

**FILED**

05/28/2026

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs May 1, 2026

**IN RE SYLIS K., ET AL.**

**Appeal from the Circuit Court for Bradley County**  
**No. V-22-034      J. Michael Sharp, Judge**

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**No. E2025-01109-COA-R3-PT**

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This appeal involves a grandmother and grandfather's petition to terminate the parental rights of a father to two of his children. The petition alleged the following grounds for termination: (1) abandonment by failure to visit, (2) abandonment by failure to support, and (3) failure to manifest an ability and willingness to assume custody. The trial court held that each ground was proven by clear and convincing evidence. The trial court also determined that the termination of parental rights was in the best interests of the children. The father appeals. We ultimately affirm the termination of the father's parental rights but must vacate the trial court's determination regarding the failure to manifest an ability and willingness to assume custody for failure to comply with Tennessee Code Annotated section 36-1-113(k).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and Vacated in Part**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ANDY D. BENNETT, and WILLIAM E. PHILLIPS, II, JJ., joined.

Jessica M. Conine, Chattanooga, Tennessee, for the appellant, Albert H.

Jerry Hoffer, Cleveland, Tennessee, for the appellees, Ashley K. and Raymond K.

**OPINION<sup>1</sup>**

**I.      FACTS & PROCEDURAL HISTORY**

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

This appeal involves the termination of the parental rights of Albert H. (“Father”) to two of his children, Alesana K. and Syllis K.<sup>2,3</sup> The children’s mother (“Mother”) surrendered her rights to both children. Alesana was born in June 2016 while Father and Mother were unmarried. They were later married, and Syllis was born in March 2018. Syllis was born prematurely and was awarded a monthly social security benefit in anticipation of related medical issues. Father, Mother, and the children resided together until December 2020. At that point, Mother and the children moved in with her mother, Ashley K., and stepfather, Raymond K., (“Grandmother” and “Grandfather,” or collectively, “Grandparents”). In February 2021, Mother removed the children from the home and began staying in a motel. Father filed a petition seeking emergency custody. The petition alleged that Mother had engaged in illegal drug use throughout the relationship and had “snapped,” resulting in her taking the children to a motel to reside with a man purported to be a drug user. Father acknowledged his own marijuana use but claimed that he never smoked in the presence of the children and would cease moving forward. An ex parte order awarding Father custody was entered on February 26, 2021.

Shortly thereafter, Father and the children moved into a house with a woman named Kendra G., her teenage daughter, her young son, her adult son and his girlfriend, her son’s two children, and her son’s girlfriend’s daughter. Father and the children left this home in August 2021 and moved in with Grandparents. Shortly thereafter, Kendra contacted the Department of Children’s Services (“DCS”) and Grandmother to report concerns regarding Father’s use of alcohol and “over disciplining” the children. On September 10, 2021, DCS entered into an immediate protection agreement (“IPA”) with Father. As a result, Father was required to move out of the home. Grandparents filed a petition seeking temporary legal custody on September 17, 2021. An ex parte order granting them custody was entered the same day. The order stated that Father and Mother were to have no contact with the children except for supervised visitation. The order directed the parents to contact Solomon Family Solutions to schedule any visitation.

Grandparents filed a petition to terminate Father’s parental rights and adopt the children on January 27, 2022. However, they were unable to serve Father for more than one year. At some point, Grandparents filed a motion for default judgment, and the motion was scheduled for a hearing on March 30, 2023. Father happened to contact Grandparents’ attorney to inquire about other legal matters and was informed the hearing was scheduled for the following day. He appeared in court and stated that he opposed the termination of his parental rights. A guardian ad litem was appointed for the children and Father was appointed counsel. The matter was tried over the course of two days in June and July 2024.

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<sup>2</sup> It appears that Syllis’s name is misspelled as “Silas” in the various transcripts of evidence. Where we quote sentences containing these misspellings, we substitute the proper spelling.

<sup>3</sup> Father has another daughter with a different mother. Father’s rights to that daughter are not at issue in these proceedings.

Father was the first witness to testify. He stated that he was living in a “sober living house” with six roommates. Prior to that, he had lived in another sober living house for approximately one year. He was working in landscaping but anticipated starting a new job at Volkswagen in the coming weeks.<sup>4</sup> He also worked part time at an American Legion location as a karaoke deejay and kitchen worker. He discussed the events that took place after he obtained sole custody of the children in February 2021. Initially, he and the children lived with Kendra. Father explained that Kendra was a mother figure to him and had permitted him to live with her for many years. They never had a romantic relationship and, at the time of trial, had no relationship whatsoever due to his addiction issues. Father stated that he began using fentanyl “roughly four months” after he obtained custody. Shortly thereafter, Father and the children moved into Grandparents’ home. He testified that he never used fentanyl while parenting the children and “would not keep it in the house” or “have it anywhere around the children.” Rather, he would use fentanyl while he “was at work or the children were already long in bed or at their house.” He agreed that this was a “terrible idea” and a “huge mistake.” He also noted that he smoked marijuana.

Subsequently, he and DCS entered into the IPA, and he was required to leave the home. Father stated that he had not seen the children since “[a]bout two days after the IPA was put in place” on September 10, 2021. Later, Grandparents filed the custody petition, and he subsequently failed a drug screen. He stated that he did not visit the children again in 2021 or at all in 2022, despite the court’s order permitting him to seek supervised visitation. He was arrested for possession of fentanyl on July 18, 2022, in Hamilton County, and remained in jail until January 26, 2023. He was released on supervised probation and required to participate in the “Hamilton County Recovery Court” program, which he referred to as “drug court.” It was a part of this program that Father moved into the various sober living homes, and he began to work on his sobriety. However, Father did not attempt to visit the children during this time. Father stated that he attempted to send the children Christmas presents in 2023, and he later “reached out” to Grandmother, but this had not resulted in any contact with the children. He subsequently contacted Solomon Family Solutions and completed certain intake forms. However, he was not permitted to visit the children.

Father also discussed his work history prior to and throughout the custody proceedings. At the time he obtained custody, he was working at Jackson Manufacturing as a warehouse worker making between \$15 and \$16 per hour. He had worked there off and on for more than seven years. He held this job the entire time in which he had custody of the children, but he lost it due to drug use shortly after losing custody. He then worked at both Whirlpool and Best Buy Metals for about one month each and then at “Kayline.” He stated that “keeping a job” during this period of time was difficult because of his drug use and attendance issues. Father stated that he quit his job at “Kayline” because “[i]t

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<sup>4</sup> Father also stated that he anticipated starting a job at “Amusement Products in the warehouse” at some point but testified primarily about his anticipated position at Volkswagen.

wasn't for [him]." At Best Buy Metals he "went on [his] lunch break and didn't go back." After his release from jail, he worked at "Chattanooga River Boat." He later worked for Schnellecke Logistics, a subcontractor for Volkswagen. However, he quit this job due to scheduling conflicts with the drug court programs in which he was participating. He then moved into his landscaping and American Legion jobs. He planned to obtain a job at Volkswagen as it would provide him with a "better schedule." Father acknowledged that, between the months of September 2021 and January 2022, he had been "capable of getting a job."

Despite this, Father admitted that he had not paid child support since the children had come into Grandparents' custody. Father explained that he had paid "[b]ack child support" to Mother through a court order in the past but never to Grandparents. He acknowledged that he had the ability to pay them "something during that period of time" but refrained from doing so. Additionally, Father stated that Syllis received a social security check of between \$400 and \$500 per month while he had custody and during the time immediately after he lost custody. Father stated that, after the children were removed from his custody, he continued to receive the check. He admittedly spent the money on himself rather than giving it to Grandparents for Syllis's benefit.

Father testified that he experienced a prominent change in his life after his incarceration. He stated that becoming incarcerated "saved [his] life." After his incarceration, he began participating in the drug court program. As part of this program, he was tested for drugs three to five times per week, participated in an "IOP," spoke with counselors and a therapist, and lived in sober living homes. He also began participating in various meetings. He stated that he attended both alcoholics anonymous and narcotics anonymous meetings but "got in really deep with" heroin anonymous. He has since become a spokesperson for heroin anonymous and started a new weekly meeting for which he is the "GSR."<sup>5</sup> He also helped to oversee seven sober living houses and worked with "PawPaw's Homeless Ministries" by serving food to the homeless. He attends church at Abba's House Ministries. He stated that he has abstained from all alcohol and mind-altering substances and was working to quit smoking cigarettes. Additionally, he had been through "all twelve" of "the steps" but had recently obtained a new sponsor and had "started back over." He stated that he was currently on step four. Likewise, he was in good standing in the drug court program and anticipated graduating in November, at which point, he would be placed on unsupervised probation.

He felt that he had "done amazing" during the 18 months since his release from jail. He remained employed consistently and chose to remain in the sober living home in order to "better [him]self." However, he acknowledged that he would not be able to care for the

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<sup>5</sup> It is unclear what the acronym GSR stands for, but essentially, Father represents the group at various state and regional meetings and interacts with the administration of the church in which the group meets.

children immediately because he was still living in a sober living home. Father stated that he understood he would need to procure his own housing prior to regaining custody. He anticipated finding a suitable place to live once he graduated from the drug court program in November 2024. He would be sober for two years on September 19, 2024, which would represent his longest period of sobriety since he began using drugs. Turning to his relationship with the children, he stated that, prior to losing custody, their relationship had been “amazing.” He maintained that they had been attached to him prior to their separation and believed the attachment could be reformed. He also claimed that he had provided a safe and stable environment for the children for most of their lives and understood how to care for them. However, he acknowledged he had not done so alone, as “while [he] was with [Mother], [they] did live under [Grandparents’] roof” for a period of time. He also maintained that the children had not suffered any abuse while in his custody. Likewise, he claimed that his drug use had not gotten “bad” until after he lost custody.

Father called Teanna Chastain to testify. Ms. Chastain has been Father’s probation officer since January 2023. She stated that Father had passed all drug screens and described the change she had seen in him since he began the drug court program. She stated that while he “struggled in the beginning” he had come to understand the purpose of the program and was taking advantage of all the resources provided to him. She stated that he was “not the same person he was when” he began the program. Additionally, Ms. Chastain noted that Father is required to attend drug recovery classes from 9:00 AM until 12:00 PM on Tuesdays through Fridays in addition to maintaining full-time employment. She stated that while there is nothing in the program prohibiting the parenting of children, the time requirements make it difficult to do so.

Grandmother also testified. Grandmother is a special education assistant and Grandfather is an over-the-road truck driver. She explained that they do not have children together, but both have children from previous relationships. She has two children: Mother, and an adult son who lives in their basement. While the record is unclear as to how many, Grandfather has multiple daughters. Grandparents have five grandchildren in addition to Alesana and Syllis. Grandmother noted that one of Grandfather’s daughters takes the children home from school every day and she then picks them up after her shift as a bus monitor.

After she and Grandfather obtained custody of the children, she received no contact from Father until around Christmas of 2023 when Father offered to provide Christmas presents. She stated that she did not feel comfortable meeting him to collect the presents and did not do so. She noted that he had not contacted them or inquired about the children at any point prior to this. She stated that she was not contacted regarding visitation until May 2024 and confirmed that Father never provided financial support or inquired about doing so. Further, she explained that she did not deny visitation but informed the center “everything had to go through [their] attorney,” at which point, contact ceased. She stated that she did not believe Father was in a good position to return to the children’s lives. She

also contended that Father had not parented well while he had custody.

Grandmother indicated that the children are doing well in school. Syllis's grade level did not receive grades on the traditional grading scale, but he received "satisfactory" marks. Alesana received all As the previous year. Additionally, the children had participated in extracurricular activities such as karate, vacation Bible school, and softball. Neither child has exhibited any behavioral problems at school or at home. Syllis has been diagnosed with ADHD and recently began taking medication. Otherwise, neither child has any ongoing health issues or traumas. Grandmother explained that, while Syllis had initially exhibited issues stemming from premature birth resulting in his receipt of social security benefits, the expected issues had not developed, and he stopped receiving those benefits. She stated that the children have strong bonds with both herself and Grandfather. Likewise, both children have good relationships with the other grandchildren and have a "brotherly-sisterly" relationship with Grandmother's adult son. She stated that the children call her either "mom" or "grammy" and call Grandfather either "dad" or "poppy." She noted that the children do know who Father is and occasionally ask about him. She stated that she and Grandfather intend to adopt the children.

The final witness to testify was Kendra. She noted that she and Father had lived together for five or six years beginning when he initially moved to Tennessee from Rhode Island. She explained that Father had been a friend and roommate of her former husband. She stated that Father and the children had lived with her after he obtained custody, and she had been the one to contact Grandmother and DCS regarding the welfare of the children. She claimed that she did so because Father's "discipline style with the children was very harsh." She recounted an incident in which she saw Father "smack [Syllis] and he fell out of a chair." She also stated that Father did not actively care for the children but, rather, her teenage daughter and adult son's girlfriend were the ones who would clean their clothes, as well as feed and bathe them. Meanwhile, Father would "stay in the driveway" of the home "talking and hanging out" or "laying in his room or . . . on his phone." She stated that the odor from his room was "terrible," and he would mix clean clothes with dirty clothes resulting in the children also having a bad odor. She stated that he had issues with drugs and alcohol during this period of time and recounted instances of drinking and the belligerent behavior to which it led. This included Father "vomiting all over the walls, the ceiling, all over the toilet" and "urinating in [a] garbage can in the kitchen." She stated that the children were "all around the house" during the first incident but were in bed during the second.

She rented another residence with Father after he lost custody of the children, but this arrangement only lasted a short time. She moved out due to Father's drug problem. She stated that, while she lived here, she "could smell the fentanyl through the house" and "could hear him in [another room] with the foil." She stated that she also found drug paraphernalia in the basement, and she became afraid of leaving her minor children in the home. At one point, she began "barricading [her] bedroom door." She was asked whether

Father had been “a good dad” when he had custody and she responded, “I don’t believe so.” She “cut contact” with him after leaving the home. Since that time, she has remained in contact with Grandmother and has observed the children while they have been in her care. She stated that the children are in a good home and Alesana has become more confident and Syllis is happy. She also stated that Grandmother “does a very good job of handling Syllis’s ADHD behavior.”

The trial court entered its final order on October 23, 2024. The court determined that the grounds of abandonment by failure to visit, abandonment by failure to support, and failure to manifest an ability and willingness to assume custody had been proven by clear and convincing evidence. The trial court also determined that termination would be in the children’s best interests. Father filed this appeal.<sup>6</sup>

## II. ISSUES PRESENTED

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

1. Whether the trial court erred when it determined that Grandparents proved grounds for the termination of Father’s parental rights existed.
2. Whether the trial court erred when it determined that the termination of Father’s parental rights was in the best interests of the children.

For the following reasons, the judgment of the circuit court is affirmed in part and vacated in part.<sup>7</sup>

## III. STANDARDS APPLICABLE TO TERMINATION PROCEEDINGS

“A parent’s right to the care and custody of [his or] her child is among the oldest

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<sup>6</sup> Approximately nine months passed before Father filed this appeal. Father filed a “motion for relief” on June 27, 2025, in which he stated that he had not been alerted to the entry of the final order until that day. Father stated that his counsel had called the clerk multiple times to inquire about the existence of an order but had been informed “there was no order.” Likewise, the order was sent neither by email nor by any other means to Father or his counsel until June 2025, although, it appears the clerk may have inadvertently sent the order to an incorrect email address. Additionally, copies of the order are contained in the record including one with a particular docket number not matching the underlying case and another with that docket number crossed out and the correct number handwritten in its place. For these reasons, the trial court granted the Rule 60 motion and permitted the filing of this appeal.

<sup>7</sup> While Father has not challenged the trial court’s determination regarding the grounds for termination, we will nonetheless review the court’s findings as to each ground for termination pursuant to our Supreme Court’s directive in *In re Carrington H.* See *In re Carrington H.*, 483 S.W.3d 507, 525-26 (Tenn. 2016) (“[W]e hold that in an appeal from an order terminating parental rights the Court of Appeals must review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal.”)

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

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

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

#### IV. DISCUSSION

## A. Grounds for Termination

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

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or any amended petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child;

Tenn. Code Ann. § 36-1-102(1)(A)(i) (2022).<sup>8</sup> Grandparents alleged abandonment by both failure to visit and failure to support pursuant to this definition. We consider each ground in turn.

To begin, we consider the trial court’s ruling regarding abandonment by failure to visit. As the petition was filed on January 27, 2022, the relevant four-month period ran from September 26, 2021, until January 26, 2022. In addition to the definition for abandonment set forth above, the statute explains,

[f]or purposes of this subdivision (1), ‘failed to visit’ means the failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant four-month period;

Tenn. Code Ann. § 36-1-102(1)(E) (2022). Father admitted that he had not visited or had contact with the children since approximately two days after DCS filed the IPA. As the IPA was put in place on September 10, 2021, this indicates that Father’s last visit was on approximately September 12, 2021, two weeks before the beginning of the relevant time period. Again, Father admitted that he did not request supervised visits during “the balance of 2021” or at any point during 2022. Accordingly, the record contains clear and convincing evidence that Father failed to visit the children within the specified time period. Therefore, we affirm the trial court’s ruling as to this ground.

Turning now to abandonment by failure to support, “[f]or purposes of this

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<sup>8</sup> Throughout this opinion, we utilize the versions of the statutes in effect when the petition was filed in 2022.

subdivision (1), ‘failed to support’ or ‘failed to make reasonable payments toward such child’s support’ means the failure, for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child.” *Id.* at 36-1-102(1)(D) (2022). “That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant four-month period.” *Id.* Additionally, “[o]ur statutes provide that ‘[e]very parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent’s legal obligation to support such parent’s child or children.’” *In re Bentley E.*, 703 S.W.3d 298, 303 (Tenn. 2024) (quoting Tenn. Code Ann. § 36-1-102(1)(H) (Supp. 2022)). Moreover, “the law is clear that parents have a duty to support their children even absent a court order requiring them to do so.” *In re Makenzie L.*, No. M2014-01081-COA-R3-PT, 2015 WL 3793788, at \*20 (Tenn. Ct. App. June 17, 2015) *perm. app. denied* (Tenn. Oct. 15, 2015) (citing *State v. Wilson*, 132 S.W.3d 340, 343 (Tenn. 2004)).

The trial court determined that this definition of abandonment was proven by clear and convincing evidence. This is supported by the record. As stated above, the relevant four-month period ran from September 26, 2021 until January 26, 2022. Father admitted that he had not paid child support to Grandparents during the time in which they had custody of the children, despite having paid child support to Mother in the past. *See State ex rel. Williams v. Woods*, 530 S.W.3d 129, 142 (Tenn. Ct. App. 2017) (explaining that “the obligation to support a child follows the child”). Likewise, Father admitted that he had the ability to support the children and agreed he made a “conscious decision not to pay the child support[.]”<sup>9</sup> As Father admitted to not paying child support during the relevant time period, our review of the record demonstrates sufficient evidentiary support for the trial court’s ruling. Therefore, we affirm the trial court’s determination that Grandparents established the ground of abandonment by failure to support.

The final ground for termination that the trial court determined was proven by clear and convincing evidence was the failure to manifest an ability and willingness to assume custody of or financial responsibility for the children. This ground exists where a parent:

has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child[.]

Tenn. Code Ann. § 36-1-113(g)(14) (2021). To prove this ground, the petitioner must prove two “prongs” by clear and convincing evidence. *In re Neveah M.*, 614 S.W.3d at 674. The first prong is that “the parent . . . failed to manifest an ability and willingness to

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<sup>9</sup> At no time has Father raised the “affirmative defense” of an absence of willfulness in response to the allegation of failure to visit or support. *See* Tenn. Code Ann. § 36-1-102(1)(I).

personally assume legal and physical custody or financial responsibility of the child[.]” *Id.* This is satisfied by “clear and convincing proof that a parent . . . has failed to manifest *either* ability or willingness[.]” *Id.* at 677. “A parent’s ability to assume custody or financial responsibility is evaluated based ‘on the parent’s lifestyle and circumstances.’” *In re Trenton B.*, No. M2022-00422-COA-R3-PT, 2023 WL 569385, at \*6 (Tenn. Ct. App. Jan. 27, 2023) (quoting *In re Zaylee W.*, No. M2019-00342-COA-R3-PT, 2020 WL 1808614 at \*5 (Tenn. Ct. App. Apr. 9, 2020)). “When evaluating willingness, we look for more than mere words.” *In re Jonathan M.*, No. E2018-00484-COA-R3-PT, 2018 WL 5310750, at \*5 (Tenn. Ct. App. Oct. 26, 2018). The second prong requires proof that “placing the child in the parent’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.” *In re Neveah M.*, 614 S.W.3d at 674.

The trial court determined that the first prong was satisfied because Father lacked suitable housing at the time of trial. At the time of trial, Father was living in a sober living home with six roommates. Father acknowledged that his housing situation was not a suitable environment for the children. When asked whether he would be able to “take care of the children right now” he responded, “[b]eing as I’m staying in a sober living house I couldn’t[.]” While he was hopeful that he would move into an apartment the November following trial, he had no concrete plans for doing so. Accordingly, the record clearly supports the trial court’s determination that Father lacked the ability to assume custody.

However, while the trial court made several factual findings regarding the first prong of this ground, the trial court failed to make specific findings of fact regarding the second prong. The order provides only that “[t]he Court finds that placing the children in the father’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the children.” Unfortunately, this statement does not contain findings of fact that explain what led the trial court to form its conclusion that placing the children with Father would place them at a risk of substantial harm. Rather, this statement is merely a conclusion of law. *See In re K.N.R.*, No. M2003-01301-COA-R3-PT, 2003 WL 22999427, at \*4 (Tenn. Ct. App. Dec. 23, 2003) (stating that “a recitation in a final order that a parent has ‘abandoned the child’ is a conclusion of law, not a finding of fact”). “[M]ere legal conclusions” do not “fulfill the trial court’s obligations [and] are [not] sufficient to satisfy the directive of Tennessee Code Annotated Section 36-1-113(k).” *In re Nevada N.*, 498 S.W.3d 579, 594 (Tenn. Ct. App. 2016). “Instead, the court’s order ‘must set forth the findings of fact that underlie the conclusions of law.’” *In re Skylar M.*, No. E2022-00119-COA-R3-PT, 2022 WL 3099267, at \*5 (Tenn. Ct. App. Aug. 4, 2022) (quoting *In re Adoption of T.L.H.*, No. M2008-01408-COA-R3-PT, 2009 WL 152475, at \*5 (Tenn. Ct. App. Jan. 21, 2009)). Failure to enter an order compliant “with subsection (k) ‘fatally undermines the validity of a termination order.’” *In re Nevada N.*, 498 S.W.3d at 594 (quoting *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004)). Here, the trial court has not explained what facts led it to determine that the children would be at risk of suffering substantial harm if placed back in Father’s custody. “It is not the role of this

Court . . . to make factual findings where the trial court fails to do so.” *Id.* at 594. Therefore, we must vacate the portion of the trial court’s order related to this ground for termination. However, we ultimately affirm the trial court’s determination that two grounds for termination existed.

### **B. Best Interests of the Children**

Having determined that the trial court did not err when it found the petitioners proved two grounds for termination existed, we now consider whether the termination of Father’s parental rights was in the best interests of the children. The factors to be considered are set out in Tennessee Code Annotated section 36-1-113(i), which states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First, we consider those interrelated factors concerning the children's need for stability and continuity of placement, the effect the potential change of caretakers and physical environment would have on the children, and their parental attachments and emotionally significant relationships with persons other than parents and caregivers. Tenn. Code Ann. § 36-1-113(i)(1)(A), (B), (H), and (I). Both children have experienced stability while in Grandparents' custody. They have resided in the same home since coming into their custody. This has resulted in both children being successful at school, as well as Alesana becoming more confident and Syllis being "happy." Further, they have developed strong bonds with the other members of the family. They have a "brotherly-sisterly" relationship with Grandmother's adult son who also lives in the home. The children also interact with Grandfather's daughters and the couple's other grandchildren daily. One of the daughters also helps care for the children each day after school. Additionally, the children are provided for financially and are able to participate in extracurricular activities such as karate, vacation Bible school, and softball. Notably, Grandparents are seeking to adopt the children. Conversely, while Father stated that he previously had a parental attachment with the children, he has disrupted that attachment through his drug use, incarceration, and other lifestyle choices. Additionally, he failed to maintain contact with the children after they were removed from his custody and did not attempt to reestablish contact or visit the children for over two and one-half years.<sup>10</sup> While Father claimed that he believed he could recreate the attachment he once had with the children and provide a stable environment in the future, that remains to be seen. We commend Father for the steps that he has taken to achieve sobriety. However, Father has not yet demonstrated that he can maintain his sobriety or a stable living situation outside of the controlled environment in which he has resided post-incarceration. At the time of the trial, he was still living in a sobriety house, participating in meetings, and on supervised probation. These steps do not demonstrate that Father has created a stable and nurturing environment for the children

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<sup>10</sup> The proof shows that, after Grandparents obtained custody of the children, Father did not attempt to contact the children or inquire about them until around Christmas of 2023, when he requested that Grandmother meet him to pick up Christmas presents for the children. He did not attempt to start supervised visitation until May 2024, which was approximately one month before trial and approximately 31 months after his last contact with the children.

akin to the one in which they now live. Additionally, at the time of trial, Father had not made progress in reforming his bond with the children and had not seen them for almost three years. Therefore, factors (A), (B), (H), and (I) each weigh in favor of termination.

Next, we consider the interrelated factors concerning the children's interests in stable and secure housing and parenting. Tenn. Code Ann. § 36-1-113(i)(1)(C), (D), (E), (F), (G), and (O). Father has not demonstrated a consistent ability to meet the needs of the children. He lost several jobs after the children were placed in Grandparents' custody. He lost these jobs due to his addiction to drugs or by simply abandoning them. Notably, even while he was working, it appears that Father was unable to provide a stable home for the children. He acknowledged his reliance on Grandparents' home to provide for the children "physically" while he was still in a relationship with Mother. Likewise, after his relationship with Mother ended, he moved into a home in which several adults and children unrelated to him resided and then brought the children into the home upon obtaining custody. He and the children later moved back in with Grandparents. Additionally, he was incarcerated for approximately 6 months due to his drug use. While Father has since taken steps to achieve sobriety through his participation in drug court, various recovery programs, church, and living in a "sober living house," he has not taken the necessary steps to repair his attachment with the children or to create a stable living environment. He was working in landscaping and as a karaoke deejay at the time of trial and admitted he was unable to care for the children immediately due to his housing situation. While he was optimistic that he would soon obtain more substantial employment, he was not yet in that position and, whether he would receive that job remained to be seen. He did not seek visitation until May 2024 despite having been released from jail for more than one year and there being a court order in place permitting supervised visitation through a family services center. Father admitted that he does not have a parental attachment with the children and, while hopeful that this attachment could be repaired, did not explain the process through which such repair would occur. Additionally, Father has failed to support the children. He admitted that he had not paid child support to Grandparents since they had taken custody, despite having the ability to do so. Again, we commend Father for his attempts to correct his behavior, but several issues remain uncertain and unresolved. Meanwhile, the children currently reside in a home that is financially stable and in which they receive appropriate care and support. Therefore, we find that factors (C), (D), (E), and (O) weigh in favor of termination. However, factors (F) and (G) are neutral in this case as the testimony of Grandmother indicates that the children have not exhibited fearfulness related to Father or residing with him.

Factor (K) concerns the parent's proclivity to participate in or use available programs, services, or resources to assist in making a lasting adjustment to his or her circumstances, conduct, or conditions. The evidence demonstrates that Father has consistently participated in various programs since his release from jail. He has lived in a sober living home and has not failed a drug test. He has also taken a leadership role in heroin anonymous and has organized a new meeting. We find that this factor weighs

against termination. Factor (L) concerns the reasonable efforts of DCS to assist the parent, and the parent's inclination to engage in DCS offered services. While DCS was involved in the implementation of the IPA, it has not been heavily involved in these proceedings since that time. Therefore, factor (L) is neutral in this case.

Factor (N) considers whether the parent or a person residing with the parent has ever exhibited brutality, physical, sexual, emotional, or psychological abuse toward others. Kendra testified regarding an incident in which Father "smack[ed] Syllis and he fell out of a chair." Father denied that he abused the children. The trial court determined that there was not evidence in the record demonstrating this factor weighed in favor of termination. We agree and find that this factor is neutral in this case.

Regarding factor (S), Father has made no financial contribution to the support of the children since they have been placed in Grandparents' custody. Tenn. Code Ann. § 36-1-113(i)(1)(S). Father acknowledged that he failed to pay child support despite having the ability to do so. He even failed to sign over Syllis's social security check to Grandmother or Grandfather and instead spent the money on himself. He has obviously failed to make the consistent and substantial financial contributions necessary for the support of the children. Therefore, this factor weighs heavily in favor of termination.

Finally, we consider the interrelated factors concerning the parent's adjustment of circumstances detrimental to the environment, health, and psychoses of the children. Tenn. Code Ann. § 36-1-113(i)(1)(J), (M), (P), (Q), (R) and (T). While Father has started to repair the circumstances preventing him from caring for the children, he has not completed that process. At the time of the trial, he remained in a sober living home that he acknowledged was not suitable for the children. Likewise, while he stated that he anticipated obtaining more substantial employment, he had not yet obtained that employment. Additionally, while Father had been sober for more than one year at the time of the trial, he had not yet demonstrated the ability to maintain his sobriety outside of the structured and controlled environment his supervised probation, sober living home, and drug court participation created. We sincerely hope that Father will continue to progress in his attempts to remain sober, but at this stage, we cannot say that he has completed the adjustment of circumstances necessary for the children to be safely placed in his custody. Therefore, factors (J), (M), (P), (Q), and (R) weigh in favor of termination. As to the final factor regarding Father's emotional maturity and mental fitness, the trial court determined that this factor was neutral. We agree. Again, Father demonstrated progress in his self-development, but whether he has achieved the level of emotional maturity necessary to raise the children remains to be seen. Therefore, factor (T) is neutral in this matter.

Having carefully reviewed the record, we conclude that the proof does not preponderate against the trial court's factual findings. Additionally, these facts amount to clear and convincing evidence that it is in Alesana and Syllis's best interests for Father's parental rights to be terminated. Therefore, the ruling of the trial court regarding best

interests is affirmed.

## V. CONCLUSION

For the foregoing reasons, we affirm in part and vacate in part the decision of the trial court, but ultimately affirm the termination of parental rights of the father, Albert H. Costs of this appeal are taxed to the appellant, Albert H., for which execution may issue if necessary.

s/ Carma Dennis McGee  
CARMA DENNIS MCGEE, JUDGE