

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 1, 2023

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Appellate Courts

IN RE: A’ZIYA G. ET AL

**Appeal from the Juvenile Court for Davidson County
No. PT249963, PT249965 Sheila Calloway, Judge**

No. M2022-01282-COA-R3-PT

This is a termination of parental rights case. The trial court terminated Mother’s parental rights to her two children on the grounds of abandonment under Tennessee Code Annotated section 36-1-113-(g)(1); substantial noncompliance with the permanency plans under section 36-1-113(g)(2); persistence of conditions under section 36-1-113(g)(3); and the failure to manifest an ability and willingness to assume custody under section 36-1-113(g)(14). The trial court also determined that termination of Mother’s parental rights is in the best interests of the children. Discerning no error, we affirm.

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

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

C. Michael Cardwell, Nashville, Tennessee, for the appellant, Rashita G.¹

Jonathan Skrmetti, Attorney General and Reporter, and Amber L. Barker, Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

The background facts of this matter are largely undisputed. Rashita G. (“Mother”) is the biological mother of two non-marital children: A’ziya G. (born in August 2015) and

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

Zacharias G. (born in December 2016) (collectively, “the children”). Mother was 16 years old when A’ziya was born and 17 when Zacharias was born. When the Department of Children’s Services (“DCS”) became involved with Mother and the children in August 2017, they were living with Mother’s cousin, Joshua G. (“Joshua”), age 27, and Samantha P. (“Samantha”), a family friend, age 39. The three adults and two children resided in a one-bedroom apartment leased to Joshua.

On August 14, 2017, DCS filed a petition for emergency removal and custody of the children in the Juvenile Court of Davidson County. In its petition, DCS asserted that, on August 9, it received a referral from law enforcement alleging that A’ziya was unsupervised, had a black eye and other abrasions, and had been transported to the hospital.² The referral also stated that A’ziya could not open her left eye and that the examining physician stated that A’ziya appeared to have a facial fracture. Mother was not present when police officers arrived at the home, and the children were in the care of Samantha and Joshua. Three other adults – including a known drug user and prostitute – were found “passed out on the floor.” Police found A’ziya wrapped in a blanket and lying on an air mattress in the same room as the “passed out” adults.

In its petition, DCS stated that A’ziya was admitted to the hospital and that DCS interviewed Mother on August 10.³ According to DCS, Mother informed DCS that she and the children had been living with Mother’s mother (“Grandmother”), but were staying with Joshua because mold had been discovered in Grandmother’s house. Mother stated that she could return to Grandmother’s residence “that evening or in a week.” Mother maintained that she was not at home when A’ziya was injured but was informed by Samantha that A’ziya had fallen and hit her head on the coffee table.

When DCS conducted a wellness check after interviewing Mother, Zacharias was in the care of Mother’s grandfather (“Great-Grandfather”). Great-Grandfather informed DCS that Mother had to move out of Grandmother’s housing because Grandmother was incarcerated in July 2017. Great-Grandfather stated that he and his wife would assume temporary care of A’ziya and Zacarias if Mother asked him to, but he stated that his one-bedroom rental was too small to accommodate anyone else. DCS conducted a second wellness check with Great-Grandfather, and Great-Grandfather informed DCS that he had left Zacarias in Joshua’s care. DCS contacted Joshua, who confirmed that the adults who were “passed out” in the apartment earlier remained in the apartment. Joshua also stated that Great-Grandfather was still at the apartment, contradicting Great-Grandfather’s statement. Against DCS’s instructions, Mother asked a friend to remove Zacarias from the apartment. DCS subsequently found that Zacarias had been taken to the hospital because he was “turning blue and limp” and “may have been given a dose of Benadryl or smothered

² According to DCS, law enforcement responded to an anonymous call alleging suspected child abuse.

³ From the record, it does not appear that Mother disputed the facts asserted by DCS.

by a 5-year old relative.”

DCS removed the children to DCS custody later that day, and on August 14 the trial court granted DCS’s petition for emergency custody. Following a hearing on October 3, 2017, the trial court approved a permanency plan with the goal of returning the children to Mother’s custody. The plan required Mother to complete a parenting assessment, obtain stable housing, submit to random drug screens, and obtain stable employment. It also required her to have regular “supervised and therapeutic” visitation with the children and to pay court-ordered child support.⁴

Mother was incarcerated when a second permanency plan was entered in July 2018. The plan indicated that Mother had been diagnosed with bi-polar disorder but had not received regular treatment or medication. The plan required Mother to “return to Centerstone and begin regular treatment, to include an updated mental health assessment and follow all recommendations of that assessment.” It also stated that Mother had “tested positive for illegal substances throughout the duration of DCS’s involvement” and required her to “undergo a substance use assessment and follow all recommendations of that assessment.” Following a hearing on August 14, 2018, the trial court determined that Mother had been offered a drug and alcohol assessment and a parenting assessment but had failed to make significant progress. The court also determined that DCS had located “rehabilitative housing” for Mother, which Mother declined. The court noted that Mother was “just released from jail” and that DCS had been unable to work with Mother due to her incarceration. The trial court also found that Mother had not complied with the requirements to address her mental health.

Following a hearing on April 4, 2018, the trial court adjudicated the children dependent and neglected. It appears that Mother was incarcerated on the hearing date and did not contest the matter.⁵ DCS filed a petition to terminate Mother’s parental rights on June 13, 2019.⁶ Mother was incarcerated when DCS filed its petition.

DCS sought termination of Mother’s parental rights on the grounds of: 1)

⁴ It is undisputed that Mother’s driver’s license was later suspended for the failure to pay child support. From the record, it is unclear when child support was set, how much support was assessed, or when Mother’s license was suspended. Mother’s driver’s license remained suspended when the petition to terminate her parental rights was heard in January and May 2022.

⁵ The trial court’s order indicates that Mother was “present” and also states that Mother was incarcerated. However, Mother’s legal counsel was present at the hearing.

⁶ It appears from the record that the identity of the children’s biological father(s) has not been determined. No father was named on the children’s birth certificates or found on the putative father registry, and the trial court found that paternity had not been established. Mother does not refute this finding in her brief to this Court. This case relates to Mother’s parental rights only.

abandonment by failure to establish a suitable home under Tennessee Code Annotated section 36-1-113(g)(1); 2) abandonment by an incarcerated parent pursuant to section 37-1-113(g)(1); 3) substantial noncompliance with the permanency plans under section 36-1-113(g)(2); 4) persistence of conditions that prevent return under section 36-1-113(g)(3); and 5) failure to assume custody or financial responsibility pursuant to section 36-1-113(g)(14). DCS also asserted that termination of Mother's parental rights was in the best interests of the children.

Three additional permanency plans were entered and ratified by the court after DCS filed its petition to terminate Mother's parental rights. The plan dated August 12, 2019, noted: "[Mother] states she last used drugs about 30 days ago as she used marijuana. She states she started using drugs at age 14 years. [Mother] states she can use more than 3 or 4 times a week." It also noted that Mother had violated her probation and was again incarcerated. Mother still had not received mental health treatment or obtained stable housing. Following a hearing on August 20, 2019, the trial court determined that Mother again was incarcerated and that the children had been in State custody for two years with "no progress." The court found that Mother had been offered drug screens and had "continue[d] to fail drug screens when out of jail." The trial court noted that DCS efforts were hampered "due to Mother's repeated incarcerations." The court approved DCS's goal of adoption for the children, and DCS's petition to terminate Mother's parental rights was set to be heard on January 6, 2020.

On September 10, 2019, DCS filed an emergency motion to suspend Mother's visits with the children. In its motion, DCS stated that Mother was released from the Sumner County jail on August 20, 2019; moved to the Williamson County jail "due to hold[;]" and was released on bond pending a hearing on October 8, 2019. DCS stated that Mother last visited the children on April 18, 2019, and asserted:

Due to the extended length of time since [Mother] visited with the children, the Department is asking that her visits be suspended at this time until she can demonstrate an ability to visit regularly. Restarting visits for them only to be sporadic, or impossible because [Mother] is once again incarcerated, would not be in the children's best interest.

The trial court granted an *ex parte* restraining order enjoining Mother from having contact with the children pending a hearing set for September 17, 2019. Mother failed to appear for the hearing, did not seek another hearing, or petition the court to lift the order, and the trial court's order enjoining her from contacting the children remained in effect throughout the remainder of the matter.

A fourth permanency plan was completed in June 2020. DCS noted that Mother still did not have stable housing and had not received mental health treatment. Following a permanency hearing on August 18, 2020, the trial court determined that Mother had

completed only one alcohol and drug assessment in the three years since the children entered DCS custody. The court found that Mother had “multiple criminal issues in the past year” and had made no progress. The trial court determined that DCS was unable to provide services because Mother had been “incarcerated off and on[.]” The permanency plan was updated again in August 2021, when Mother was again incarcerated. The trial court again determined that Mother had not made progress toward completing the requirements of the permanency plans and that Mother’s repeated incarcerations hampered DCS’ efforts to assist her.

After a number of continuances due to Mother’s incarcerations and the Covid-19 pandemic, the trial court heard the petition to terminate Mother’s parental rights on January 19 and May 5, 2022.⁷ By order entered on August 17, 2022, the trial court found that grounds existed to terminate Mother’s parental rights based on abandonment for the failure to provide a suitable home; abandonment by an incarcerated parent and wanton disregard; substantial non-compliance with the permanency plans; persistence of conditions that prevent the return of the children to the Mother’s custody; and failure to manifest an ability and willingness to assume legal and physical custody. The trial court also determined that it is in the best interests of the children to terminate Mother’s parental rights. Mother filed a notice of Appeal to this Court on September 16, 2022.

The children have remained in DCS custody since their removal from Mother’s care in August 2017, and they have been in the same foster home since August 2019.

II. ISSUES PRESENTED

Mother raises the following issues for review, as stated in her brief:

I. Whether the trial court erred when it found by “clear and convincing evidence” that the mother failed to make reasonable efforts within four (4) months after her children were placed in DCS custody to provide a suitable home and that she demonstrated a lack of concern for the children to such a degree that it appears unlikely that she will be able to provide a suitable home for the children at an early date pursuant to T.C.A. §36-1-113(g)(1) and T.C.A. §36-1-102(1)(a)?

II. Whether the trial court erred when it found by “clear and convincing evidence” that the mother abandoned the children pursuant to T.C.A. §36-1-

⁷ Mother was incarcerated beginning March 2021, and Mother’s counsel moved for a continuance of the January hearing due to Mother’s continued incarceration. The trial court denied the motion and Mother testified by telephone. Mother was released from incarceration in March 2022 and testified in person on May 5. It appears from Mother’s testimony that she was released on probation.

113(g)(1), §36-1-102(1)(a)(iv), -102(1)(c), -102(1)(d), and - 102(1)(d)?

III. Whether the trial court erred when it found by “clear and convincing evidence” that the mother failed to comply with the reasonable responsibilities of the permanency plan pursuant to T.C.A. §36-1-113(g)(2) and T.C.A. §37-2- 403(a)(2)?

IV. Whether the trial court erred when it found by “clear and convincing evidence” that the children have been removed from the mother’s home for six (6) months and the conditions which led to the children’s removal still persist and there is little likelihood that these conditions can be remedied at an early date pursuant to T.C.A. §36-1-113(g)(3)?

V. Whether the trial court erred when it found by “clear and convincing evidence” that the mother failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the children and placing them in the legal and physical custody of the mother would pose a risk of substantial harm to the physical or psychological welfare of the children pursuant to T.C.A. §36-1-113(g)(14)?

VI. Whether the trial court erred when it found that termination of the mother’s parental rights was in the best interests of the children?

III. STANDARD OF REVIEW

It is well-settled that:

A parent’s right to the care and custody of [his or] her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clause of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (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 (1982); *In re Angela E.*, 303 S.W.3d at 250.

In re Carrington H., 483 S.W.3d 507, 522-23 (Tenn. 2016) (footnote omitted). In

Tennessee, termination of parental rights proceedings are governed by statute, *In re Kaliyah S.*, 455 S.W.3d 533, 541 (Tenn. 2015), and the statutes identify “those situations in which the state’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth grounds on which termination proceedings can be brought.” *In re Jacobe M.J.*, 434 S.W.3d 565, 568 (Tenn. Ct. App. 2013) (quoting *In re W.B.*, Nos. M2004-00999-COA-R3-PT, M2004-01572-COA-R3-PT, 2005 WL 1021618, at *7 (Tenn. Ct. App. Apr. 29, 2005) (citing Tenn. Code Ann. § 36-1-113(g))) (internal quotation marks omitted).

Tennessee Code Annotated section 36-1-113 governs the termination of parental rights in this state. It provides, in pertinent part:

(c) 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.

Tenn. Code Ann. § 36-1-113(c). Therefore, every termination of parental rights case requires the trial court “to determine whether the parent has engaged in a course of action or inaction that constitutes one of the statutory grounds for termination[]” and whether termination of the parent’s rights is in the child’s best interest. *In re Donna E.W.*, No. M2013-02856-COA-R3PT, 2014 WL 2918107, at *2 (Tenn. Ct. App. June 24, 2014). “Because the stakes are so profoundly high[]” in a termination of parental rights case, the statute “requires persons seeking to terminate a ... parent’s parental rights to prove the statutory grounds for termination by clear and convincing evidence.” *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). This Court has observed that:

This heightened burden of proof minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d [467,] 474 [(Tenn. Ct. App. 2000)]; *In re M.W.A., Jr.*, 980 S.W.2d [620,] 622 [(Tenn. Ct. App. 1998)]. Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State Dep’t of Children’s Servs. v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at *9 (Tenn. Ct. App. Aug.13, 2003) (No Tenn. R. App. P. 11 application filed), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); *In re S.M.*, 149 S.W.3d at 639; *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App.2004). It produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d at 733; *In*

re C.W.W., 37 S.W.3d at 474.

Id.

If the trial court determines that clear and convincing evidence supports grounds for termination in light of its factual findings, the court “should then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest.” *In re Kaliyah S.*, 455 S.W.3d at 555. The party petitioning for the termination of parental rights bears the burden of demonstrating that termination is in the best interests of the child by clear and convincing evidence. *In re Angela E.*, 303 S.W.3d 240, 250 (Tenn. 2010).

We review the trial court’s findings of fact *de novo* upon the record with a presumption of correctness. Tenn. R. App. P. 3; *In re Carrington H.*, 483 S.W.3d 507, 524 (Tenn. 2016) (citations omitted). However, “[i]n light of the heightened burden of proof in termination proceedings ... [we] must make [our] 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 Carrington H.*, 483 S.W.3d at 524 (citation omitted). When the trial court has seen and heard witnesses, we give great deference to any findings that are based on the court’s assessment of witness credibility. *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007) (citation omitted). We will not reverse a finding based on witness credibility unless the record contains clear and convincing evidence to contradict it. *Id.* The trial court’s conclusion that clear and convincing evidence supports termination of parental rights is a conclusion of law that we review *de novo* with no presumption of correctness. *In re Carrington H.*, 483 S.W.3d at 524 (citation omitted).

The petitioner needs to establish only one of the statutory grounds set-forth in Tennessee Code Annotated section 36-1-113(g) to establish grounds for the termination of parental rights. *In re Angela E.*, 303 S.W.3d at 250. However, regardless of which grounds for termination are raised for our review on appeal, we must review the trial court’s findings and conclusions as to each ground. *In re Carrington H.*, 483 S.W.3d at 525-26. We also must review the trial court’s determination that termination is in the child’s best interests. *Id.* With these standards in mind, we turn to our review of the trial court’s findings of facts and conclusions of law in this case.

IV. ANALYSIS

Tennessee Code Annotated section 36-1-113 establishes the grounds for the termination of parental rights.⁸ The statute provides, in relevant part:

⁸ Tennessee Code Annotated section 36-1-113 has been amended since DCS filed the petition to terminate parental rights in this case. The most recent amendments became effective July 1, 2022. 2022 Pub. Acts,

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

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

(3)(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

(i) The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard;

...

(14) A parent or guardian has failed to manifest, by act or omission, an ability

c. 937, §§ 2 to 6, 13, 14. However, the version of the Code in effect when DCS filed its petition on June 13, 2019, is applicable to this case. *See In re Jah'Lila S.*, No. W2021-01199-COA-R3-PT, 2022 WL 4362839, at *5 n.7 (Tenn. Ct. App. Sept. 21, 2022).

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[.]

As noted above, the trial court terminated Mother's parental rights on the grounds of: 1) abandonment for failure to provide a suitable home pursuant to Tennessee Code Annotated section 36-1-113-(g)(1); 2) abandonment by an incarcerated parent under section 36-1-113-(g)(1); 2) failure to comply with the permanency plan pursuant to section 36-1-113(g)(2); 3) persistence of conditions the led to removal of the children under section 36-1-13(g)(3). The trial court also determined that Mother failed to manifest an ability and willingness to assume custody or financial responsibility for the children under section 36-1-113(g)(14), and that placing the children in her care would pose a substantial risk of harm. The trial court additionally found that termination of Mother's parental rights is in the children's best interests. We turn first to whether clear and convincing evidence establishes grounds for termination of Mother's parental rights.

A. Grounds for Termination of Parental Rights

1. Abandonment for Failure to Provide a Suitable Home

Under section 36-1-102(1)(A)(ii), abandonment may include a parent's failure to obtain and maintain a suitable home for the child after the child has been removed from his or her care.⁹ The section defines abandonment for failure to establish a suitable home as occurring when:

(ii)(a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;

(b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and

⁹ Amendments to Tennessee Code Annotated section 36-1-102 since DCS filed its petition in June 2019 did not alter subsection 102(1)(A)(ii).

(c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department[.]

Under section 36-1-102(1)(A)(ii)(c), DCS' efforts to assist a parent "shall be found to be reasonable if such efforts equal or exceed the efforts of the parent ... toward the same goal[.]" Additionally, this Court has emphasized that a "suitable home" requires more than an adequate physical space. *E.g., In re Navada N.*, 498 S.W.3d 579, 595 (Tenn. Ct. App. 2016) (citations omitted). A suitable home is one that is free of violence and illegal drugs. *Id.* It is a home in which the children receive appropriate care and attention. *E.g., In re Jason*, No. E2020-01479-COA-R3-PT2002, WL 1575469, at *8 (Tenn. Ct. App. Apr. 22, 2021) (citation omitted). Additionally, a parent's compliance with counseling and other requirements to address conditions that impact the care and safety of the child are related to the establishment of a suitable home for the child. *Id.* (citations omitted).

In her brief, Mother's argument on this issue consists of reciting the applicable statutes and four additional sentences. She asserts:

The Appellant argues that in the four (4) months after the [c]hildren were placed in state custody, [Mother] made reasonable efforts to establish a suitable home and she will be able to provide a suitable home at an early date.

...

In the present case, it was unclear from the testimony at trial when specific services were offered to [Mother] by DCS. There were few specific dates of service requests provided at trial, so it is unclear if services were offered or provided to [Mother] during the four-month period after the [c]hildren entered state custody. Therefore, the findings by the [t]rial [c]ourt on this ground should be reversed.

Mother does not dispute the trial court's finding that she did not have suitable housing for the children when DCS removed them from her care in 2017. Mother also does not dispute that she had not obtained suitable housing by the time DCS filed its

petition to terminate her parental rights in 2019. In fact, Mother does not argue that DCS failed to make reasonable efforts to assist her. Rather, as we understand it, Mother's argument is that DCS's efforts did not occur in the four months immediately following removal of the children from Mother's custody.

Mother's brief points us to nothing to demonstrate that this issue was raised in the trial court. Issues not raised in the trial court are considered waived and cannot be raised for the first time on appeal. *E.g., In re Aliyah C.*, 604 S.W.3d 417, 419 (Tenn. Ct. App. 2019). Additionally, Rule 24 of the Tennessee Rules of Appellate Procedure requires the appellant to prepare the record to provide the appellate court with "a 'fair, accurate and complete account' of what transpired at the trial level." *Jennings v. Sewell-Allen Piggly Wiggly*, 173 S.W.3d 710, 713 (Tenn. 2005) (quoting *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993)). The appellee may designate additional portions of the record that "it deems necessary" to our review. *Id.* As far as we can ascertain from the record, Mother filed no pleadings in the trial court, and it does not appear that this issue was raised below.¹⁰ "We will not presume error from a silent record." *In re William B.*, No. M202001187COAR3PT, 2021 WL 4935740, at *13 (Tenn. Ct. App. Oct. 22, 2021) (quoting *State v. Hufford*, No. E2012-02162-CCA-R3-CD, 2014 WL 4403831 (Tenn. Crim. App. Sept. 8, 2014)).

Nevertheless, we have a duty to review each ground for termination. Accordingly, we turn to the trial court's findings on this ground. The trial court found that "Mother made little to no reasonable efforts to provide a suitable home for the children despite DCS's assistance from August 10, 2017 to December 10, 2017." The trial court found that DCS efforts in this case included "trying to assist Mother in obtaining appropriate low-cost housing" and that "Mother consistently declined assistance with housing, reporting that she was already on waiting lists[.]" The court also found that Mother "never provid[ed] documentation of her efforts to obtain housing." The trial court additionally found that DCS's efforts included:

- 2) asking Mother to submit to random drug screens; 3) referring Mother to a parenting assessment; 4) providing therapeutic supervised visitation; 5) offering assistance with Mother's mental health; and 6) supervising visits.

From the record, it is clear that Mother did not have suitable housing for the children when they were removed from her custody in August 2017 and that she did not have suitable housing when DCS filed the petition to terminate her parental rights in July 2019. It is also clear that DCS offered to assist Mother with housing, and the permanency plans

¹⁰ We observe that the trial court entered an order appointing legal counsel for Mother on January 6, 2020, *nunc pro tunc* to July 23, 2019. The record demonstrates that Mother was represented by counsel, at latest, since the initial permanency hearing on October 3, 2017. The same legal counsel represents Mother on appeal.

indicate that Mother repeatedly told DCS that she was “on the list” for public housing. At the January 2022 hearing, Mother testified that when she was released from incarceration, she intended to live with Grandmother, who also has a criminal background. She stated that Grandmother had placed her on lists with several housing authorities. Mother also testified that she had a housekeeping job “lined up” through a temporary agency. At the May 2022 hearing, Mother testified that she had secured employment at a restaurant and was scheduled to start the following week, but she was unable to testify with any certainty as to how many hours she would be working. Mother testified that she was living with her sister and two-year-old niece in a two-bedroom apartment but was still “on a list” for housing.

Mother also testified that she has been diagnosed with bi-polar disorder, anxiety, depression, and PTSD. She stated that she has received mental health treatment through Centerstone and received medication while incarcerated. Mother further stated that she was released from incarceration in March 2022 with a three-day supply of medication and was awaiting an appointment to have her medication refilled. Mother testified that she “detoxed” with respect to illegal drugs while incarcerated and had “no intention of using” and “[didn’t] plan on using no [sic] time soon.”

Mother testified that she had used illegal drugs since she was 14-years-old and that she was using Fentanyl prior to her incarceration in March 2021. Mother also testified that, notwithstanding the alcohol and drug assessment in April 2020, she had used Fentanyl for approximately two years prior to incarceration in March 2021. She testified that she had not completed alcohol or drug classes or treatment. Additionally, it is undisputed that Mother was incarcerated multiple times throughout this matter. In January 2018, Mother was incarcerated in Atlanta, Georgia. Mother was incarcerated in Davidson County, Tennessee, from March through October 2018. In December 2018, she was incarcerated in Pigeon Forge, Tennessee. She was incarcerated again from March 13, 2019, through August 20, 2019. In October or November 2019, she was incarcerated for ten days in Alabama for a “fugitive of justice charge.” In July 2020, she was arrested in Sumner County, Tennessee. She was arrested in Sevier County, Tennessee, in December 2020. Mother was incarcerated in Williamson County from March 2021 through March 24, 2022.

The evidence does not preponderate against the trial court’s factual findings that: 1) DCS made efforts to assist Mother to secure housing; 2) Mother refused offers of rehabilitative housing and maintained that she was “on lists” for housing; and 3) that DCS efforts were hampered by Mother’s repeated incarcerations throughout the custodial period. Termination of Mother’s parental rights on the ground of abandonment for the failure to provide a suitable home is supported by clear and convincing evidence in this case.

2. Abandonment by an Incarcerated Parent

Tennessee Code Annotated section 36-1-102(1)(A)(iv) as it existed in June 2019 defined abandonment by an incarcerated parent as occurring when:

A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. If the four-month period immediately preceding the institution of the action or the four-month period immediately preceding such parent's incarceration is interrupted by a period or periods of incarceration, and there are not four (4) consecutive months without incarceration immediately preceding either event, a four-month period shall be created by aggregating the shorter periods of nonincarceration beginning with the most recent period of nonincarceration prior to commencement of the action and moving back in time. Periods of incarceration of less than seven (7) days duration shall be counted as periods of nonincarceration. Periods of incarceration not discovered by the petitioner and concealed, denied, or forgotten by the parent shall also be counted as periods of nonincarceration. A finding that the parent has abandoned the child for a defined period in excess of four (4) months that would necessarily include the four (4) months of nonincarceration immediately prior to the institution of the action, but which does not precisely define the relevant four-month period, shall be sufficient to establish abandonment[.]

This section “contains two distinct tests” relating to abandonment by an incarcerated parent. *In re Audrey S.*, 182 S.W.3d 838, 865 (Tenn. Ct. App. 2005). The first test mirrors the ground of abandonment for the failure to visit or support the child as defined in section 36-1-102(1)(A)(i) “but shifts the focus from the four-month period immediately preceding the filing of the termination petition to the four-month period immediately preceding the parent's incarceration.” *Id.* The second test has no corollary in section 36-1-102(1)(A)(i). *Id.* “The second test asks whether the parent ‘has engaged in conduct prior to incarceration which exhibits a wanton disregard for the welfare of the child.’” *Id.* (quoting Tenn. Code Ann. § 36–1–102(1)(A)(iv)). “This test . . . is not expressly limited to any particular four-month period.” *Id.*

This Court has observed that this section:

reflects the commonsense notion that parental incarceration is a strong indicator that there may be problems in the home that threaten the welfare of the child. Incarceration severely compromises a parent's ability to perform his or her parental duties. A parent's decision to engage in conduct that carries with it the risk of incarceration is itself indicative that the parent may not be fit to care for the child.

Id. at 866 (citation omitted). However, incarceration itself is not a ground for termination of parental rights, and it “is not an infallible predictor of parental unfitness.” *Id.* Rather, incarceration is “a triggering mechanism that allows the court to take a closer look at the child's situation to determine whether the parental behavior that resulted in incarceration is part of a broader pattern of conduct that renders the parent unfit or poses a risk of substantial harm to the child.” *Id.* Termination of parental rights under this section requires the court to find, by clear and convincing evidence, that the parent's pre-incarceration conduct demonstrates a wanton disregard for the child's welfare. *Id.*

In this case, it is undisputed that Mother was incarcerated during the four months preceding the filing of the petition to terminate her parental rights on June 13, 2019. In her brief, Mother asserts that the trial court erred by terminating her parental rights on this ground because she visited regularly with the children “until sometime in 2019.” She submits that she visited with the children on April 18, 2019, and “only stopped visiting when she went to jail and later when the [c]ourt suspended her visits in September 2019.” However, as DCS points out in its brief, the trial court did not terminate Mother's parental rights based on the failure to visit but on the basis that her conduct prior to incarceration exhibited a wanton disregard for the children's welfare.

The trial court found that:

Mother's conduct has disrupted her ability to parent the children, bond with the children, and provide a safe and stable environment for the children. Mother was arrested and convicted of different charges while she was aware that her children were in foster care. She intentionally committed illegal activities, knowing her behavior would impede reunification with her children. These crimes constitute a wanton disregard for the children's welfare. While Mother testified that she has changed and wants a second chance, a pattern of ongoing criminal conduct proves otherwise.

As noted above, it is undisputed that Mother was incarcerated on charges of theft, criminal simulation, and violation of probation for most of the two-year period following removal of the children from her care, *i.e.*, August 2017 through June 2019, when DCS filed its petition to terminate her parental rights. Notwithstanding the petition to terminate her parental rights and the development of additional permanency plans, Mother continued

to engage in criminal activity until she was incarcerated from March 2021 until March 2022. At trial, Mother testified that she engaged in criminal activity because she “was just hanging around the wrong people, and it was something to do when [she] was off.” It is also undisputed that Mother continued to use illegal drugs, including Fentanyl, until she was incarcerated in March 2021. As discussed above, Mother refused DCS’ offers of housing; maintained that she was “on the list” for housing but was unable to obtain suitable housing during the custodial period; and DCS attempts to assist her were hampered by her repeated incarcerations.

This Court has “repeatedly held that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child.” *In re Audrey S.*, 182 S.W.3d at 867-68 (citations omitted). We agree with the trial court that termination of Mother’s parental rights on the ground of abandonment by an incarcerated parent is supported by clear and convincing evidence in this case.

3. Substantial Noncompliance with Permanency Plan

Under Tennessee Code Annotated section 36-1-113(g)(2), parental rights may be terminated if “[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4[.]” Termination of parental rights on this ground requires the trial court to find that the parent was informed of the content of the plan “and that the requirements of the plan are reasonable and related to remedying the conditions which necessitated foster care placement.” Tenn. Code Ann. § 37-2-403(a)(2)(C). The trial court must make this finding “in conjunction with the determination of substantial noncompliance under [section] 36–1–113(g)(2).” *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002). The court must also determine that the parent’s noncompliance is “substantial.” *Id.* at 548. “[T]he real worth and importance of noncompliance should be measured by both the degree of noncompliance and the weight assigned to that requirement. Terms which are not reasonable and related are irrelevant, and substantial noncompliance with such terms is irrelevant.” *Id.* at 548-49. Whether a parent has substantially complied with a parenting plan is a question of law, which we review *de novo* with no presumption of correctness. *Id.* at 548.

The two permanency plans approved by the trial court before DCS filed its petition to terminate Mother’s parental rights required Mother to: 1) complete a parenting assessment and follow any recommendations; 2) obtain and maintain stable housing; 3) obtain stable employment; 4) participate in random drug screens; 5) complete a mental health assessment and follow recommendations; 6) complete an alcohol and drug assessment and follow recommendations; 7) pay child support; 8) regularly visit the children; and 9) maintain contact with DCS. There is no dispute that the requirements of

the plan were reasonable or that Mother was aware of her responsibilities. Following the May 2022 hearing, the trial court determined that Mother had not complied substantially with these requirements and did not “show completion of any services prior to the filing of [the] petition.”

On appeal, Mother asserts that although she did not complete all the tasks required under the permanency plans, she substantially complied with her responsibilities. She submits that she completed an alcohol and drug assessment in April 2020; had a mental health evaluation in the fall of 2018; and “restarted mental health treatment” after being released from incarceration in March 2022. She asserts that she completed parenting classes by telephone “sometime in 2020.” Mother also maintains that she is “in the process of obtaining stable income and housing” and is “on the waiting list” for an apartment.

With the exception of one mental health evaluation in 2018, it is undisputed that Mother had not completed any of the requirements of the permanency plans when DCS filed its petition to terminate her parental rights in June 2019, which was two years after the children were removed from her custody. Although a trial court may consider a parent’s efforts to comply with the permanency plan after the termination petition is filed, *In re Jordan P.*, No. E2022-00499-COA-R3-PT, 2023 WL 2770680, at *10 (Tenn. Ct. App. Apr. 4, 2023), such efforts generally will be deemed “too little, too late.” *See, e.g., In re A.W.*, 114 S.W.3d 541, 546 (Tenn. Ct. App. 2003) (holding that mother’s compliance with requirements to address her mental health a few months prior to trial was “[t]oo little, too late”); *see also In Re Jordan P.*, 2023 WL 2770680, at *10 (citing *see In re Savannah F.*, No. E2015-02529-COA-R3-PT, 2016 WL 4547663, at *16 (Tenn. Ct. App. Aug. 31, 2016) (citing *In re K.M.K.*, No. E2014-00471-COA-R3-PT, 2015 WL 866730, at *6 (Tenn. Ct. App. Feb. 27, 2015) (holding that father’s efforts after the termination petition was filed were “too little, too late”))).

Clear and convincing evidence supports the trial court’s conclusion that Mother made very little effort to comply with the permanency plans in this case. Rather, as the trial court noted, Mother continued to abuse illegal drugs and to engage in a pattern of behavior that resulted in multiple periods of incarceration throughout most of the custodial period. Meanwhile, the children spent nearly five years in foster care. We affirm termination of Mother’s parental rights on the ground of substantial noncompliance with the permanency plans.

4. Persistence of Conditions

We turn next to the trial court’s termination of Mother’s parental rights on the ground of persistence of conditions. Tennessee Code Annotated section 36-1-113(g)(3) provides that parental rights may be terminated on the ground of persistent conditions when

[t]he child has been removed from the home or the physical or legal custody

of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

(i) The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard[.]

As discussed above, it is undisputed that the children were removed from Mother's custody in August 2017 and were adjudicated dependent and neglected in April 2018. It is also undisputed that DCS filed the petition to terminate Mother's parental rights in June 2019, and the petition was initially set to be heard in January 2020. The matter was continued several times while Mother continued to abuse illegal drugs and to commit offenses resulting in multiple periods of incarceration. Mother failed to fully complete any requirements of the permanency plans, and it appears that she maintained sobriety only while incarcerated.

In May 2022, on the second day of the hearing, Mother had been released from incarceration for approximately six weeks and was living with her sister. She testified that she was again on a list for housing. Mother also testified that she had passed several drug screens "through" her probation officer and had completed parenting classes. Mother testified that she obtained mental health treatment and medication while incarcerated but left incarceration in March 2022 with only a three-day supply of medication. She testified that she had completed one appointment for mental health evaluation following her release, but had not yet been evaluated for medication. She also testified that she had been hired to work at a restaurant at a rate of \$18 per hour and would receive a work schedule the following week. Her testimony regarding the number of hours she expected to work was uncertain, but she stated it was "roughly" 30 or 40 hours per week.

In sum, Mother maintains that she will be able to provide for the children in the near

future – after she begins working, obtains independent housing, and accesses mental health treatment and medication. At trial, Mother asked the court for a “second chance.” She stated:

I’m not gonna lie, I was probably in a bad space when I was out ‘cause I was on the run and, you know, I was on drugs. But I’ve been clean for 15 months, and I plan to stay clean because my sobriety is everything to me. It means a lot, and I just want to, you know, do the right thing for my kids and for myself.

We have noted that “[t]he purpose behind the ‘persistence of conditions’ ground for terminating parental rights is “to prevent the child’s lingering in the uncertain status of foster child if a parent cannot within a reasonable time demonstrate an ability to provide a safe and caring environment for the child.” *In re Nevada N.*, 498 S.W.3d 579, 606 (Tenn. Ct. App. 2016) (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008) (quoting *In re D.C.C.*, No. M2007-01094-COA-R3-PT, 2008 WL 588535, at *9 (Tenn. Ct. App. Mar. 3, 2008))). Additionally, “[a] parent’s continued inability to provide fundamental care to a child, even if not willful, ... constitutes a condition which prevents the safe return of the child to the parent’s care.” *Id.* (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008) (citing *In re T.S. & M.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at *7 (Tenn. Ct. App. July 13, 2000))). “[T]he pertinent question in a termination proceeding based upon the statutory ground of persistence of conditions is whether [the parent] has continued to neglect the [c]hild after the child has been removed from the parent’s custody.” *In re Korey L.*, No. M2022-00487-COA-R3-PT, 2023 WL 2174854, at *5 (Tenn. Ct. App. Feb. 23, 2023) (quoting *In re Emilie A.M.*, No. E2011-02416-COA-R3-PT, 2012 WL 4053040, at *6 (Tenn. Ct. App. Sept. 17, 2012)) (additional citation omitted).

As discussed above, over the nearly five years after the children were removed from Mother’s custody, five permanency plans were developed. Mother had five years to rectify the conditions leading to the removal of the children and to comply with the requirements of the permanency plan. Mother had several “second chances,” and she chose a course of action that prevented the return of the children to her care. Further, Mother has had no contact with the children since April 2019; the trial court suspended visitation in September 2019, and Mother pursued no steps to resume visitation. We agree with the trial court that clear and convincing evidence supports termination of Mother’s parental rights on the ground of persistence of conditions.

5. Ability and Willingness to Assume Custody or Financial Responsibility

We turn next to termination of Mother’s parental rights on the ground of failure to

manifest an ability and willingness to assume custody or financial responsibility for the children under Tennessee Code Annotated section 36-1-113(g)(14). This section provides that parental rights may be terminated if “[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.”

The trial court determined that Mother expressed a willingness to assume custody of the children but failed to manifest the ability to assume legal and physical custody. The court also determined that placing the children in her care would pose a substantial risk of harm to them. On review of the record, we agree that clear and convincing evidence supports the trial court’s determination that, nearly five years after the children were removed from her care, Mother remained unable to assume custody or financial responsibility for them.

As discussed above, the children had been in foster care for nearly five years when this matter was heard in May 2022. During that time, Mother engaged in a course of conduct that resulted in her incarceration for more than half of that period. Although Mother testified that she had secured employment after she was released from incarceration in March 2022, from her testimony, we observe that Mother’s employment history has been interrupted by frequent periods of incarceration. At the time of the hearing, Mother was not in a position to support the children financially. Additionally, the trial court found that the children were “settled and happy with their foster family of three years[.]” and that the foster family wished to adopt the children. Mother has not visited the children since April 2019, and the trial court found that the children love their foster parents and do not remember “life before foster care[.]” The court found that “it would be traumatic to reunite [the children] with a mother they do not remember.” Clear and convincing evidence supports the trial court’s determination that Mother is unable to assume custody or financial responsibility for the children and that returning the children to her custody would pose a substantial risk of harm to their well-being.

B. Best Interests

We now turn to the trial court’s determination that termination of Mother’s parental rights is in the children’s best interests.¹¹ The statute in effect when DCS filed its petition

¹¹ The best-interest analysis established by Tennessee Code Annotated section 36-1-113(i) was substantially amended effective April 22, 2021. However, although this matter was heard in January and May 2022, the amended statute applies to petitions filed on or after April 22, 2021. The petition to terminate parental rights in this case was filed in June 2019. Thus, the new factors set out in the current version of section 36-1-113(i) are not applicable to this case. *See In re Riley S.*, Nos. M2020-01602-COA-R3-PT(c); M2021-00018-COA-R3-PT(c), 2002 WL 128482, at *13 n.10 (Tenn. Ct. App. Jan. 14, 2022), *perm. app. denied*, (Tenn. Mar. 17, 2022).

in June 2019 provided:

(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). These factors are not exclusive but "illustrative . . . and

any party to the termination proceeding is free to offer any other factor relevant to the best interests analysis.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (citation omitted).

The statutes recognize that, notwithstanding clear and convincing evidence of grounds for termination, termination of parental rights is not always in the child’s best interests. *In re I.E.A.*, 511 S.W.3d at 517. Whether termination of parental rights is in the child’s best interests must be “viewed from the child’s, rather than the parent’s, perspective.” *In re Gabriella D.*, 531 S.W.3d at 681 (quoting *In re Audrey S.*, 182 S.W.3d at 878). “[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[.]” *Id.* (quoting Tenn. Code Ann. § 36-1-101(d) (2017)).

The best-interest analysis requires “more than a ‘rote examination’ of the statutory factors.” *Id.* (quoting *In re Audrey S.*, 182 S.W.3d at 878). Further, it “consists of more than tallying the number of statutory factors weighing in favor of or against termination.” *Id.* (citing *White v. Moody*, 171 S.W.3d 187, 193-94 (Tenn. Ct. App. 2004)). Although the trial court must consider all the statutory factors and other relevant proof, one factor may be determinative of the best-interests analysis in light of the circumstances surrounding the particular child and parent. *Id.* (quotation omitted). The trial court’s factual findings relevant to the best-interest analysis must be supported by a preponderance of the evidence. *In re Kaliyah S.*, 455 S.W.3d at 555 (citation omitted). The trial court also must determine whether the combined weight of the facts amounts to clear and convincing evidence that it is in the child’s best interest to terminate parental rights. *Id.* (citation omitted).

In her brief, Mother argues that it is unnecessary to address the issue of best interests because the grounds for termination of her parental rights were not proven. She asserts that, assuming grounds were proven, the evidence preponderates against the trial court’s determination that termination of her parental rights is in the best interests of the children. Mother contends that she “has a strong bond with her children that is beneficial to them[.]” because she visited the children “regularly . . . usually on Thursdays until sometime in 2019.” She asserts that she is able to provide a home for the children with her sister and is on the waiting list for an apartment. She submits:

In closing [at trial], the Mother stated, “I’ve been trying really hard to do what I have to do to get my kids back. I have made mistakes along the way, but all I can say that I’m a work in progress and I’m trying. I’m still young. I’m only 23. I just want a change to do right and get my kids back.”

The children were less than two-years old when they were removed from Mother’s custody in 2017, and it is undisputed that Mother has had no contact with the children since April 2019. The same foster parents cared for the children for three years prior to the

hearing, and they wish to adopt the children. The trial court found that “the foster parents are the only family that the children really know.” The court also found that “[t]he children [were] excelling in every respect under their foster parents’ care[]” and that they had “created a healthy parental attachment with their foster parents.” The court determined that returning the children to Mother’s care would be harmful to their emotional and psychological well-being.

The trial court also found that Mother was incarcerated for much of the custodial period and that she has “shown herself incapable of making changes to her lifestyle to change” her pattern of frequent incarceration for theft and other offenses. The court also found that Mother has been unable to obtain stable employment or independent housing since the children were removed from her care and that she never paid child support – even when not incarcerated.

We are not insensitive to Mother’s age and desire to improve her situation. However, as discussed above, Mother continued to use illegal drugs and to engage in conduct that resulted in incarceration until her most recent incarceration from March 2020 to March 2021. She did little to comply with the permanency plans or to improve her situation after the children were removed from her care. Mother was not able to financially support the children on the day of trial, and her testimony with respect to the hours she expected to work was not definitive. While Mother requests one more chance, the children have been in foster care for nearly five years. They are bonded and happy with their foster parents. Meanwhile, Mother has yet to demonstrate that she is able to care for and support them. The best-interest analysis requires the court to determine what is in the best interests of the children, not the parent. From the record, we agree that clear and convincing evidence supports a determination that termination of Mother’s parental rights is in the best interests of the children in this case.

V. CONCLUSION

For the foregoing reasons, we affirm the trial court’s order terminating Mother’s parental rights. The case is remanded to the trial court for further proceedings as may be necessary and are consistent with this opinion. Costs of appeal are assessed to Appellant, Rashita G. Because Appellant is proceeding *in forma pauperis*, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE