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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 ISAIAH W. ET AL.

Appeal from the Circuit Court for Greene County
No. CC-21-CV-254, 17762, 17763 William Erwin Phillips, II, Judge

No. E2022-00575-COA-R3-JV

This is a dependency and neglect case concerning two minor children. Appellee Tennessee Department of Children's Services received a referral of potential child abuse. Following a brief investigation, the oldest child was taken into DCS custody after he admitted to sexually assaulting Appellant, his mother. Three days later the juvenile court *sua sponte* ordered the younger child into DCS custody due to allegations of domestic violence and sexual abuse in the home. Later, the juvenile court adjudicated both children dependent and neglected. On *de novo* review, the circuit court found the older child dependent and neglected under Tennessee Code Annotated section 37-1-102(b)(13)(A) and found both children dependent and neglected under section 37-1-102(b)(13)(F) and (G). Mother appeals. Discerning no error, we affirm.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and THOMAS R. FRIERSON, II, J., joined.

Jessica C. McAfee, Greeneville, Tennessee, for the appellant, Constance C.¹

Jonathan Skrmetti, Attorney General and Reporter, and Carrie Perras, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.²

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

² Although the minor children were represented by a guardian ad litem in the Circuit Court, the guardian ad litem did not file a brief in this appeal.

OPINION

I. Background

On May 1, 2021, the Greene County Sherriff's Department received a call from a preacher who reported that Isaiah W. (d/o/b December 2005) told the preacher that his mother, Appellant Constance C. ("Mother"), was going to "do something bad" to him. At the time, Isaiah, his younger brother, Noah C. (d/o/b/ January 2010) (together with Isaiah, the "Children"), and Mother were residing at a local motel. When officers arrived to check on the family, both Mother and Isaiah were questioned. Isaiah told police that he lied to the preacher. Mother told police that she and the Children were running from Douglas C., Mother's ex-husband and Isaiah's legal father.³ Mother also told police that she believed Douglas C. was plotting to kill her over insurance money and that Isaiah was participating in the murder plot. Mother provided police with a letter Isaiah had handwritten and given to Mother. In the letter, Isaiah admitted that he raped Mother approximately 18-20 times and that he gave her excess trazadone (Mother's prescribed sleep medication) to cause her to sleep more heavily. When questioned by police whether the letter was true, Isaiah admitted to writing it and to its truthfulness. Thereafter, the police contacted the Tennessee Department of Children's Services ("DCS").

That night, DCS employee Christy Blair responded to the scene and spoke with Mother and the Children. Isaiah admitted to Ms. Blair that he wrote the letter and that its contents were true. Mother told Ms. Blair that she did not know about Isaiah raping her until she read the letter, and Mother stated that she did not want Isaiah in her care. Mother also told Ms. Blair about the alleged murder plot and her belief that Isaiah was involved. At that time, DCS did not have safety concerns for Noah, and he was left in Mother's care. Isaiah was transported to a juvenile holding area.

On May 4, 2021, DCS filed a petition for temporary legal custody of Isaiah in the Juvenile Court of Greene County (the "Juvenile Court"). In pertinent part, the petition: (1) described Isaiah's confession concerning the drugging and rape of Mother; (2) alleged that Mother believed there was a murder plot to kill her; and (3) alleged that Mother admitted that two of her older children sexually abused the Children. The petition also alleged that Mother was unwilling to have Isaiah returned to her care. Although DCS' petition sought custody only of Isaiah, the Juvenile Court entered a protective custody order concerning *both* Children. Under the order, the Juvenile Court granted temporary legal custody of both Isaiah and Noah to DCS. Although the order set a preliminary hearing for the following day, Mother, by and through her counsel, waived the preliminary hearing. In a June 4, 2021 order, the Juvenile Court found that Mother, by and through counsel, waived "the requirement for a preliminary hearing within three days and ask[ed] that the preliminary hearing be combined with the adjudicatory hearing."

³ Douglas C. is not a party to this action.

After the Children's removal, DCS began providing services to the family. On June 1, 2021, DCS developed a permanency plan with the goal of reunifying both of the Children with Mother. In pertinent part, the permanency plan required Mother to: (1) take an active role in visitation; (2) provide medical documentation of her medical diagnosis; (3) complete a psychological evaluation and follow recommendations; (4) participate in mental health treatment and follow recommendations; (5) submit to an alcohol and drug assessment and allow a random pill count; (6) obtain and maintain a legal source of income and provide proof of income to DCS; (7) continue to pay the court-ordered child support; (8) maintain weekly contact with the family's social worker; and (9) obtain and maintain safe and stable housing for the Children to return to and allow DCS to visit the home.

On June 29, 2021, the Juvenile Court conducted an adjudicatory hearing and review of the permanency plan. On July 20, 2021, the Juvenile Court entered an order from this hearing. As found in its order, although the Juvenile Court originally granted Mother's request to continue the hearing because she was ill and absent from the courtroom, Mother's attorney later withdrew the motion, and the hearing commenced. Relevant here, the Juvenile Court found both Children dependent and neglected. Concerning Isaiah, the trial court found that Mother stated that Isaiah could not return to her custody due to the sexual assault allegations. The Juvenile Court found that both Children were placed in a dangerous situation due to: (1) the alleged murder plot; (2) a history of familial sexual abuse that went unaddressed; and (3) not receiving proper medical or mental health treatment. The Juvenile Court also found that there was no record of the Children being homeschooled or proof of an approved curriculum. The Juvenile Court expressed great concern for Mother's mental and emotional health and stability and found that Mother "needs to do a lot of work before Noah returns to her home." The Juvenile Court also found that the permanency plan tasks were reasonable and related to achieving permanency for the Children. Accordingly, the Juvenile Court found that the permanency plan was in the best interests of the Children and approved and ratified it. The Juvenile Court suspended visitation between Mother and Isaiah until Mother attended mental health therapy and Isaiah completed his therapy program. The Juvenile Court awarded Mother therapeutic visitation with Noah in a controlled setting.

On July 27, 2021, Mother filed a notice in the Circuit Court for Greene County (the "trial court") that she was appealing the Juvenile Court's July 20, 2021 order. On March 28, 2022, the trial court held a *de novo* adjudicatory hearing. The following witnesses testified: (1) Rebecca Yarosh, a licensed clinical social worker and Isaiah's therapist; (2) Christopher Shufflar, one of the officers who arrived on the scene the night Isaiah was removed from Mother's custody; (3) Ms. Blair; (4) Mother; (5) Jerry M., Mother's long-time paramour; (6) Christopher Vance, the Children's foster care case manager; and (7) Heather Darling, a family support specialist who supervised Mother's visitation with Noah. That day, the trial court orally announced its conclusion that the Children were dependent and neglected. The trial court confirmed its conclusion in writing by order of April 21,

2022. Mother filed a timely appeal.

II. Issues

As stated in her brief, Mother raises five issues for review:

1. Whether the trial court erred when it bench-ordered the minor children into custody, without sufficient probable cause, and in determining that there were no *less drastic alternatives to removal*.
2. Whether the trial court violated Mother's due process rights in entering a restraining order between Mother and the oldest child, Isaiah, *without notice* thereof, in her absence, and no findings to substantiate the restraining order.
3. Whether the trial court erred in finding that [sic] clear and convincing evidence that the children were dependent and neglected pursuant to T.C.A. 37-1-102(13)(f), & (g).
4. Whether the trial court erred in ratifying the Department of Children's Services' permanency plan which contains tasks which are **not** reasonably related to the reasons for removal of the children.
5. Whether there exists any basis for the continued separation of the children from their Mother, Constance C[.], when the Court violated Mother's constitutional rights to the care and custody of her children.

(Emphases in original). Confusingly, Mother's appellate brief uses the term "trial court" to refer to both the Juvenile Court and the Circuit Court. We deduce from context that: (1) the "trial court" referred to in Mother's first, second, and fourth issues is the Juvenile Court; (2) the "trial court" in Mother's third issue is both the Juvenile Court and the Circuit Court; and (3) the "trial court" in her fifth issue is the Circuit Court.

III. Standard of Review

We review a non-jury case "*de novo* upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is otherwise." *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000) (citing Tenn. R. App. P. 13(d)). The trial court's conclusions of law are reviewed *de novo* and "are accorded no presumption of correctness." *Brunswick Acceptance Co., LLC v. MEJ, LLC*, 292 S.W.3d 638, 642 (Tenn. 2008). This Court also gives considerable deference to a trial court's assessment of a witness' credibility, and such determinations will not be overturned absent clear and convincing evidence to the contrary. *Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999).

IV. Analysis

A. Juvenile Court Proceedings

Tennessee Courts have routinely noted that appeals in dependency and neglect cases are somewhat unique. As this Court has explained,

[t]he appeal from juvenile court to circuit court in a dependency and neglect case is not the same as this [C]ourt’s review of trial court decisions, as set out in the Tennessee Rules of Appellate Procedure. That is because, by statute, the circuit court is to “hear the testimony of witnesses and try the case *de novo*.” Tenn. Code Ann. § 37-1-159(a). . . .

While the record of the juvenile court proceedings is required to be provided to the circuit court on appeal, Tenn. Code Ann. § 37-1-159(c), the circuit court is not limited to that record. On the contrary, the circuit court in a dependency and neglect proceeding may not rely solely on the record made before the juvenile court, but under Tenn. Code Ann. § 37-1-159(c) must try the case *de novo* by hearing witnesses again and by rendering an independent decision based on the evidence received in the circuit court proceeding. *Tennessee Dept. of Children’s Services v. T.M.B.K.*, 197 S.W.3d 282, 289 (Tenn. Ct. App. 2006); *In re M.J.B.*, 140 S.W.3d [643,] 651 [(Tenn. Ct. App. 2004)]; *In re M.E.*, M2003-00859-COA-R3-PT, 2004 WL 1838179, at *5 (Tenn. Ct. App., August 16, 2004) (perm. app. denied Nov. 8, 2004). Black’s Law Dictionary defines a *de novo* trial as “[a] new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance.” *Kissick v. Kallaher*, W2004-02983-COA-R3-CV, 2006 WL 1350999, at *3 (Tenn. Ct. App. May 18, 2006) (no Tenn. R. App. P. 11 application filed). Consequently, the circuit court is not “reviewing” the juvenile court’s decision; instead, it is conducting a new proceeding as though the petition were originally filed in circuit court.

Green v. Green, No. M2007-01263-COA-R3-CV, 2009 WL 348289, at *8 (Tenn. Ct. App. Feb. 11, 2009). Accordingly, when a circuit court holds a trial *de novo*, “it is as though the juvenile court proceeding never occurred,” and “any findings by the juvenile court about dependency and neglect were of no effect whatsoever.” *Id.* at *9. When a party appeals a circuit court’s decision in a dependency and neglect matter, this Court’s review is limited to the circuit court’s actions. In short, we do not also review the actions of the juvenile court.

As discussed above, four of Mother’s issues implicate the Juvenile Court’s decisions. Specifically, Mother asks this Court to consider whether the Juvenile Court erred when it: (1) *sua sponte* ordered Noah into custody; (2) entered a restraining order between Mother and Isaiah; (3) determined that there was clear and convincing evidence that the Children were dependent and neglected at the time of removal; and (4) ratified DCS’ permanency plan. Because this Court’s review is limited to the actions taken by the Circuit Court, we do not review the foregoing actions by the Juvenile Court.⁴

Briefly, we address an issue that Mother raises in the argument portion of her appellate brief, but which she fails to list as an issue for review. In her briefing, Mother argues that the Juvenile Court “was never vested with venue or jurisdiction, since the parties reside in a different county, and the [Juvenile Court] abused its discretion when it denied DCS’ request to change venue, so DCS could work with [Mother], in the city where [she] reside[s].” To support her argument, Mother relies on a motion to transfer jurisdiction that DCS filed in the Juvenile Court. On this Court’s review, Mother never raised this issue with the Juvenile Court or the Circuit Court, and, although she raises it in this Court, she has failed to designate it as an issue on appeal.⁵

Nevertheless, under Rule 13(b) of the Tennessee Rules of Appellate Procedure, this Court is required to “consider whether the trial and appellate court have jurisdiction over the subject matter” even if the issue is not presented for review. Tenn. R. App. P. 13(b). Subject matter jurisdiction “involves a court’s power to adjudicate a particular controversy brought before it.” *First Am. Tr. Co. v. Franklin-Murray Dev. Co., L.P.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001) (citing *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Cashion v. Robertson*, 955 S.W.2d 60, 63 (Tenn. Ct. App. 1997)). “A court’s subject matter jurisdiction is derived—‘either explicitly or by necessary implication’—from the state constitution or statute.” *Jack R. Owen Revocable Tr. v. City of*

⁴ For completeness, we note that, on March 7, 2022, Mother filed a motion to lift the no contact order in the trial court, *i.e.*, the Circuit Court. In that motion, Mother referenced the Juvenile Court’s no contact order between Mother and Isaiah and alleged that “[t]here is no basis whatsoever for Mother to be prevented contact with Isaiah[.]” However, in her “prayer for relief” Mother asked that the trial court “allow for therapeutic visitation to take place between [Mother] and *Noah*,” (emphasis added), rather than Mother and *Isaiah*. In its adjudicatory order, the trial court referenced motions filed by Mother’s counsel before ordering that Mother be allowed two telephone calls per week with *Noah*. On this Court’s review, Mother does not cite to the motion to lift no contact order in her briefing, nor does she argue that the trial court erred by not lifting the no contact order with Isaiah.

⁵ The contents of appellate briefs are governed by Rule 27 of the Tennessee Rules of Appellate Procedure, which requires an appellant’s brief to list “[a] statement of the issues presented for review” Tenn. R. App. P. 27(a)(4). The statement of the issues is vitally important to the appeal as it provides this Court with the questions that we are asked to answer on review. The statement is also significant because our “[a]ppellate review is generally limited” to those issues listed in it. *Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012) (citing Tenn. R. App. P. 13(b)). Indeed, “[c]ourts have consistently held that . . . [a]n issue not included [in the statement of the issues] is not properly before the Court of Appeals.” *Hawkins v. Hart*, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001).

Germantown, No. W2018-01662-COA-R3-CV, 2019 WL 2233886, at *2 (Tenn. Ct. App. May 23, 2019) (quoting *Benson v. Herbst*, 240 S.W.3d 235, 239 (Tenn. Ct. App. 2007)). “The existence of subject matter jurisdiction depends on ‘the nature of the cause of action and the relief sought.’” *Jack R. Owen Revocable Tr.*, 2019 WL 2233886, at *2 (quoting *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994)). “[W]hen an appellate court determines that a trial court lacked subject matter jurisdiction, it must vacate the judgment and dismiss the case without reaching the merits of the appeal.” *Hirt v. Metro. Bd. of Zoning Appeals of Metro. Gov't of Nashville*, 542 S.W.3d 524, 527 (Tenn. Ct. App. 2016) (quoting *First Am. Trust Co.*, 59 S.W.3d at 141).

Although Mother argues that the Juvenile Court lacked “jurisdiction” over the Children, we deduce that Mother’s argument concerns venue. It is well settled that juvenile courts are vested with exclusive jurisdiction over dependency and neglect proceedings, *see* Tenn. Code Ann. § 37-1-103(a)(1), and Mother does not argue that this case should not have been filed in the Juvenile Court. Rather, Mother cites to Tennessee Code Annotated section 37-1-111, the statute concerning venue in juvenile court proceedings, and argues that the Juvenile Court erred “in keeping the case in Greene County, Tennessee, where none of the parties reside.” Tennessee Code Annotated section 37-1-111 provides that a dependency and neglect proceeding “may be brought in the county in which the child is present when it is commenced.” Tenn. Code Ann. § 37-1-111(c). It is undisputed that the Children were residing in a motel in Greene County when DCS received the referral and when DCS filed the petition for temporary legal custody. Accordingly, venue was proper in Greene County. Mother’s remaining issues concern the trial court’s orders, *i.e.*, the Circuit Court’s orders, which are properly before this Court for review. We turn to those now.

B. Dependency and Neglect Adjudication in Circuit Court

In conducting the *de novo* hearing, discussed *supra*, the trial court was required to determine whether the Children were dependent and neglected at the time of the second adjudicatory hearing. *See In re Lukis B.*, No. M2016-00357-COA-R3-JV, 2017 WL 1103043, at *2 (Tenn. Ct. App. Mar. 24, 2017); *Green*, 2009 WL 348289, at *10 n.13. “A determination that a child is dependent and neglected must be supported by clear and convincing evidence.” *In re Lukis B.*, 2017 WL 1103043, at *1. Under the clear and convincing standard, the evidence “must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence.” *Id.* (citing *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992))). Because the question of whether a child is dependent and neglected is a question of law, this Court reviews the trial court’s conclusion *de novo* with no presumption of correctness. *In re Lukis B.*, 2017 WL 1103043, at *2 (citing *In re H.L.F.*, 297 S.W.3d 223, 233 (Tenn. Ct. App. 2009)).

Tennessee Code Annotated section 37-1-102(b)(13) provides that a dependent and

neglected child includes a child:

(A) Who is without a parent, guardian or legal custodian;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; [or]

(G) Who is suffering from abuse or neglect[.]

Tenn. Code Ann. § 37-1-102(b)(13)(A), (F), and (G).

In its adjudicatory order, the trial court concluded that Isaiah was dependent and neglected under Tennessee Code Annotated section 37-1-102(b)(13)(A), (F), and (G). Specifically, the trial court found,

with respect to Isaiah[,] that he is a dependent and neglected child within the meaning of the law by clear and convincing evidence. As the Guardian ad Litem pointed out, [Mother] acknowledged that she did not feel Isaiah was remorseful and she feels unsafe and hostile towards Isaiah and does not want him in her home. The [c]ourt makes these findings pursuant to T.C.A. [§] 37-1-102(b)(13)(A)[,] (F)[,] and (G), that the [C]hild is without a proper parent or guardian, in such condition of want or suffering or under such improper guardianship or control so as to injure or endanger the morals or health of the [C]hild and suffering from abuse or neglect. Isaiah bears the responsibility for his actions, but the [c]ourt is want to concede that the household from which the [C]hild came was without abuse and neglect and the [c]ourt finds that his home life is likely what endangered his morals. [Mother] agrees that . . . Isaiah needs treatment and is not ready at this time to return to her home.

Concerning Noah, the trial court found that he was dependent and neglected by clear and convincing evidence under section 37-1-102(b)(13)(F), and (G), to-wit:

The [c]ourt finds that there is a cycle of sex abuse and violence in the family and [it] cannot identify the origin but notes that of the five children that [Mother] has, four of whom, Emmanuel, Helen, Isaiah[,] and Noah, were sexually abused, perpetrated sex abuse, or perpetrated sexual violence. Not only have those children been consumed by sexual violence, so has [Mother] and so has Jerry [M.], and so has Douglas [C.]. [Mother] stated that she left Douglas [C.] 18 years prior to the birth of both Isaiah and Noah. Time and

again she insinuated that he inserted himself into her life and was the cause of the sexual issues involving four of her five children. The [c]ourt cannot find that he was the sole origin of the sexual abuse. The [c]ourt also finds that there is domestic violence in the home of [Mother]. [Jerry M.] is to be commended for the efforts he has made but he has only just begun his sobriety. The [c]ourt finds that there were inconsistencies in the testimony offered by [Mother] and where her testimony conflicts with the testimony of other witnesses and the [c]ourt's findings[,] the [c]ourt finds that her testimony on those points is not credible, and the [c]ourt's ruling will be based on the testimony of the other witnesses. The [c]ourt is concerned about the home situation as it stands today and finds that Noah would be and is a dependent and neglected child if he were to be returned to the care of [Mother] today by clear and convincing evidence. . . . The [c]ourt makes this finding pursuant to T.C.A. § 37-1-102(13)(F) and (G) in such condition of want or suffering or under such improper guardianship or control as to injure or endanger the morals or health of the child and is suffering from abuse or neglect. Noah was then and is now suffering in the eyes of the [c]ourt. There was very powerful testimony of his disclosure to Mr. Vance of his entry into the cycle of sexual abuse. He needs help and he needs to continue to address this in therapy. There is clear and convincing evidence that Noah would be in danger of not continuing to receive the necessary mental health treatment [he] is currently receiving if he were to be returned home. It has not been adequately addressed for Noah in the past. We see here a young man struggling with his face in a pillow and asking it to stop. Everyone involved in this case wants this inner torment to stop for Noah.

On appeal, Mother argues that the trial court erred when it found both Children dependent and neglected. As an initial matter, it is perplexing to this Court that Mother's appellate argument concerns both Children when she conceded at the adjudicatory hearing that she did not want Isaiah back in her custody. When asked whether Mother was requesting for Noah to return home but not Isaiah, Mother testified:

Well, I need someone to tell me. No one has communicated to me if . . . but he recently disclosed something on March 11 that worried me because this is the third time that he has changed his story. I don't see someone as remorseful if they are going to keep denying this, admitting that, admitting this and denying that.

In closing arguments, Mother's attorney argued, in pertinent part:

Nevertheless, she is not in the position today because there is so much more room for growth, maturity and whatever else with Isaiah that he is not ready to come home. I believe she agrees with me and that is what we have

discussed. That is where we are with that.

For completeness, and because the trial court's adjudicatory order addressed Isaiah, this Court will as well. The record supports the trial court's conclusion that Isaiah is dependent and neglected under Tennessee Code Annotated section 37-1-102(b)(13)(A). As noted above, Mother is not ready for Isaiah to return to her custody, and Isaiah's legal father, Douglas C., filed a waiver of interest, stating that he did not wish to provide care for Isaiah. Accordingly, the record is clear that Isaiah is "without a parent, guardian or legal custodian." Tenn. Code Ann. § 37-1-102(b)(13)(A).

We will address the trial court's conclusions concerning Tennessee Code Annotated section 37-1-102(b)(13)(F) and (G) together for both Children. As discussed above, a child is dependent and neglected under Tennessee Code Annotated section 37-1-102(b)(13)(F) when the child is "in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others." Tenn. Code Ann. § 37-1-102(b)(13)(F). A child is also dependent and neglected if he or she "is suffering from abuse or neglect." Tenn. Code Ann. § 37-1-102(b)(13)(G). There is clear and convincing evidence in the record to support that Isaiah and Noah are dependent and neglected under section 37-1-102(b)(13)(F) and (G).

The core issues for this family are a cycle of sexual abuse and sexual violence, domestic violence, and Mother's failure to recognize and/or appropriately address these issues. Mother has a history of sexual abuse, she has been a victim of domestic violence perpetrated by Douglas C. and Jerry M., both of the Children have been sexually abused by family members, and both of the Children have been exposed to domestic violence perpetrated against Mother. The record shows that Mother has failed to appropriately address these issues, and she refuses to accept responsibility for her part in the abuse cycle.

At the adjudicatory hearing, Mother blamed Douglas C. for the family's history of sexual abuse and domestic violence. However, Mother also testified that she left Douglas C. in 2003, before either Isaiah or Noah was born. While Douglas C.'s actions towards Mother and her other children (Emmanuel and Helen) certainly could (and likely) have affected Isaiah and Noah, we agree with the trial court that Douglas C. is not solely to blame for the issues facing this family. Mother seems not to recognize how her choices and history of abuse have affected both herself and the Children. By way of example, despite Mother blaming Douglas C. for the family's issues with sexual violence, and despite Mother's belief that Douglas C. and Isaiah were conspiring to murder her, Mother allowed Isaiah to have phone contact with Douglas C. a few months before the Children were removed from her care. Similarly, the record shows that Mother has been in a relationship with Jerry M. for sixteen years. Jerry M. testified that, during that time, he physically abused Mother; he admitted to choking her and breaking some of her bones. The record shows that Jerry M. is an alcoholic who becomes abusive when he drinks. At the adjudicatory hearing, Mother testified that it had been "over ten years" since Jerry M.

abused her. However, other proof admitted into evidence contradicted Mother's testimony. Jerry M. admitted that he relapsed after Noah was taken into DCS custody. During his relapse, Jerry M. physically abused Mother, giving her two black eyes one or two days before Mother was to exercise visitation with Noah. Text messages entered into evidence show that Mother believed Jerry M. was threatening to kill her in November 2021. On November 9, 2021, Mother wrote in a text message to Jerry M., Mr. Vance, and Mother's attorney:

. . . I will tell you anything you want to know about why this all was never Isaiah's fault, but that he had to listen to all of Jerry's abuse and hatred. I am not protecting Jerry anymore. He says he is going to kill me.

Mother also wrote that she was going to seek an order of protection against Jerry M. In response to Mother's text message, Jerry M. wrote: "I am not even in the same county. Not sure why she is lying[.]" Jerry M. testified that he has been sober since November 2021, that he attends Alcoholics Anonymous meetings several times per week, and that he is working on anger management with a counselor at Watauga Behavioral Health. Although Mother testified that she called the Domestic Abuse Hotline in January 2022, when she testified in March 2022, she stated that she did not believe domestic abuse would be an issue anymore.

Concerning the Children, Mother testified that Jerry M. was not allowed around the Children when he was drinking. The foregoing text message, as well as other text messages and voicemails that were admitted into evidence, directly contradict Mother's testimony. For example, in a text from Mother to DCS employees, Mother stated that the Children have lived in a perpetual state of fear and that Isaiah often heard Jerry M. screaming. Mr. Vance corroborated Mother's statements when he testified that Isaiah "felt that he was [Mother's] defender," and that Isaiah "has actually broken up fights where Jerry [M.] would be attacking [Mother]; [h]e has had to step in, break it up[,] and be a defender for [Mother]." Thus, the evidence shows that the Children, and particularly Isaiah, have witnessed the domestic abuse perpetrated against Mother by Jerry M.

Turning to sexual abuse and the Children, the record shows that Isaiah has committed sexual abuse against Mother, and that he has alleged that he has been the victim of sexual abuse perpetrated by his older siblings, Helen and Emmanuel. We agree with the trial court that Isaiah bears the responsibility for his abuse against Mother, but we also note that Isaiah was raised in a household that allowed sexual abuse and violence to persist. As evidence of the persistent sexual abuse, the record shows that Noah was also sexually abused by his sister, Helen, when he was five years old. Noah was seven years old when Mother learned of the abuse. When questioned whether Mother took Noah to therapy after learning of the abuse, Mother testified that she "tried to encourage [Noah] to go and he said that he would not go." Mother testified that Noah "appeared in no way affected and . . . when he told [Mother] he said it was like a weight was lifted off of him[.]" Mr. Vance

testified that when he discussed Noah's sexual abuse with Mother, Mother told him "they were working on it internally and with God." Mr. Vance's testimony concerning Noah's disclosure of the abuse demonstrates that Noah is still very much traumatized by the event:

. . . I asked if someone touched you inappropriately and he said yes, Helen. I asked who was Helen and [he put] his fist up and his body does this and he turns and just shoves his face into the pillow and then he starts beating the pillow. He says, "Stop it, stop it, stop it," basically screaming to himself. I couldn't calm him and I had to get the foster mom to come because still he was very hesitant to talk with me because I am from D.C.S. She came in and comforted him and he said that Helen had molested him and touched his privates and then he just broke down bawling.

Both of the Children are in therapy to work through their respective unaddressed traumas and issues.

The foregoing evidence clearly and convincingly establishes that the Children are suffering from abuse and neglect, Tenn. Code Ann. § 37-1-102(b)(13)(G), and that such suffering is, at least partially, the result of Mother's improper guardianship that has injured and endangered both the morals and health of the Children. Tenn. Code Ann. § 37-1-102(b)(13)(F). Mother fails to recognize how her actions (or inactions) have perpetuated the cycle of abuse. While Noah was in Mother's care, he was sexually abused by a family member. When Mother learned of the abuse, she failed to provide Noah with the appropriate treatment to help him address the trauma; rather, Noah was left to suffer silently for years. Mother also seems to be unaware of how her relationship with Jerry M. has affected the Children, especially Isaiah, who saw himself as Mother's protector. Of further concern is Mother's failure to recognize the instability in her relationship with Jerry M. Despite alleging that Jerry M. was going to kill her in November 2021, in March 2022, Mother testified that Jerry M. "is the best loving man that [Mother had] ever met . . . [and that] [h]e is just incredibly stable." At the time of the hearing, Mother was living with Jerry M., on whom she was completely financially dependent. We agree with the trial court that Jerry M. is to be commended for his efforts with sobriety and counseling, but his ability to remain sober and to refrain from domestic abuse is not yet established. Jerry M. is certainly to blame for his abuse against Mother, but Mother consistently has chosen to remain with him, which decision has exposed the Children to abuse and violence.

It is clear from the record that Mother has suffered significant trauma of her own that she has yet to address. The record shows that Mother has been reluctant to accept mental health services and treatment because, according to her, she "[hasn't] done anything wrong." As discussed above, although Mother never perpetrated sexual or domestic violence against the Children, she has continually exposed them to it and has allowed it to persist in her household. At the adjudicatory hearing, Mother testified that she had very recently submitted to a psychological evaluation, the results of which had not been

released; she also stated that she had begun to participate in therapy. However, at the time of the adjudicatory hearing, Mother still refused to accept responsibility for her part in the Children's dependency and neglect. Mother testified:

Q. I am going to say this to you and then I am going to sit down. I don't know about Dylan but I know that Emanuel had sexual issues.

A. It all came from Douglas C[.]

Q. Helen had sexual issues.

A. Douglas C[.]

Q. Noah has at least been a victim. Isaiah may have been a victim or a perpetrator. Right? We don't know. Those are four out of your five children that have had sexual issues, right?

A. Yes.

Q. Are you legitimately telling me that you don't need mental health services to deal with that and that is not an ongoing issue?

A. An ongoing issue for whom?

Q. For you. I know what we are talking about for the kids but I am talking about for you. It is four out of your five children.

A. And it all came from my ex.

Q. None of it came from you? You are not impacted in any way by it?

A. Impacted, certainly I am impacted, but did any of it come from me? No. It is only now that Isaiah is claiming that he has [co]-slept with me and all of this, you know, it is absurd. I don't think he is sorry at this point. I did but I don't think

This Court is hopeful that Mother will commit to mental health treatment and to understanding her role in the cycle of abuse. However, until Mother is able to recognize how her actions affect the Children, the Children will remain dependent and neglected if left in Mother's care.

V. Conclusion

For the foregoing reasons, we affirm the trial court's order declaring the Children dependent and neglected. The case is remanded for such further proceedings as may be necessary and are consistent with this Opinion. Costs of the appeal are assessed to the Appellant, Constance C. Because Constance C. is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE