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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs February 1, 2023

**IN RE NEVAEH S.**

**Appeal from the Circuit Court for Bradley County  
No. V-21-625 J. Michael Sharp, Judge**

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**No. E2022-00959-COA-R3-PT**

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A mother appeals from the termination of her parental rights to her child on the ground of severe child abuse. She concedes the ground for termination, but challenges the trial court's finding that termination of her parental rights was in the child's best interest. We affirm the trial court's conclusion that clear and convincing evidence supports the aforementioned ground for termination and that termination is in the child's best interest.

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

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER and KENNY ARMSTRONG, JJ., joined.

Jessica Conine, Chattanooga, Tennessee, for the appellant, McKala D. S.<sup>1</sup>

Jonathan Skrmetti, Attorney General & Reporter, and Kathryn A. Baker, Senior Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

Christina M. Denton, Chattanooga, Tennessee, Guardian *ad litem*.

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<sup>1</sup> In cases involving minor children, it is the policy of this Court to redact the parties' names to protect their identities.

## OPINION

### I. BACKGROUND

Nevaeh S. (“the child”) was born in May 2021 to McKala D. S. (“Mother”). In 2017, Mother surrendered her parental rights to another child, Nathan. Jodi R. (“Foster Mother”) later adopted Nathan. Mother’s other child, James, tested positive for methamphetamine and amphetamine when he was a toddler and was placed in foster care. By order of the Bradley County Juvenile Court entered March 16, 2017, James was adjudicated dependent and neglected and severely abused by Mother due to drug exposure. Mother did not appeal from the order. Ultimately, Mother pleaded guilty to child abuse and neglect, resulting in a felony conviction. Sadly, at age three, James passed away while in foster care. His manner of death was ruled an accident, but the postmortem examination revealed that pediatric methamphetamine exposure contributed to his death.

None of the above deterred Mother from using methamphetamine when she was pregnant with the child at issue in this action. The day after her birth, the Tennessee Department of Children’s Services (“DCS”) received a referral that the child was drug exposed. DCS investigated and questioned Mother. Mother admitted to a history of drug use beginning in her own childhood. She estimated using methamphetamine one to three times weekly during the previous year, which included her pregnancy. Mother stated that she did not know she was pregnant until two months before the child’s birth and did not know the father’s identity. Hospital drug screens showed that both Mother and the newborn child tested positive for amphetamines, methamphetamine, and THC.

On May 25, 2021, DCS petitioned the Juvenile Court for Bradley County to award DCS temporary legal custody and to find the child dependent and neglected. The same day, the child was ordered into DCS’s custody. DCS then placed the child into Foster Mother’s home. The child’s pediatrician later diagnosed her with neonatal abstinence syndrome. The child suffered withdrawal due to Mother’s drug use during pregnancy. The child has a host of serious medical issues and requires physical therapy, speech therapy, and developmental therapy. Thus, Foster Mother manages twenty monthly medical or therapy appointments for the child and is extensively trained in life saving measures so she can care for the child’s special needs. Following a hearing and by order entered September 30, 2021, the juvenile court adjudicated the child dependent and neglected and found that she was the victim of severe child abuse perpetrated by Mother due to in utero drug exposure. Mother did not appeal this order.

DCS and Mother developed a permanency plan on June 4, 2021. Mother’s agreed responsibilities pursuant to the plan included: completing mental health and alcohol and drug assessments, following all recommendations, and providing proof to DCS; signing all

required releases of information; obtaining and maintaining residential stability for six months minimum; providing DCS with a lease agreement in her own name and proof of utilities in her own name; avoiding substances that cause drug screen failure for THC; complying with random drug screens; completing parenting classes; demonstrating positive parenting skills and an understanding of how drug use affects a child; providing a transportation plan; providing proof of a legal income; maintaining contact with DCS; paying ordered child support; attending visitation with the child; and providing the child with necessary items during visits. On December 3, 2021, DCS and Mother created a second permanency plan containing substantially the same agreed responsibilities.

Mother entered inpatient drug rehabilitation on November 17, 2021 and completed the rehabilitation program on December 15, 2021. Then, Mother participated in intensive outpatient therapy and passed the related drug screens. On November 29, 2021, DCS petitioned the Circuit Court for Bradley County (“trial court”) to terminate Mother’s parental rights to the child, alleging several statutory grounds.<sup>2</sup> Mother did not file an answer. The trial court appointed counsel to represent Mother and a guardian *ad litem* to represent the child.

After the court set the matter for trial, Mother named the child’s potential father for the first time on March 3, 2021. The case proceeded to a March 29, 2022 trial on the termination petition. By then, DCS was still in the process of DNA testing the child’s potential father. DCS characterized Mother’s late-naming of a potential father as a delay tactic and noted that she had waited until the day she surrendered her parental rights to another child, Nathan, to name his potential father. Mother, Foster Mother, DCS Family Service Worker Cayci Byers, and DCS Child Protective Services Case Manager Emma Jackson testified at trial.<sup>3</sup> The child was then ten months old.

By order entered June 20, 2022, the trial court found clear and convincing evidence of the ground of severe child abuse for termination of Mother’s parental rights. The trial court also determined that termination of Mother’s parental rights was in the child’s best interest. The child has been in foster care since May 25, 2021—essentially her entire life. Mother appealed.

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<sup>2</sup> Upon proper motion, the trial court struck the termination grounds of substantial noncompliance with the permanency plan, failure to manifest an ability and willingness to personally assume custody or financial responsibility, and persistence of conditions, Tennessee Code Annotated sections 36-1-113(g)(2); (g)(14), and (g)(3).

<sup>3</sup> We have studied the trial transcripts and exhibits and will discuss the testimony in greater detail below as relevant to the issues on appeal.

## II. ISSUES

We consolidate and restate the issues on appeal as follows:

- A. Whether clear and convincing evidence supports the trial court's finding of the statutory ground for termination.
- B. Whether clear and convincing evidence supports the trial court's findings that termination of Mother's parental rights was in the best interest of the child.

## III. STANDARD OF REVIEW

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions." *In re M.J.B.*, 140 S.W.3d 643, 652–53 (Tenn. Ct. App. 2004). "Termination of a person's rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and 'severing forever all legal rights and obligations' of the parent." *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting Tenn. Code Ann. § 36-1-113(I)(1)). "[F]ew consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787 (1982)).

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

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

Tenn. Code Ann. § 36-1-113(c). "[A] court must determine that clear and convincing evidence proves not only that statutory grounds exist [for the termination] but also that

termination is in the child's best interest." *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court's decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000), *abrogated on other grounds by In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005).

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

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

An appellate court reviews a trial court's findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. The trial court's ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review de novo with no presumption of correctness. Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness.

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

Lastly, in the event that the "resolution of an issue in a case depends upon the truthfulness of witnesses, the trial judge, who has had the opportunity to observe the witnesses and their manner and demeanor while testifying, is in a far better position than this Court to decide those issues." *In re Nevada N.*, 498 S.W.3d 579, 591 (Tenn. Ct. App.

2016) (citing *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997)). “Thus, this court gives great weight to the credibility accorded to a particular witness by the trial court.” *In re Christopher J.*, No. W2016-02149-COA-R3-PT, 2017 WL 5992359, at \*3 (Tenn. Ct. App. Dec. 4, 2017) (citing *Whitaker*, 957 S.W.2d at 837).

#### IV. DISCUSSION<sup>4</sup>

##### A.

As stated above, the trial court granted the termination petition against Mother based upon the statutory ground of severe child abuse. Mother does not offer any argument against this statutory ground of termination and “concedes that grounds exist to terminate her parental rights.” Nevertheless, we will consider this ground as required by our Supreme Court. *In re Carrington H.*, 483 S.W.3d at 525–26 (“[T]he 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.”).

##### *Severe Child Abuse*

The trial court terminated Mother’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(4), which provides:

The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights . . . to have committed severe child abuse against any child[.]

As relevant here, Tenn. Code Ann. § 37-1-102(27) defines “severe child abuse” as:

(A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a child that is likely to cause serious bodily injury or death[.]

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<sup>4</sup> We will reference the statutes which were in effect when DCS filed the petition for termination of parental rights on November 29, 2021.

On September 30, 2021, the Juvenile Court of Bradley County entered an order adjudicating the child dependent and neglected and finding that she was the victim of severe child abuse perpetrated by Mother due to in utero drug exposure. Additionally, on March 16, 2017, the Juvenile Court of Bradley County entered an order adjudicating another of Mother's children, James, dependent and neglected and finding that Mother severely abused him "by exposing him to drugs, specifically methamphetamine and amphetamine." These orders were final, and Mother did not appeal them. Therefore, either severe abuse finding is *res judicata*. *In re Dakota C.R.*, 404 S.W.3d 484, 497 (Tenn. Ct. App. 2012). We apply the doctrine of *res judicata* "to prevent a parent from re-litigating whether she committed severe child abuse in a later termination of parental rights proceeding, when such a finding ha[s] been made in a previous dependency and neglect action." *In re Heaven L.F.*, 311 S.W.3d 435, 439 (Tenn. Ct. App. 2010). Because the severe abuse findings in the March 2017 and September 2021 orders each satisfy the "under any prior order of a court" language in Tennessee Code Annotated section 36-1-113(g)(4), we conclude that the trial court properly determined that DCS proved this ground for termination by clear and convincing evidence.

B.

*Best Interest of the Child*

Having concluded that there was clear and convincing evidence supporting at least one statutory ground of termination, the trial court was required to consider whether termination of Mother's parental rights was in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113(c)(2); *In re Audrey S.*, 182 S.W.3d at 860. After a court finds that clear and convincing evidence exists to support a termination ground, "the interests of the parent and the child diverge," and the court focuses on the child's best interests. *In re Audrey S.*, 182 S.W.3d at 877. A finding that at least one ground for termination of parental rights exists does not necessarily require that a parent's rights be terminated. *Id.* Because some parental misconduct is redeemable, Tennessee's termination of parental rights statutes recognize "that terminating an unfit parent's parental rights is not always in the child's best interests." *Id.* The facts a court considers in the best interest analysis "must be proven by a preponderance of the evidence, not by clear and convincing evidence." *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). After making the underlying factual findings, the court "should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child's best interest." *Id.*

The applicable statute instructs as follows:

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

(A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority;

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

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

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

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

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

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

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

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

(J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol,



controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;

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

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

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

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

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

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

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

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

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

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

(2) When considering the factors set forth in subdivision (i)(1), the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.

(3) All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court's written order.

(4) Expert testimony is not required to prove or disprove any factor by any party.

Tenn. Code Ann. § 36-1-113(i). "This list is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent's parental rights is in the best interest of a child." *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005). The General Assembly has also stated that "when the best interest[] of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interest[] of the child, which interests are hereby recognized as constitutionally protected." Tenn. Code Ann. § 36-1-101(d); *see also White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004) (holding that when considering a child's best interest, the court must take the child's perspective, rather than the parent's).

On appeal, Mother argues that termination of her parental rights was not in the child's best interest because the termination petition was filed only six months following the child's removal. Here, DCS petitioned to terminate Mother's parental rights after she ceased communication and essentially disappeared. Mother does not cite any legal authority to support this assertion of error. Given the facts of this case and the testimony outlined below, we find the argument unavailing. Likewise, Mother argues without citation to legal authority that termination of her parental rights was not in the child's best interest because there was no petition to terminate the parental rights of the potential father she named a few weeks before trial. The record indicates that DCS consulted the Tennessee putative father registry before filing the petition, as required by Tennessee Code Annotated section 36-1-113(d)(3)(A), and that Mother was the only party to this action. Mother's attempt to rely on her own secrecy is not well taken, and we discern no error here.

In its order, the trial court made specific findings as to each relevant best interest factor and concluded that they weighed in favor of terminating Mother's parental rights. Upon our review of the record, we agree. For instance, the testimony at trial showed that Mother has abused illegal drugs since she was a teenager. She is now in her thirties. Mother's own testimony, as well as that of the other witnesses, highlighted the significant consequences of Mother's extensive history of drug abuse. These consequences include:

the abuse of the child, Tenn. Code Ann. § 36-1-113(i)(1)(N); the abuse of another child, James, and contribution to his death, *id.*; Mother's inability to obtain stable housing due to the felony conviction from her neglect and abuse of James, *id.* at (i)(1)(C); and Mother's failure to provide safe and stable care for any of her children, *id.* at (i)(1)(O). The record contains extensive testimony about the serious medical issues that the child suffers due to in utero drug exposure. Mother attended only one of the child's doctor's appointments, did not know who the child's doctors were, could not name the child's medical issues besides baby asthma, and overall did not demonstrate an understanding of the child's health problems or needs. *Id.* at (i)(1)(P). Despite knowing that the child suffers from asthma, Mother could not offer her the courtesy of not smelling of cigarette smoke during visits, even after DCS's instruction. *Id.* Foster Mother explained that, after visiting with Mother, the child must "go home and do breathing treatments because there is a strong smell of nicotine on a regular basis." DCS observed that Mother did not meet the child's basic need of checking and changing diapers. *Id.*

Testimony on the subject of visitation established that, following the child's removal, Mother inconsistently visited her and was often late; then Mother did not visit the child for three months—from September until December 2021—when she disappeared from contact. *Id.* at (i)(1)(E). Beginning in December 2021, Mother consistently visited the child but, by all accounts, those visits went poorly because the child would scream herself to breathlessness. Mother testified that her bond with the child improved during the visits nearest to the trial date. This was contradicted by testimony that the child would consistently scream when in Mother's care but would immediately calm down in Ms. Byers's or Foster Mother's presence. *Id.* at (i)(1)(D). By contrast, the child shows a healthy parental attachment to her foster parents who hope to adopt her, *id.* at (i)(1)(H), and to her biological sibling who lives in the same home, *id.* at (i)(1)(I). Further, the evidence does not preponderate against the trial court's finding that Mother "has never provided stability for herself or any biological child," whereas the child has lived in the foster home nearly her entire life. *Id.* at (i)(1)(A). The record leaves no doubt that changing the child's caretakers and physical environment at this point is likely to negatively affect her emotional condition and especially her medical conditions. *Id.* at (i)(1)(B). Based on Mother's testimony that she lives as a guest of someone whom she met in jail, questions remain as to whether the physical environment of Mother's home is healthy and safe for the child. *Id.* at (i)(1)(R).

It is commendable that Mother maintained sobriety for three months prior to trial and that she was working on turning her life around. However, all of the facts outlined above are supported by a preponderance of the evidence in the record and amount to clear and convincing evidence that it is in the child's best interest for Mother's parental rights to be terminated. Accordingly, we affirm.

## V. CONCLUSION

The trial court's judgment is affirmed. The case is remanded for such further proceedings as may be necessary and consistent with this Opinion. Costs of the appeal are taxed to the appellant, McKala D. S.

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JOHN W. McCLARTY, JUDGE