

FILED

09/21/2022

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs July 1, 2022

**IN RE JAH'LILA S. ET AL.**

**Appeal from the Juvenile Court for Shelby County  
No. EE5210 Dan H. Michael, Judge**

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**No. W2021-01199-COA-R3-PT**

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This is a termination of parental rights case. The trial court terminated Mother's parental rights to her three children on the grounds of: 1) abandonment for failure to support under Tennessee Code Annotated section 36-1-113-(g)(1); 2) failure to comply with the permanency plan under section 36-1-113(g)(2); 3) persistence of the conditions that led to removal of the children under section 36-1-13(g)(3); and failure to manifest an ability and willingness to assume custody under section 36-1-113(g)(14). Mother's parental rights to her youngest child were terminated on the additional ground of severe child abuse under section 36-1-113(g)(4). After determining that Father had failed to legitimate his children, the trial court terminated Father's parental rights pursuant to section 36-1-113(g)(9)(A) for failure to support; failure to visit; failure to manifest an ability and willingness to assume custody; and a danger of risk of substantial harm. The trial court also determined that termination of Mother's and Father'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 JOHN W. MCCLARTY, J., joined.

Bob Huddleston, Jr., Cordova, Tennessee, for the appellant, Jacqueline S.<sup>1</sup>

Virginia R. Williams, Memphis, Tennessee, for the appellant, Joseph M.

Herbert H. Slattery, III, Attorney General and Reporter, and Amber L. Barker, Assistant Attorney General, for the appellee, Tennessee Department of Children's Services.

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

## OPINION

### I. FACTUAL AND PROCEDURAL HISTORY

Jacqueline S. (“Mother”) is the biological mother of the three non-marital children involved in this case: Jah’Lila S. (born February 2012), Jah’Arius S. (born June 2017), and Jah’Ziyah S. (born June 2018). Although he is not their legal father, is not identified on the children’s birth certificate, and did not file a petition to establish paternity or register as the children’s putative father, Joseph M. (“Father”) acknowledges that he is the biological father of Jah’Arius and Jah’Ziyah.<sup>2</sup>

In June 2018, the Department of Children’s Services (“DCS”) received a referral alleging that Jah’Ziyah was born exposed to marijuana and cocaine and that Mother had tested positive for cocaine and marijuana upon admission to St. Francis Hospital in Memphis.<sup>3</sup> After meeting with a Child Protective Services Investigator (“CPSI”), Mother signed a non-custodial permanency plan and agreed to refrain from using drugs, to submit to drug screening, and to comply with DCS recommendations. Mother told the CPSI that she had everything she needed to care for the baby and that she planned to stay with her grandmother because her apartment was being renovated, and a safety plan was completed.

When the CPSI visited Mother on August 3, 2018, Mother was residing in a rooming house where her aunt was also living. Mother again tested positive for marijuana and cocaine. Another safety plan was completed, and the children were placed in the care of mother’s aunt. Mother’s aunt also had housing difficulties and expressed that Mother was not financially contributing to the children’s care and that she could not keep the children without financial assistance. Mother, Mother’s aunt, and the three children remained at the rooming house.

In the meantime, Father was arrested for domestic assault against Mother in June 2018, and Mother and Father were involved in another altercation on August 13.<sup>4</sup> On

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<sup>2</sup> The trial court also terminated the parental rights of Jah’Lila’s biological father, who did not register with the putative father registry or legitimate the child. He was served by publication in Tennessee and Alaska, did not participate in the proceedings in the trial court, and is not a party to this appeal.

<sup>3</sup> In its petition for termination of parental rights, DCS states that it first became involved with Mother in August 2012 — when it received a referral alleging that Jah’Lila was a drug exposed infant and was environmentally neglected — and that the case was classified as no services needed. DCS also states that it received another referral in June 2017 — when Jah’Arius tested positive for marijuana at birth — and that the case was classified as services recommended and accepted. However, DCS does not indicate what services, if any, were provided following the June 2017 referral.

<sup>4</sup> It is undisputed that Father was arrested at least twice and was incarcerated for several months for domestic

August 14, 2018, the children were placed in the protective custody of DCS pursuant to an emergency order. The trial court entered an *ex parte* protective custody order on August 16, 2018.<sup>5</sup> Following a hearing on August 20, the trial court upheld the protective order by order entered September 18, 2018. On June 11, 2019, the trial court entered an order finding the children dependent and neglected following a hearing on April 12. The trial court also determined that Jah'Ziyah was severely abused pursuant Tennessee Code Annotated section 37-1-102(b)(27) because she tested positive for cocaine and marijuana at birth. The children have remained in foster care since August 14, 2018.

DCS filed a petition to terminate Mother's and Father's parental rights on May 6, 2020. In its petition, DCS asserted as grounds for termination of Mother's parental rights: 1) abandonment pursuant to Tennessee Code Annotated section 36-1-113(g)(1) for failure to support; 2) substantial non-compliance with the parenting plan pursuant to section 36-1-113(g)(2); 3) persistent of conditions leading to removal of the children pursuant to section 36-1-113(g)(3); 4) failure to manifest an ability and willingness to assume custody under section 36-1-113(g)(14); and 5) severe child abuse against Jah'Ziyah pursuant to section 36-1-113(g)(4). DCS alleged as grounds to terminate Father's parental rights: 1) abandonment for failure to visit and support under section 36-1-113(g)(1); failure to manifest an ability and willingness to assume custody under section 36-1-113(g)(14); and failure to establish parentage and to visit, support or manifest an ability and willingness to assume custody pursuant to section 36-1-113(g)(9). DCS also alleged that placing the children in Father's custody would pose a risk of substantial harm to the physical or psychological welfare of the children under section 36-1-113(g)(9)(v). DCS also alleged that termination of Mother's and Father's parental rights was in the best interests of the children.

On September 3, 2020, the trial court appointed a special judge to serve as juvenile court judge. The guardian *ad litem* was appointed on September 3, and attorneys were appointed to represent Father and Mother on September 24 and October 5, 2020, respectively. On October 26, the matter was continued and set to be heard on February 4, 2021.<sup>6</sup> It does not appear from the record transmitted to this Court that either Mother or Father filed an answer to the petition to terminate their parental rights. For reasons that are unclear from the record, the matter was further delayed and eventually came to be heard by the trial court on August 26, 2021.

At the August 2021 hearing, DCS struck the grounds of abandonment under section 36-1-113(g)(1) and failure to manifest an ability to assume custody under section 36-1-113(g)(14) with respect to Father, but proceeded on the grounds set-forth in section 36-1-

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assault. However, Father's testimony with respect to whether he was incarcerated when Jah'Ziyah was born is contradictory, as is Father's testimony with respect to how long he was incarcerated.

<sup>5</sup> It appears from the record that the trial court signed the *ex parte* protective custody order for entry on August 16, 2018, and that it was filed by the trial court clerk on September 18, 2018.

<sup>6</sup> We observe that mother gave birth to a fourth child in September 2020.

113(g)(9). The trial court entered its order terminating parental rights on September 30, 2021. The trial court terminated Mother's parental rights on the grounds of: 1) abandonment for failure to support under Tennessee Code Annotated section 36-1-113(g)(1); 2) failure to comply with the permanency plan under section 36-1-113(g)(2); 3) persistence of conditions that led to removal of the children under section 36-1-13(g)(3); and 4) the failure to manifest an ability and willingness to assume custody or financial responsibility for the children such that placing them in Mother's care would pose a substantial risk of harm under section 36-1-113(g)(14). Mother's parental rights to Jah'Ziyah were also terminated on the ground of severe child abuse under section 36-1-113(g)(4). The trial court found that Father had failed to legitimate his children and terminated Father's parental rights pursuant to section 36-1-113(g)(9)(A) for failure to support; failure to visit; failure to manifest an ability and willingness to assume custody; and a danger of risk of substantial harm. The trial court also determined that termination of Mother's and Father's parental rights is in the best interests of the children.

The trial court entered final judgment in the matter on September 30, 2021, and Father and Mother filed timely notices of appeal to this Court. Briefing was completed in July 2022, and the matter was assigned on briefs.

## II. ISSUES

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

A. Whether there is clear and convincing evidence in the Trial Court record that Appellant abandoned her children pursuant to Tenn. Code Ann § 36-1-113(g)(1) or,

B. Whether there is clear and convincing evidence in the Trial Court record that Appellant was in substantial noncompliance pursuant to Tenn. Code Ann. § 36-1-113(g)(2) and,

C. Whether there is clear and convincing evidence in the Trial Court record that, pursuant to Tenn. Code Ann. §36-1-113(g)(3)(A)(i), “[t]he conditions that led to the child’s removal still persist, preventing the child’s safe return to the care of (Appellant), 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 (Appellant).[”]

D. Whether there is clear and convincing evidence in the Trial Court record that, pursuant to Tenn. Code Ann. §36-1-113(g)(14), Mother “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.[”]

Mother does not raise the issue of whether termination of her parental rights is in the best interests of the children in her Statement of the Issues.

In his Statement of the Issues, Father does not appeal the trial court’s determinations with respect to grounds for termination of his parental rights, but asserts that the record does not contain clear and convincing evidence that termination of his parental rights is in the best interests of the children.

### III. STANDARD OF REVIEW

As this Court has previously noted, the Tennessee Supreme Court has opined 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 Bobby G.*, No. E202101381COAR3PT, 2022 WL 2915535, at \*2 (Tenn. Ct. App. July 25, 2022) (quoting *In re Carrington H.*, 483 S.W.3d 507, 522-23 (Tenn. 2016) (footnote omitted)). Termination of parental rights proceedings are governed by statute in Tennessee, *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 Tennessee. 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 it determines that clear and convincing evidence supports grounds for termination in light of its 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.” *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 sets forth the grounds for the termination of parental rights.<sup>7</sup> The statute provides, in relevant part:

(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

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<sup>7</sup> Tennessee Code Annotated section 36-1-113 has been amended three times since DCS filed the petition to terminate parental rights that is at issue in this case. The most recent amendments became effective July 1, 2022. 2022 Pub. Acts, c. 937, §§ 2 to 6, 13, 14. However, the version of the Code in effect when DCS filed its petition in May 2020 is applicable to this case. *See In re Damium F*, No. M2021-01301-COA-R3-PT 2022, WL 3100560, at \*3 (Tenn. Ct. App. Aug. 4, 2022).

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;

(4) The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child;

...

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

(i) Deleted by 2019 Pub. Acts, c. 36, § 3, eff. July 1, 2019.

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the



department pursuant to § 36-5-101;

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

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

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

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

(B)(i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father, or possible biological father, of the biological mother's child;

...

(14) 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[.]

#### **A. Termination of Mother's Parental Rights**

As noted above, the trial court in this case terminated Mother's parental rights on the grounds of: 1) abandonment for failure to support pursuant to Tennessee Code Annotated 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 pursuant to section 36-1-13(g)(3). Mother's parental rights to Jah'Ziyah were also terminated on the additional ground of severe child abuse pursuant to section 36-1-113(g)(4). The trial court also determined that Mother had 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.

As observed above, Mother raises the issue of whether clear and convincing evidence supports the trial court's conclusions with respect to grounds for termination of her parental rights, but she does not raise the trial court's conclusions with respect to whether termination is in the children's best interests as an issue for review in the Statement of the Issues section of her brief. However, in the Argument Section of her brief, Mother presents no argument with respect to grounds for termination of her parental rights, nor does she point to any evidence in the record to refute the trial court's factual findings. Rather, Mother argues that "[t]here is no clear and convincing evidence that terminating the parental rights of Mother is in the best interests of her children[]" under the factors set forth in Tennessee Code Annotated section 36-1-113(i). Nevertheless, in accordance with *In re Carrington H.*, 483 S.W.3d 507, 524 (Tenn. 2016), we first turn to whether clear and convincing evidence supports the trial court's termination of Mother's parental rights on each of these grounds.

### **1. Abandonment for Failure to Support**

Under Tennessee Code Annotated section 36-1-113(g)(1), parental rights may be terminated for abandonment as defined in section 36-1-102. Abandonment for failure to support is defined as "the failure, for a period of four (4) consecutive months, to provide monetary support or the failure to provide more than token payments toward the support of the child." Tenn. Code Ann. § 36-1-102(1)(D). Token support is support that, "under the circumstances of the individual case, is insignificant given the parent's means[.]" Tenn. Code Ann. § 36-1-102(1)(B). Section 36-1-102(1)(D) also provides that if no payments were made during the relevant four-month period, "[t]hat the parent had only the means or ability to make small payments is not a defense to failure to support[.]" Further, abandonment for failure to support is not cured by resuming support after the petition to terminate parental rights is filed. Tenn. Code Ann. § 36-1-102(1)(F). Additionally, it is presumed that a parent who is 18 years of age or older knows that they have a legal obligation to support their children. Tenn. Code Ann. § 36-1-102(1)(H).

Section 36-1-102 further provides that "it shall be a defense to abandonment for

failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful." The parent or guardian bears the burden of proof to demonstrate, by a preponderance of the evidence, that their failure was not willful. Tenn. Code Ann § 36-1-102(1)(I). "The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure[.]"<sup>8</sup> *Id.* In the context of a termination of parental rights proceeding, "'willfulness' does not require the same standard of culpability as is required by the penal code." *In re Audrey S.*, 182 S.W.3d at 863 (citation omitted). It also does not "require malevolence or ill will." *Id.* (citation omitted). Rather, "[w]illful conduct consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertent." *Id.* (citations omitted). "Conduct is 'willful' if it is the product of free will rather than coercion. Thus, a person acts 'willfully' if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing." *Id.* at 863-64.

In this case, DCS filed its petition to terminate Mother's parental rights on May 6, 2020. Accordingly, the relevant period here is the four months preceding May 6, 2020.

At the August 2021 hearing of this matter, DCS family service worker Tramaine Lewis testified that she explained the consequences of failing to support the children to Mother in August 2018 and that Mother signed the document setting forth the criteria and procedures for the termination of parental rights on August 20, 2018. She testified that Mother's legal counsel was present when Mother signed the document and that Mother appeared to understand the criteria and consequences. Ms. Lewis further testified that the juvenile court magistrate explained the criteria and consequences at the adjudication hearing in October 2018 and again at the permanency hearing in August 2019. She testified that Mother provided no financial support for the children in January, February, March, April or May 2020 and that, prior to January 2020, Mother provided some gifts and snacks. The children's foster mother, Cherylonda D. also testified that Mother provided no support for the children for the four months preceding May 2020.

Mother's testimony regarding her employment history was unclear and contradictory, but she testified that she worked at FedEx "for the majority of the year in 2020." When asked whether she provided child support during the periods she was

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<sup>8</sup> Rule 8.03 of the Tennessee Rules of Civil Procedure provides:

In pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute accord and satisfaction, arbitration and award, express assumption of risk, comparative fault (including the identity or description of any other alleged tortfeasors), discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, statute of repose, waiver, workers' compensation immunity, and any other matter constituting an affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

working, Mother testified that “[t]hey didn’t tell me I had to pay child support.” However, the record contains a Criteria and Procedures for Termination of Parental Rights document that was signed by Mother in August 2018. The document states that parental rights may be terminated for willfully failing to pay child support for four consecutive months. The document also contains a notation stating that Mother’s legal counsel was present when Mother signed the document. The trial court found that the juvenile court magistrate also explained the consequences of failure to support to Mother at hearings in October 2018 and August 2019.

As noted above, Mother points us to no evidence to demonstrate that the trial court erred in its finding that Mother failed to support the children, and upon review of the record we find none. To the contrary, Mother’s own testimony demonstrates that she paid no support during the four months preceding the filing of the petition to terminate her parental rights. Mother’s testimony also demonstrates that, despite being employed for substantial intervals, Mother provided no support other than occasional birthday and Christmas gifts during the three years that the children were in DCS custody. We affirm the trial court’s determination that clear and evidence supports termination of Mother’s parental rights under Tennessee Code Annotated section 36-1-113(g)(1).

## **2. Failure to Comply With the Permanency Plan**

Pursuant to Tennessee Code Annotated section 36-1-113(g)(2), “substantial noncompliance” with the responsibilities set forth in a permanency plan constitutes a ground for the termination of parental rights. The statute also provides:

(C) 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. The permanency plan shall not require the parent to obtain employment if such parent has sufficient resources from other means to care for the child, and shall not require the parent to provide the child with the child’s own bedroom unless specific safety or medical reasons exist that would make bedroom placement of the child with another child unsafe.

Tenn. Code Ann. § 37-2-403(A)(2)(C).

The record contains permanency plans dated September 14, 2018, and July 25, 2019. The plans required Mother to:

- attend necessary medical appointments of the children
- visit the children at set times
- complete a parenting assessment and follow all recommendations
- complete an alcohol and drug assessment and follow all recommendations
- submit to random hair follicle drug testing
- utilize community resources such as AA and sponsors
- provide a list of people for possible Kinship Placement
- secure and maintain residential stability and complete a home-study.

Following a hearing in October 2018, the plan was approved by the court and incorporated as part of the court's order in December 2018. Mother was present at the hearing. Following a permanency hearing on August 8, 2019, the trial court found that DCS was making reasonable efforts to provide necessary services and that Mother was not in compliance with the permanency plan. The court determined that Mother was visiting the children but providing only "occasional support." The court found that Mother had not completed a parenting or alcohol and drug assessment and that she had not completed negative drug screens.

Following the August 2021 termination hearing, the trial court found that Mother had failed to comply with the majority of the tasks set-forth in the permanency plan. Mother testified at the hearing that she remembered the requirements of the permanency plan. She testified that she "started off fine" with respect to drug and alcohol "action steps," but that she "just fell off" as time progressed. She also stated that, in June 2021, she resumed alcohol, drug and mental health counseling through Zoom three days per week. Mother testified that her last drug screening was in March 2020 and that she had tested positive for marijuana. However, she maintained that she had not used cocaine for three years.

Mother testified that she "never heard" that she was required to attend the children's medical appointments and that she was not invited to attend them. It is undisputed that Mother visited the children approximately 15 times during the three years they had been in foster care, primarily in 2018 and 2019. However, Mother and the foster mother offered conflicting testimony with respect to whether the foster mother was cooperative with respect to visitation. The trial court specifically found the foster mother to be more credible on this issue.

Ms. Lewis testified that Mother had not completed the drug and alcohol assessment despite referrals to free services. She testified that Mother did complete the parenting assessment but did not follow the recommendations. Ms. Lewis testified that Mother was invited to attend medical and educational appointments for the children, but that Mother did not attend the appointments. She also testified that the foster mother had "always been open to [Mother] coming to her home[]" to visit the children.

It is undisputed that Mother did not have stable, adequate housing when this matter was heard in August 2021, and that she and Father and their youngest child, who was born in September 2020, resided in a room in a rooming house. Mother's answers to questions posed by the court regarding her employment were unclear and contradictory, but she affirmatively stated that she had been working at a warehouse in Olive Branch, Mississippi, for nearly three months.

Upon review of the record, we concluded that the trial court's determination that Mother failed to substantially comply with the permanency plan is supported by clear and convincing evidence. We accordingly affirm the trial court's finding of grounds to terminate Mother's parental rights under section 36-1-113(g)(2).

### **3. Persistence of Conditions**

Tennessee Code Annotated Section 36-1-13(g)(3) provides a ground for termination of parental rights when:

(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[.]

When this matter was heard in August 2021, the children had been living in foster care for three years. They were removed from Mother's care because Mother tested positive for cocaine and marijuana and because Mother did not have suitable housing for

herself and her three children. It is undisputed that Mother's housing situation did not improve over the three years following removal of the children from her care – Mother testified that she and Father and their youngest child live in a rented room in a rooming house. Mother's March 2020 drug screen was positive for marijuana, and Mother testified that she had used marijuana “months” before the August 2021 hearing. Mother also testified that she needed “just a little bit more time to get it straightened out.” In short, the conditions that led to the removal of the children in 2018 — Mother's use of illegal drugs and the lack of suitable housing — remained unchanged when this matter was heard in August 2021. Further, although Mother testified that she felt she had a bond with the children, it is undisputed that Mother visited the children only 15 or 16 times over the course of three years.

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.

#### **4. Severe Child Abuse**

Mother's parental rights to Jah'Ziyah were also terminated on the ground of severe child abuse under Tennessee Code Annotated section 36-1-113(g)(4). Under the section, “sever child abuse” is defined by Tennessee Code Annotated section 37-1-102 and includes “knowingly or with gross negligence allowing a child under eight (8) year of age to ingest an illegal substance or a controlled substance that results in the child testing positive on a drug screen, except as legally prescribed to the child[.]” Tenn. Code Ann. § 37-1-102(b)(27)(E). In this case, it is undisputed that Jah'Ziyah tested positive for marijuana and cocaine when she was born. Accordingly, clear and convincing evidence supports the trial court's finding of severe child abuse as grounds for termination of Mother's parental rights with respect to Jah'Ziyah. We additionally observe that parental rights may be terminated on the grounds of severe child abuse when the parent has been found to have committed severe abuse “against any child[.]” Tenn. Code Ann. § 36-1-113(g)(4). Thus, termination of parental rights on the grounds of severe child abuse against one child may serve as grounds for the termination of parental rights to the parent's other children. *In re I.E.A.*, 511 S.W.3d 507, 517 (Tenn. Ct. App. 2016).

#### **5. Ability and Willingness to Assume Custody or Financial Responsibility**

The trial court also determined that Mother failed 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) and that placing the children in her care would pose a substantial risk of harm. Upon review of the record, we agree that clear and convincing evidence supports the trial court's determination that, three years after they were removed from her care, Mother remains unable to assume custody or financial responsibility for the children. As noted above, it is undisputed that Mother, Father, and their infant child were living in a room in a rooming house when this matter was heard in

August 2021. Although Mother's testimony with respect to her employment history was not altogether coherent, it is clear that Mother's intermittent employment was interrupted by long breaks following the birth of each of her four children. It was undisputed at trial that Mother had used illegal drugs within months of the August 2021 hearing and that she remained unable to provide a home for or financially support the children. Additionally, the trial court found that the children had bonded with their foster mother, who testified that she is willing to adopt them; that they have done well in foster care; and that Mother has visited with the children only 15 or 16 times in three years. There is no evidence in the record to contradict the trial court's findings. Finally, Mother testified that, after three years, she need additional time to complete the requirements of the permanency plan and to be in a position to support the children. 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.

## 6. Best Interests

We finally turn to the trial court's determination that termination of Mother's parental rights is in the children's best interests.<sup>9</sup> The statute in effect when DCS filed its petition in May 2020 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

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<sup>9</sup> 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 August 2021, the amended statute applies to petitions filed on or after April 22, 2021. Thus, the new factors set-forth in the current version of Tennessee Code Annotated 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).



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 Tennessee termination of parental rights 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). Additionally, 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). Factual findings

relevant to the best-interest analysis must be proven by a preponderance of the evidence. *In re Kaliyah S.*, 455 S.W.3d at 555 (citation omitted). The trial court must then 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 this case, the trial court considered each statutory factor in turn. With respect to factor eight, the trial court determined that the evidence did not establish that Mother's emotional status would be detrimental to the children or prevent her from providing care for them. With respect to factor four, the trial court determined that although Mother had established a meaningful relationship with Jah'Lila and Jah'Arius, she did not have a meaningful relationship with Jah'Ziyah. The trial court further found that Mother had not made adjustments to make a safe home for the children. It found that Mother had not complied with a majority of the action steps contained in the permanency plans despite having three years in which to do so.

In her brief, Mother asserts that the trial court's determination that termination of her parental rights is in the children's best interests is not supported by the evidence. She asserts, "that the [c]ourt erred in its findings related to the factors based on the lack of evidence presented at the hearing, the [c]ourt's misapplication of misunderstanding of the factors, and, in one instance, that the factor is patently unfair and conflicts with what the State of Tennessee advises parents do when it comes to support of a child or children in the Department's custody." She submits that she has been raising her youngest child — who was born after the older three were removed from her care — and that there was no evidence that the youngest child had been neglected or abused or that her home is unsafe. Mother asserts that the children were removed because Jah'Ziyah tested positive for marijuana and cocaine and that her most recent drug test tested positive for marijuana but not for cocaine, "which is an adjustment of conduct and conditions that indicates a level of safety that was not present at the time the children were removed."

Other than not testing positive for cocaine, Mother points to no other evidence to suggest that she has made an adjustment of circumstances as to make it safe to return the children to her care. It is undisputed that Mother had used illegal drugs just months before the August 2021 hearing of this matter and that her housing situation has not improved since the children were removed from her care in 2018. The fact that Mother's youngest child has not been removed from her custody does not demonstrate that Mother has made an adjustment to her circumstances such that returning the older children to her care is in the children's best interests. *See In re S.Y.*, 121 S.W.3d 358, 370 (Tenn. Ct. App. 2003). On the contrary, if the three older children were allowed to return to Mother's care, Mother, Father and four children would be living in a single room in a rooming house. Mother's residence is wholly insufficient to accommodate the addition of Mother's three older children. *See id.*

The trial court also found that Mother had not made lasting adjustments after

reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible. In her brief, Mother asserts that the trial court's "critical assumption is that reasonable efforts were made by 'available social service agencies' in the first place." She contends that, as the trial court noted, DCS never tried to contact her by e-mail when unable to reach her by telephone and that DCS "apparently[] did not think there was a further need for drug testing after Mother tested negative for cocaine" in March 2020 "as they did not put in another request for drug testing." She also submits that the trial court erred by relying on findings that Mother had not maintained contact with the children, that she did not financially support the children, and that she did not have sufficient housing for the children because the children were removed for drug exposure to cocaine and marijuana.

The trial found that Ms. Lewis referred Mother to service providers in 2018 and 2019 to assist Mother to complete action steps required by the permanency plan free of charge. It found that Mother had not complied with the plan despite reasonable efforts by DCS "in every aspect even though the Department could have been asked to be relieved of reasonable efforts."<sup>10</sup> The court also determined that, although DCS contacted Mother by telephone, DCS should have used email as an alternate way to contact her. However, the court concluded that the failure to do so was "not a huge flaw."

As noted above, the evidence demonstrates that Mother did not make adjustments to her circumstances so as to make a safe home for the children. It is undisputed that DCS made some efforts to assist Mother to access services and to maintain contact with Mother. "Reasonable efforts" are not tantamount to "Herculean" efforts, however, and parents are also required to "make reasonable efforts to rehabilitate themselves." *In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438, at \*7 (Tenn. Ct. App. Mar. 9, 2004) (overruled in part by *In re Kaliyah*, 455 S.W.3d 533 (Tenn. 2015) "insofar as it required DCS to prove by clear and convincing evidence, as a precondition to obtaining termination of parental rights, that it made reasonable efforts to reunify the family[]"). The extent of DCS's efforts is but one factor that the trial court must weigh in its best-interest analysis, and "the extent of DCS's efforts ... [is] not an essential element that must be proven in order to terminate the parental rights of the respondent parent." *In re Kaliyah*, 455 S.W.3d at 556. DCS is required to prove that its effort were reasonable under the circumstances by a preponderance of the evidence, not by clear and convincing evidence. *Id.* at 555. Upon review of the record, we cannot conclude that the evidence preponderates against the trial court's finding that DCS's efforts were reasonable in this case.

We turn next to the trial court's finding that Mother failed to maintain regular

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<sup>10</sup> Tennessee Code Annotated section 37-1-166 relieves DCS of its obligation to make reasonable efforts to prevent the removal of a child from the child's family or to make it possible for the child to return home in cases where a court has determined that the parent has subjected the child or any sibling of the child to, *inter alia*, severe child abuse as defined in section 36-1-102.

visitation with the children. The trial court found that Mother's "visitation was somewhat regular" in 2018 and 2019, but that it had been irregular in 2020 and 2021 "despite having the opportunity to have regular visitation[.]" Mother does not dispute this finding, but maintains that she was hindered in her ability to see the children after a dispute with the foster mother's adult daughter. She further maintains that she was expected to visit virtually after the onset of Covid and that she was unfamiliar with and unable to use the technology that would make virtual visitation possible. The trial court found the foster mother's testimony that Mother would have been welcome to visit in person to be more credible on this issue, however, and also noted that Mother testified that she was able to use Zoom for counseling. The evidence does not preponderate against the trial court's findings with respect to visitation.

Mother also asserts that there was no evidence beyond "mere speculation" that a change of caretakers and environment would have a negative effect on the children's emotional, psychological, and medical condition. The trial court found that the children had bonded with the foster mother "after spending three years in her home, and that disrupting that bond would be detrimental to the children's welfare." The trial court further found that the foster mother had ensured that the children attended medical and counseling sessions. The trial court's finding that the children had formed a bond with the foster mother, that Mother's visits with the children became increasingly sporadic over the three years following removal from Mother's custody, that Mother had not attended any of the children's medical or other appointments, and that Mother had neglected the basic needs of all three children support a determination that returning the children to Mother's care would have a negative effect on their well-being.

Mother additionally maintains that, despite the finding of dependency and neglect with respect to Jah'Lila and Jah'Arius and her failure to appeal the dependency and neglect proceeding, the children were never neglected. She asserts in her brief that, although "[t]he children were removed based on the youngest testing positive for drugs at the time of birth and allegations of being exposed to domestic violence[,] [t]here was no evidence as to how mother's drug use or the alleged domestic violence incident adversely affected the two older children." As Mother acknowledges, she did not appeal the trial court's judgment following the dependency and neglect proceedings, and she may not challenge that judgment here.

Mother also asserts that, notwithstanding her request at trial for more time to secure adequate housing, there was no evidence presented at trial that the room she and Father were renting was unhealthy, unsafe or unavailable. There is no dispute, however, that Mother tested positive for marijuana in March 2020, and Mother testified to using marijuana months before the August 2021 hearing of this matter. As she concedes, Mother testified that she needed more time to secure adequate housing. Further, although Mother testified that she was employed, there is no dispute that returning the children to her care would result in four children and two adults living in a single room in a rooming house.

Finally, Mother asserts that her failure to pay child support should not be considered because “no order for child support was entered into the record[.]” She argues in her brief that “every permanency plan leading up to this requested ‘good faith support,’ and to hold this as a factor against any parents who (1) do not have a current child support order calculated under the current guidelines, and (2) are not provided by the Department the amount it would be if it were to be calculated pursuant to the guidelines is patently unfair, and will remain so for all parents in a similar situation. A lack of notice of the amount pursuant to the guidelines, a likely inability to do the calculations from scratch if given the full guidelines place parents in a situation where it would seem they were intended to fail.”

As an initial matter, we observe that Mother did not raise the issue of whether Tennessee Code Annotated section 36-1-113(i)(9) is “patently unfair” in the trial court, and she may not raise it for the first time on appeal. *See Emory v. Memphis City Sch. Bd. of Educ.*, 514 S.W.3d 129, 146 (Tenn. 2017) (quoting *Simpson v. Frontier Cmty. Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991) (“issues not raised in the trial court cannot be raised for the first time on appeal.”)). However, we observe that section 36-1-113(i) as amended provides that, when considering a parent’s contribution of financial support as a factor in the best-interest analysis, the court must consider “[w]hether the parent has consistently provided more than token financial support for the child[.]” Tenn. Code Ann. § 36-1-113(i)(1)(S). Thus, any challenge to the statutory section is moot. As applied to this case, regardless of what Mother’s obligation would have been under the guidelines, Mother did not provide “good faith support” as required by the permanency plan. She provided no support beyond the occasional birthday and Christmas gifts. Thus, we agree with the trial court that this factor weighs against Mother with respect to the court’s best-interest analysis.

In light of the entirety of this record, we agree with the trial court that the combined weight of the facts constitutes clear and convincing evidence that termination of Mother’s parental rights is in the children’s best interests. We next turn to the termination of Father’s parental rights.

### **B. Termination of Father’s Parental Rights**

As noted above, the trial court terminated Father’s parental rights to Jah’Arius and Jah’Ziyah pursuant to Tennessee Code Annotated section 63-1-113(g)(9) and upon its determination that termination of parental rights is in the best interests of the children. Father does not appeal the trial court’s findings with respect to grounds, and upon review of the record we conclude that grounds were established by undisputed facts in this case.

Father testified at trial that he knew he was the children’s biological father before the children were born and that he never filed a petition to establish paternity. Further, Father does not dispute that he did not complete a DNA test to establish paternity or that

he is not named on the children’s birth certificates. The trial court noted that Father’s “requirement to legitimate his children was the most important task for him, and Ms. Lewis provided him information on how to legitimate. However, he did not follow through with this process[.]” The court also noted that the courthouse remained open to the public for the filing of petitions despite the Covid pandemic and that Father could have filed a petition at any time.

Father testified that he had steady employment — often working 15 hours a day seven days per week. He acknowledged that he did not provide financial support for the children but asserted that no one ever asked him for support. Although Father testified that he had a bond with the children, he did not dispute that he visited the children only three or four times during the three years they were in foster care. Father also testified that he was living with Mother in a room in a rooming house at the time of trial but was renovating a house in Memphis that someone had given him. However, he also testified that the house was not currently inhabitable and that it was not titled in his name. Father acknowledged that he was not yet able to provide a home for the children and that he needed more time to establish a home.

The trial court found that Father had taken “few steps to rectify or improve his conditions, lifestyle and/or circumstances regarding potential risks of harm to the children[.]” The trial court concluded that Father’s statements regarding his desire to parent the children did “not match the words he ha[d] uttered in regard to their welfare.” The court further concluded that the children had bonded well with their foster mother and that removing them from her care would be detrimental to their welfare. In light of its factual findings and the factors set-forth in section 36-1-113(i), the trial court concluded that termination of Father’s parental rights is in the children’s best interests.

Upon review of the record, we find nothing to preponderate against the trial court’s factual findings. Reviewing the trial court’s legal conclusions *de novo* with no presumption of correctness, we conclude that clear and convincing evidence supports grounds for termination of Father’s parental rights under section 36-1-113(g)(9) and that termination of Father’s parental rights is in the best interests of the children.

#### IV. CONCLUSION

For the foregoing reasons, we affirm the trial court’s order terminating both Mother’s and Father’s parental rights. This case is remanded for such further proceedings as may be necessary and as are consistent with this opinion. Costs on appeal are assessed one-half to Appellant Jacqueline S., and one-half to Appellant Joseph M. Because Appellants are proceeding *in forma pauperis*, execution for costs may issue if necessary.

s/ Kenny Armstrong \_\_\_\_\_  
KENNY ARMSTRONG, JUDGE