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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 3, 2022

IN RE SAMONE D. ET AL.

**Appeal from the Juvenile Court for Shelby County
No. EE5298 Dan H. Michael, Judge**

No. W2021-01225-COA-R3-PT

This appeal arises from the termination of a father's parental rights to his minor children upon the juvenile court's finding by clear and convincing evidence of the statutory grounds of abandonment by failure to provide a suitable home, abandonment by failure to visit, substantial noncompliance with the permanency plan, persistent conditions, putative father grounds, and failure to manifest an ability and willingness to assume custody of and financial responsibility for the children. The juvenile court further found by clear and convincing evidence that termination of the father's parental rights was in the children's best interest. We reverse the statutory grounds of abandonment by failure to provide a suitable home and persistent conditions. We also reverse the ground of abandonment by failure to visit and the putative father ground of failure to seek reasonable visitation as they pertain to the child, Samyra. We affirm the remaining grounds for the termination of the father's parental rights, as well as the juvenile court's determination that termination of the father's parental rights is in the children's best interest.

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

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which ANDY D. BENNETT and KENNY W. ARMSTRONG, JJ., joined.

Ada Johnson, Memphis, Tennessee, for the appellant, Sammie D., Sr.¹

Jonathan Skrmetti, Attorney General and Reporter, and Jordan K. Crews, Senior Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

¹ Mother died during the pendency of this appeal; therefore, Mother's parental rights are not at issue in this appeal. We will include facts relevant to the termination of Mother's parental rights only as they are relevant to Father's appeal.

OPINION

Background

The Tennessee Department of Children's Services ("DCS") became involved with the family in March 2016. At that time, DCS filed a petition seeking emergency custody of Samyra D.; Sammie D., Jr.; and Samantha A. (collectively, "the Children") in the Shelby County Juvenile Court ("Juvenile Court"). That custody petition also included the Children's older sibling, Samone D.² In its petition, DCS alleged physical and verbal abuse toward the Children by the mother, Lakeysha A. ("Mother") and alcohol abuse by Mother. The Juvenile Court removed the Children from Mother's custody at that time. In an amended petition, DCS raised allegations against the father, Sammie D., Sr. ("Father"), stating that he was aware of Mother's alcohol abuse in the home while caring for the Children and that the home where Father resided was not appropriate for the Children.

Father is not listed as the father on Samone's, Samyra's, or Samantha's birth certificates. Father, however, is listed on Sammie Jr.'s birth certificate as his father. Father entered into a permanency plan as the Children's biological father and later was determined to be their biological father following DNA testing. In April 2016, Father signed the Criteria and Procedures for Termination of Parental Rights as having received a copy and been explained its contents. DCS developed a permanency plan for the family in May 2016 that required Father to pay child support; visit the Children at least four hours per month; comply with the legitimation process regarding Samantha A.; submit to random drug screens; if positive for a drug screen, complete alcohol and drug treatment; complete a parenting assessment and follow the recommendations therefrom; and provide a safe and stable home for the Children "free of emotional, physical, and psychological abuse." Shortly thereafter, the Juvenile Court entered an order approving the permanency plan. In its order, the Juvenile Court found that the tasks in the permanency plan were reasonably related to the permanency goals of returning the Children to a parent or the Children exiting custody with a relative. At that time, the Juvenile Court found that Father was not in compliance with the permanency plan.

The Juvenile Court conducted an adjudicatory hearing in June 2016 before a Magistrate where evidence was presented regarding the allegations. In its order, the Juvenile Court Magistrate found by clear and convincing evidence that the Children were dependent and neglected, in part, because Father did not have suitable housing for the Children, was incarcerated at the time of the hearing, and was not present for the hearing.

² Because Samone turned eighteen years old during the pendency of this appeal, the termination of Father's parental rights as to Samone is moot. *See In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at *12 (Tenn. Ct. App. May 15, 2009). Therefore, Father's parental rights to Samone are not at issue in this appeal.

Although a rehearing before the Juvenile Court Judge was requested initially, that request was voluntarily dismissed at the hearing.

In April 2018, the Juvenile Court conducted a permanency hearing, where it approved a permanency plan developed in March 2018 with the goal of the permanency plan being modified to the Children exiting custody with a relative or adoption. This March 2018 plan contained the same requirements for Father as the previous plan but added that Father would complete an anger management program. In its order, the Juvenile Court again found that Father was not in compliance with the plan and that the action steps were reasonably related to achieving the goals of the permanency plan.

DCS developed a permanency plan in April 2019, which was approved by the Juvenile Court the same month. The April 2019 plan contained the same requirements as the previous plan but also required Father to complete domestic violence classes. In its April 2019 order, the Juvenile Court found that Father was not in compliance with the requirements of the permanency plan. Another permanency plan was developed in April 2020 that included the same responsibilities for Father as the previous plan, which was also approved by the Juvenile Court. The permanency hearing orders entered as a collective exhibit during trial reflect that although Father's attorney had been present at court, Father was not present for any of the permanency hearings from 2016 to 2020. The permanency hearing court orders each found that DCS had "made reasonable efforts to locate the whereabouts and/or identity of the party or parties who were not present before the Court." On the first page of each permanency plan, the juvenile court judge or magistrate has signed and dated the plan below language stating that the plan has been reviewed and approved by the court along with this statement: "The responsibilities outlined in the plan are reasonably related to the achievement of the goal, are related to remedying the conditions, which necessitated foster care, and are in the best interest of the child."

DCS filed a petition to terminate Father's parental rights in May 2020. In its petition, DCS alleged the following grounds for the termination of Father's parental rights: (1) abandonment, pursuant to Tenn. Code Ann. § 36-1-113(g)(1), by failure to financially support the Children; (2) abandonment, pursuant to Tenn. Code Ann. § 36-1-113(g)(1), by failure to visit the Children; (3) abandonment, pursuant to Tenn. Code Ann. § 36-1-113(g)(1), by failure to provide a suitable home for the Children; (4) alternatively, that if Father was incarcerated, he abandoned the Children by his wanton disregard toward their welfare; (5) substantial noncompliance with the permanency plan; (6) persistent conditions; and (7) failure to manifest an ability and willingness to assume custody of the Children. Additionally, DCS alleged against Father the putative father grounds located at Tenn. Code Ann. § 36-1-113(g)(9)(ii)-(vi) (Supp. 2020). DCS further stated that termination of Father's parental rights was in the Children's best interest.

This case was tried in September 2021. The Juvenile Court heard testimony from the child, Samyra D.; DCS family service worker, Ashley Hunter; and Father. Samyra

testified first. She was fourteen years old at the time of trial. Samyra testified about an incident where she had observed Mother and Father having a physical altercation in front of her in 2016 or earlier. Regarding Father, Samyra testified that she had not seen Father in “a long time” but she believed she last saw him in 2020 when he had gotten some shoes for her. However, she testified that she had spoken with him the day prior to trial and that they typically speak about every week. According to Samyra, Father sends money to her when she needs it and had sent approximately \$100 since school started in August. However, she explained that the money Father gave her was not enough to cover all her expenses and that the remaining expenses are paid by others. She testified that she and Father were close, that they had a good relationship, and that she possibly would move back in with Father at some point. When asked how she felt about her parents’ rights potentially being terminated, Samyra stated that she felt “like it’s time.” Samyra stated that she did not have a problem getting adopted by someone but she would rather not.

Ms. Hunter testified next. She is employed as a family service worker by DCS. Ms. Hunter was assigned the case involving the Children in March 2016. Father was present at the initial meeting with the family in April 2016. During that meeting, Father stated that he wanted custody of his Children. Ms. Hunter testified that she initially worked with Father to try to place the Children with him. On the day of that meeting, she requested a drug screen from Father, and he refused and left the meeting. Ms. Hunter testified that Father had been consistently incarcerated for a majority of the time after that meeting. Ms. Hunter provided Father with a copy of the Criteria and Procedures for Termination of Parental Rights, which he signed, and Ms. Hunter explained to Father the contents of the document.

Ms. Hunter testified that to her knowledge, Father had not completed any action step required by the permanency plan. Ms. Hunter stated that Father had known his Children have been in foster care since 2016, he had previously contacted her by telephone, and her contact information had remained the same. Ms. Hunter testified that she had mailed Father a copy of the permanency plan. The last one was sent to him in 2017. Ms. Hunter testified that during the previous year, she tried to contact Father on a telephone number he had given to her, but the number had been disconnected. She subsequently mailed him a letter, and he contacted her thereafter. Ms. Hunter stated that she had not had any contact with Father since that time. According to Ms. Hunter, Father neither asked her for assistance in completing any of the tasks on the permanency plan nor told her of any issues he was having in completing any required task. Father also had not provided her with an address to do in-home visits or a home study, and she did not know Father’s current housing situation.

Ms. Hunter testified that Father had not filed a petition to establish paternity of Samantha, Samyra, or Samone. Ms. Hunter further testified that from January 21, 2020 through May 21, 2020, Father did not visit with Sammie at all, and she was not aware of any barriers that would have interfered with Father visiting during that time. According to

Ms. Hunter, Father's last visit with Samantha and Sammie was in September 2019. She further stated that Father had provided no financial support for Sammie or Samantha. According to Ms. Hunter, the only child that Father had given money to was Samyra, but Father did not send any form of support to Samyra before the termination petition was filed.

Ms. Hunter explained that the Covid-19 pandemic had led to restrictions on face-to-face visits between parents and their children. However, Ms. Hunter explained that after everything shut down in March 2020, parents were permitted to visit with their children via video conferencing on several different platforms. For the previous six months before trial, in-person visits were left to the discretion of the foster parent. According to Ms. Hunter, Father did not participate in any type of virtual visit with any of the Children. Ms. Hunter testified that Father had not asked for visits with the Children or indicated that he was unaware of what he needed to do to get a visit. Ms. Hunter acknowledged that Father was not contacted or invited to any medical appointments for Samantha when they did not have Father's phone number because they did not know how to contact him. Ms. Hunter explained that as a result, she did not believe Father had been invited to any medical appointments.

Ms. Hunter opined that Father had not shown an ability or willingness to assume custody of the Children. Ms. Hunter further testified that placing custody of the Children with Father would cause substantial harm to the Children and explained that Father's ability to parent and drug use are unknown. She further explained that Sammie Jr. and Samantha were stable in their foster home. Ms. Hunter acknowledged that Samyra has a relationship with Father, but Ms. Hunter was unsure about Father's housing or stability. According to Ms. Hunter, Mother and Father had domestic violence issues, and both had been arrested following those incidents.

At the time of trial, the three children, Samyra, Sammie Jr., and Samantha, were placed in three separate foster homes. Ms. Hunter testified that Samantha is in a pre-adoptive home where she had been since she entered DCS custody. Samantha has some developmental delays and requires a feeding tube. Sammie Jr. had been diagnosed with ADHD and currently has an individualized education plan (IEP). Sammie Jr. had been in his foster home for about two years. Ms. Hunter testified that Sammie Jr.'s foster mother had informed her previously that she would adopt him but recently stated she was unsure. Ms. Hunter stated that Samyra had some behavioral issues but has been stable in her home for over two years.

Ms. Hunter testified that each of the Children had a strong bond with their foster parents, but Samyra had more of a bond with Father than the younger children. Ms. Hunter stated that Sammie is aware of Father, but Samantha refers to her foster parents as "mom" and "dad." Ms. Hunter opined that changing the Children's caregivers would have a detrimental effect on them and that it is in the Children's best interest for the parents' rights

to be terminated so that the Children can finally achieve permanency. When asked specifically about Samyra and whether it would have a detrimental effect on her without the termination of her parents' rights, Ms. Hunter explained that Samyra wants to do certain things that require DCS to request permission from her parents. According to Ms. Hunter, Samyra is getting older and wanting more freedom so if the parents' rights are terminated, DCS would make the choice instead of having to "hunt her parents down."

Father testified as the final witness. At the time of trial, Father was hospitalized but participated remotely. During trial, Father acknowledged that he was the father of all of the Children. According to Father, he was not on the birth certificates as the father of Samone, Samyra, and Samantha because he was incarcerated when each of them were born. When asked what steps he had taken toward legitimating those three children, Father stated that he had a DNA test conducted with them. Father acknowledged that although he had a DNA test done, he had not established parentage of the three children. When asked about establishing parentage for Samantha, he stated that the Children were already his children and questioned why he would do that. Father testified that he provided for the Children and did not need a certificate to say he would provide for them.

Father testified regarding his incarceration history. According to Father, he was in jail when Samone was born in March 2004 and got out in June of the same year. Father was incarcerated when Samyra was born in November 2006 and got out in October 2007. He was incarcerated when Samantha was born in 2015 for a couple of months and again from sometime in 2017 through July 2019. Additionally, he had been arrested in October 2020. Father acknowledged several arrests for physical assault but stated that was between him and Mother. When asked whether his physically assaulting Mother had any effect on his ability to parent, Father testified: "No. That ain't got nothing to do with it."

Regarding the permanency plan, Father acknowledged that he had not completed the tasks from the permanency plan and explained that he "really didn't know what the permanency -- what they talking about on the permanency plan, and [he had] been incarcerated most of the time anyway." He acknowledged receiving a copy of the permanency plan but stated that the Children were removed from Mother so he "shouldn't have to do none of that stuff" that was being discussed with regard to the permanency plan.

Father acknowledged that he refused to take a drug screen once and stated that he "walked out on them." Father denied using illegal drugs and when asked why he refused the drug screen, Father explained: "[C]ause I wasn't gonna take no drug screen. Why do I gotta take one? Why do I gotta take one of those, why? I'm always trying to figure it out." Father denied receiving an explanation as to why he was asked to take a drug screen. Father, however, acknowledged being arrested in October 2020 for criminal possession of marijuana. According to Father, the drugs were in his vehicle but did not belong to him. However, Father admitted that he pled guilty to the charge.

Father testified that he completed domestic violence classes in 2017 for an unrelated matter but had not completed them for DCS. He testified that he had not provided Ms. Hunter with a certificate from those classes. Father admitted that he had not completed anger management classes, an alcohol and drug assessment, or parenting classes. He testified that he had been trained with Samantha's feeding tube prior to the Children entering DCS custody.

Father initially testified that he had not seen Samyra in person since 2019 but later stated that he saw her at a friend's house a few months before trial. However, Father stated that he was in regular telephone contact with Samyra. Father testified that he last visited with Sammie Jr. and Samantha after he was released from jail around July 2019. Father stated that he had spoken with Sammie Jr. on his birthday. When asked what had prevented him from visiting the Children, Father stated the pandemic had interfered once. He also stated that he did not know the foster parents' telephone numbers, that Samantha's foster parents had moved out of town, and that he did not know how to get in touch with Samantha. When asked about his relationship with Samantha, Father stated that he had not seen the Children.

Father testified that he had not spoken with Ms. Hunter in a long time but acknowledged that he knew she was the way to communicate with the Children. Father acknowledged that he had Ms. Hunter's contact information in his other phone but no longer has it. However, he stated that he knew how to contact Ms. Hunter at the DCS office if he needed to get in touch with her. Father stated that he never asked Ms. Hunter for assistance with completing parenting classes.

Father testified that since being released from jail, he has been employed and provided money to Samone and Samyra. Father explained that Samone and Samyra were older. According to Father, he was unable to get in touch with the two younger children as easily and, therefore, it was harder to provide support for them. Regarding Sammie Jr. and Samantha, Father stated: "I gotta go through a lot to get in touch with them." Father testified that he did not want to give up his parental rights to the Children.

Father initially testified that he did not currently have housing but then provided the court with an address where he had moved a couple weeks prior. When asked if he lived there, Father stated "yeah, you could say that." Father acknowledged that he had not notified DCS or his attorney that he had moved. He stated that he was unaware that he had to notify DCS of the change.

At the conclusion of trial, the Juvenile Court announced its decision to terminate Father's parental rights. In its oral ruling, the Juvenile Court found that DCS had not proven by clear and convincing evidence the statutory grounds relevant to a failure to provide financial support for the Children. The Juvenile Court subsequently entered a judgment in September 2021, finding that DCS had proven by clear and convincing

evidence the following statutory grounds for the termination of Father's parental rights: (1) abandonment by failure to visit; (2) abandonment by failure to provide a suitable home; (3) substantial noncompliance with the requirements of the permanency plan; (4) persistent conditions; (5) putative father grounds; and (6) failure to manifest an ability and willingness to assume custody or financial responsibility of the Children. The Juvenile Court also found by clear and convincing evidence that it was in the Children's best interest to terminate Father's parental rights. Father timely appealed to this Court.

Discussion

Although not stated exactly as such, Father raises the following issues for our review on appeal: (1) whether the Juvenile Court erred by finding that DCS had proven by clear and convincing evidence the grounds to terminate Father's parental rights to the Children; (2) whether the termination of Father's parental rights should be reversed because DCS had not provided Father with reasonable efforts to assist him with the tasks on his permanency plan; and (3) whether the Juvenile Court erred by finding by clear and convincing evidence that termination of Father's parental rights is in the Children's best interest.

As our Supreme Court has instructed regarding the standard of review in parental rights termination cases:

A parent's right to the care and custody of her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.³ *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010); *In re Adoption of Female Child*, 896 S.W.2d 546, 547-48 (Tenn. 1995); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993). But parental rights, although fundamental and constitutionally protected, are not absolute. *In re Angela E.*, 303 S.W.3d at 250. "[T]he [S]tate as *parens patriae* has a special duty to protect minors . . . Tennessee law, thus, upholds the [S]tate's authority as *parens patriae* when interference with parenting is necessary to prevent serious harm to a child." *Hawk*, 855 S.W.2d at 580 (quoting *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983)); see also *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Angela E.*, 303 S.W.3d at 250. "When the State initiates a parental rights termination proceeding, it seeks

³ U.S. Const. amend. XIV § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."). Similarly, article 1, section 8 of the Tennessee Constitution states "[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

not merely to infringe that fundamental liberty interest, but to end it.” *Santosky*, 455 U.S. at 759, 102 S.Ct. 1388. “Few consequences of judicial action are so grave as the severance of natural family ties.” *Id.* at 787, 102 S.Ct. 1388; *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The parental rights at stake are “far more precious than any property right.” *Santosky*, 455 U.S. at 758-59, 102 S.Ct. 1388. Termination of parental rights has the legal effect of reducing the parent to the role of a complete stranger and of “severing forever all legal rights and obligations of the parent or guardian of the child.” Tenn. Code Ann. § 36-1-113(l)(1); *see also Santosky*, 455 U.S. at 759, 102 S.Ct. 1388 (recognizing that a decision terminating parental rights is “*final* and irrevocable”). In light of the interests and consequences at stake, parents are constitutionally entitled to “fundamentally fair procedures” in termination proceedings. *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388; *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (discussing the due process right of parents to fundamentally fair procedures).

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

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

Termination of parental or guardianship rights must be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

- (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.

This statute requires the State to establish by clear and convincing proof that at least one of the enumerated statutory grounds⁴ for termination exists and that termination is in the child’s best interests. *In re Angela E.*, 303 S.W.3d at 250; *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “The best interests analysis is separate from and subsequent to the determination that there is clear and convincing evidence of grounds for termination.” *In re Angela E.*, 303 S.W.3d at 254. Although several factors relevant to the best interests analysis are statutorily enumerated,⁵ the list is illustrative, not exclusive. The parties are free to offer proof of other relevant factors. *In re Audrey S.*, 182 S.W.3d at 878. The trial court must then determine whether the combined weight of the facts “amount[s] to clear and convincing evidence that termination is in the child’s best interest.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). These requirements ensure that each parent receives the constitutionally required “individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Furthermore, other statutes impose certain requirements upon trial courts hearing termination petitions. A trial court must “ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child.” Tenn. Code Ann. § 36-1-113(k). A trial court must “enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.” *Id.* This portion of the statute requires a trial court to make “findings of fact and conclusions of law as to whether clear and convincing evidence establishes the existence of each of the grounds asserted for terminating [parental] rights.” *In re Angela E.*, 303 S.W.3d at 255. “Should the trial court conclude that clear and convincing evidence of ground(s) for termination does exist, then the trial court must also make a written finding whether clear and convincing evidence establishes that termination of [parental] rights is in the [child’s] best interests.” *Id.* If the trial court’s best interests analysis “is based on additional factual findings besides the ones made in conjunction with the grounds for termination, the trial court must also include these findings in the written order.” *Id.* Appellate courts “may not conduct de novo review of the

⁴ Tenn. Code Ann. § 36-1-113(g)(1)-(13).

⁵ Tenn. Code Ann. § 36-1-113(i).

termination decision in the absence of such findings.” *Id.* (citing *Adoption Place, Inc. v. Doe*, 273 S.W.3d 142, 151 & n.15 (Tenn. Ct. App. 2007)).

B. Standards of Appellate Review

An appellate court reviews a trial court’s findings of fact in termination proceedings using the standard of review in Tenn. R. App. P. 13(d). *In re Bernard T.*, 319 S.W.3d at 596; *In re Angela E.*, 303 S.W.3d at 246. Under Rule 13(d), appellate courts review factual findings de novo on the record and accord these findings a presumption of correctness unless the evidence preponderates otherwise. *In re Bernard T.*, 319 S.W.3d at 596; *In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). In light of the heightened burden of proof in termination proceedings, however, the reviewing court must make its own determination as to whether the facts, either as found by the trial court or as supported by a preponderance of the evidence, amount to clear and convincing evidence of the elements necessary to terminate parental rights. *In re Bernard T.*, 319 S.W.3d at 596-97. The trial court’s ruling that the evidence sufficiently supports termination of parental rights is a conclusion of law, which appellate courts review de novo with no presumption of correctness. *In re M.L.P.*, 281 S.W.3d at 393 (quoting *In re Adoption of A.M.H.*, 215 S.W.3d at 810). Additionally, all other questions of law in parental termination appeals, as in other appeals, are reviewed de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d at 246.

In re Carrington H., 483 S.W.3d 507, 521-24 (Tenn. 2016) (footnotes in original but renumbered). In combination with a best interest finding, clear and convincing evidence supporting any single ground will justify a termination order. *E.g.*, *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

We first address the statutory grounds found by the Juvenile Court to terminate Father’s parental rights to Samyra, Sammie Jr., and Samantha. In its brief, DCS has chosen not to defend the grounds of abandonment by failure to provide a suitable home and persistent conditions due to the Children not being removed from Father’s home or his legal or physical custody. Therefore, we reverse those grounds as to the termination of Father’s parental rights.

We next address the ground of abandonment by Father’s failure to visit the Children. Tenn. Code Ann. § 36-1-113(g)(1) (2021) provides abandonment by a parent as a ground for the termination of parental rights. We note that the termination petition was filed on May 22, 2020 and that the relevant statute in effect at that time defining abandonment stated as follows in pertinent part:

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

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding, 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) (2021).

Specific to abandonment by failure to visit, pursuant to Tenn. Code Ann. § 36-1-102(1)(E), a parent must have failed to visit or engage in more than token visitation during the relevant four-month period. Tenn. Code Ann. § 36-1-102(1)(C) defines “token visitation” as visitation that, under the circumstances of the particular case, “constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child.” The burden of proof was with Petitioners to prove by clear and convincing evidence that Father had failed to engage in more than token visitation with the Children during the four months prior to the filing of the termination petition.

For purposes of abandonment, the relevant four-month period extended from January 22, 2020 to May 21, 2020. The Juvenile Court found that Father had not visited the Children since 2019. As to Samyra, both she and Father testified to consistent telephone contact between them. Samyra testified that she spoke to Father on the telephone “about every week.” Although telephone contact is generally not a substitute for in-person visitation for purposes of abandonment, we must consider the circumstances of each individual case. *See In re Candace J.*, No. M2015-01406-COA-R3-PT, 2016 WL 944268, at *7 (Tenn. Ct. App. Mar. 11, 2016) (internal citations omitted). This Court has held that where in-person visitation is not feasible, telephone visitation may rise above the level of token visitation. *See id.*; *In re Caira D.*, No. M2014-01229-COA-R3-PT, 2014 WL 6680696, at *7 (Tenn. Ct. App. Nov. 25, 2014).

For at least half of the relevant four-month period, in-person visitation was limited to virtual visits due to the Covid-19 pandemic. We take judicial notice of our Supreme Court’s order dated March 13, 2020, declaring a state of emergency due to the Covid-19 pandemic; limiting in-person proceedings “in all state and local courts in Tennessee . . .” with only specific exceptions; and encouraging the use of available technologies, including video conferencing. As is reflected in our Supreme Court’s order, even the courts during

this time were limiting physical contact and encouraging video conferencing due to safety reasons. Therefore, after March 2020, in-person visitation between Father and the Children was not feasible. Under the circumstances of this case, we hold that Father's frequent phone visitation with the child, Samyra, was not token visitation. As such, we reverse this ground as to the termination of Father's parental rights to Samyra.

However, no evidence of such telephone visitation was provided regarding the younger children, Samantha and Sammie Jr. The evidence in the record does not preponderate against the Juvenile Court's finding that Father had not visited Samantha and Sammie Jr. since 2019. Both Ms. Hunter's and Father's testimonies reflect that Father had not visited with these children since 2019, which includes the relevant four-month period.

On appeal, Father argues in his brief that due to the Covid-19 pandemic, meaningful visitation was not possible during the four-month period. Father further argues that DCS failed to prove that his failure to visit the Children was willful. However, the law in effect at the time the termination petition was filed provided lack of willfulness as an affirmative defense to the ground of abandonment, which Father must prove by a preponderance of the evidence. *See* Tenn. Code Ann. § 36-1-102(1)(I) (2021). Although Father argues meaningful visitation was not possible, DCS offered video conferencing visitation to Father with the Children. During his testimony, Father stated that because these two children were younger, he had to "go through a lot to get in touch with them." Father testified that he knew the way to communicate with his Children was through Ms. Hunter, acknowledged that he had her contact information in his phone previously, and admitted that he had not spoken with Ms. Hunter for a long period of time. Although he did not have her contact information at the time of trial, he testified that he knew how to contact Ms. Hunter at the DCS office. Ms. Hunter confirmed that Father had not contacted her to request visitation with the Children. The record established that Father made no effort to visit the children, Samantha and Sammie Jr., during the relevant four-month period. As such, we affirm the Juvenile Court's finding that Father had abandoned the children, Samantha and Sammie Jr., by failing to visit them.

We next address the ground of substantial noncompliance with the permanency plans. Concerning substantial noncompliance with the permanency plans, Tenn. Code Ann. § 36-1-113(g)(2) (2021) provides:

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

The May 2016 permanency plan required Father to pay child support; visit the Children for at least four hours per month; comply with the legitimation process regarding Samantha A.; submit to random drug screens; if positive on a drug screen, complete alcohol and drug treatment; complete a parenting assessment and follow the recommendations

therefrom; and provide a safe and stable home for the Children “free of emotional, physical, and psychological abuse.” The March 2018 plan added that Father would complete anger management classes. Additionally, the April 2019 permanency plan included the requirement that Father complete domestic violence classes.

In his brief, Father points out that he testified that he did not know what a permanency plan was; however, he acknowledged receiving a copy of the permanency plan. Ms. Hunter also testified that she had mailed Father a copy of the permanency plan. Furthermore, Father signed the Criteria and Procedures for Termination of Parental Rights, which provided him with notice that his failure to comply with the permanency plan could result in the termination of his parental rights.

Additionally, Father now disagrees with the requirements for him on the permanency plans and argues that the action steps were not reasonable or related to remedying the reasons necessitating foster care. We disagree. When approving the initial plan, the Juvenile Court found that the action steps on the permanency plan were reasonably related to accomplishing the permanency goals of returning custody to a parent or having the Children exit custody with a relative. Additionally, the front page of each permanency plan shows that the Juvenile Court had ratified the plans, which included the signature of the juvenile court judge or magistrate approving the plan underneath a statement that the requirements in the plans were reasonably related to achieving the goal of the plan, were related to remedying the conditions necessitating foster care, and were in the Children’s best interest. Furthermore, the Children were adjudicated as dependent and neglected in part due to Father’s unstable housing, a condition which continued to exist at the time of trial. Testimony further established that Father had not had consistent visitation with the Children, had not legitimated the child, Samantha; that Father had been incarcerated several times during the Children’s lives; and that Father had been arrested multiple times for domestic abuse against Mother. We find, as did the Juvenile Court, that the action steps required of Father in the permanency plans were reasonable and related to remedying the reasons that had necessitated foster care.

As part of his argument, Father argues that Ms. Hunter had not assisted Father with the legitimation process. However, it is undisputed that DCS arranged for DNA tests which showed that Father was the biological father of the Children. After the results of those tests, Father had not filed a petition with the courts to establish parentage of Samantha as required by the permanency plan. Ms. Hunter testified that to her knowledge, Father had not completed any action step on the permanency plan. Father admittedly had not visited with the Children every month for four hours. Additionally, Father admitted to refusing a drug screen and not completing an alcohol and drug screen. Father further acknowledged at trial that he had not completed anger management classes or parenting classes. Although he stated that he had completed domestic violence classes, he acknowledged that he had not gone through DCS for those classes and had not provided a certificate regarding those classes to DCS. We note that Father’s testimony was inconsistent at trial regarding his

housing. Father initially testified that he was between housing but then provided the court with an address where he was living. Nevertheless, Father acknowledged that he had not provided the address to DCS, and the Juvenile Court found that Father's living situation was not stable. The Juvenile Court found that Father had not completed any tasks required of him on the permanency plan. The evidence presented does not preponderate against this finding by the Juvenile Court. Therefore, we affirm the Juvenile Court's finding by clear and convincing evidence of the ground of substantial noncompliance with the responsibilities in the permanency plan against Father.

In his brief, Father takes issue with the reasonableness of DCS's efforts to assist him with accomplishing the tasks required of him on the permanency plans. Our Supreme Court has held that "in a termination proceeding, the extent of DCS's efforts to reunify the family is weighed in the court's best-interest analysis, but proof of reasonable efforts is not a precondition to termination of the parental rights of the respondent parent." *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). As reasonable efforts are a factor in the best interest analysis, we will address this issue regarding reasonable efforts later in this Opinion.

We next address whether the Juvenile Court erred in finding by clear and convincing evidence the ground of failure to manifest an ability and willingness to assume custody of or financial responsibility for Samyra, Sammie Jr., and Samantha as to Father.⁶ Tennessee Code Annotated § 36-1-113(g)(14) (2021) provides as follows as a ground for termination:

A parent or guardian 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[.]

This ground has two prongs. Regarding the first prong of our analysis, our Supreme Court has explained that "[i]f a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied." *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020) (emphasis in original). The second prong of the statute requires the court to consider whether 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. *See* Tenn. Code Ann. § 36-1-113(g)(14) (2021).

⁶ We note that the Juvenile Court confused the statutory ground for termination located at Tenn. Code Ann. § 36-1-113(g)(14) with the putative father grounds located at subsection (g)(9)(iv) and (v), which are substantially similar. We hold that any error by the Juvenile Court in this regard is harmless error as the Juvenile Court made the necessary findings to support each ground.

With regard to the first prong of this ground, the Juvenile Court found that Father had “little to no interaction” with Samantha and Sammie Jr. and that although he had spoken with Samyra “fairly regularly,” she had not seen Father in person since 2019.⁷ Additionally, the Juvenile Court found that Father had multiple incarcerations that had occurred both before and after the Children entered foster care. Moreover, the Juvenile Court found that Father still did not have stable housing at the time of trial. The Juvenile Court recognized Father’s testimony that he wanted custody of the Children but also his statements that he was unaware of why he needed to complete tasks on the permanency plan, that he had not seen the Children in person since 2019, and that he did not have stable housing. A parent’s actions or inaction can be analyzed by the trial court in its determination of whether the parent has established a lack of willingness to assume custody of or financial responsibility for the Child. *See In re Ryan J. H.*, No. M2019-01439-COA-R3-PT, 2020 WL 7861376, at *14 (Tenn. Ct. App. Dec. 22, 2020), *no perm. app. filed*, (“[The parent’s] actions in the present case raise doubts as to his actual willingness to assume custody of the Child.”); *In re Ellie K.*, No. M2019-01269-COA-R3-PT, 2020 WL 1943522, at *11 (Tenn. Ct. App. Apr. 23, 2020), *no perm. app. filed*, (“It is well established that a parent’s actions can demonstrate a lack of willingness to assume custody of or financial responsibility for the child.”). Father’s actions were clearly not consistent with a willingness to assume physical or legal custody of the Children. We agree with the Juvenile Court that clear and convincing evidence was presented by DCS to establish that Father had failed to manifest an ability and willingness to assume custody of or financial responsibility for Samyra, Sammie Jr., and Samantha, as required by Tennessee Code Annotated § 36-1-113(g)(14).

By the same quantum of proof, DCS has proven the second prong in establishing that placing Samyra, Sammie Jr., and Samantha into Father’s custody would pose a risk of substantial harm to their physical or psychological welfare. The Juvenile Court found that it would be harmful to the Children to remove them from their current placement and put them into the custody of Father because the Children have had no interactions with Father, and he had taken few steps to rectify his circumstances or the risk of harm to the Children. Samantha and Sammie Jr. had not seen or spoken to Father since July 2019 by Father’s own admission, which was approximately two years prior to trial. As the Juvenile Court found, Father had multiple incarcerations. Although Father testified that his arrests for domestic violence were between him and Mother and had no effect on his parenting of the Children, we disagree as Samyra testified to witnessing one of those incidents. We agree with the Juvenile Court that placing Samyra, Sammie Jr., and Samantha into Father’s legal or physical custody would create a risk of substantial harm to them. Therefore, we affirm

⁷ The record reflects that Father mentioned visiting with Samyra at a friend’s house a few weeks prior to trial in addition to his statement that he had not seen her since 2019. Samyra did not mention any such visit and stated that she believed she last saw Father sometime in 2020 when he gave her a pair of shoes. However, the Juvenile Court clearly credited Father’s initial statement that he had not seen Samyra in person since 2019.

the Juvenile Court's finding that DCS has proven this statutory ground for termination of Father's parental rights by clear and convincing evidence.

Additionally, the Juvenile Court terminated Father's parental rights to Samyra and Samantha on several putative father grounds located at Tenn. Code Ann. § 36-1-113(g)(9) (Supp. 2020), as follows in relevant part:

(9)(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, or if no such petition is filed, at the time of the filing of a petition to adopt a child, is the putative father of the child may also be terminated based upon any one (1) or more of the following additional grounds:

* * *

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102;

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of 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; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3)[.]

Father does not dispute on appeal that he is a putative father of the children, Samantha and Samyra, as defined in Tenn. Code Ann. § 36-1-102(44). As to Tenn. Code Ann. § 36-1-113(g)(9)(A)(iii), the Juvenile Court found that Father had failed to seek reasonable visitation with the children, Samantha and Samyra, without good cause or excuse. As previously discussed in this opinion with regard to the abandonment grounds, Father had not visited with Samantha since 2019. Ms. Hunter testified that Father had not sought visitation with Samantha since 2019 and had not participated in any virtual visit with her. We, therefore, affirm this ground as to the termination of Father's parental rights to Samantha by clear and convincing evidence. As to Samyra, we recognize that Father had consistent telephone contact with her "about every week." During a significant period of time, only video conferencing visits were available to Father due to the Covid-19 pandemic. Because Father had consistent telephone contact with Samyra and in-person visits were not feasible for a significant period of time, we reverse this ground as to the termination of Father's parental rights to Samyra.

Concerning the putative father ground that Father had failed to manifest an ability and willingness to assume physical or legal custody of the children, Samantha and Samyra, under Tenn. Code Ann. § 36-1-113(g)(9)(iv), Father had failed to visit Samantha at all since 2019 and had only spoken to Samyra on the telephone since that time. Father had multiple incarcerations throughout the Children's lives, both prior to their entry into foster care and after. Despite the Children being adjudicated as dependent and neglected in part due to Father's unstable housing, he did not have stable housing at the time of the termination trial. Father's actions and inactions in this case evince his lack of willingness to assume physical or legal custody of Samantha and Samyra. Therefore, we affirm this ground for the termination of Father's parental rights to Samantha and Samyra by clear and convincing evidence.

As to Tenn. Code Ann. § 36-1-113(g)(9)(v), Father has had multiple arrests and spent a significant period of time incarcerated. There were domestic violence issues between Father and the children's mother, about which Father did not appear to be concerned. The Juvenile Court found that Father had only telephone contact with Samyra since 2019. Father had not visited Samantha at all since July 2019, and she refers to her foster parents as "mom" and "dad." The Juvenile Court found that Samantha had a strong bond with her foster parents and no meaningful relationship with Father. The evidence does not preponderate against any of these findings by the Trial Court. We affirm the Juvenile Court's finding by clear and convincing evidence that placing the children, Samantha and Samyra, into Father's custody would pose a risk of substantial harm to their physical or psychological welfare.

Regarding Tenn. Code Ann. § 36-1-113(g)(9)(A)(vi), Father argues on appeal that DCS had not assisted Father with the legitimation process and that Father accepted the Children as his and did not feel it was necessary to legitimate the Children. The Juvenile Court found that Father had failed to file a petition to establish paternity of the Samantha and Samyra within thirty days of being provided notice his alleged paternity. DNA testing established that Father was the biological father of the children, Samantha and Samyra, around 2017. Ms. Hunter testified that Father had not filed a petition to establish paternity of Samantha or Samyra. At trial, Father acknowledged that although he had completed a DNA test, he had not established parentage. Despite learning sometime around 2017 that he was the biological father of Samyra and Samantha, Father still had not filed a petition to establish parentage by the time of trial in 2021. We affirm the Juvenile Court's finding by clear and convincing evidence regarding the putative father ground, located at Tenn. Code Ann. § 36-1-113(g)(9)(A)(vi), that Father had failed to file a petition to establish parentage within thirty days of being notified of his alleged paternity of Samantha and Samyra.

We next address the best interest analysis. Father argues that the Juvenile Court erred in finding by clear and convincing evidence that termination of Father's parental

rights is in Samyra's, Sammie Jr.'s, and Samantha's best interest. The version of Tenn. Code Ann. § 36-1-113(i) that was in effect when the termination petition was filed provides a set of non-exclusive factors courts are to consider in determining whether termination of parental rights is in a child's best interest:

- (i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
 - (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
 - (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
 - (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
 - (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
 - (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
 - (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
 - (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
 - (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i) (Supp. 2020).

With regard to making a determination concerning a child’s best interest, our Supreme Court has instructed:

When conducting the best interests analysis, courts must consider nine statutory factors listed in Tennessee Code Annotated section 36-1-113(i). These statutory factors are illustrative, not exclusive, and any party to the termination proceeding is free to offer proof of any other factor relevant to the best interests analysis. *In re Carrington H.*, 483 S.W.3d at 523 (citing *In re Audrey S.*, 182 S.W.3d 838, 878 (Tenn. Ct. App. 2005)). Facts considered in the best interests analysis must be proven by “a preponderance of the evidence, not by clear and convincing evidence.” *In re Kaliyah S.*, 455 S.W.3d at 555 (citing *In re Audrey S.*, 182 S.W.3d at 861). “After making the underlying factual findings, the trial 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[s].” *Id.* When considering these statutory factors, courts must remember that “[t]he child’s best interests [are] viewed from the child’s, rather than the parent’s, perspective.” *In re Audrey S.*, 182 S.W.3d at 878. Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. *Id.* “[W]hen the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child. . . .” Tenn. Code Ann. § 36-1-101(d) (2017).

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. *In re Audrey S.*, 182 S.W.3d at 878. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. *White v. Moody*, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004). Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. *See In re Audrey S.*, 182 S.W.3d at 878. Simply put, the best interests analysis is and must remain a factually intensive undertaking, so as to ensure that every parent receives individualized consideration before fundamental parental rights are terminated. *In re Carrington H.*, 483 S.W.3d at 523. “[D]epending upon the circumstances of a particular child and a particular parent, the consideration

of one factor may very well dictate the outcome of the analysis.” *In re Audrey S.*, 182 S.W.3d at 878 (citing *White v. Moody*, 171 S.W.3d at 194). But this does not mean that a court is relieved of the obligation of considering all the factors and all the proof. Even if the circumstances of a particular case ultimately result in the court ascribing more weight—even outcome determinative weight—to a particular statutory factor, the court must consider all of the statutory factors, as well as any other relevant proof any party offers.

In re Gabriella D., 531 S.W.3d 662, 681-82 (Tenn. 2017).

The Juvenile Court considered the relevant best interest factors in its analysis. Significantly, the Juvenile Court placed a great deal of emphasis on Father’s lack of visitation with the Children. Father had no meaningful relationship with Sammie Jr. and Samantha and had not visited with them since 2019. The Juvenile Court found that a change of caregivers for the Children would be detrimental to the Children in that Sammie Jr. and Samantha had no relationship with Father. Although Samyra testified of consistent telephone contact with Father, she testified during trial that she felt “like it’s time” regarding the termination of his parental rights.

During the time the Children were in foster care, Father had not made an adjustment to his circumstances that would make it safe and in the Children’s best interest to be placed in his care. Father’s living situation at the time of trial was largely unknown due to his lack of contact with DCS and his admitted failure to provide them with his address. However, due to Father’s repeated multiple incarcerations throughout the case, the Juvenile Court found that there was criminal activity in his home. Additionally, Father’s lack of concern about the domestic violence between him and the Children’s mother is concerning.

According to the Juvenile Court, Father had failed to make a lasting adjustment despite reasonable efforts by DCS such that a lasting adjustment did not appear possible. Regarding Father’s argument that DCS had not made reasonable efforts to assist him in completing the tasks on the permanency plan, Father had little to no contact with DCS despite testifying during trial that he knew how to contact Ms. Hunter. DCS had assisted Father in completing DNA testing for the Children and had developed permanency plans in an attempt to remedy the reasons necessitating foster care. In this case, it appears that DCS’s efforts to assist Father exceeded Father’s efforts. Father testified that in 2017, he had completed domestic violence classes, although he acknowledged that he had not gone through DCS or provided them with a certificate of completion. He admittedly walked out of a DCS meeting after being requested to complete a drug screen and had little contact with DCS after that time. He failed to provide DCS with his addresses, which would allow them to perform home visits. Father had made no effort to improve his circumstances or make a lasting adjustment as reflected by his recent arrest for simple possession of

marijuana in 2020, to which he pled guilty, and his continued inability to provide a safe and stable home for Samyra, Sammie Jr., and Samantha.

We note that DCS's efforts are only one factor in the best interest analysis. Even if DCS's efforts were lacking in this case, Father's lack of a parent-child relationship with the Children, unstable living situation, multiple arrests, and domestic violence history would weigh heavily in favor of terminating Father's parental rights. As such, we find and hold by clear and convincing evidence, as did the Juvenile Court, that termination of Father's parental rights is in the best interest of Samyra, Sammie Jr., and Samantha.

Conclusion

Based on the foregoing, we affirm the Juvenile Court's judgment as modified. The grounds of abandonment by failure to provide a suitable home for the Children and persistent conditions are reversed. Additionally, the ground of abandonment by failure to visit and the putative father ground of failure to seek reasonable visitation are reversed as to the child, Samyra. The remaining grounds and best interest determination are affirmed, as is the termination of Father's parental rights to the children, Samyra, Sammie Jr., and Samantha. This cause is remanded to the Juvenile Court for collection of the costs assessed below. The costs on appeal are assessed against the appellant, Sammie D., Sr., and his surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE