

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 2, 2026

IN RE BRYISON B.

Appeal from the Juvenile Court for Greene County
No. 25-J-30893 Kenneth N. Bailey, Jr., Judge

No. E2025-02064-COA-R3-PT

Father appeals the termination of his parental rights. We affirm the trial court's findings as to the grounds for termination. Because the trial court declined to consider eight of the twenty statutory best interest factors, we vacate the trial court's best interest determination and remand for reconsideration.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which JEFFREY USMAN, and WILLIAM E. PHILLIPS II, JJ., joined.

Edward L. Kershaw, Greeneville, Tennessee, for the appellant, Roger B.

Jonathan Skrmetti, Attorney General and Reporter; and Clifton Wade Barnett, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

OPINION**I. FACTUAL AND PROCEDURAL BACKGROUND**

On March 31, 2025, Petitioner/Appellee the Tennessee Department of Children's Services ("DCS") filed a petition in the Greene County Juvenile Court ("the trial court") to terminate the parental rights of Respondent Jasmine N. ("Mother")¹ and Respondent/Appellant Rodger B. ("Father") to their child, Bryison B.,² born in December

¹ Mother did not appeal the termination of her parental rights, so we discuss the facts as they relate to her only as necessary to address this appeal.

² In cases involving the termination of parental rights, it is this Court's policy to remove the full names of children and other parties to protect their identities.

2020. The petition alleged the following grounds for termination: (1) abandonment by failure to visit; (2) abandonment by failure to support; (3) abandonment by failure to provide a suitable home; (4) substantial noncompliance with the permanency plans; (5) persistent conditions; and (6) failure to manifest an ability and willingness to assume custody or financial responsibility of the child. The petition further alleged that termination was in the child's best interest but stated that many of the statutory best interest factors were inapplicable.

Trial occurred on November 18, 2025. Father, Mother, and DCS case manager Sandra Chandley were the only witnesses.

Ms. Chandley testified that the child was removed from parents' physical custody in August 2023 after a referral that the family was living in a van. A visit revealed that the family did not have access to running water and that the family had two coolers for food: one containing nothing more than milk and potatoes and one that had discarded food and maggots inside.³ The child was still being fed from a bottle, but there was no way to clean the bottles. Prescription medications from third parties were found in the van. Boards with nails sticking out of them were in places where the child could be injured. The child was extremely dirty. The parents submitted to drug tests, which were both positive. Father's drug test was positive for both methamphetamine and buprenorphine. As a result, the child was removed from his parents' custody and placed into DCS custody. The child was later adjudicated dependent and neglected by order of September 26, 2023.

Following the removal, DCS created a permanency plan for Mother and Father that was focused on two main areas of concern: drug use and stable housing. So Father was ordered to complete several assessments and follow recommendations, take random drug screenings, and provide proof of a stable home and legal source of income to DCS. Father was also required to participate in visitation and have reliable transportation. In order to facilitate these steps, DCS set up the assessments, supervised visitation, conducted random drug screenings, gave Mother and Father state letterhead to use in obtaining housing, participated in meetings with the parents, and set up homemaker services for the parents.

Unfortunately, drug use continued following the removal. At trial, Father admitted to failing drug screenings in February 2024, March 2024, and October 2024 for methamphetamine. Father conceded that he was suffering from a drug addiction but claimed that he was seeking help for this problem. When asked the nature of the program, Father admitted that it was the same one that he had been attempting for "[a]lmost fifteen years" but asserted that it "really does work." Still, Father asserted that DCS did not do enough to assist him with his addiction, suggesting that DCS should have required he attend an inpatient rehabilitation program following his positive drug screenings, as apparently had been threatened.

³ Father asserted at the removal and again at trial that the family no longer used the second cooler.

As a result of the positive drug screenings, Mother's and Father's visitation was inconsistent⁴ and eventually was entirely suspended in November 2024.⁵ Mother and Father were required to achieve two consecutive negative drug screens in order for visitation to resume. According to Ms. Chandley, she reached out to Mother and Father between twenty and twenty-five times in the year that followed, but they never provided two consecutive negative drug screens in that time.⁶ Rather, Father admitted at trial that he failed additional drug tests in April 2025, June 2025, August 2025, also for methamphetamine. Other times, the parents did not follow through with the testing set up by Ms. Chandley. Admittedly, there were issues with transportation and Ms. Chandley explained that she did not offer to meet the parents closer to their location. But Ms. Chandley did give the parents additional time to submit the samples for screening than she normally would—giving the parents up to twenty-four hours to provide the sample. Later, the parents were able to take drug screenings in Washington County due to a pending action involving their youngest child. But Father admitted that in a September 2025 hair follicle drug screening, he once again tested positive for methamphetamine.

Housing and communication were also at issue. Ms. Chandley testified that she often had trouble communicating with the parents, as they changed phone numbers regularly and did not give her updated information promptly. Father claimed that the parents' phones were lost, stolen, or broken. At the time of the removal, Mother and Father claimed to merely be camping in the van, as they were renovating Father's brother's property; Mother thereafter moved into her mother's home while they applied for housing. But Mother and Father never gave Ms. Chandley the names of any housing they had actually applied to. Mother and Father did obtain an apartment in March 2024, but they were evicted before Ms. Chandley could visit the residence. Father and Mother then stayed with Father's brother; Ms. Chandley attempted to visit the home but was stopped by a woman living in a tent on the property. At trial, Father claimed that they had moved into the brother's home following renovations a year earlier. But Father reported to DCS in the summer of 2025 that they were transient at that time, moving from hotels to relatives' homes. And in July 2025, Father admittedly provided a juvenile court magistrate the wrong address for where they were living. Then in the fall of 2025, Father reported to DCS that the parties obtained land to place their camper; neither Mother nor Father gave DCS an

⁴ When visitation occurred, the parents brought appropriate gifts for the child and the visits themselves were appropriate, with the parents being "very engaged with the child" throughout the entire visit. However, the child was negatively impacted by the visits, as they would cause him to wake up in the middle of the night to crawl in his foster parents' bed and to wet himself at daycare. These issues stopped after visitation was suspended.

⁵ The last visit occurred early, however, in September 2024, via video call.

⁶ Father objected to the admission of Exhibit 4, a document prepared by Ms. Chandley detailing her attempts to obtain random drug screenings from Mother and Father during the pendency of this action. The trial court nevertheless admitted this exhibit as a business record, after confirming that the information was entered into the Tennessee Family and Child Tracking System ("TFACTS") by DCS.

address to investigate this property.

Father claimed to be gainfully employed throughout the pendency of this case. But he failed to provide any documents to DCS to establish that he was lawfully employed. Father did demonstrate to DCS that he had a car, car insurance, and a valid driver's license. At trial, Father testified that he was self-employed in a clean-up business with Mother. Records were admitted by the trial court demonstrating that neither Mother nor Father paid any child support prior to the termination petition being filed.⁷ Father claimed at trial that he had sent money orders for the child's support but the money orders were returned months later because Mother failed to place case numbers on them.

Father and Mother each have multiple other children, none of which were in their custody. When asked the name of their youngest child, who was born to them following the removal of Bryison, Father had trouble recalling. He then claimed that he had suffered a stroke in 2021. But Father testified that he never sought medical treatment or a medical diagnosis as to this alleged stroke. In any event, the proof indicated that the youngest child was removed from Father's and Mother's custody due to allegations of severe abuse, namely drug use while Mother was pregnant. Father admitted to using drugs "occasionally" during the pregnancy but asserted that he and Mother only used drugs independently from one another, never together. Mother admitted that she used drugs even after learning about her pregnancy. The youngest child was found to be a victim of severe abuse in a separate juvenile court proceeding in light of the fact that he tested positive for methamphetamine exposure at birth.

The child at issue in this case was placed in a non-adoptive foster home at the time of removal, then in a pre-adoptive foster home in June 2025. At the time of the removal, the child was suffering from tooth decay, but that issue had been remedied by the time of trial by the child's first foster family, and the current foster family had kept "on top of it." By the time of the termination trial, the child was "building a very bonded relationship with his foster parents." The child is now "thriving" and "getting all his needs met." The child does not ask after Mother and Father.

The trial court entered an order terminating Mother's and Father's parental rights on all of the grounds alleged on December 1, 2025. The trial court further found that termination was in the child's best interest, despite finding eight of the twenty statutory best interest factors inapplicable, mirroring DCS's termination petition. Father thereafter appealed to this Court.

II. ISSUES PRESENTED

Father raises four issues in this appeal, which are taken from his brief:

⁷ Although Father and Mother provided gifts during visitation, visitation last occurred more than one year before the termination trial. No gifts were provided outside of visitation.

1. Whether the trial court committed reversible error by admitting extensive inadmissible hearsay (all of Exhibit 4 to the November 18, 2025 Hearing)?
2. Whether [DCS] used reasonable care and diligence to provide services to an impoverished man who possibly suffers from a stroke?
3. Whether the possible stroke of [Father] affects his “willingness” or “ability” to comply with certain [c]ourt requirements?
4. Whether termination was in the best interests of the child especially given the fact that [Father] possibly suffers from a stroke and [DCS] did not make reasonable efforts to assist him?

Although Father has not specifically challenged most of the grounds found by the trial court, we will nevertheless consider whether sufficient evidence was presented to support them. *See In re Carrington H.*, 483 S.W.3d 507, 525–26 (Tenn. 2016) (holding that “in an appeal from an order terminating parental rights the Court of Appeals must review the trial court’s findings as to each ground for termination and as to whether termination is in the child’s best interests, regardless of whether the parent challenges these findings on appeal”).

III. STANDARD OF REVIEW

Parental rights are “among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *Id.* at 521 (collecting cases). Therefore, “parents are constitutionally entitled to fundamentally fair procedures in parental termination proceedings.” *Id.* at 511. These procedures include “a heightened standard of proof—clear and convincing evidence.” *Id.* at 522 (quotation marks and citations omitted). “Clear and convincing evidence is evidence in which there is no 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) (quotation marks and citation omitted).

In Tennessee, termination of parental rights is governed by statute, which identifies “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))). Thus, a party seeking to terminate a parent’s rights must prove by clear and convincing evidence (1) the existence of at least one of the statutory grounds in section 36-1-113(g), and (2) that termination is in the child’s best interest. *See In re Valentine*, 79 S.W.3d at 546. “Considering the fundamental nature of a parent’s rights, and the serious consequences that stem from termination of those rights, a higher standard of proof is

required in determining termination cases.” *In re Addalyne S.*, 556 S.W.3d 774, 782 (Tenn. Ct. App. 2018). The clear and convincing evidence standard applicable here is “more exacting than the ‘preponderance of the evidence’ standard, although it does not demand the certainty required by the ‘beyond a reasonable doubt’ standard. To be clear and convincing, the evidence must eliminate any substantial doubt and produce in the fact-finder’s mind a firm conviction as to the truth.” *In re S.R.C.*, 156 S.W.3d 26, 29 (Tenn. Ct. App. 2004) (internal citation omitted).

Because of the high standard of proof in termination cases, the standard of review is somewhat different than our typical standard under Rule 13 of the Tennessee Rules of Appellate Procedure. As the Tennessee Supreme Court has previously explained:

To review trial court decisions, appellate courts use a . . . two-step process, to accommodate both Rule 13(d) of the Tennessee Rules of Appellate Procedure and the statutory clear and convincing standard. First, appellate courts review each of the trial court’s specific factual findings de novo under Rule 13(d), presuming each finding to be correct unless the evidence preponderates against it. *In re Taylor B.W.*, 397 S.W.3d 105, 112 (Tenn. 2013); *In re Justice A.F.*, [No. W2011-02520-COA-R3-PT,] 2012 WL 4340709, at *7 [(Tenn. Ct. App. Sept. 24, 2012)]. When a trial court’s factual finding is based on its assessment of a witness’s credibility, appellate courts afford great weight to that determination and will not reverse it absent clear evidence to the contrary. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re Justice A.F.*, 2012 WL 4340709, at *7 (citing *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005)).

Second, appellate courts determine whether the combination of all of the individual underlying facts, in the aggregate, constitutes clear and convincing evidence. *In re Taylor B.W.*, 397 S.W.3d at 112; *In re Audrey S.*, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005); *In re Justice A.F.*, 2012 WL 4340709, at *7. Whether the aggregate of the individual facts, either as found by the trial court or supported by a preponderance of the evidence, amounts to clear and convincing evidence is a question of law, subject to de novo review with no presumption of correctness. *See In re M.L.P.*, 281 S.W.3d 387, 393 (Tenn. 2009); *see also In re Samaria S.*, 347 S.W.3d 188, 200 (Tenn. Ct. App. 2011). As usual, the appellate court reviews all other conclusions of law de novo with no presumption of correctness. *In re Angela E.*, 303 S.W.3d [240,] 246 [Tenn. 2010)].

In re Markus E., 671 S.W.3d 437, 457 (Tenn. 2023).

IV. ANALYSIS

A. Admission of Exhibit 4

Father first asserts that the trial court committed reversible error when it admitted Trial Exhibit 4, which consisted of a detailed summary of Ms. Chandley's interactions with Mother and Father attempting to schedule drug screenings. The trial court admitted this exhibit after inquiring whether these interactions were contained in DCS's TFACTS database. Father contends that while business records are an exception to the hearsay prohibition, this exception does not apply to "a bystander's declaration to a business person . . . [s]ince the bystander had no business duty to report accurately, there is no guarantee the bystander's information is trustworthy," citing the Second Edition of *Tennessee Law on Evidence*. Father goes on to argue that "[b]ecause Trial Exhibit 4 contains multiple statements by [him], the very person whose credibility was attacked by DCS, there is no way this can come in as a business records exception."

As this Court has explained, Tennessee Rule of Evidence 803(6) "embodies the exception to the hearsay rule commonly known as the business records exception. It rests on the premise that records regularly kept in the normal course of business are inherently trustworthy and reliable." *Alexander v. Inman*, 903 S.W.2d 686, 700 (Tenn. Ct. App. 1995). The rule provides five criteria that must be met in order to qualify under the exception, including, inter alia, that "[t]he person providing the information in the document must be under a business duty to record or transmit the information[.]" *Id.*

"The determination of whether a hearsay statement is admissible through an exception to the hearsay rule is left to the sound discretion of the trial court." *In re Melanie T.*, 352 S.W.3d 687, 699 (Tenn. Ct. App. 2011) (citing *Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256, 262 (Tenn. 2010)); *see also Hyder v. Bd. of Pro. Resp. of Sup. Ct.*, 696 S.W.3d 532, 542 (Tenn. 2024) ("Rulings on the introduction of evidence are usually within the discretion of the trial judge and will not be reversed except for an abuse of that discretion."). "A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). "Even if the trial court erred in an evidentiary ruling, the ruling may still stand if the error was harmless and did not affect the outcome of the trial." *In re Est. of Curtis*, No. E2024-00724-COA-R3-CV, 2025 WL 1567093, at *3 (Tenn. Ct. App. June 3, 2025) (citing *McAdams v. McAdams*, No. E2019-02150-COA-R3-CV, 2020 WL 4723762, at *8 (Tenn. Ct. App. Aug. 13, 2020)).

DCS agrees that Exhibit 4 was not taken directly from TFACTs but asserts that it should have been presented at trial as a summary of DCS's business records under Rule 1006 of the Tennessee Rules of Evidence. *See Fusner v. Coop Const. Co., LLC*, 211 S.W.3d 686, 693 (Tenn. 2007) ("[S]o long as the data included in a compilation otherwise satisfies the business records exception, the fact that a compilation of admissible business records was created during litigation does not disqualify it as a business record under the exception."). Moreover, we note that a more recent version of the treatise relied on by

Father recognizes that when there are multiple declarants at issue in a business record, the statements may be admitted by “combining hearsay exceptions.” *Tennessee Law of Evidence* 8.11[13] (5th ed. 2005). Of course, the only statements that Father has chosen to find objectionable in his brief—his own statements—are admissible as statements by a party opponent. *See* Tenn. R. Evid. 803(1.2).

But even so, DCS asserts that any error in the admission of the exhibit was harmless, as the evidence presented in Exhibit 4 is merely duplicative of information presented elsewhere in the record. We agree. The evidence in Exhibit 4 generally concerned Ms. Chandley’s efforts to contact Mother and Father to take drug screenings. Ms. Chandley testified without objection that she contacted Mother and Father on more than twenty occasions to do so and gave the parents additional time to complete the testing. Although the parents gave various excuses as to why they could not appear, the fact remains that the parents could not produce two consecutive negative drug screens in the year between the suspension of visitation and the termination trial. And Father himself admitted that he and Mother did not always take drug tests set up by Ms. Chandley, placing the blame on DCS for not making more effort to meet them nearer to their location or when it was convenient for them. Thus, there was ample evidence in the record to support a finding that Father declined to take drug tests in the latter part of this case despite significant effort by Ms. Chandley even without considering Exhibit 4. As a result, any error in the admission of Exhibit 4 was harmless. *See Lewis v. Lewis*, No. 01A01-9809-CH-00469, 1999 WL 536272, at *5 (Tenn. Ct. App. July 27, 1999) (“This Court has previously concluded that there is no abuse of discretion in the exclusion of evidence about facts already presented before the court.” (citing *Pearson v. Pearson*, No. W2018-01188-COA-R3-CV, 2019 WL 2394247, at *4 (Tenn. Ct. App. June 6, 2019))); *see also In re Royalty Y.*, No. W2023-01333-COA-R3-PT, 2024 WL 2042496, at *4 (Tenn. Ct. App. May 8, 2024) (reviewing the evidence presented in support of the termination petition, but excluding consideration of certain inadmissible hearsay “to determine whether grounds were proven as well as the weight of the applicable best interest factors”).

B. Other Issues

Father addresses his remaining three issues in tandem, arguing that DCS failed to prove willfulness because the proof purportedly demonstrated that Father “had a stroke which should fall under the Americans with Disabilities Act” and could not have done “anything willfully or intentionally in his condition.” Further, Father asserts that his alleged disability was not taken into account in the trial court’s best interest findings, particularly as it relates to those factors related to DCS’s reasonable efforts. According to Father, DCS “should be required to make additional efforts when it is clear that a parent suffers from a disability.” And yet Father “was not given any extra help[.]” So Father contends that it would have been in the child’s best interest “to help [Father], rather than use his disability against him.”

Respectfully, Father's entire argument rests on multiple faulty premises. Here, Father's testimony was that he has memory problems because he "had a slight stroke." Father made this statement after he was unable to immediately recall the name of his most recent child with Mother. Later, Father testified that he thinks that he had a "mini stroke" in 2021 after he "got real hot and fell off the truck and hit [his] head." But Father admitted that he had never seen a doctor to diagnose him as having had a stroke. Moreover, there was no proof that Father ever informed Ms. Chandley of his alleged disability. As such, there was no competent proof that Father even suffered from a stroke, much less that his actions in this case should be excused due to some stroke-related cognitive decline or that DCS should have made more effort in this case due to knowledge of Father's alleged disability.⁸

Moreover, Father misapprehends the effect of willfulness in this case. Importantly, willfulness is only relevant to some of the grounds for termination at issue in this case; many do not mandate a finding of willfulness. Certainly, willfulness or the lack thereof is not expressly required to demonstrate the ground of persistent conditions, abandonment by failure to establish a suitable home, or substantial noncompliance with permanency plans. Arguably, whether a parent had demonstrated willingness to parent or support a child involves some consideration of willfulness; but that ground can also be proven through a parent's inability to parent or support a child. *See* Tenn. Code Ann. § 36-1-113(g)(14) and discussion, *infra*. Moreover, it is true that willfulness is relevant to the grounds of abandonment by willful failure to support and visit, but only because it is an affirmative defense that may be raised by the parent. *See* Tenn. Code Ann. § 36-1-102(I) ("[I]t 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 shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense[.]"). In this case, Father did not file an answer in which he raised the lack of willfulness as an affirmative defense. So DCS argues that willfulness is simply not at issue. Nevertheless, in considering this appeal, we proceed with an assumption for purposes of argument that the issue of willfulness was tried by consent *See, e.g., In re Christopher L.*, No. M2020-01449-COA-R3-PT, 2021 WL 4145150, at *5 (Tenn. Ct. App. Sept. 13, 2021) (holding that the parent waived the defense of willfulness by not raising it in an answer but that the issue was tried by consent). So we will consider Father's willfulness only as it relates to the grounds of abandonment for failure to visit and support.

Finally, Father contends that his alleged stroke necessitated that DCS make additional efforts in this case. As we perceive it, then, Father is arguing that DCS did not

⁸ Father also did not raise the Americans with Disabilities Act at trial, nor did he offer any legal authority in this appeal to suggest that DCS is under a heightened burden when the Act is applicable. *See generally Dick Broad Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 670 (Tenn. 2013) ("Issues raised for the first time on appeal are waived.").

make reasonable efforts under the circumstances of this case. But reasonable efforts are only relevant to the ground of abandonment by failure to establish a suitable home and best interest. Simply put, “proof of reasonable efforts is not a precondition to termination of the parental rights of the respondent parent.” *In re Kaliyah S.*, 455 S.W.3d 533, 555 (Tenn. 2015). Moreover, because there is no proof that Father ever informed DCS that he was unable to understand or perform tasks due to a stroke or other disability, DCS was under no obligation to make additional effort for Father simply due to said alleged disability. In any event, we conclude that DCS did make reasonable efforts in this case, as discussed *infra*. So then, although Father does not challenge the proof as to any of the five grounds at issue, we will address each.

C. Grounds

1. Abandonment by Failure to Establish A Suitable Home

First, we consider whether DCS presented clear and convincing evidence that Father abandoned the child by failing to establish a suitable home. Parental rights may be terminated when “[a]bandonment by the parent or guardian, as defined in § 36-1-102, has occurred[.]” Tenn. Code Ann. § 36-1-113(g)(1). One definition of abandonment involves failure to establish a suitable home:

- (a) The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a child is alleged to be a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency;
- (b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child’s situation prevented reasonable efforts from being made prior to the child’s removal; and
- (c) For a period of four (4) months following the physical removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have not made reciprocal reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child shall be found to be reasonable if such efforts equal or exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

Tenn. Code Ann. § 36-1-102(1)(A)(ii).⁹

Under this ground, we “consider[] whether a child has a suitable home to return to after the child’s court-ordered removal from the parent.” *In re Adaleigh M.*, No. E2019-01955-COA-R3-PT, 2021 WL 1219818, at *3 (Tenn. Ct. App. Mar. 31, 2021). A suitable home requires “more than a proper physical living location.” *In re Daniel B.*, No. E2019-01063-COA-R3-PT, 2020 WL 3955703, at *4 (Tenn. Ct. App. July 10, 2020) (quoting *Tenn. Dep’t of Child.’s Servs. v. C.W.*, No. E2007-00561-COA-R3-PT, 2007 WL 4207941, at *3 (Tenn. Ct. App. Nov. 29, 2007)). A suitable home entails “[a]ppropriate care and attention” for the child and “must be free from drugs.” *In re Matthew T.*, No. M2015-00486-COA-R3-PT, 2016 WL 1621076, at *7 (Tenn. Ct. App. Apr. 20, 2016) (citing *In re Hannah H.*, No. E2013-01211-COA-R3-PT, 2014 WL 2587397, at *9 (Tenn. Ct. App. June 10, 2014)).

With regard to the reasonable efforts required of DCS, the Tennessee Supreme Court explained as follows:

Reasonable efforts entail more than simply providing parents with a list of service providers and sending them on their way. [DCS’s] employees must use their superior insight and training to assist parents with the problems [DCS] has identified in the permanency plan, whether the parents ask for assistance or not.

In re Kaliyah S., 455 S.W.3d at 556 (citation omitted). However,

the manner in which [DCS] renders services must be reasonable, not herculean. In addition, [DCS] is not required to shoulder the burden alone. The parents must also make reasonable efforts to rehabilitate themselves and to remedy the conditions that required the removal of the children. The reasonableness of [DCS’s] efforts should be decided on a case-by-case basis in light of the unique facts of the case.

In re Bernard T., 319 S.W.3d 586, 601 (Tenn. 2010) (internal citations omitted).

The trial court in this case found that DCS’s efforts were reasonable both before and after removal in that they were equal to or exceed the efforts of the parents. The evidence does not preponderate against this finding. Here, the child was removed because the home of his parents was entirely unsuitable for a child; Father does not deny that removal at that time was necessary.

⁹ Throughout this Opinion, we apply the statutes as they existed when the termination petition was filed.

Moreover, in the months following removal, DCS provided the parents with state letterhead to attach to housing applications to assist them in obtaining state housing. DCS created permanency plans and held Child Family Team Meetings. DCS scheduled and supervised visitation. At some point, DCS also set up homemaker services and assessments for both parents. And DCS attempted home visits and conducted drug screens for Father. Thus, while it may be true that DCS could have done a better job at meeting parents where they were at or in mandating that Father attend a specific drug rehabilitation program, Father simply did not make reciprocal efforts of his own to establish a suitable home.

Certainly, Father did make some effort to complete assessments later in this case and did testify that he attempted to obtain housing. He and Mother were able to obtain an apartment but were soon evicted and lived in a camper once again for a time. Although Father claimed at trial that he was living in an appropriate home, DCS was unable to conduct a home study because Father had given DCS various conflicting information in the months prior about his residence, stating that he was staying in a camper that a woman had given him, that he was staying in hotels and with relatives, and that he and Mother had acquired new property to place the camper on but giving DCS a wrong address or no address at all.

Even more importantly, even if Father could have provided a proper physical home for the child, he had not provided a home that was free from drugs. Father tested positive for methamphetamine consistently throughout this case, failed to take additional drug tests requested by Ms. Chandley, and was admittedly still using drugs less than two months prior to the termination trial. The lack of a drug-free home was a significant barrier to reunification in this case and shows a lack of concern toward reunification with the child. And Father's testimony that he "tried to kick the habit by getting into a program"—that same program he had been doing for "[a]lmost fifteen years"—does not give this Court any reassurance that Father will be able to remedy his long-standing drug addiction at an early date. We therefore conclude that DCS proved by clear and convincing evidence that Father was unable to establish a suitable home despite reasonable efforts by DCS.

2. Abandonment by Failure to Visit and Support

Abandonment can also occur when a parent fails to visit or support a child. This form of abandonment may be proven with evidence of the following:

If the child is four (4) years of age or more at the time of the filing of a petition for termination of parental rights, for a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or amended or supplemental petition to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, the parent or

parents or the guardian or guardians either have failed to visit or have failed to support or have failed to make reasonable payments toward the support of the child[.]

Tenn. Code Ann. § 36-1-102(1)(A)(i)(a).

There is no dispute that Father did not visit or support the child in the four months prior to the filing of the termination proceeding. We further conclude that to the extent that a lack of willfulness was tried by consent, Father did not meet his burden. *See* Tenn. Code Ann. § 36-1-102(I).

As for the failure to visit, it is undisputed that Father's visitation with the child was suspended until he was able to pass two consecutive drug screens. But Father never did, despite Ms. Chandley testifying that she attempted to set up random drug screens for Father on more than twenty occasions in the year that followed. Indeed, Father testified that he was still abusing methamphetamine less than two months before trial. "This Court has often held that when a parent's visitation has been suspended by the trial court and the parent has the ability to demonstrate a change in situation or behavior that would warrant reinstating visitation but fails to do so, that parent can be found to have willfully failed to visit." *In re Meadow L.*, No. E2024-01425-COA-R3-PT, 2025 WL 1779767, at *13 (Tenn. Ct. App. June 24, 2025) (quoting *In re Kiara C.*, No. E2013-02066-COA-R3-PT, 2014 WL 2993845, at *6 (Tenn. Ct. App. June 30, 2014)). So Father failed to demonstrate a lack of willfulness in his failure to visit the child.

With regard to the failure to support, Father claimed at trial that he attempted to provide support for the child, but the payment was returned due to Mother's failure to place a case number on the money orders. But Father did not submit any documentary proof of these attempts, nor did he testify as to the dates of these attempts except for one payment a week before the termination trial. *See* Tenn. Code Ann. § 36-1-102(1)(F) ("Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child[.]"). Moreover, the proof shows that Father claimed to be gainfully employed throughout the life of this case, such that he had the means to provide at least some support for the child. So Father did not meet his burden to demonstrate that his failure to support was not willful. The trial court therefore did not err in finding clear and convincing evidence to support the grounds of abandonment by failure to visit and support.

3. Substantial Noncompliance with Permanency Plans

Another ground for termination exists when there is proof of "substantial noncompliance by the parent ... with the statement of responsibilities in a permanency plan[.]" Tenn. Code Ann. § 36-1-113(g)(2). The court must first determine "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 (Tenn. Ct. App. 2004). The court must also determine 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.” *Id.* “Trivial, minor, or technical deviations” do not arise to substantial noncompliance. *Id.*

Several permanency plans were created in this case and ratified by the trial court. The initial plan required that Father complete three assessments: an alcohol and drug assessment, a mental health assessment, and a parenting assessment, and follow all recommendations. Father was also required to obtain and maintain safe and stable housing, have reliable transportation, obtain and maintain a legal source of income, submit to random drug screens, pay child support, and actively participate in visitation with the child. The later plans largely stayed the same, omitting assessments as Father completed them and adding that Father complete parenting classes.

Father was substantially noncompliant with these plans. Although Father did eventually complete the required assessments and appears to have started parenting classes by the time of trial, he was not compliant with the recommendation that he begin counseling. Father did obtain proper transportation, including insurance and a driver’s license, but he failed to provide proof to DCS that he has legal income; rather, he often reported that he was paid “under the table,” which DCS informed him was not permitted. Father also did not actively participate in visitation in the latter part of this case because he continued to fail drug screenings or failed to take requested drug screenings in order to have visitation reinstated. Father also failed to consistently maintain appropriate housing. Clearly, Father’s drug use and lack of consistent housing were the most important barriers to reunification in this case. *See In re M.J.B.*, 140 S.W.3d at 656. By failing to make real effort to remedy these issues, Father substantially failed to comply with the permanency plans. The trial court did not err in finding that DCS established this ground by clear and convincing evidence.

4. Persistence of Conditions

The next ground for termination found by the trial court is persistence of conditions, also known as persistent conditions. This ground applies when:

- (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 child is alleged to be 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[.]

Tenn. Code Ann. § 36-1-113(g)(3).

The purpose of the persistent conditions ground for termination 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 Navada N.*, 498 S.W.3d 579, 606 (Tenn. Ct. App. 2016) (quoting *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *20 (Tenn. Ct. App. Oct. 13, 2008)). As we have previously explained,

“A parent's continued inability to provide fundamental care to a child, even if not willful, . . . constitutes a condition which prevents the safe return of the child to the parent's care.” *In re A.R.*, [] 2008 WL 4613576, at *20 [] (citing *In re T.S. & M.S.*, No. M1999-01286-COA-R3-CV, 2000 WL 964775, at *7 (Tenn. Ct. App. July 13, 2000)). The failure to remedy the conditions which led to the removal need not be willful. *In re T.S. & M.S.*, 2000 WL 964775, at *6 (citing *State Dep't of Human Servs. v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990)). “Where . . . efforts to provide help to improve the parenting ability, offered over a long period of time, have proved ineffective, the conclusion [] that there is little likelihood of such improvement as would allow the safe return of the child to the parent in the near future is justified.” *Id.*

In re Navada N., 498 S.W.3d at 605–06. Accordingly, “[t]his ground for termination focuses on the *results* of the parent's efforts at improvement rather than the mere fact that he or she has made them.” *In re Allison S.*, No. E2023-01072-COA-R3-PT, 2024 WL 2050502, at *9 (Tenn. Ct. App. May 8, 2024) (quoting *In re Edward R.*, No. M2019-01263-COA-R3-PT, 2020 WL 6538819, at *17 (Tenn. Ct. App. Nov. 6, 2020)). Moreover, this statutory ground also applies when conditions other than those for which the child was removed “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." Tenn. Code Ann. § 36-1-113(g)(3)(A)(i).

There can be no dispute that the child was removed from Father's physical custody for more than six months by an order entered in the course of a dependency and neglect action. Nor is there any genuine dispute that this ground has been proven. Here, the child was removed primarily due to issues with his parents' home and drug use. Years later, these conditions still persist. Over the years, Father has been unable to maintain consistent housing and has failed to communicate with DCS about his location on many occasions. And Father admitted that he has a drug addiction that he has been fighting in the same manner for fifteen years without any lasting success. Father also admitted to using methamphetamine less than two months prior to the termination trial. In contrast, the child is in a pre-adoptive foster home where he is thriving. Continuation of the parent-child relationship prevents the child from being fully integrated with that family. So this ground was proven by clear and convincing evidence.

5. Failure to Manifest an Ability and Willingness to Parent

The trial court also determined that Father failed to manifest an ability and willingness to assume custody or financial responsibility of the child under Tennessee Code Annotated section 36-1-113(g)(14). Parental rights may be terminated under this section when:

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[.]

Tenn. Code Ann. § 36-1-113(g)(14). The ground contains two distinct elements that must be proven by clear and convincing evidence. The first requires proof that the parent has failed to evince *either* an ability *or* a willingness to assume custody of the child. *In re Neveah M.*, 614 S.W.3d 659, 677 (Tenn. 2020). Our analysis of a parent's ability "focuses on the parent's lifestyle and circumstances," while willingness involves the parent's attempts "to overcome the obstacles that prevent them from assuming custody or financial responsibility for the child." *In re Cynthia P.*, No. E2018-01937-COA-R3-PT, 2019 WL 1313237, at *8 (Tenn. Ct. App. Mar. 22, 2019) (citations omitted).

The second element requires proof that placing the child in the parent's custody poses "a risk of substantial harm to the physical or psychological welfare of the child." Tenn. Code Ann. § 36-1-113(g)(14). Although "risk of substantial harm" is not defined by the statute, this Court has provided examples of situations resulting in such a risk, including "forcing a child to begin visitation with a near-stranger," "placing a child with a parent

who engaged in repeated criminal conduct that required incarceration,” or returning a child to “parents with a significant, recent history of substance abuse, mental illness, and/or domestic violence[.]” *In re Brianna B.*, No. M2019-01757-COA-R3-PT, 2021 WL 306467, at *6 (Tenn. Ct. App. Jan. 29, 2021) (collecting cases).

Again, clear and convincing evidence supports this ground. Father has been unable to maintain sobriety for any real length of time during the pendency of this case. He has also been unable to maintain consistent housing. Moreover, visitation with the child, when it occurred, indicated that contact with Father and Mother negatively impacted the child. Visitation was completely suspended approximately one year before the termination trial due to Father’s inability to maintain sobriety, and Father never completed the steps necessary to resume visitation. Under these circumstances, we conclude that clear and convincing evidence establishes that Father is unable to take physical custody of the child and that placing the child in Father’s physical custody would likely create a substantial risk of harm to the child. *See, e.g., In re Grace F.*, No. M2023-00344-COA-R3-PT, 2023 WL 8915746, at *12 (Tenn. Ct. App. Dec. 27, 2023) (finding the parents’ continued drug use would pose a risk of substantial harm to the welfare of the children); *In re Lucas S.*, No. M2019-01969-COA-R3-PT, 2021 WL 710841, at *9 (Tenn. Ct. App. Feb. 24, 2021) (finding, inter alia, that a parent’s continued drug use “would pose ‘a risk of substantial harm to [the child’s] physical or psychological welfare.’”).

D. Best Interest

Because at least one ground for termination exists, we proceed to consider the trial court’s findings as to the child’s best interest. Tenn. Code Ann. § 36-1-113(c); *White v. Moody*, 171 S.W.3d 187, 192 (Tenn. Ct. App. 1994). The factors that courts “shall” consider in ascertaining the best interests of children include, but are not limited to, the following:

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

- (G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;
- (H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;
- (I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;
- (J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;
- (K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;
- (L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;
- (M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;
- (N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;
- (O) Whether the parent has ever provided safe and stable care for the child or any other child;
- (P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;
- (Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;
- (R) Whether the physical environment of the parent's home is healthy and safe for the child;
- (S) Whether the parent has consistently provided more than token financial support for the child; and
- (T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

Tenn. Code Ann. § 36-1-113(i)(1) (directing the court to “consider all relevant and child-centered factors applicable to the particular case before the court”).

“This list is not exhaustive, and the statute does not require a trial court to find the existence of each enumerated factor before it may conclude that terminating a parent’s rights is in the best interest of a child.” *In re M.A.R.*, 183 S.W.3d at 667 (citations omitted). As such, determining a child’s best interest does not entail simply conducting “a rote examination” of each factor and then totaling the number of factors that weigh for or against termination. *In re Audrey S.*, 182 S.W.3d at 878. Instead, the “relevancy and weight to be given each factor depends on the unique facts of each case.” *Id.* (citing *White*, 171 S.W.3d at 194). In considering the statutory factors, “courts must remember that the child’s best interests are viewed from the child’s, rather than the parent’s, perspective.” *In re Gabriella D.*, 531 S.W.3d 662, 681 (Tenn. 2017) (quoting *In re Audrey S.*, 182 S.W.3d at 878).

In this case, our review is unfortunately hampered by the trial court’s findings as to the best interest factors. Specifically, the trial court found that while factors (C), (D), (E), (G), (J), (K), (L), (O), (P), (Q), (R), and (S) favored termination, the remaining factors were inapplicable. Although the trial court expressly explained that factors (A) and (B) were inapplicable as they were not pleaded by DCS in this case, a review of the other factors the trial court found inapplicable reveals that DCS also alleged in its petition that these factors were inapplicable. So then, the trial court found that forty percent of the best interest factors contained in section 36-1-113(i) were inapplicable, apparently based solely on DCS’s choice not to plead them.

This Court has recently held that nearly this exact scenario was error. *See In re Mercury H.*, No. E2025-01810-COA-R3-PT, 2026 WL 1894531 (Tenn. Ct. App. July 1, 2026).¹⁰ In particular, after noting that the trial court found that forty percent of the factors were inapplicable, we explained:

Because the trial court’s order found these factors neutral based on DCS’s failure to plead them rather than based upon the particular circumstances of the case or the evidence presented, “we are unable to discern whether the trial court considered each of the statutory factors and how the trial court considered the proof presented relative to the factors.” *In re Michael S.*, No. E2025-01028-COA-R3-PT, 2026 WL 1494102, at *10 (Tenn. Ct. App. May 28, 2026). For example, on appeal DCS puts forward a developed argument that factors A and B actually support termination, and strongly so, while Mother insists that the factors support declining to terminate her parental rights. We have no findings, though, to review as to these factors because

¹⁰ The same trial court presided over the termination case in *In re Mercury*.

they were not considered as a result of DCS's purported pleading deficiencies.

In reviewing the record in this case, DCS filed a petition before the trial court that appears to have helped to generate confusion through how it addressed these factors. Nevertheless, Tennessee Code Annotated section 36-1-113(i) requires that "[i]n determining whether termination of parental or guardianship rights is in the best interest of the child, the court shall consider all relevant and child-centered factors applicable to the particular case before the court." The statute then proceeds to set forth the twenty factors delineated above. Tenn. Code Ann. § 36-1-113(i). The trial court can certainly consider how evidentiary deficiencies impact certain factors in a particular case or conclude that a particular factor is not relevant given the circumstances of a particular case. DCS is not free, however, to use its pleadings to amend the statutory requirements set forth by the General Assembly in Tennessee Code Annotated section 36-1-113(i) under which a trial court is required to consider all relevant and child-centered factors applicable to the case before the court in its best interest analysis. DCS may argue a factor or factors are not relevant in a particular case, but the trial court must make its own determination as to relevancy in the particular case – not decline to consider the factor because it was not pleaded.

Errors may occur in a trial court's reasoning as to a particular factor or factors without posing any significant challenge to the ultimate resolution as to the best interest of the child. However, given the sheer breadth of the number of factors not considered in determining whether to terminate parental rights and the improper basis for declining to consider these factors, we conclude that the more prudent course in the present case is to remand. This will allow the trial court to consider the twenty statutorily specified best interest factors in making a determination in accordance with Tennessee Code Annotated section 36-1-113(i).

In re Mercury, 2026 WL 1894531, at *13 (citation omitted).

Here, the parties are not "duel[ing]" over the factors the trial court found inapplicable, as Father has offered no argument as to any specific best interest factor and DCS simply does not analyze the "inapplicable" factors in its brief. But we are no less hindered in our review in this case, as we are required to consider the evidence presented in support of the best interest determination whether appealed or not. *See In re Carrington H.*, 483 S.W.3d at 525–26.

Moreover, DCS's decision to characterize some of the factors as inapplicable in this particular case is, respectfully, baffling. Indeed, Factors (A) and (B) consider the child's well-being as affected by either the termination of parental rights or a change in caretakers of physical environment. *See* Tenn. Code Ann. § 36-1-113(i)(1)(A), (B). We have difficulty

seeing how these factors are not relevant in nearly *every* termination of parental rights case. The proof may show that the termination will benefit the child’s need for stability or a change in caretakers would harm the child, thus favoring termination. Or the proof could show that termination would not further the child’s need for stability and a change in caretakers would not be detrimental to the child, thus weighing against termination. But DCS cannot claim that a factor is inapplicable simply because they cannot meet their burden to demonstrate that a given factor favors termination.¹¹

Likewise, the question of whether the child has made a parent-like attachment to another, such as a foster parent, is incredibly relevant in many cases. *See* Tenn. Code Ann. § 36-1-113(i)(1)(H). And allegations like those in this case—that a child was forced to live in a van without access to running water or food not contaminated with maggots and arrived in DCS custody filthy and with decaying teeth—arguably constitute neglect of the type that factor (N) is meant to address.¹² So we are unable to discern why these factors are inapplicable in this case.

As a result, we employ the same remedy ordered by the *In re Mercury* panel: we vacate the trial court’s best interest determination and remand for the trial court to consider all twenty of the statutory best interest factors. So too do we employ the remand instructions offered by *In re Mercury* panel:

On remand both DCS and [Father] should have an opportunity to present evidence addressing the factors [found to be inapplicable] as well as any other relevant child-centered factor applicable to the case before the court and not previously passed upon by the court. The trial court should then make appropriate findings as to these factors. Having done so, the trial court should proceed with considering its findings as to these factors in conjunction with its previous findings to determine [the child’s] best interest.

In re Mercury, 2026 WL 1894531, at *13.

V. CONCLUSION

The judgment of the Greene County Juvenile Court is affirmed in part, vacated in

¹¹ Depending on the circumstances, this Court has classified a factor for which there was a lack of evidence as, variously, weighing against termination, being neutral, or being inapplicable. *See In re Colten B.*, No. E2024-00653-COA-R3-PT, 2025 WL 252663, at *9–10 (Tenn. Ct. App. Jan. 21, 2025) (including a thorough discussion of the approaches taken in similar situations). Regardless, a factor that is merely neutral or inapplicable cannot be said to weigh in favor of termination.

¹² Not to mention that the parents’ youngest child was found to be the victim of severe abuse due to exposure to illegal drugs in utero. *See* Tenn. Code Ann. § 36-1-113(i)(1)(N) (involving the parent’s abuse of “the child or any other child”). This event, however, apparently occurred following the filing of the termination petition in which this ground was alleged to be inapplicable.

part, and remanded for all further proceedings consistent with this Opinion. Costs of this appeal are taxed to the appellee, the Tennessee Department of Children's Services, for which execution may issue if necessary.

s/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE