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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 1, 2023

**IN RE MADDOX H.<sup>1</sup>**

**Appeal from the Juvenile Court for Sumner County**  
**No. 2021-TPR-18                      David R. Howard, Judge**

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**No. M2022-00942-COA-R3-PT**

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This appeal concerns the termination of a mother’s parental rights to one of her children. The trial court found that Tennessee Department of Children’s Services (“DCS”) established four grounds for terminating the mother’s parental rights and that termination of her rights was in the best interest of the child. The mother appeals. We affirm the termination of the mother’s parental rights.

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

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KRISTI M. DAVIS, JJ., joined.

Lee W. McDougal, Gallatin, Tennessee, for the appellant, Danielle B. H.

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

**OPINION**

**FACTS AND PROCEDURAL HISTORY**

Danielle B. H. (“Mother”) is the mother of Maddox H., born in July 2017. DCS filed a petition to terminate Mother’s parental rights to Maddox on August 16, 2021, in the Juvenile Court for Sumner County, Tennessee. Because Mother named William D. B. as the father of Maddox, he was also named in the petition; however, the petition against William D. B. was bifurcated.<sup>2</sup> Thus, he is not a party to this appeal.

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<sup>1</sup> This court has a policy of protecting the identity of children by initializing the last names of parents, children, immediate relatives and pre-adoptive foster parents.

<sup>2</sup> As the trial court explained in its final order:

The petition to terminate Mother’s parental rights was tried on March 17, 2022. An overview of the more relevant facts and procedural history are as follows.

Maddox was removed from Mother and placed in state custody on October 10, 2020, due to Mother’s substance abuse, concerns that Maddox was exposed to domestic violence in the home, and environmental issues.<sup>3</sup> At the time of removal, Mother tested positive for methamphetamines, rats were observed in the home, and Mother and her then-boyfriend, Carlos Seaborn, were facing eviction.

DCS filed a dependency and neglect petition in Sumner County Juvenile Court three days later. On the same day, the juvenile court entered an order placing Maddox in state custody effective October 10, 2020, the date of his removal. Attorney Sonia Boss was appointed the guardian ad litem for Maddox and Jennifer Thomas was appointed as counsel for Mother in the dependency and neglect proceedings.

Maddox was adjudicated dependent and neglected on December 10, 2020. That order was based on Mother’s stipulation under Tennessee Code Annotated § 27-1-102(b)(F) and admission of illicit drug abuse. In the subsequent final order of disposition, entered on April 12, 2021, the juvenile court found “no evidence of improvement since the adjudication” and ordered that Maddox remain in state custody. The order also afforded Mother therapeutic visitation with Maddox. Maddox has remained in state custody in a pre-adoptive home ever since.

Over the ensuing seventeen months before the trial on the petition, several permanency plans were developed. The first plan was developed on October 23, 2020. Under the first plan, Mother was to complete an alcohol-and-drug (“A&D”) assessment and follow all recommendations; submit to random drug screens; complete a psychological evaluation and follow all recommendations; complete a parenting assessment and follow all recommendations; obtain and maintain safe and stable housing; obtain and maintain stable, legal income; comply with supervised therapeutic visitation and attend at least four hours of visitation with Maddox each month; comply with the child-support guidelines

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When court was reconvened, [William D. B.’s] Counsel advised that he had contacted his client [who was incarcerated], who indicated that he was not the child’s biological father. He further indicated that [William D. B.] would sign a Waiver of Interest in the proceedings. As such, Counsel requested the opportunity to bifurcate [William D. B.’s] hearings to allow his client to sign a Waiver of Interest. Having no objection from either [DCS] or the Guardian ad litem, the Court granted [William D. B.’s] request. [William D. B.’s] portion of the termination proceedings was reset pending the entry of the Waiver.

<sup>3</sup> Another child of Mother was also removed; however, that child is not the subject of these proceedings for that child was placed with the child’s father, who is not Maddox’s father.

while Maddox was in state custody; provide DCS with documentation of income, employment, and housing; and notify DCS of any change in address or phone number within ten business days of the change. Mother participated in and agreed to the development of the plan.

A second and very similar permanency plan was developed on April 6, 2021. It included additional responsibilities for Mother, such as completing an intensive outpatient treatment program as recommended by her A&D assessment; completing the recommendations of her parenting assessment, which included individual therapy, ten hours of parenting education, and medication management; and participating in domestic-violence education. Mother also participated in the development of the plan and agreed to the plan. A third permanency plan was developed on October 1, 2021, in which Mother's responsibilities did not change.

Mother was 27 years old at the time of trial. Testimony elicited at trial revealed that her substance-abuse issues began when she was 15 years old. Mother testified that she still had a substance-abuse problem with methamphetamine when the termination petition was filed in August 2021; however, she stated that she last used drugs in September 2021. Contrary to Mother's testimony, Mother tested positive for every drug screen administered following Maddox's removal. She tested positive for methamphetamine and amphetamine on December 30, 2020 and March 12, 2021, and for methamphetamine, amphetamine, and methylenedioxy-methamphetamine ("MDMA")<sup>4</sup> on May 3 and May 25, 2021. She also tested positive for methamphetamine, amphetamine, tetrahydrocannabinol, and MDMA in August 2021, the month the termination petition was filed.

With regard to housing, the evidence revealed that Mother was not able to maintain safe and stable housing. Immediately prior to Maddox's removal, Mother and Maddox lived in Gallatin with Mother's boyfriend, Carlos Seaborn. Just three days after Maddox's removal, Mother was evicted. Over the next few weeks, Mother and Mr. Seaborn lived in Mother's car. In November 2020, Mother obtained a one-bedroom apartment where she lived with Mr. Seaborn in Old Hickory, Tennessee. However, it was later learned that Mr. Seaborn abused Mother and used illicit drugs with her.

Over a short period of time, the DCS case worker, Destiny Riggins, became most concerned with the domestic violence in the apartment. This prompted Ms. Riggins to advise Mother that "staying with [Mr. Seaborn] [was] detrimental to this custodial case" and that it would not be appropriate to return Maddox to Mother while she was in a

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<sup>4</sup> MDMA "acts as a monoaminergic agonist, promoting copious serotonin release in midbrain centers. Taken orally, a dose of 100 mg induces euphoria, loquacity, and a sense of increased energy and heightened social intimacy lasting 4–6 hours. Some users experience perceptual distortion and hallucinations, delirium, anxiety, panic attacks, aggressiveness, paranoia, or seizures." *MDMA*, Stedman's Medical Dictionary (28th ed. 2006).

relationship with Mr. Seaborn. Notwithstanding this advice, Mother continued to live with Mr. Seaborn until April 2021, when, according to Mother, Mr. Seaborn kicked her out of the apartment.

Mother then lived with her father in his camper in Hartsville, Tennessee, for about a week or so; however, DCS had “ongoing concerns” with Mother’s father based on Mother’s statements that he had taken pictures of her friends when they were adolescents and that she did not “want[] her children around him.”

After her father’s camper, Mother lived with a friend near Lafayette, Tennessee, for a month or so. Thereafter, Mother again lived in her car. In June or July 2021, Mother moved in with her then-boyfriend, Joey Irwin, in Westmoreland, Tennessee. Ms. Riggins visited the residence twice, but Mother was not there on either occasion. Nevertheless, Ms. Riggins found the residence inappropriate for a child. She described it as “essentially a junkyard around the housing.” Mother’s relationship with Mr. Irwin ended in November 2021, at which time she returned to live with her father in Hartsville, where she stayed for approximately two months.

In February 2022, Mother started living in Hartsville, Tennessee, with her maternal grandmother and niece, where she remained at the time of trial. Mother stated that she was living there on a temporary basis because “she didn’t have anywhere else to go.” In her testimony at trial, Mother admitted that her living arrangement was not stable, but she also explained that she was saving money to obtain her own housing within six months.

During the custodial period, Mother’s employment was “very scattered.” She worked for Molly Maid, a cleaning service and, thereafter, “off and on” at TN Tidy, another cleaning service. She worked only one day for AmeriColor and All Star. At trial, Mother explained that she had been working for You Rest We Clean, another cleaning service, since early February 2022. She said her hours varied, and her income was dependent on how many houses she cleaned, typically \$60 to \$120 per day.

Although Mother made a very modest living, she never paid child support because she “was never given an amount” to pay. Mother did, however, provide birthday and Christmas presents to Maddox.

Mother was afforded supervised therapeutic visitation through Omni Community Health. Out of a possible 28 visits, Mother attended 15 visits, missing 13 possible visits.<sup>5</sup> For the visits Mother failed to attend, she either did not show, failed to confirm the visit in advance, or cancelled the visit. Mother’s last visit prior to trial occurred on March 5, 2022, two weeks before trial.

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<sup>5</sup> Another visit was scheduled, but Omni cancelled the visit due to inclement weather.

Maddox had been in the same foster home throughout the entire custodial episode. It was a pre-adoptive foster home, and the foster parents' four biological children also lived in the home.

When Maddox entered state custody, he had “quite a few dental needs,” had trouble sleeping, and had delays with basic motor skills. He made significant progress in foster care, receiving occupational therapy to improve his motor skills. He also received “play therapy” to work on regulating his emotions, which was “a big thing for him” because Maddox had been exposed to domestic violence. His tonsils and adenoids were removed, which “helped a lot with [his] speech and sleep.” His foster mother, who was a speech pathologist, ensured that “his developmental needs [were] met.” As she explained at trial, Maddox had “grow[n] so much” and was “a healthy, happy, [and] wild child.”

The petition was tried on March 17, 2022. In its final order filed on June 22, 2022, the juvenile court terminated Mother's parental rights on the grounds of (1) abandonment by failure to provide a suitable home, (2) substantial noncompliance with the permanency plan, (3) persistence of conditions, and (4) failure to manifest an ability and willingness to personally assume custody of Maddox, and on the finding that termination of Mother's parental rights was in Maddox's best interest.

This appeal followed.

### ISSUES

Mother raises three issues on appeal, stated as follows:

- I. Whether Mother was deprived of due process as a consequence of DCS's failure to produce discovery;
- II. Whether the trial court erred in finding that grounds exist to terminate her parental rights; and
- III. Whether the trial court erred in finding that it is in the best interest of Maddox to terminate Mother's parental rights.

### STANDARD OF REVIEW

“Parents have a fundamental constitutional interest in the care and custody of their children under both the United States and Tennessee constitutions.” *Keisling v. Keisling*, 92 S.W.3d 374, 378 (Tenn. 2002). “[T]his right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute.” *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)).

“To terminate parental rights, a court must determine that clear and convincing evidence proves not only that statutory grounds exist but also that termination is in the child’s best interest.” *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). “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 586, 596 (Tenn. 2010). “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 Carrington H.*, 483 S.W.3d 507, 522 (Tenn. 2016).

In an appeal, “this court is required ‘to review thoroughly the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests.’” *In re Connor B.*, 603 S.W.3d 773, 779 (Tenn. Ct. App. 2020) (quoting *In re Carrington H.*, 483 S.W.3d at 525). In doing so, we must determine “whether the trial court’s findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.” *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). Stated another way, 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.

The trial court’s findings of fact are reviewed de novo upon the record, accompanied by a presumption of correctness unless the evidence preponderates against those findings. *See* Tenn. R. App. P. 13(d); *see also In re Carrington H.*, 483 S.W.3d at 523–24; *In re F.R.R., III*, 193 S.W.3d at 530. Questions of law, however, are reviewed de novo with no presumption of correctness. *See In re Carrington H.*, 483 S.W.3d at 524. A trial court’s determinations regarding witness credibility are entitled to great weight on appeal and will not be disturbed “absent clear and convincing evidence to the contrary.” *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007).

## ANALYSIS

### I. MOTHER’S DUE PROCESS AND EVIDENTIARY ARGUMENTS

Although it is not entirely clear, Mother appears to argue on appeal that she was deprived of due process because “there likely existed documentation that was requested by Mother but excluded from [DCS’s] disclosure.” DCS responds to this argument by contending it has been waived because Mother did not raise this due-process issue in the trial court. *See In re Jaylan J.*, No. W2019-02025-COA-R3-PT, 2020 WL 7861378, at \*13 (Tenn. Ct. App. Dec. 22, 2020) (“Father’s due process argument is waived because he failed to raise it in the trial court.”). We have been unable to find where this issue was raised in the trial court and Mother fails to cite the record to reveal where it was raised. Accordingly, this issue is waived. *See id.*; *see also Powell v. Cmty. Health Sys., Inc.*, 312

S.W.3d 496, 511 (Tenn. 2010) (“It is axiomatic that parties will not be permitted to raise issues on appeal that they did not first raise in the trial court.”).

Mother also takes issue with the fact that, during cross-examination, Destiny Riggins, the DCS case worker, appeared to be reading from documentation of what occurred during the course of her casework. Mother objected to this form of testimony based on Tennessee Rule of Evidence 612. The record reveals that when Mother’s counsel objected to this testimony, the trial court ordered that the testimony be stricken. Specifically, the trial court stated that it would “draw no inference either way from [the testimony].” We find no error with the trial court’s action in this regard.

Furthermore, as a practical matter, we note that the testimony Mother sought to strike pertained to Mother’s use of illicit drugs. Because the record is replete with Mother’s failed drug screens and Mother’s own admissions that she and Mr. Seaborn used drugs, Ms. Riggins’ reference to her notes to support this statement would be harmless. Accordingly, we find no merit to this argument.

## II. GROUNDS FOR TERMINATION

The trial court found that DCS established four grounds for terminating Mother’s parental rights. We will discuss each ground in turn.

### A. Abandonment by Failure to Establish a Suitable Home

Pursuant to Tennessee Code Annotated § 36-1-113(g)(1), a ground exists for termination of parental rights if “abandonment” has occurred within the meaning of § 36-1-102. As is applicable to this case, § 36-1-102(1)(A)(ii) requires the petitioner to establish three elements:

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:

- (ii)(a) The child has been removed from the home or the physical or legal custody of a parent . . . 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 . . . ;

(b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department . . . 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

(c) For a period of four (4) months following the physical removal, the department . . . made reasonable efforts to assist the parent or parents . . . to establish a suitable home for the child, but that the parent or parents . . . 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 . . . 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 . . . toward the same goal, when the parent . . . is aware that the child is in the custody of the department;

*Id.* § 102(1)(A). “[T]he proof necessary to support termination under this ground need not be limited to any particular four-month period after removal. As long as the proof relates to ‘a period of four (4) months following the removal, . . . the ground may be established.’” *In re Joseph D.*, No. M2021-01537-COA-R3-PT, 2022 WL 16848167, at \*13 (Tenn. Ct. App. Nov. 10, 2022) (citing *In re Jakob O.*, No. M2016-00391-COA-R3-PT, 2016 WL 7243674, at \*13 (Tenn. Ct. App. Dec. 15, 2016)). Thus, our inquiry is not limited “to a period of four months *immediately* following the [child’s] removal.” *Id.*

Maddox was removed from Mother’s custody on October 10, 2020. One of Mother’s primary responsibilities under the plans was to “obtain/maintain safe, stable housing suitable for herself and children.”<sup>6</sup> The importance of this goal was noted by the trial court: “While the ‘safe and stable housing’ language of the Permanency Plan is a fairly common requirement, the Court finds that the Mother’s housing instability was noted as a significant issue from the beginning.” The trial court also noted that Maddox was removed from Mother’s custody “due to allegations of child sexual abuse and drug exposure” in addition to domestic violence and environmental concerns.

These additional concerns are significant because a “suitable home” requires more than adequate “physical space.” *In re A.D.A.*, 84 S.W.3d 592, 599 (Tenn. Ct. App. 2002).

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<sup>6</sup> As noted earlier, Mother had custody of another child in addition to Maddox; however, that child is not at issue in this appeal.

It requires that the appropriate care and attention be given to the child as well. *Id.* Moreover, a suitable home is one that is free from drugs and domestic violence. *Dep't of Children's Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at \*3 (Tenn. Ct. App. Nov. 29, 2007).

The record reveals that Mother was unable to obtain and maintain a suitable home during the 17-month custodial period following Maddox's removal up to the date of trial. As we discussed in more detail earlier, Mother moved from place to place numerous times during the custodial period. None of these "homes" were suitable for a variety of reasons.

Simply put, Mother was not able to maintain safe or stable housing. Immediately prior to Maddox's removal, Mother and Maddox lived in Gallatin with Mother's boyfriend, Carlos Seaborn, but the record reveals that he abused Mother in the presence of Maddox. Moreover, the physical locations were temporary and the environments where they resided were untenable. First, they were evicted three days after Maddox's removal. Immediately thereafter, Mother and Mr. Seaborn lived in Mother's car. Then, in November 2020, Mother lived in a one-bedroom apartment with Mr. Seaborn, where he continued to abuse her and they used drugs together.

As noted earlier, Ms. Riggins advised Mother that "staying with [Mr. Seaborn] [was] detrimental to this custodial case" due to concerns with the domestic violence. Ms. Riggins also advised Mother that it would not be appropriate to return Maddox to Mother while she was in a relationship with Mr. Seaborn. Nevertheless, Mother continued to live with Mr. Seaborn until April 2021, when Mr. Seaborn kicked her out of the apartment.

Mother then lived with her father in his camper in Hartsville, Tennessee for about a week or so; however, this arrangement would be inappropriate for Maddox because, as Mother admitted, she did not "want[] her children around her father."

After leaving her father's camper, Mother lived with a friend near Lafayette, Tennessee, for a month or so. Thereafter, Mother again lived in her car. In June or July 2021, Mother moved in with Joey Irwin in Westmoreland, Tennessee. Ms. Riggins visited the residence twice, but Mother was not there on either occasion. Nevertheless, Ms. Riggins found the residence inappropriate for a child. She described it as "essentially a junkyard around the housing."

Mother's relationship with Mr. Irwin ended in November 2021, at which time she returned to live with her father in Hartsville, where she stayed for approximately two months.

In February 2022, Mother started living in Hartsville, Tennessee with her maternal grandmother and niece, where she remained at the time of trial. Mother stated that she was living there on a temporary basis because "she didn't have anywhere else to go." In her

testimony at trial, Mother admitted that her living arrangement was not stable, but she explained that she was saving money to obtain her own housing within six months.

In addition to Mother's housing issues, Mother continued to have substance-abuse issues up to the time of trial. Although Mother testified that she last used drugs in September 2021, she failed every drug screen administered following Maddox's removal. These drug screens occurred on December 30, 2020, March 12, 2021, May 3, 2021, May 25, 2021, and August 2021, the last being when the termination petition was filed. The failed drug screens are significant here because a suitable home "requires that the home be free of drugs and domestic violence." *In re Navada N.*, 498 S.W.3d 579, 595 (Tenn. Ct. App. 2016) (quoting *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at \*9 (Tenn. Ct. App. June 10, 2014)).

Before we consider whether the foregoing evidence is sufficient to show that Mother failed to establish a suitable home for Maddox, we must consider whether DCS exerted reasonable efforts to assist Mother in obtaining suitable housing. This inquiry is necessary because this ground requires DCS to exert reasonable efforts to assist a parent. Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c). Nevertheless, this is a two-way street because a parent desiring the return of her child "must also make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove their children from their custody." *In re Shameel S.*, No. E2014-00294-COA-R3-PT, 2014 WL 4667571, at \*5 (Tenn. Ct. App. Sept. 19, 2014).

The testimony of Ms. Riggins reveals that DCS exerted efforts to help Mother establish a suitable home. These efforts included developing permanency plans, speaking to Mother about housing concerns, providing Mother with a list of government-assisted housing, discussing with Mother her assessments and recommendations, drug testing, and paying for Mother's parenting-education classes and individual therapy, among other efforts. Moreover, these efforts continued throughout the custodial episode.

Although the efforts of DCS were not Herculean, they were reasonable because they exceeded the efforts made by Mother. As the statute expressly provides, "[t]he efforts of the department . . . to assist a parent . . . 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 . . . toward the same goal, when the parent . . . is aware that the child is in the custody of the department." Tenn. Code Ann. § 36-1-102(1)(A)(ii)(c).

Based on the foregoing and other evidence in the record, we conclude—as the trial court did—that DCS exerted reasonable efforts to assist Mother in establishing a suitable home. Having determined that DCS exerted reasonable efforts, we must now determine whether the evidence clearly and convincingly established that Mother failed to establish a suitable home for Maddox.

The trial court found that Mother failed to establish a suitable home for Maddox:

The facts in the instant case have demonstrated that despite finding otherwise adequate housing, the Mother was in a situation involving continued substance abuse and significant domestic violence. The Mother even conceded this. It was even domestic violence that created the scenario in which she lost the Old Hickory residence. A child should not be exposed to this type of environment... therefore, the Court finds by clear and convincing evidence that the Mother has abandoned the child due her failure to provide a suitable home.

Mother does not directly dispute the trial court's findings on this issue. Instead, her defense is that her failure to provide a suitable home "was not willful" and that "the weight of the evidence show[ed] that Mother's conduct was not willful." We find Mother's reliance on the lack of willfulness misplaced because the ground of abandonment by failure to provide a suitable home does not contain a willfulness component. *See* Tenn. Code Ann. § 36-1-102(1)(A)(ii). The case on which Mother relies, *In re Audrey S.*, 182 S.W.3d 838, 863 (Tenn. Ct. App. 2005), references other abandonment grounds, failure to visit and failure to support, which include a willfulness component. *See In re Audrey S.*, 182 S.W.3d 838, 863 (Tenn. Ct. App. 2005) ("A parent cannot be found to have abandoned a child under Tenn. Code Ann. § 36-1-102(1)(A)(i) unless the parent has either 'willfully' failed to *visit* or 'willfully' failed to *support* the child for a period of four consecutive months.") Thus, Mother's willfulness defense is without merit.

Based on the foregoing and other evidence in the record, we have determined that DCS clearly and convincingly established that Mother abandoned Maddox by failing to establish a suitable home for him. Accordingly, we affirm the trial court on this ground.

#### B. Substantial Noncompliance

The trial court found that Mother was in substantial noncompliance with the permanency plan. Tennessee Code Annotated § 36-1-113(g)(2) provides that a ground for termination exists where "[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." Further, Tennessee Code Annotated § 37-2-403(a)(2)(C) provides, in relevant part:

Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights, and notwithstanding the failure of the parent to sign or to agree to such statement if the court finds the parent was informed of its contents, and that

the requirements of the statement are reasonable and are related to remedying the conditions that necessitate foster care placement. . . .

To prove this ground, DCS “must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent’s custody in the first place.” *In re M.J.B.*, 140 S.W.3d 643, 656–57 (Tenn. Ct. App. 2004) (citing *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003)). DCS must also establish that “the parent’s noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met.” *In re Nevada N.*, 498 S.W.3d at 603 (quoting *In re M.J.B.*, 140 S.W.3d at 657). The determination of whether there has been substantial noncompliance with a permanency plan is a question of law, to be reviewed on appeal de novo with no presumption of correctness. *Id.* (citing *In re Valentine*, 79 S.W.3d 539, 548 (Tenn. 2002)).

The trial court found that the permanency plans were “reasonable and related to remedying the reasons for which the child was placed into foster care, such that, had [Mother] cooperated with the same, it would have addressed the reasons for which the child was in DCS custody.” We agree, because the plans primarily focused on Mother’s biggest problems: her substance abuse, domestic violence, environmental issues, and housing instability.

In the previous section, we discussed Mother’s housing issues, and it is readily apparent that Mother substantially failed to comply with this important part of the plans. As the record reveals, she was homeless on two occasions and had temporary housing on numerous occasions. Also, Mother resided with Mr. Seaborn and then her father, neither of whom were suitable for Maddox to be around.

Additionally, as discussed earlier, each of the permanency plans called for Mother to address her substance abuse issues, perhaps the most important goal; yet she totally failed in this regard. This is evident because Mother failed every drug screen administered by DCS during the custodial period.

Mother was also substantially noncompliant with visitation. Out of 28 opportunities to visit with Maddox, Mother only attended 15 visits.

As for Mother’s other responsibilities, the trial court noted, “Mother has only recently . . . really worked to complete her tasks.” While Mother belatedly completed some of her responsibilities, she failed to comply in a substantial manner with the responsibilities related to remedying the conditions which led to Maddox’s removal, including her housing instability and substance abuse. As we noted in an earlier case, while Mother “did complete some of the plan’s requirements, she did not complete the most important requirements.”

*See In re B.J.L.*, No. E2007-00596-COA-R3-PT, 2007 WL 2751688, at \*10 (Tenn. Ct. App. Sept. 21, 2007) (affirming termination of mother’s rights on the ground of substantial noncompliance).

For the foregoing reasons, we affirm the trial court’s finding that the ground of substantial noncompliance was proven by clear and convincing evidence.

### C. Persistence of Conditions

A ground for abandonment may be found when the conditions that led to the child’s removal persist for a period of more than six months. *See* Tenn. Code Ann. § 36-1-113(g)(3). Specifically, the statute has four requirements:

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.

Tenn. Code Ann. § 36-1-113(g)(3)(A).

The purpose of the persistence of conditions ground 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 at 606 (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*20 (Tenn. Ct. App. Oct. 13, 2008)). Consequently, “[t]he failure to remedy the conditions which led to the removal need not be willful.” *Id.* (citing *In re T.S. and M.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at \*6 (Tenn. Ct. App. July 13, 2000)). Importantly, this ground applies “only where the prior court order removing

the child from the parent’s home was based on a judicial finding of dependency, neglect, or abuse.” *In re Audrey S.*, 182 S.W.3d at 874 (citing Tenn. Code Ann. § 36-1-113(g)(3)(A)(i)).

Maddox was removed from Mother’s custody on October 10, 2020, and adjudicated dependent and neglected on December 10, 2020, based on Mother’s stipulation under Tennessee Code Annotated § 37-1-102(b)(13)(F)<sup>7</sup>. As the court noted, Maddox was removed from Mother’s custody “due to environmental concerns, drug-exposure, and exposure to domestic violence.” One of Mother’s primary responsibilities under the plans was to “obtain/maintain safe, stable housing suitable for herself and children.” As noted earlier, Mother failed to accomplish this goal. Another goal was to deal with her substance abuse issues. Thus, Mother failed to accomplish the two most important goals in her permanency plans. Accordingly, it is readily apparent that the conditions that led to the removal of Maddox from Mother’s custody persist and there is little likelihood that these conditions will be remedied at an early date in order for Maddox to be safely returned to Mother in the near future. *See* Tenn. Code Ann. § 36-1-113(g)(3)(A).

For the foregoing reasons, we conclude, as the trial court did, that DCS proved by clear and convincing evidence that the conditions that led to Maddox’s removal persist, that there is little likelihood that these conditions will be remedied at an early date so that Maddox can be safely returned to Mother in the near future, and that the continuation of the parent and child relationship greatly diminishes Maddox’s chances of early integration into a safe, stable, and permanent home. Accordingly, we affirm the trial court’s finding that this ground was proven.

#### D. Failure to Manifest an Ability and Willingness to Assume Custody

A court may terminate a parent’s rights if (1) the parent “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 (2) “placing the child in the [parent]’s legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.” Tenn. Code Ann. § 36-1-113(g)(14).

“[T]he first prong requires clear and convincing proof that the parent ‘has failed to manifest *either* ability or willingness’ to assume custody of or responsibility for the child.” *In re Manning H.*, No. M2020-00663-COA-R3-PT, 2021 WL 2935047, at \*6 (Tenn. Ct. App. July 13, 2021) (quoting *In re Neveah M.*, 614 S.W.3d 659, 675 (Tenn. 2020)). In order to satisfy the second prong, the petitioner must show “clear and convincing proof that placing the child in the parent’s physical custody would likely cause substantial harm.”

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<sup>7</sup> Tennessee Code Annotated § 37-1-102(b)(13)(F) states that a dependent and neglected child is one “who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others.”

*Id.* Though the statute does not specifically define “substantial harm,” this court has construed it to require showing “a real hazard or danger that is not minor, trivial, or insignificant.” *Ray v. Ray*, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001).

The trial court made specific findings of fact concerning both prongs. As for the first prong, whether Mother had manifested either an ability or willingness to assume custody of or responsibility for Maddox, the trial court’s findings include the following:

Though the Court finds that the Mother’s testimony certainly demonstrates a willingness to assume legal custody, questions remain as to the Mother’s ability to assume legal custody or financial responsibility. As stressed many times over, there are valid, ongoing concerns as to the Mother’s residential stability. This is a child who has already been in foster care for two (2) years. Even taking the Mother at her word that she will find a place to live, the fact of the matter is that she has not. She remains in what she herself called temporary housing and projects another six (6) months before she can afford alternate housing. That is not stability.

There are also just as many concerns as to the Mother’s financial stability. In addition to being unable to save any money thus far, her employment history has been unstable. She has been employed, but there are some jobs that were for one day, while others appear to be inconsistent. She testified that she is working, though there is no documentation. Even now, the Court is uncertain as to the Mother’s actual earning capacity. Additionally, she recognized that in order to work she would have to find daycare and believes that she could get “some sort of help” to pay for it, but she was unable to provide any testimony as to where that help would originate or how much that daycare would cost. As before, there are more questions than answers. After two (2) years, though, there should be very few questions. That has not happened.

Though the Court recognizes that the Mother has made some strides towards demonstrating an ability to assume legal custody and financial responsibility, the Court does not find that that she has demonstrated an actual ability to do so. The unfortunate reality is that she is still in very much the same position that she was when her son was removed into foster care. The Court finds that her living situation is unstable and speculative. The Court finds that she is financially unable to support the child. The Court finds that she receives the same supervised, therapeutic visitation with her child that she started with almost two (2) years ago. While the filing of the termination proceedings may have truthfully been a wake-up call, she has not acted in a manner that demonstrates an immediate ability to parent this child. Based upon the

foregoing, the Court finds by clear and convincing evidence that the first prong of his ground has been proven.

Having concluded that the first prong had been proven, the trial court turned its attention to the second prong, whether placing the child in Mother's legal and physical custody would pose a risk of substantial harm to Maddox's physical or psychological welfare. The trial court's analysis of the second prong included the following:

This is a child who has been outside of his mother's care for almost two (2) years. At the time he was brought into foster care, the Mother was being evicted from her home. There were significant environmental concerns within the home; rats were reported to be running free. This was also a child exposed to significant drug abuse and significant domestic violence. This was his daily trauma, a trauma that the Mother did not stop but instead allowed to perpetuate because she "was not the type to call the cops."<sup>8</sup> . . . .

The child has been in the same foster home since he entered custody. This is a home that, in addition to providing consistency and stability, has provided him what he needs to address his trauma and medical needs. He has been in regular occupational therapy to work on basic motor skills. He is regular therapy to help regulate his emotions and help with attachment issues. He is in daycare and there is a daily routine. This is a child that Ms. Riggins noted was "happy and healthy and "blossoming into a wild toddler." This child has developed a strong bond and parental attachment with his foster parents, calling them "mommy and daddy." Ms. Riggins noted that he is very close to one of the foster parents' older children, as well. Finally, it was noted during testimony that despite the fact that the child knows his mother and refers to her as his mother, he does not really talk about her. Ms. Riggins opined that it would be a traumatic experience to remove him from his current placement, particularly since this is a family that wants to adopt him. The Court agrees. To return him to the Mother would pose a substantial risk of harm.

Having reviewed the record, we find that the evidence preponderates in favor of the findings set forth above. We have also concluded that the evidence as found by the trial court, as well as other evidence not mentioned above, clearly and conclusively proves that Mother has failed to manifest an ability to assume custody of or responsibility for Maddox and that placing Maddox in Mother's legal and physical custody would pose a risk of substantial harm to Maddox's physical or psychological welfare. *See* Tenn. Code Ann. §

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<sup>8</sup> When Mother was asked why she had not called the police to report Mr. Seaborn's conduct, Mother testified that she was "not the type to do the whole cop-calling thing."

36-1-113(g)(14). Accordingly, we affirm the trial court’s finding that this ground was proven.

### III. BEST INTEREST ANALYSIS

Because grounds to terminate Mother’s parental rights were proven, we must now consider the relevant and child-centered factors enumerated in Tennessee Code Annotated § 36-1-113(i)(1)(A)–(T) to determine whether terminating Mother’s parental rights is in Maddox’s best interests.

Tennessee Code Annotated § 36-1-113(i) identifies factors to be considered when analyzing whether termination of parental rights is in a child’s best interest.<sup>9</sup> However, these “factors are illustrative, not exclusive,” and the parties are free to offer proof of any other relevant factor to the analysis. *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017). In *In re Gabriella D.*, 531 S.W.3d 662 (Tenn. 2017), the Tennessee Supreme Court summarized the law pertaining to this analysis:

Facts considered in the best interests analysis must be proven by “a preponderance of the evidence, not by clear and convincing evidence.” “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].” 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.” Indeed, “[a] focus on the perspective of the child is the common theme” evident in all of the statutory factors. “[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. . . .”

Ascertaining a child’s best interests involves more than a “rote examination” of the statutory factors. And the best interests analysis consists of more than tallying the number of statutory factors weighing in favor of or against termination. Rather, the facts and circumstances of each unique case dictate how weighty and relevant each statutory factor is in the context of the case. 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. “[D]epending upon the circumstances of a particular child and a particular

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<sup>9</sup> The petition at issue was filed on August 16, 2021, which was after April 22, 2021, the effective date of amendments to the best interest factors in Tennessee Code Annotated § 36-1-113(i). *See* S.B. 205, 112th Leg., 1st Reg. Sess. (Tenn. 2021). Because the amendments apply, we are required to consider the additional factors, as did the trial court.

parent, the consideration of one factor may very well dictate the outcome of the analysis.” 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.

*Id.* at 681–82 (citations omitted).

“The child’s best interests must be viewed from the child’s, rather than the parent’s, perspective.” *In re Audrey S.*, 182 S.W.3d at 878 (citations omitted). “When 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).

The statute, as amended prior to the filing of the petition in this case, states that the court shall consider “all relevant and child-centered factors applicable to the particular case,” which may include the following:

- (A) The effect a termination of parental rights will have on the child’s critical need for stability and continuity of placement throughout the child’s minority;
- (B) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological, and medical condition;
- (C) Whether the parent has demonstrated continuity and stability in meeting the child’s basic material, educational, housing, and safety needs;
- (D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;
- (E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;
- (F) Whether the child is fearful of living in the parent’s home;
- (G) Whether the parent, parent’s home, or others in the parent’s household trigger or exacerbate the child’s experience of trauma or post-traumatic symptoms;

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

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

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

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

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

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

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

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

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

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

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

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

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

Tenn. Code Ann. § 36-1-113(i)(1).

The trial court set forth findings of fact regarding the factors it deemed applicable, and we review those findings below.

As for the first factor, the effect that termination will have on Maddox's need for stability and continuity of placement, *id.* at § 113(i)(1)(A), the trial court found that termination of Mother's parental rights would have a beneficial effect:

Despite almost two (2) years and approximately (8) residential changes, the Mother's living situation continues to be unstable. At present, the Mother is living in what she has described as a temporary residence and, based upon her testimony, this will not change for at least six (6) months. There are continued concerns that the Mother does not possess the financial ability to support the child. During the term of foster care, however, the child has remained with a stable family. He has consistency and a routine that he did not have while in his mother's care. His medical and therapeutic needs are also being met.

The evidence in the record preponderates in favor of this finding.

Regarding "[t]he effect a change of caretakers and physical environment," *id.* at 113(i)(1)(B), the trial court found that a change of caretakers would be a negative effect on Maddox's emotional and psychological welfare:

Testimony indicated that he is well cared for; that his medical situation has improved while in foster care; and that he is in ongoing therapy to treat his traumatic experiences. These issues have been addressed while the child has been in foster care. There was also testimony to indicate that he has a close relationship with his foster family, and he is bonded with them. To uproot the child to reunite him with the Mother could pose the risk of substantial harm and return him to a situation of instability and uncertainty.

The evidence in the record preponderates in favor of this finding.

The trial court then considered whether Mother had consistently met Maddox's needs, *see id.* § 113(i)(1)(C), and it found that Mother had not demonstrated continuity or stability in this regard:

During the pendency of the underlying dependency and neglect case, the Mother changed residences at least four (4) times and, during the pendency of the instant case, the Mother changed residences at least four (4) additional times. This does not demonstrate stability. Additionally, the Court finds that while the Mother has some basic understanding of the child's needs, the very fact that many issues were left untreated while in her care demonstrates the inability to provide the basic parenting the child requires. Further, the Mother's substance abuse and exposure to domestic violence created a situation where the child was exposed to both, as well.

The evidence in the record preponderates in favor of this finding.

The next factor that the court considered was "[w]hether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs." *See id.* § 113(i)(1)(D). The trial court found that this factor weighed against termination:

[D]espite the fact that the Mother's visitation has remained therapeutic and supervised, there is an attachment between the Mother and the child. There are concerns that the child's exposure to domestic violence has prompted some of the child's behavior and emotional issues, including his assaultive behavior towards his mother, but the Mother has worked to maintain an attachment to her son.

We respectfully disagree that this factor "weighs against termination." Although Maddox continues to call Mother "mommy" and there is a relationship of sorts, there is also evidence that Maddox never asked or spoke about Mother when she was not present. Accordingly, we respectfully disagree with the trial court and find that this factor weighs neither in favor of nor against termination of Mother's parental rights.

The next factor is "[w]hether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child." *Id.* § 113(i)(1)(E). The trial court found that this factor weighed against termination:

[D]espite some missed visits, there has still been regular visitation between the Mother and her son. Other than one specific visit which also involved the Mother's abusive boyfriend, there were no concerns noted about the appropriateness of the Mother's visits. If there is a concern to be voiced, however, it is the fact that the Mother's contact with the child has remained supervised.

We respectfully disagree that this factor weighs against termination. Mother only visited Maddox on 15 out of 28 scheduled visits. Accordingly, we find that this factor weighs in favor of terminating Mother's parental rights.

The next factor is "[w]hether the child is fearful of living in the parent's home." *Id.* § 113(i)(1)(F). The trial court awarded this factor no weight, and we agree with this finding.

The next factor is "[w]hether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms." *Id.* § 113(i)(1)(G). As stated by the trial court, "[t]he Court has not afforded this factor any significant weight, though the Court notes that the Mother's own testimony indicated that she did not have ideal relationships or support from her family." We do not disagree with this finding.

The next factor is "[w]hether the child has created a healthy parental attachment with another person or persons in the absence of the parent." *Id.* § 113(i)(1)(H). The trial court did not afford this factor any significant weight, stating, "[ T]he Court notes that the Mother's own testimony indicated that she did not have ideal relationships or support from her family." We find that this factor weighs in favor of termination because, in Mother's absence, Maddox has developed a parental attachment with the pre-adoptive foster parents.

The next factor is "[w]hether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage." *Id.* § 113(i)(1)(I). The trial court chose not to afford this factor any particular weight:

While the child has developed emotionally significant relationships with his foster parents and foster siblings, the Court cannot draw the same inference as it relates to the development of emotionally significant relationships with his other, actual siblings. Other than noting that the Mother does not have custody of either of these children, there was no proof as to what relationship, if any, Maddox has (or had) with them. As such, the Court has not afforded this factor any particular weight.

We find the evidence does not preponderate against the trial court's finding to not afford this factor any weight.

The question posed by the next factor is whether Mother has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for Maddox to be in her home. *Id.* § 113(i)(1)(J). The trial court found that this factor weighed in favor of termination:

Mother has not demonstrated a lasting adjustment of her circumstances to make it safe and beneficial for the child to be in her home. The Mother's residential circumstances remain in flux, and her financial situation remains generally unknown. While the Court acknowledges that the issue of domestic violence may have been remedied, there are still concerns about the Mother's substance abuse. It was reported that she never tested negative on any drug screens. Though the Mother testified that she has been sober for about seven (7) months, there are no drug screens to demonstrate whether this is true.

We respectfully disagree with the finding that there were "no drug screens to demonstrate" whether Mother stayed sober. Several drug screens proved that Mother was still abusing drugs. Accordingly, this factor weighs in favor of terminating Mother's parental rights.

The next factor is whether Mother "has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions." *Id.* § 113(i)(1)(K). The trial court found that this factor weighed against termination:

The Court finds that despite the fact they were done late in the game, the Mother finally took advantage of available services. She completed her alcohol and drug assessment, parenting assessment, and psychological assessment. She completed her intensive outpatient program, parenting classes, and started individual therapy. The Mother testified that, for the first time in a long time, she believes she has greater insight and improved decision-making capability. The Court finds that even though the "timetable" was not met, progress occurred, and this factor weighs against termination.

We respectfully disagree because the record shows that Mother waited too long to take advantage of the services offered to her in order for those services, or her own efforts, to make a difference in her ability to be reunited with Maddox. Accordingly, we find that this factor weighs in favor of terminating Mother's parental rights.

The next factor pertains to whether DCS made reasonable efforts to assist Mother in making a lasting adjustment while Maddox was in DCS custody. *Id.* § 113(i)(1)(L). The trial court found that this factor weighed in favor of termination:

DCS made reasonable efforts to assist the Mother. DCS created a Permanency Plan, held periodic CFTMs, and offered services that were reasonably related to remedying the conditions that necessitated foster care. Due to her substance abuse issues, they attempted to drug screen her. Ultimately, because she was unresponsive, the Mother was found to be in substantial noncompliance with her portion of the Plan. After the filing of the termination petition, however, she eventually worked the Plan.

The evidence preponderates in favor of the trial court's finding that DCS made reasonable efforts to assist Mother. Thus, this factor favors terminating Mother's parental rights.

The next factor is whether Mother "has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest. *Id.* § 113(i)(1)(M). The trial court found that this factor weighed in favor of termination:

Mother has demonstrated no sense of urgency in seeking custody of the child. This weighs in favor of termination. Even though her son has been in foster care since October 2020, it has only been in the last ten (10) months that she really demonstrated efforts to remedy the situation and, even then, it was after the termination proceedings had started. This is what prompted the Mother's "wake-up call." The Court finds this is problematic and seems antithetical to the General Assembly's intent. Waiting until the eleventh hour is not urgency. While she waited to take responsibility and complete tasks, the child waited as well. And he became bonded to his foster family. Despite her hesitation to work her Plan, though, she continued her visitation and worked to maintain a relationship with her son. Additionally, her visitation never changed (though the Mother indicated she was unaware that she could request a modification).

The evidence does not preponderate against the trial court's finding that this factor weighs in favor of termination.

The next factor to consider is whether "the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult." *Id.* § 113(i)(1)(N). The trial court found that this factor weighed in favor of termination:

that while the child was not the victim of actual physical abuse, the Mother still exposed the child to domestic violence during her relationship with her abusive boyfriend. She even testified that she was "not the type to call the cops." Because of this *laissez-faire* attitude, she allowed her son to experience trauma.

We have concluded that the evidence preponderates in favor of a finding that exposing Maddox to domestic violence and drug use in the home constitutes emotional or psychological abuse or neglect. Thus, this factor favors terminating Mother's parental rights.

The next factor is “[w]hether the parent has ever provided safe and stable care for the child or any other child.” *Id.* § 113(i)(1)(O). The trial court found that Maddox was approximately three years old when he entered foster care, that “Mother had not provided for the child’s medical care and this neglect resulted in issues that had to be treated while in foster care (and later even had surgery).” Ultimately, the trial court found that this factor weighed in favor of termination:

Maddox did not have a pediatrician or had apparently ever visited a dentist. There have been subsequent, noticeable development delays which required occupational therapy. Further, the child had been exposed to substance abuse and domestic violence. This trauma has created emotional issues, and the child is now in therapy. The Court finds that taken whole or in part, the Mother’s conduct does not demonstrate that the child’s safety has been a paramount concern.

The evidence preponderates in favor of these findings; thus, we agree that this factor favors terminating Mother’s parental rights.

The next factor requires us to consider whether Mother has demonstrated an understanding of the basic and specific needs required for Maddox to thrive. *Id.* § 113(i)(1)(P). The trial court found that this factor weighed in favor of termination:

Mother has a basic understanding of the child’s needs, but there are credible concerns that she will be unable to provide for them. What the Court does not find to be credible, however, is the Mother’s confidence that this child “will want for nothing.” The Court finds that the Mother has not demonstrated that she can help the child thrive.

The evidence preponderates in favor of these findings; thus, we agree that this factor favors terminating Mother’s parental rights.

The next factor is whether Mother has “demonstrated the ability and commitment to creating and maintaining a home that meets [Maddox’s] basic and specific needs and in which the child can thrive.” *Id.* § 113(i)(1)(Q). The trial court found that this factor weighed in favor of termination:

The Court finds that the Mother has not demonstrated the ability and commitment to maintaining a home. The Court finds that this factor weighs in favor of termination. During the whole of this case, the Mother has lived in multiple homes across multiple counties. Even now, her living situation is both temporary and tenuous. She lives in her grandmother’s home and, frankly, at the grandmother’s whim. The Court acknowledges the Mother’s testimony that her family relationships are not good, and her support system is generally nonexistent. Even the folks on whom she has relied are not

considered appropriate. The Mother testified that she did not want her son around her own mother and that her father's conduct with other minor children was inappropriate. Simply put, the Court lacks confidence in the Mother's ability to provide a safe and stable home.

The evidence preponderates in favor of these findings; thus, we agree that this factor favors terminating Mother's parental rights.

The next factor is whether the physical environment of Mother's home is healthy and safe for Maddox. *Id.* § 113(i)(1)(R). It appears the trial court may have misconstrued the issue here, for the trial court's findings read as follows: "The Court finds that the child's current physical environment is healthy and safe. This child is well cared for, loved, and appears to have been made a priority." While we agree with the court's statement, the question is whether the physical environment of *Mother's home* is healthy and safe for Maddox. The evidence clearly and convincingly established that the physical environment of Mother's home would not be healthy or safe for Maddox. Accordingly, this factor weighs in favor of terminating Mother's parental rights.

Section 36-1-113(i)(1)(S) poses the question of whether Mother has consistently provided more than token financial support for Maddox. The trial court afforded no particular weight to this factor:

Even though Tennessee law presumes that every parent eighteen (18) years of age or older has knowledge of their legal obligation to support their child, the Mother has not paid any financial support beyond the occasional holiday gift. The Court, however, tempers this finding with the belief that there have always been financial concerns that the Mother is unable to support herself, much less her son. Based upon this finding, the Court has not afforded this factor any particular weight.

The record contains very little evidence concerning Mother's ability to provide child support. Accordingly, we agree with the trial court's decision not to afford any particular weight to this factor.

The final factor to be considered is "[w]hether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child." *Id.* § 113(i)(1)(T). The trial court did not afford any weight to this factor and the evidence does not preponderate against this finding.

Having considered the relevant best interest factors, we agree with the trial court's conclusion that the evidence clearly and convincingly establishes that terminating Mother's parental rights is in Maddox's best interest.

## IN CONCLUSION

Having affirmed the trial court's findings that grounds exist for terminating the parental rights of Mother and that termination of Mother's parental rights is in the best interest of Maddox, we affirm the termination of the parental rights of Mother. Costs of appeal are assessed against the appellant, Danielle B. H.

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FRANK G. CLEMENT JR., P.J., M.S.