Support

Mother contends that her failure to provide financial support was not willful, but that in lieu of money, she provided “boxes of diapers, clothes, wipes ... [and] groceries for Nolan.”

The permanency plan required the parents to “provide for the children financially including daycare through a legal and stable source of income”; the plan also required them to provide diapers and food during visitation. Ms. Kimbrell testified that the parents submitted proof of paying child support for only one month, and that “[t]he Department has paid for daycare since the children have come into custody.”⁷ As to the items provided by Mother, Ms. Kimbrell testified that she was aware of “a pack of diapers bought, possibly some outfits at one time, but nothing substantial at all” provided by Mother. As noted in Footnote 5, *supra*, Stephanie W., the foster mother, testified that Mother provided only diapers during visitation and clothing as a gift for the children’s birthdays. To the extent that there was a conflict in the testimony, the court concluded that “there was nothing substantial provided to the children by the parents except a pack of diapers and maybe a couple of outfits.” The evidence does not preponderate against this holding. In any event, providing diapers during visitation was a requirement of the permanency plan and does not satisfy the requirement to provide financial support as set forth in the permanency plan. Mother’s choice to not pay \$40 per week in child support was willful.

Other than the foregoing, Mother presented no evidence of a justifiable excuse for her failure to support. The record contains clear and convincing evidence that supports the court’s finding that Mother willfully abandoned her children by failing to support them. Accordingly, we affirm this ground for termination of Mother’s parental rights.

III. SUBSTANTIAL NON-COMPLIANCE WITH THE PERMANENCY PLANS

Mother contends that the court erred in holding that she failed to substantially comply with the responsibilities of the permanency plans.

Tenn. Code Ann. § 36-1-113(g)(2) authorizes termination of parental rights for failure to comply with a permanency plan as follows:

⁷ The first permanency plan required Mother to either pay for daycare or obtain daycare vouchers from the Department of Human Services (“DHS”). Mrs. Kimbrell testified that Mother did not pay for daycare, after her application to get the vouchers from DHS was denied “because [Mother] would not give up information on [Father], because she didn’t want him to have to pay child support.” Subsequent permanency plans did not include the option of obtaining the vouchers; they only required the parents pay for daycare.

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

“In order for noncompliance to justify the termination of parental rights, it must be ‘substantial.’” *In re S.H.*, No. M2007-01718-COA-R3-PT, 2008 WL 1901118, at *7 (Tenn. Ct. App. Apr. 30, 2008). Mere technical noncompliance by itself is not sufficient to justify the termination of parental rights. *Id.* (citing *In re Valentine*, 79 S.W.3d at 548). The issue of substantial noncompliance with the requirements of a permanency plan is a question of law; therefore, it is reviewed *de novo* with no presumption of correctness. *Id.* (citing *In re Valentine*, 79 S.W.3d at 547).

The permanency plans required Mother to: take anger management and domestic violence classes and follow all recommendations; follow the recommendations of a parenting assessment, including obtaining a mental health evaluation and following all recommendations and attending therapy; provide child support to the family taking care of the children via court order or as agreed upon; provide proof of residence; inform the Department, providers, and her family if she changed her address, the people living in her home, or her phone number; refrain from illegal activities or picking up new charges including domestic violence; provide proof of legal income; pay for day care or obtain daycare vouchers from the Department of Human Services; show an ability to have stable and reliable transportation by car ownership or use of public transportation; maintain and provide proof of driver’s license, vehicle registration, and insurance; obtain a parent mentor to help establish a budget, housekeeping, job stability, and other independent living skills and parenting education to benefit the family; submit a written plan to the Department that explained how the parents would protect the children in the future and what to do if a child was injured; pay for daycare services rendered; and make weekly updates to the Court Appointed Special Advocate (“CASA”) via text, phone calls, or emails about their progress on the permanency plan, with the requirement that the parents were to initiate at least half of all contact.

In the order terminating parental rights, the court made extensive findings of fact pertaining to Mother and Father’s compliance and concluded that:

In terms of substantial noncompliance with the permanency plan, while both parents have gone through the motion of complying to some degree with the tasks, it’s not been substantial compliance. The substantial noncompliance has been worse with the mother than with the father. And the credibility of both Respondents are at issue with the Court.

Ms. Kimbrell testified at length about Mother’s failure to substantially comply with the permanency plans, specifically that Mother successfully completed a parenting assessment, domestic violence assessment, and anger management classes, though the

parenting assessment had to be performed a second time⁸; that Mother completed a mental health evaluation, but never provided proof of her attendance at therapy; that Ms. Kimbrell followed up with the therapy provider and learned that Mother had attended three of her ten scheduled appointments and was discharged more than once for failing to make an appointment.⁹ Ms. Kimbrell further testified that the parenting plan Mother prepared to comply with the permanency plan did not address how to keep the children safe; that Mother never notified the Department of changes in her residence¹⁰; that Mother did not submit proof of her driver's license until two years after the requirement was imposed on her; that Mother did not to provide proof of her employment, and because Mother never provided proof of her income, the family services worker could not determine whether the budget Mother submitted was realistic; and that Mother failed to pay child support.

We have reviewed Mother's arguments and the portions of testimony she cites in support of her position that her noncompliance was not substantial. The testimony shows that Mother completed the portions of the plan that involved services that were provided in her home but that anything she had to do on her own was either not performed in a timely manner or not at all. In the case of Mother's requirement to create a parenting plan, the plan she submitted was silent to the very issue it was supposed to address: how to prevent injuries to her children and how she would handle any that occurred. We do not agree with Mother's characterization of her noncompliance and find particularly compelling the following testimony of Ms. Kimbrell:

[W]hat has been accomplished and what has been taken care of are services that the Department has provided and paid for and has delivered to wherever they are residing . . . [a]ll of those items are followed through with because we have providers that drive to them, meet with them, and do things with them at their home. The very simple, small things that we have asked for that would have required them to do it on their own took two years.

⁸ Ms. Kimbrell determined after reviewing the initial parenting assessment that Mother provided "gigantic pieces of [her history] that aren't true" to the person performing the assessment; she was referring to Mother's failure to tell the interviewer of domestic violence incidents in the home. Because incomplete information was provided by Mother, Ms. Kimbrell requested a second assessment, which Mother completed.

⁹ Ronald Peak, a mental health services therapist with a graduate degree, testified that he had seen Mother at the Mental Health Cooperative three times in July 2013, that she was scheduled for ten visits, that she had been automatically discharged twice due to missing appointments.

¹⁰ We note that the permanency plan indicates that the parents were evicted from their home due to domestic violence incidents and lived in a motel and with family members before finding suitable housing in July 2013.

The record before us provides clear and convincing evidence supporting the trial court's determination that the requirements of the permanency plan were reasonably related to remedying the conditions necessitating foster care and were established to create a safe and stable home for the children, and that Mother failed to substantially comply.¹¹ The proof before us does not preponderate against the court's holding. Accordingly, we affirm the trial court's finding that clear and convincing evidence exists to support a finding that Mother did not substantially comply with the terms of the permanency plans.¹²

IV. PERSISTENCE OF CONDITIONS

In the order terminating parents' parental rights, the court held that:

In terms of persistence of conditions or other conditions, the other conditions would be that the Court simply cannot find that there has been sufficient proof that either of these parents has significantly addressed issues regarding their instability, their ability to comprehend how to protect their children and to keep their children safe, their ability to accept responsibility, if none other than to say or show some remorse that this young baby received these kinds of injuries, and they claim to be unaware of even having seen the injuries. Despite having unbelievable services in this case, their continued belief that it's somebody else's fault and not theirs and that they've not been given enough in terms of services and resources, causes the Court to clearly find the persistence of conditions grounds against both parents.

Mother contends that this ruling was error because she was able to obtain "stable and permanent housing"; she further argues that "the Court's perception of a parent's alleged lack of judgment is not persistence of conditions."

¹¹ We also note that the court made an adverse credibility finding as to Mother. We accord great deference to a trial court's determinations on matters of witness credibility and will not re-evaluate such determinations absent clear and convincing evidence to the contrary. *Lane v. Lane*, M2008-02802-COA-R3-CV, 2009 WL 3925461, at *2 (Tenn. Ct. App. Nov. 17, 2009) (citing *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn.1999)). We have not been cited to such evidence by Mother.

¹² In the alternative, Mother contends that the Department "failed to provide reasonable efforts to address Mother's various issues, i.e. employment, housing, and transportation." In conjunction with terminating a parent's rights on the ground of substantial noncompliance, the trial court must find that the requirements of the permanency plan that the parent allegedly did not satisfy are "reasonable and related to remedying the conditions which necessitate foster care placement." *In re Valentine*, 79 S.W.3d at 547 (quoting Tenn. Code Ann. § 37-2-403(a)(2)(C)). To the extent that Mother's argument is ambiguous, we determine that the requirements imposed on Mother were reasonable, and the Department's efforts were adequate.

Parental rights may be terminated on the basis of “persistence of conditions,” as defined by Tenn. Code Ann. § 36-1-113(g)(3), when:

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(s) or guardian(s), still persist;[¹³]

(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(s) or guardian(s) 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[.]

A termination proceeding based on persistence of conditions requires a finding by clear and convincing evidence of all three statutory factors. *In re Valentine*, 79 S.W.3d at 550.

Relative to element (A), Ms. Ballard, who provided the parent mentoring services required by the permanency plans, testified that:

[The parents have] “maintained it the entire time that I’ve known them, that they did nothing wrong, and they did not know what happened to their infant. . . . Initially . . . they said that it was the grandmother. . . . And then

¹³ In adjudicating the children to be dependent and neglected, the Juvenile Court found that:

In this case, the court finds by clear and convincing evidence that Alison L[.] and Nolan G[.] have both been exposed to physical and verbal threats by their father as a means of intimidating both their mother as well as their grandmother. The court further finds that both children have been exposed to excessive alcohol use by their father.

The court finds that there is sufficient evidence in the record to support a finding that both Chelsea G[.] and Julia C[.] failed to protect both children from their father; however, the court does not make the more serious findings of failure to protect against either, as the court believes that both the mother and grandmother feared reprisal by the father.

The court finds the children to be dependent and neglected children pursuant to T.C.A. § 374-102(b)(12)(B),(F), and (G). The perpetrators of the dependency and neglect are Richard L[.], Chelsea G[.] and Julia C[.].

as time went by, it was ‘My mother didn’t do anything wrong; why are we all in this situation.’”

Ms. Ballard also testified that she found it troubling that Mother later changed her story as to how many bruises she remembered seeing on the baby; that she was concerned about returning the children to Mother because Mother had shown “poor judgment”; that Mother “had a hard time of holding the dots together of why her mother could not be around the kids; and that Mother had not taken “parental ownership” over what had happened to her children and how she could prevent it in the future. Ms. Kimbrell testified that the parenting plan submitted by Mother did not address the issue of how she would protect her children or what she would do if a child were injured.

Relative to element (B), Ms. Ballard testified that Mother thought the permanency plan was “frivolous,” that Mother continued to blame the Department for her separation from her children, and that Mother asserted that the Department lied about the severity of the bruises and was not working with her to get her kids back.

While Mother testified that she was “willing to do anything” required of her by a permanency plan, Ms. Ballard testified that during the years she had been working with the family, Mother was “dragging her feet” and “procrastinating” in her attempts to comply with the provisions of the parenting plan. Ms. Kimbrell’s testimony echoed that of Ms. Ballard. Further, as noted earlier, the court did not find Mother to be a credible witness. Though Mother contends that the fact that she has achieved stable and permanent housing has eliminated the conditions which resulted in the children’s removal, many other conditions besides the couples’ physical home were to be addressed.

The testimony of Ms. Ballard and Ms. Kimbrell shows that despite mentoring efforts, Mother was not progressing or addressing the conditions which led to the removal of the children. This testimony supports the court’s finding that Mother’s denial of the dangers her children faced and inability to grasp the gravity of the situation was the cause of her failure to address the abuse Allison suffered or to comprehend why her mother could not be around the children. In light of the many months in which Mother had the opportunity to remedy the conditions that resulted in her children being removed and her failure to make appropriate efforts to do so, there is clear and convincing evidence that the conditions which led to the children’s removal persisted and there was little likelihood that those conditions could be remedied at an early date.

Relative to element (C), Ms. Kimbrell, Ms. Ballard, and Stephanie W. each testified that the children are currently residing with a relative foster family and were thriving in that home. Stephanie W., the foster parent, testified that each child has his or her own bedroom and that Nolan “has a routine,” “eats better,” and “goes to sleep at a decent hour.” As to Allison, Stephanie W. testified that initially she was “skittish” and did not like loud noises or men, but had “gotten much better and come out of that shell

quite a bit.” Stephanie W. also testified that Allison calls her “Mom.” She also testified about Nolan’s dietary allergies and how she was ensuring that he was eating food to which he was not allergic but still carried an “epi pen” for emergencies. Stephanie W. testified that she and her husband wished to adopt Nolan and Allison. The court found that “[t]he children are placed in a relative foster home that wishes to adopt the children and has established a strong bond with the relative foster parents” and held that the continuation of the parent relationship greatly diminishes the children’s chances of early integration into a stable, safe, and loving home.

In light of the testimony relating to the elements of Tenn. Code Ann. § 36-1-113(g)(3) (A), (B), and (C), the trial court did not err in holding that the conditions which led to the children’s removal persisted.

V. BEST INTEREST

Once a ground for termination has been proven by clear and convincing evidence, the trial court must then determine whether it is the best interest of the child for the parent’s rights to be terminated, using the clear and convincing evidence standard. *In re B.A.C.*, 317 S.W.3d 718, 726 (Tenn. Ct. App. 2009) (citing Tenn. Code Ann. § 36-1-113(c)(2)). We review the court’s best interest determination in light of the factors found at Tenn. Code Ann. § 36-1-113(i):

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent’s or guardian’s home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substances analogues as may render the parent or guardian consistently unable to care

- for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The foregoing list of factors "is not exhaustive, and the statute does not require every factor to appear before a court can find that termination is in a child's best interest." *In re S.L.A.*, 223 S.W.3d 295, 301 (Tenn. Ct. App. 2006) (citing *Tenn. Dep't of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. May 10, 2002); *In. re I.C.G.*, No. E2006-00746-COA-R3-PT, 2006 WL 3077510, at *4 (Tenn. Ct. App. Oct. 31, 2006)).

The trial court made specific findings citing factors (1), (2), (3), (4), (5), (6), (7), and (9).

As to factor (1), the court held: "Chelsea [G.] and Richard [L.] have not made an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to be in the home of the parent. . . . The Court cannot find that they have made such an adjustment to make it safe."

As to factor (2), the court held: "Chelsea [G.] and Richard [L.] have failed to effect a lasting adjustment after reasonable efforts by available social agencies for such duration of time that lasting adjustment does not reasonably appear possible. . . . They have failed to make a lasting adjustment." Further, the court made the following finding: "[T]he Department made reasonable efforts and went above and beyond; they outdid themselves. The Court wishes that every case could mirror this one in terms of the services and provisions and the reasonable efforts that were made."

As to factor (3), the court found: "To their credit, the parents have maintained visitation with the children, but the Court believes that's partly because, as the case manager pointed out, the Department has pretty much done everything for them in that regard."

As to factor (4), the court found: "There was some evidence that the father and the son, Nolan, have a meaningful relationship. But aside from the testimony regarding that relationship, there has not been any testimony of a meaningful relationship between either of them and their daughter, Allison. . . ."

As to factor (5), the court held:

A change of caretaker and physical environment is likely to have a negative effect on the children's emotional, psychological and/or medical condition. The Court believes that if these children were taken from the resource parents and placed back with these parents, it would have a potentially very volatile result on these children. The Court believes that the mother, perhaps because she is so young and was raised in such a dysfunctional family herself, cannot grasp the risk her mother is to her current infant, let alone to these children. The Court believes that she cannot get it and that it may be from unresolved issues of neglect that she herself experienced. The Court finds that there would be potentially fatal consequences emotionally and psychologically, perhaps even physically, to these children, if they were to be removed from the caretaker they're with now and placed back home. . . .

As to factor (6), the court found:

There was an admission to the case manager by the mother, despite hers and the father's testimony, that there was not a history of domestic violence. She has admitted to several people that there has been domestic violence in the home. There was admission to the DCS case manager that the parents lost their apartment because of domestic violence, and the police were called. There was a history of domestic violence between Chelsea and Blake, as well as Chelsea and her own mother and that her mother, Julia C[.], has quite a history that Chelsea was well aware of throughout the pendency of this case and back in her own teenage years. Under the permanency plan, there was to be no contact between the children and Julia C[.], but there was testimony that there was.

As to factor (7), the court found that "[t]he physical environment of Chelsea [G.] and Richard [L.]'s home is unhealthy and/or unsafe for the children. . . ."

As to factor (8), the court did not cite Tenn. Code Ann. § 36-1-113(i)(8) but made the following findings:

Chelsea [G.] and Richard [L.] have shown little or no interest in the welfare of the children.

Chelsea [G.] and Richard [L.] continue to make lifestyle choices that prevent them from being able to parent the children or to provide a home for the children.

The Court believes that the Mental Health Co-op records, as well as the therapist's testimony, speaks volumes that the mother has substantially not complied with portions of her permanency plan that are the most critical, and that's her mental health needs.

As to factor (9), the court found:

Chelsea [G.] and Richard [L.] have not paid child support consistently with the child support guidelines promulgated by the Department pursuant to T.C.A. § 36-5-101. T.C.A. 36-1-113(i)(9) requires the court to consider this factor in determining whether termination of parental rights is in the best interest of the children. The father testified that he paid child support of \$283 per month, but there was also testimony that he had financial assistance in paying child support.

The record contains clear and convincing evidence supporting the trial court's findings.

Mother contends that termination was not in her children's best interest because: she had secured stable, permanent housing; the Department did not provide reasonable efforts; she maintained regular visitation; she had a meaningful relationship with her children; no proof was offered as to the effect a change of caretakers or physical environment would have on the children; no finding of abuse had been entered against her; no proof was presented as to her present mental or emotional status and whether it would be detrimental to her children; and her failure to pay child support was not willful and thus should not have been weighed in favor of termination.

We have thoroughly reviewed the evidence, especially the portions of testimony to which Mother cites. There is a plethora of testimony as to the efforts of the Department, including many services that were provided in Mother's home, throughout the nearly two years leading up to the termination proceeding. The record shows that the parents were consistent in maintaining visitation and that Mother interacted with her children in appropriate ways during visitation. There is no proof in the record which indicates that either parent had a meaningful relationship with Allison. The foster mother's testimony, as well as the order adjudicating the children dependent and neglected, the testimony of Ms. Kimbrell and Ms. Ballard, and the permanency plan itself, indicate the presence of abuse, violence, and the volatility of Mother's home over the years; meanwhile, the testimony showed that both children were thriving in the stable environment of the foster parents' home. Further, Ms. Yelton, the Court Appointed Special Advocate, testified that she was concerned about returning the children to the parent's home because "the safety of the children is not just their physical safety but it's also their emotional safety." The

record also contains testimony from Ms. Ballard relative to Mother's blame-shifting and failure to apprehend the dangers posed to her children and how these characteristics would be detrimental to her children and would prevent her from effectively providing safe or stable care and supervision. Finally, as discussed in Section II, *supra*, Mother was aware of her support obligation, had the capacity to pay the agreed upon amount, and willfully chose not to do so.

The evidence which Mother cites does not preponderate against the trial court's conclusion. We affirm the holding of the trial court that clear and convincing evidence existed to conclude that the termination of Mother's rights was in the children's best interest.

VI. CONCLUSION

For the foregoing reasons, the order terminating Mother's parental rights is affirmed.

RICHARD H. DINKINS, JUDGE