IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF: J.H., K.H., T.H.,	)	
Juveniles,	)	
JUVENILE OFFICER,	)	
Respondent,	)	
v.	)	WD87887
J.M.S,	)	Opinion filed: December 16, 2025
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
THE HONORABLE JENNIFER M. PHILLIPS, JUDGE

Before Division One: Janet Sutton, Presiding Judge,
Gary D. Witt , Judge and W. Douglas Thomson, Judge

J.M.S. ("Mother") appeals the judgment of the Jackson County Circuit Court, Family Court Division terminating her parental rights to J.M.H., K.M.H. (the "Twins"), and T.M.H. ("Younger Brother") (collectively the "Children"). The trial court determined that termination was appropriate based on abuse and

neglect and parental unfitness under section 211.447.5,[1] and was in the Children's best interest under 211.447.7. Mother challenges each finding. Finding no error, we affirm.

Factual and Procedural History[2]

Mother is the natural mother of the Children at issue in this appeal. In regard to the instant case,[3] the Children became involved with the Missouri Children's Division (the "Division") on December 26, 2023, when law enforcement and the Division responded to a call received from the Child Abuse and Neglect Hotline. The hotline call was placed by the Children's maternal grandmother ("Grandmother") after she witnessed Mother slap K.M.H. Grandmother had observed Mother slap the Children once previously and warned Mother that if she saw it again, she would call the hotline. When an investigator with the Division ("Investigator") arrived at the family home, Mother was not present. At some point, Mother drove up to the house, but when she saw the Division was there, she drove off. Investigator then knocked on the door and a man with whom Mother

[1] All statutory references are to RSMo 2016 as supplemented through the date the termination petition was filed, unless otherwise indicated.

[2] "When reviewing a judgment terminating parental rights, we view the facts in the light most favorable to the judgment." *In re D.T.H.*, 652 S.W.3d 738, 742 n.2 (Mo. App. W.D. 2022) (quoting *In re D.L.S.*, 606 S.W.3d 217, 220 n.1 (Mo. App. W.D. 2020)).

[3] The Children previously came under the jurisdiction of the court when the Twins were born due to Mother's use of methamphetamine. In that case, the Twins were immediately removed from Mother's care and resided with their maternal aunt for a couple of years. Younger Brother was born approximately one year later, and also immediately came under the jurisdiction of the court. Based on this record, it is unclear if Younger Brother also resided with his maternal aunt for a period of time.

and the Children were living answered.[4] The man allowed Investigator to come inside and view the Children. Investigator found the Children with marks, bruises, and swollen faces. They were in a small closet or room containing a urine stained mattress. The Children told the Investigator that "mommy whooped with the belt[,]" and one of the Twins stated that "mom put the cigarette out on them." Overall, Investigator noted that the Children acted afraid and she was concerned for their safety. Investigator had responded to approximately three or four other hotline calls regarding Mother, which included allegations of physical abuse. Investigator also had concerns regarding substance abuse based on past reports.

When law enforcement officers arrived at the home they identified the Children as having signs of potential abuse and took them to the emergency room. Once there, hospital personnel observed various injuries on the Twins. All three Children later underwent an exam on January 4, 2024, after which the Twins were diagnosed with child physical abuse and Younger Brother was diagnosed with concern for child physical abuse, given he was in the same environment.

The Children came under the jurisdiction of the court on January 4, 2024, when the juvenile officer filed an abuse and neglect petition for each child (the "underlying juvenile action").[5] On March 14, 2024, the juvenile officer filed a

[4] While the Children all share the same natural father, at this point in time, the Children's father does not appear to be present in their lives.

[5] We have very limited facts before us regarding the underlying juvenile actions. While the trial court took express notice of the underlying juvenile proceedings in this case (both those initiated in 2023 and the initial cases at the time the Children were born), a record of those proceedings has not been included in the record on appeal. Thus, we

petition for termination of parental rights ("TPR") against Mother for each child. On May 30, 2024, Mother entered into a written stipulation in the underlying juvenile action that Count I of the juvenile officer's second amended petition "could be proven by clear, cogent and convincing evidence and waived her right to trial on the following allegations," restated below:

> The [C]hildren . . . are without the proper care, custody and support necessary for their well-being and are subject to the jurisdiction of this Court pursuant to 211.031.1 RSMO, in that the [Twins] suffered severe and recurrent acts of physical abuse while in the care and custody of [M]other. Specifically, on or about December 24, 2023, the mother was observed kicking, backhanding and tossing [K.M.H.] around by his arm. Law Enforcement and Children's Division responded to the family home and observed all three children covered in various scratches and bruises. In addition, the [C]hildren were found to be sleeping on urine stained mattresses, in a closet, in the family home. All three children were subsequently transported to Children's Mercy Hospital (CMH) and on or about December 26, 2023 medical professionals diagnosed all three children with Child Physical Abuse. The [C]hildren later reported to Children's Division [M]other has [J.M.H. and Younger Brother] "fight" K.M.H. so that [Mother] does not get in trouble.
>
> As disclosed by the [C]hildren in their forensic interviews, the Mother has a history of physically abusing the children, including by:
>
> - striking the [C]hildren with a belt on their body and head leaving marks / and or bruises;

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rely on the trial court's recitation of the allegations contained in the petition and summary of the procedural history of the matter, as reflected in the trial court's judgment.

Rule 81.12(a) requires that the record on appeal contain "all of the record, proceedings and evidence necessary to the determination of all questions to be presented" on appeal. It is the appellant's responsibility to prepare the legal file. Rule 81.12(b). We consider these omissions from the legal file favorable to the trial court's ruling and unfavorable to Mother. *In re K.G.K.*, 709 S.W.3d 446, 452 n.7 (Mo. App. S.D. 2025); *Gross v. Schmitt*, 709 S.W.3d 347, 354 (Mo. App. W.D. 2025).

All Rule references are to the Missouri Supreme Court Rules (2025), unless otherwise indicated.

- holding [K.M.H.'s] head underwater in the toilet, preventing him from breathing;

- putting out a lit cigarette on [J.M.H.'s] ear, resulting in marks; and

- holding [J.M.H.'s] head underwater in the bathtub preventing him from breathing.

> [M]other has been charged with two (2) counts of Abuse and Neglect of a Child-Serious Emotional or Physical Injury-No Sexual Contact (Class B Felony) and two counts of Abuse or Neglect of a child-No Sexual Contact Class D Felony in Case Number 2416-CR00855-01. The criminal matter is currently set for a Pre-Trial conference on June 26, 2024. Further, in a police interview [M]other admitted to abusing her [C]hildren with a belt in the face and body as well as admitting that other child abuse could have happened as the [M]other was blacked out using drugs while the [C]hildren were in her care and could not remember. [M]other has not addressed the physical abuse to the children such that their safety cannot be ensured in her care at this time. Moreover; the [C]hildren were previously under the jurisdiction of this Court in [c]ase numbers 1716-JU001370, 1716-JU001369, and 1816-JU001319, due in part, to [M]other's substance abuse. [M]other currently has three pending charges for Endangering the Welfare of a Child, in case numbers 210263640, 210263490 and 210263638, after the [C]hildren were located in a car, with the windows down, while [M]other was asleep in the driver's seat. [M]other's actions continually place the [C]hildren at risk of further harm or neglect and the safety of the [C]hildren cannot be ensured absent the intervention of this Court.[6]

The TPR matter proceeded to trial, which was held on November 4, 12, and 14, 2024. At the time of trial, Mother was incarcerated pending charges for felony child abuse. The trial court heard testimony from the following individuals: a doctor at Children's Mercy Hospital who serves as director of the Foster Care Clinic

[6] Count II of the juvenile officer's second amended petition in the underlying juvenile action was also sustained against the Children's father, however he is not a party to this appeal.

("Doctor"), a detective with the Independence Police Department ("Detective"), Investigator, the foster care case manager assigned to the Children ("Case Manager"), the lead forensic interviewer with the Child Protection Center ("Forensic Interviewer"), Mother, Grandmother, and a clinical psychologist ("Psychologist"). Several exhibits were admitted into evidence including but not limited to: medical records, the Children's forensic interviews, photographs of the Children's injuries, and Mother's psychological evaluation.[7]

On January 13, 2025, the trial court entered its judgment terminating Mother's parental rights to the Children. The trial court found that termination was appropriate on the bases of abuse and neglect under section 211.447.5(2) and parental unfitness under section 211.447.5(5)(a). It also determined termination was in the Children's best interest under section 211.447.7. Mother appeals. Additional facts will be provided as necessary to address the parties' arguments.[8]

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[7] None of these exhibits are contained in our record on appeal. These omissions represent a significant amount of evidence which under our standard of review supports the trial court's judgment. Mother ultimately asks this Court to find the trial court's judgment is against the weight of the evidence without providing us with all of the evidence which was before the trial court. Rule 81.16(a) tasks the appellant with filing exhibits "necessary to the determination of any point relied on[.]" "When exhibits necessary to the determination of a point on appeal are omitted from the record, such evidentiary omissions will be taken as favorable to the trial court's ruling and unfavorable to the appeal." *D.T.H.*, 652 S.W.3d at 751 (internal quotation marks and citation omitted); *In re Est. of L.G.T.*, 442 S.W.3d 96, 106 n.9 (Mo. App. S.D. 2014).

[8] We note that both Mother and the juvenile officer include citations in their brief to the appendix. This is improper as all page references must be to the record on appeal. Rule 84.04(c), (e). The "[a]ppendix is not part of the legal file or otherwise part of the record on appeal." *In re T.C.T.*, 165 S.W.3d 529, 531 n.2 (Mo. App. W.D. 2005). "[T]he authorized record on appeal is the firm boundary of our consideration—materials cannot be shoehorned into the record via the appendix, and such attempts may be stricken by the reviewing court." *State ex rel. Hawley v. Allen*, 536 S.W.3d 380, 383 (Mo. App. S.D.

Standard of Review

"Section 211.477.6 establishes the two factors that must be found in order to terminate parental rights." *In re B.H., III*, 527 S.W.3d 167, 171 (Mo. App. W.D. 2017). First, "the trial court must find clear, cogent, and convincing evidence to support at least one of the statutory grounds set forth in [s]ection 211.447." *In re K.M.A.-B.*, 493 S.W.3d 457, 467 (Mo. App. E.D. 2016) (citing *In re K.A.W.*, 133 S.W.3d 1, 9 (Mo. banc 2004)). "'Clear, cogent, and convincing evidence' is that which 'instantly tilts the scales in favor of termination when weighed against the evidence in opposition and the finder of fact is left with the abiding conviction that the evidence is true.'" *In re B.K.B.*, 688 S.W.3d 579, 586 (Mo. App. W.D. 2024) (quoting *K.A.W.*, 133 S.W.3d at 12). "Proof under this standard of only one of the statutory grounds alleged is sufficient to sustain the judgment." *T.T.G. v. K.S.G.*, 530 S.W.3d 489, 493 (Mo. banc 2017) (quoting *In re P.L.O.*, 131 S.W.3d 782, 789 (Mo. banc 2004)). "This Court reviews whether clear, cogent, and convincing evidence was presented to support a statutory ground for terminating parental rights under *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)." *In re J.G.W.*, 613 S.W.3d 474, 479 (Mo. App. E.D. 2020) (quoting *J.A.R. v. D.G.R.*, 426 S.W.3d 624, 626 (Mo. banc 2014)). "Accordingly, we will affirm the trial court's judgment 'unless there is no substantial evidence to support it, it is against the weight of the

2018) (citation omitted). As discussed in context below, we do not consider those documents contained only in the appendix.

evidence, or it erroneously declares or applies the law.'" *Id.* (quoting *J.A.R.*, 426 S.W.3d at 626).

Second, "[o]nce one of the grounds for termination has been shown under section 211.447, the circuit court also must consider whether termination is in the best interests of the child." *T.T.G.*, 530 S.W.3d at 493 (citing *P.L.O.*, 131 S.W.3d at 789). "At the trial level, the standard of proof for this best interest inquiry is a preponderance of the evidence; on appeal, the standard of review is abuse of discretion." *In re J.P.B.*, 509 S.W.3d 84, 90 (Mo. banc 2017) (quoting *J.A.R.*, 426 S.W.3d at 626).

"In reviewing questions of fact, the reviewing court is to recognize that the circuit court is free to disbelieve any, all, or none of the evidence, and it is not the reviewing appellate court's role to re-evaluate the evidence through its own perspective." *Id.* (quoting *J.A.R.*, 426 S.W.3d at 627). "Termination of parental rights is an exercise of awesome power, and therefore we review such cases closely." *In re K.N.D.*, 649 S.W.3d 54, 60 (Mo. App. W.D. 2022) (quoting *In re D.L.S.*, 606 S.W.3d 217, 222 (Mo. App. W.D. 2020)).

Analysis

Mother raises four points on appeal. In Point I, Mother argues the trial court abused its discretion by showing bias against mother. In Points II and III, Mother challenges the statutory grounds under which the trial court terminated her parental rights. Point IV challenges the trial court's best interest determination.

There Was No Bias Against Mother

In Point I, Mother essentially argues the trial court was biased against her because the same judge presided over the underlying juvenile actions and the TPR trial. She alleges that because the permanency goal in the juvenile cases was changed from reunification to termination of parental rights, the judge must have prematurely determined, prior to the TPR trial, that Mother's parental rights should be terminated.

Mother acknowledges that she did not file a motion for change of judge or otherwise present this issue to the trial court and thus preserve it for our review. She then incorrectly asserts that her claim is subject to an abuse of discretion standard of review. However, because the matter is not preserved, we have the discretion to review her claim, if at all, for plain error. Rule 84.13(c). Because the termination of parental rights is an extraordinary power, we elect to do so here. "Plain error review requires a two-prong analysis to determine: (1) whether there was an error that is evident, obvious, and clear; and (2) whether a manifest injustice or miscarriage of justice occurred as a result of that error." *J.N.W. v. Juv. Officer*, 643 S.W.3d 618, 638 (Mo. App. W.D. 2022) (citation omitted).

"It is presumed that a judge acts with honesty and integrity and will not preside over a hearing in which the judge cannot be impartial." *Anderson v. State*, 402 S.W.3d 86, 92 (Mo. banc 2013) (citation omitted). A judge "should not conclude in advance of the end of the trial what he will do at that time. For this is to adjudge the controversy without hearing the evidence that ought to resolve it."

In re K.R.J.B., 228 S.W.3d 611, 622 (Mo. App. S.D. 2007) (quoting *Rutlader v. Rutlader*, 411 S.W.2d 826, 831 (Mo. App. 1967)). "Rule 2–2.11(A) directs that a judge shall recuse 'in any proceeding in which the judge's impartiality might reasonably be questioned.'" *J.P.B.*, 509 S.W.3d at 98 (quoting Rule 2–2.11(A)). The Rule requires recusal when "a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court." *Anderson*, 402 S.W.3d at 92.

The Missouri Supreme Court has considered and rejected a claim analogous to Mother's. In *In re J.P.B.*, the father claimed the trial judge assigned to his TPR trial had prejudged the matter of termination because the same judge overruled his motion for placement of Child with grandmother. 509 S.W.3d at 88. The Court summarily denied this claim stating, "Such a circumstance does not require recusal. Rulings against a party do not establish bias or prejudice on the part of a trial judge." *Id.* at 98 (internal quotation marks and citation omitted). Further, in *In re C.L.L.*, the father claimed the trial judge in his TPR case was biased against him because the same judge presided over his trial for the rape of the child at issue. 776 S.W.2d 476, 477 (Mo. App. E.D. 1989). The court similarly found no bias because "[t]he fact that a judge has previously made adverse rulings against a defendant . . . does not establish prejudice which would require the trial judge to disqualify himself." *Id.* (citation omitted). The court noted that any judge would have learned of the father's conviction. *Id.*

Here, the adverse ruling against Mother is similar and does not in and of itself establish prejudice nor a reason for recusal. Mother only points us to the permanency goal in the underlying juvenile action, and directs us to no further evidence to support her claim of error in this regard.[9] Accordingly, there is no evident, obvious, and clear error, nor is there a manifest injustice or miscarriage of justice such that plain error is established. No bias was present in this case simply because the trial judge previously ruled against Mother. The trial judge's failure to *sue sponte* recuse herself was not plain error. Point I is denied.

Abuse and Neglect: 211.447.5(2)

In Point II, Mother alleges the trial court erred in terminating her parental rights under section 211.447.5(2) because the trial court's findings related to abuse

[9] We note that the order from the underlying juvenile actions which Mother references is not in our record on appeal. Instead, Mother has only included it in her appendix. Again, "an [a]ppendix is not part of the legal file or otherwise part of the record on appeal." *T.C.T.*, 165 S.W.3d at 531 n.2. Even if we take Mother's representation of the order as accurate, however, the crux of Mother's bias argument is that, in the underlying juvenile actions, the judge ordered termination of parental rights as the permanency plan rather than one of the permanency plan options delineated in Rule 124.09(c): (1) reunification, (2) adoption, (3) guardianship, (4) placement with a fit and willing relative, or (5) placement with another planned permanent living arrangement. But, termination of parental rights is one step in a permanency plan aimed at adoption. *See* Rule 124.09(c)(2)(A) ("if the permanency plan in effect is adoption: (A) whether the parents' rights have been terminated"). Regardless, we find numerous cases where termination of parental rights was identified as the permanency goal as it is naturally a step in the process which leads to adoption, and it appears that in practice juvenile courts recognize these as going hand in hand. *See, e.g.*, *T.T.G.*, 530 S.W.3d at 491 ("The permanency plan is termination of parental rights and adoption[.]"); *In re E.P.*, 545 S.W.3d 898, 900 (Mo. App. W.D. 2018) ("[T]he permanency goal was changed to termination of parental rights."); *In re M.A.M.*, 500 S.W.3d 347, 353 (Mo. App. S.D. 2016) ("[T]he permanency planning goal was changed from reunification with Mother to termination of parental rights."). That said, trial courts would be well-advised to utilize only one of the five Rule 124.09(c) permanency plan options.

and neglect were unsupported by the weight of the evidence. To terminate parental rights based on the abuse and neglect ground, the trial court is required to consider and make findings on four factors. Section 211.447.5(2)(a)-(d). "Those factors can be summarized as (a) a mental condition, (b) a chemical dependence, (c) a severe or recurrent acts of abuse, and (d) repeated or continuous failure by the parent, although physically or financially able, to provide for the child." *Mo. Dep't of Soc. Servs., Children's Div. v. B.T.W.*, 422 S.W.3d 381, 392 (Mo. App. W.D. 2013) (citing Section 211.447.5(2)(a)-(d)). "Factors (a) though (d) 'are simply categories of evidence to be considered along with other relevant evidence, rather than separate grounds for termination in and of themselves.'" *T.T.G.*, 530 S.W.3d at 495 (quoting *In re K.M.C., III*, 223 S.W.3d 916, 923 (Mo. App. S.D. 2007)). "However, proof of any one of these factors is sufficient to support termination under [s]ection 211.447.5(2)." *K.N.D.*, 649 S.W.3d at 61 (citing *D.L.S.*, 606 S.W.3d at 226).

Here, the trial court found no evidence existed under subsection (a), while subsection (b), (c), and (d) each supported termination. But, the primary reason for termination in this case was Mother's severe physical abuse of the Children over time, as discussed under subsection (c). Mother's point raises only an against-the-weight-of-the-evidence challenge. "The against-the-weight-of-the-evidence standard serves only as a check on a circuit court's potential abuse of power in weighing the evidence, and an appellate court will reverse only in rare cases, when it has a firm belief that the decree or judgment is wrong." *S.S.S. v. C.V.S.*, 529

S.W.3d 811, 816 (Mo. banc 2017) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 206 (Mo. banc 2014)).

The trial court's decision is not against the weight of the evidence. The court heard extensive testimony regarding the physical abuse the Twins suffered at the hands of Mother. First, Doctor testified regarding her physical evaluation of the Children performed on January 4, 2024, a week after they were removed from Mother's custody for the second time. Based on K.M.H.'s exam, Doctor found he suffered "multiple injuries to the face, neck, back, chest, some of which were pattern injuries and in protected areas, that was diagnostic of child physical abuse." She explained that a pattern injury raises concerns the injury was inflicted with an object. Doctor also testified regarding photos taken in the emergency room on December 26, 2023, the day of the hotline call. These photos showed K.M.H. had bruising to his right eye; "several abrasions to both sides of the face, nose, [and] lip"; "abrasions to his neck and ear lobe"; "significant injury to both sides of the face"; "old scarring to his chin"; and a large circular pattern scar to the back of his right leg. The face, neck, and ear are not places typically injured by accident. His right ear, behind his right ear, and the right side of his neck showed *both* old scarring *and* new injury. Doctor also noted what appeared to be fingernail abrasions and "three pattern marks that could be consistent with grabbing" on his neck. He had bruising and old scars to his bottom, the side of his hip, and his lateral back. The scarring would have occurred at a different time than the bruising. Doctor further stated K.M.H. disclosed "being hit by a flexible object and

that disclosure was consistent with the skin findings that we saw on [the] exam." At the emergency room his liver was inflamed in a manner consistent with being kicked. Overall, K.M.H.'s injuries were "too numerous to count."

As to J.M.H., Doctor likewise concluded that "given the totality of his injuries to his face, neck, and then [the] pattern injury to his chest, it was diagnostic of child physical abuse." J.M.H.'s emergency room photos revealed he had an abrasion to the earlobe; "a scar or a healing superficial abrasion that goes from his mid-face to his lateral cheek"; "an abrasion to the left cheek and then some scarring down by his lip and then as well on his neck"; scarring to his lower back; and "several healing abrasions to the upper back[,] . . . the lateral left back[,] and then to the back of his neck." A facial injury across two planes of the body is not consistent with accidental injury and causes concern for inflicted injury. J.M.H. also had patterned scarring to his mid-chest and upper left chest. While Doctor could not affirmatively detail the cause of the scar, she stated that J.M.H. had disclosed being hit with a belt buckle and the scar was consistent with such an injury. The mid-chest is also an unusual place for accidental injury. Overall, she found the "totality of his injuries [to be] concerning." The amount of injuries present on the Twins "would be inconsistent with a child causing them."

Doctor also examined Younger Brother and discovered "a linear scar to his neck and his lateral arm." Both of these injuries were non-specific such that Doctor could not definitively diagnose child abuse. Younger Brother was diagnosed with concern for abuse given that he was in the same environment as the Twins.

Second, Detective testified as to his work with Mother and Children. He stated that he spoke with Mother during his investigation into the child abuse allegations. Mother relayed to him that she engaged in child abuse[10] of the Children using an "open hand hit to the face, as well as using a belt, [and] a belt buckle on the body and on the face." He testified that criminal charges for child physical abuse followed from his investigation.

Third, Investigator testified as to her response to the December 26, 2023 hotline call. When she saw the Children at their home that night she observed "marks, bruises, [and] swollen faces." The Children were in a small room, later described as a walk-in closet, on a urine stained mattress. The Children told her that "mommy whooped with the belt," and that "mom put the cigarette out on them." K.M.H. further disclosed that "mommy put his head in the toilet" and the tub such that water was coming out of his nose. Investigator described mom as having "a long history with [the] Children's Division," including past hotline calls for alleged physical abuse.

Fourth, Case Manager testified as to the Twins disclosures to her. They stated mom would put their head[s] in the toilet, smack them, punch them, kick them until they passed out, and beat them with belts. When Case Manager visited the Children in their placement home, J.M.H. would run and hide from her because he was afraid Case Manager would take him back to Mother. Case

[10] Detective does not specifically recall if Mother described her actions as "abuse" or "discipline."

Manager further discussed her difficulties in taking the Children on their first supervised visit with Mother as the Twins "were kicking and screaming and didn't want to get in the car." J.M.H. stated mom is mean and he is scared of her. The Twins expressed that they were scared for Younger Brother to attend visits with Mother alone. Case Manager was aware that Mother had the Twins "fight each other so that [Mother] would not get in trouble[,]" presumptively as an explanation for the injuries inflicted upon them by her. Case Manager recommended terminating parental rights to prevent the abuse, or something worse, from happening again and testified that no services could be offered that would bring about reunification.

Fifth, Forensic Interviewer interviewed the Children. She asked K.M.H. about the marks and scars on his face and behind his ear. K.M.H.

> disclosed that he had gotten those from his mom, that he had been hit with a belt, and that when she hit with the belt that she would hit with the silver part. He also disclosed having a cord tied around his neck, and that his head would be held into water in the toilet.

When Mother put his head in the toilet, she would hold him up by his feet. K.M.H. also disclosed that J.M.H. would get held in the water and hit with the belt. Similarly, J.M.H. disclosed being hit with belts and a metal pole and being held underwater. When he told Mother he could not breath, Mother told J.M.H. to "shut up." J.M.H. said that one time Mother got "mad because there was pee in the toilet, and that she picked up [K.M.H.] and put his face in the toilet that had pee in it." He further told Forensic Interviewer that he had an injury on the thigh where mom punched him and that Mother had kicked him in the stomach. K.M.H.

would also get kicked. J.M.H stated he had a scar from the belt buckle, Mother had put a lit cigarette out on him, and that Mother choked him and K.M.H against the wall. J.M.H. was afraid of Mother and told Forensic Interviewer that, aside from what he did disclose, there were things "he didn't want to talk about because they were bad and he was afraid that people would hate him if he talked about it."

When the Forensic Interviewer talked to Younger Brother, he disclosed that he was spanked by Mother, but the Twins "got hit the worst, and that they would get hit all over their bodies." Younger Brother observed this abuse occurring on more than one occasion. Notably, Forensic Interviewer had no concerns the Children were being coached to testify a certain way.

Sixth, Grandmother testified that she did not regret making the hotline call. Grandmother did not wish to be around Mother in the six months leading up to the December 2023 hotline call because she suspected Mother was using methamphetamine and Xanax, which "makes her not a nice person." Grandmother described Mother as "yelling all the time" and wanted the Children away from that. Overall, Grandmother did not believe the Children should be placed with Mother until she received further help.

Finally, Psychologist testified as to his evaluation of Mother. He testified that Mother had previously had between 15-20 different jobs, but was unemployed from December 2023 until he saw her in May 2024. Mother's criminal history involved about 10 different arrests. Mother told Psychologist that she first became involved with the Division due to her methamphetamine use. Psychologist

described Mother as having below average knowledge of the Children's developmental milestones, a below average level of empathy for their feelings, and a stronger than average belief in the value of physical punishment. This causes concern for abuse and neglect.

In the underlying juvenile actions, Mother stipulated that the majority of these events could be proven by clear, cogent, and convincing evidence. Mother's appellate brief likewise does not dispute that Mother committed acts of abuse against the Twins in the past. Instead, she argues that "the court erred by failing to consider Mother's steps toward reformation of her behavior." Specifically, Mother asserts the trial court "ignored the testimony and evidence about the steps Mother had taken to reform her behavior, including taking anger management, discipline, and water safety courses as well as submitting to regular drug testing." As an initial note, Mother's argument on this allegation of error is wholly underdeveloped. It is a page and a half in length, fails to reference *In re K.A.W.*, the Missouri Supreme Court case discussing the future harm analysis, and summarizes past cases without explaining how they relate to the facts of the case at hand. Nevertheless, we attempt to address Mother's argument to the extent we can discern it.

The Missouri Supreme Court in *In re K.A.W.* held that,

> An essential part of any determination whether to terminate parental rights is whether, considered at the time of the termination and looking to the future, the child would be harmed by a continued relationship with the parent. A prospective analysis is required to determine whether grounds exist and what is in the best interests of the child for the reasonably foreseeable future.

133 S.W.3d at 9. The Court continued, "it is insufficient merely to point to past acts, note that they resulted in abuse or neglect and then terminate parental rights." *Id.* (citing *In re C.L.W.*, 115 S.W.3d 354, 356 (Mo. App. S.D. 2003)). "Past behavior can support grounds for termination, but only if it is convincingly linked to predicted future behavior." *Id.* at 9-10.

"[T]he *K.A.W.* court developed, described, and discussed the future harm analysis as an integral part of the trial court's *factual* determinations of the existence of a ground for termination and of the child's best interest, not as a stand-alone element of termination requiring a separate explicit finding." *A.R.F. v. V.H.F.*, 593 S.W.3d 686, 688 (Mo. App. S.D. 2020). "As long as the relevant termination ground was supported by substantial evidence supporting the potential for future harm, . . . *K.A.W.*'s requirements have been met." *In re N.D.B.*, 623 S.W.3d 223, 231 n.7 (Mo. App. S.D. 2021) (cleaned up) (quoting *A.R.F.*, 593 S.W.3d at 689).

When a child has experienced severe and recurrent acts of abuse, our Court has recognized a presumption of future harm. "[L]ogic and life experiences dictate the presumption that an unreformed parent will continue to be a threat to the welfare of the child for the foreseeable future." *In re T.M.E.*, 169 S.W.3d 581, 588 (Mo. App. W.D. 2005). When abuse is severe and recurring, not isolated to a particular incident, and there are no factors to suggest the parent has reformed, we can presume, "in the absence of contrary evidence, that [Mother] is not rehabilitated in [her] ability to function as a parent." *Id.*; *accord In re J.L.G.*, 399

S.W.3d 48, 61-63 (Mo. App. S.D. 2013) (applying the presumption when "there [were] no facts, conduct or factors presented here that would suggest that [Father] has repented and reformed his conduct to discontinue physical and emotional abuse on the Children"); *In re K.R.G.*, 248 S.W.3d 651, 653 (Mo. App. S.D. 2008) (same).[11]

Our record contains very little evidence of any reformative steps taken by mother.[12] Mother represents she participated to some extent in individual therapy, discipline training, a water safety course, and an anger management class. She attended individual therapy from the end of February 2024 until April or May 2024, apparently took a break, and then resumed therapy at some later point. While Mother completed anger management counseling when incarcerated, Grandmother testified that "she could probably use another one to get it to stick." As to the water safety course, we fail to understand its significance and note such a course is unnecessary to know a child's head should not be held underwater.

[11] We note that section 211.183.7 states the Division "shall not be required to make reasonable efforts" to return the child to the home "if a court of competent jurisdiction has determined that: (1) The parent has subjected the child to a severe act or recurrent acts of physical, emotional or sexual abuse toward the child[.]" Such a finding could have been supported by Mother's written stipulation in the underlying juvenile cases where Mother acknowledged that "the [Twins] suffered severe and recurrent acts of physical abuse while in the care and custody of [M]other." We do not have the record from the underlying juvenile case, and thus do not know if this subsection was considered by the trial court in the underlying juvenile proceedings.

[12] As noted, we do not benefit from the underlying juvenile records. We presume this omission from the record on appeal supports the trial court's judgment. *K.G.K.*, 709 S.W.3d at 452 n.7.

These actions are de minimis compared to the acts of reform present in the cases to which Mother directs us, which decline to apply the presumption that future harm is likely to occur. For example, in *In re M.A.M.*, the appellant mother was not the abuser but had failed to report abuse of her children at the hands of their father. 500 S.W.3d 347, 353 (Mo. App. S.D. 2016). The court declined to presume mother's future dangerousness because she had divorced and moved away from father, did not show an inclination to enter another abusive relationship, and chose to obtain therapy. *Id.* at 358. In *In re E.D.C.*, the appellant mother was found to have committed severe and recurrent physical abuse to another child in E.D.C.'s household. 499 S.W.3d 766, 767-69 (Mo. App. E.D. 2016). The court found the record did not support a presumption that mother would abuse E.D.C. in the future because mother had fully complied with her service plan, the only assessment that had been conducted of her was over two years old by the time of trial, and "she ultimately accepted responsibility for how the children came to be under the court's jurisdiction." *Id.* at 768, 770-71. Finally, Mother cites to *In re A.M.R.*, which is also distinguishable. 673 S.W.3d 864, 873 (Mo. App. W.D. 2023). There, appellant mother denied any knowledge that the children were being abused and took appropriate action to ensure her children received medical care. *Id.* at 870, 872-83. The record contained evidence that father, not mother, was the abuser. *Id.* at 872. Thus, mother separated herself from father and engaged in parenting services. *Id.* at 873. The trial court found

mother's testimony credible and declined to termination parental rights, a finding to which the appellate court deferred. *Id.*

M.A.M. and *A.M.R.* carry little weight here because the appellant in those cases was not the abuser. Further, while our record may contain de minimis actions of reform, it contains significant evidence that Mother has not reformed and still exhibits aggressive behavior. Primarily, Mother has not accepted any accountability for the abuse of her Children. She told Detective she was unaware of the Children having many of their injuries. Investigator testified Mother had no explanation for the injuries on the Children. When Mother provided an explanation, it was only that the Children fought each other or played sports, but she later testified these fights never led to significant injury. Mother consistently told Case Manager the Children were never abused, she "doesn't understand why her Children are afraid of her," and she generally denies everything. Mother testified she did not admit anything to Detective, she never saw the injuries in person, she never took them to the hospital because they never had any injuries prior to the hotline call, the children are in care because of substance abuse issues and nothing else, and the previous testimony in this case was simply not true. She further testified that she did not choose to take the discipline and water safety courses, they were simply the only option available and she wanted to do something to get her kids back. The individual therapy that Mother did participate in did not address her abuse of the Children because she was generally in denial and had not yet advanced to talking to her therapist about such matters. During

her psychological evaluation, Mother never took responsibility for any of the Children's injuries, and instead told the psychologist that her family had falsified reports. Finally, Mother did not recognize that the court had previously found she abused her Children in the underlying juvenile action.

Next, Mother continued to exhibit aggressive behavior in the months leading up to trial. She often threatened Case Manager, who testified:

> [Mother] has told me that I hope you don't have kids. Oh, you think I'm threatening you now? Just wait and see. She's threatened to get me fired. She's threatened to have my job. She's threatened to report me to the person that's over DCFS. The threats go on and on.

Further, during one of Mother's virtual visits with the Children she raised her voice at them because they wanted to play instead of talk to her. Mother told the Children they were going to sit down, talk to her, and listen. This upset the Children such that J.M.H. was afraid and did not want to be on the phone anymore. K.M.H. was already not on the phone because he didn't want to come. Younger Brother said Mother was mean and he didn't want to talk anymore. When Case Manager tried to redirect Mother, Mother "went off" on her, and told Case Manager that she is their mom and Case Manager cannot "tell her what to do with her children." Case Manager was forced to end the call.

This evidence distinguishes Mother's case from those where the abuser had admitted their wrongdoing and taken meaningful steps to reform their behavior. Because the record lacks any evidence that Mother has acknowledged the harm she presents to her Children and acted to reform her behavior, we presume that she is not rehabilitated and continues to pose a threat to her Children. *See In re S.R.H.*,

589 S.W.3d 62, 71 (Mo. App. E.D. 2019) (applying the presumption of future harm where mother had not acknowledged or treated her mental condition); *J.L.G.*, 399 S.W.3d at 61-62 (noting no services could be provided that would reduce the risk of father abusing the children because he denied causing the injuries).

The trial court found Mother "committed a severe act or recurrent acts of physical, emotional, or sexual abuse toward the [C]hildren[,]" and succinctly summarized the evidence presented above. We are not required to return the Children to a dangerous situation and allow them to be harmed yet again before we take steps to protect them. *See In re M.J.*, 539 S.W.3d 82, 86 (Mo. App. W.D. 2017). "Isolated abusive acts or conditions may not support termination when considered individually, but if they form a consistent pattern, are recurrent or are repeated, they can, when considered in combination, rise to the level of abuse and support termination." *K.A.W.*, 133 S.W.3d at 11. Substantial evidence exists supporting the risk of severe future harm if the Children were returned to Mother.

Finally, Mother takes issue with the fact that the trial court does not reference Younger Brother in its abuse and neglect findings. This is inconsequential. Section 211.447.5(2)(c) "does not require that the abuse be inflicted specifically on the child who is the subject of the petition." *K.N.D.*, 649 S.W.3d at 63. Instead, the statute states that "evidence of physical and emotional abuse 'toward the child *or any child in the family* by the parent' supports termination on the ground of abuse." *Id.* (quoting section 211.447.5(2)(c)). The

extensive evidence of abuse incurred by the Twins is sufficient to terminate Mother's parental rights as to Younger Brother.

The trial court's findings of abuse and neglect based on section 211.447.5(2)(c) are not against the weight of the evidence. Further, we are not left with a firm belief that the trial court's decision is wrong. *See S.S.S.*, 529 S.W.3d at 816. Because the evidence of abuse under factor (c) is alone sufficient to support termination under 211.447.5(2), we do not address Mother's remaining claims in Point II that the evidence supporting factor (b) and (d) is also unsupported by the weight of the evidence. *In re C.E.B.*, 565 S.W.3d 207, 218 (Mo. App. S.D. 2018); *K.N.D.*, 649 S.W.3d at 64; *B.H., III*, 527 S.W.3d at 175. Mother's Point II is denied. For the same reason, we decline to address Mother's Point III regarding parental unfitness, as it is moot.

Best Interest Determination: 211.447.7

Finally, in Point IV Mother argues the trial court erred by finding that termination of parental rights was in the best interest of the Children. As noted, once a statutory ground for termination has been established, the trial court must next determine whether termination is in the best interest of the child. *T.T.G.*, 530 S.W.3d at 493 (citation omitted). "This is a subjective assessment based on the totality of the circumstances, and we review for an abuse of discretion." *B.T.W.*, 422 S.W.3d at 395 (internal quotation marks and citation omitted). "A trial court abuses its discretion when its ruling is clearly against the logic of the circumstances and [is] so unreasonable and arbitrary so as to shock the sense of justice and

indicate a lack of careful, deliberate consideration." *B.K.B.*, 688 S.W.3d at 587 (citing *J.P.B.*, 509 S.W.3d at 96). "[I]t is the trial court's duty to weigh the evidence presented relating to best interest, and this Court will not reweigh that evidence." *C.E.B.*, 565 S.W.3d at 218 (citation omitted). "We also defer to the trial court's ability to determine the witnesses' credibility and to choose between conflicting evidence." *Id.* (citation omitted).

To determine that termination of parental rights is in the best interest of the child, the trial court must consider and make findings on the seven factors laid out in section 211.447.7, where appropriate and applicable.[13] "There is no requirement, statutory or otherwise, that all [best interest] factors must be negated before termination can take place; likewise, there is no minimum number of

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[13] The best interest factors are:
(1) The emotional ties to the birth parent;
(2) The extent to which the parent has maintained regular visitation or other contact with the child;
(3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;
(4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;
(5) The parent's disinterest in or lack of commitment to the child;
(6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;
(7) Deliberate acts of the parent or acts of another of which the parent knew or should have known that subjects the child to a substantial risk of physical or mental harm.
Section 211.447.7(1)-(7).

negative factors necessary for termination." *B.K.B.*, 688 S.W.3d at 588 (alteration in original) (quoting *In re A.M.W.*, 652 S.W.3d 225, 244 (Mo. App. W.D. 2022)).

Here, the trial court made findings as to all seven factors, which can be briefly summarized as follows:

a. The Children have some emotional ties to Mother, although the bond has deteriorated due to Mother's incarceration and her physical abuse of the Children. The Twins have expressed Mother is mean, they fear attending visits with her, and they fear they will be unable to protect Younger Brother when he attends visits.
b. Mother was often unable to attend visitation due to her incarceration. She was out on bond and attended visitation for a short time, however her bond was revoked and she is currently incarcerated.
c. Mother has provided minimal support that is token in nature. She has not provided financial support outside of gifts for birthdays and holidays, as well as some snacks and meals.
d. "Additional services would not be likely to bring about lasting parental adjustment enabling a return of the [C]hildren to [Mother] within an ascertainable period of time." Mother does not have housing, is incarcerated pending trial, needs substance abuse treatment, and needs to obtain employment.

e. "[M]other has shown a lack of commitment to the children in that she has failed to engage in substance abuse treatment and to consistently engage in reunification services, other than supervised visitation."

f. "At the time of this hearing [M]other was incarcerated in the Jackson County Detention Center, with pending charges for felony child abuse."

g. Mother committed deliberate acts which subjected the Children to a substantial risk of physical or mental harm. The trial court summarized the acts of abuse committed by Mother above and concluded, "There is significant evidence that the [C]hildren experienced physical abuse and harm by [M]other."

The trial court concluded, by a preponderance of the evidence, that it is in the best interest of the Children that all parental rights of Mother be terminated.

Mother's argument largely focuses on the factors she deems favorable to her position while ignoring the factors that best supports the trial court's decision. She attacks specific findings within each factor and fails to engage in the required totality of the circumstances analysis. *See In re G.G.B.*, 394 S.W.3d 457, 474 (Mo. App. E.D. 2013) (noting that "[a]lthough father attacks specific findings, the findings on factors (1) through (7) are merely an aid to the 'best interests' determination" and that "father has not made a totality of the circumstances argument about the best interests of the children, thus failing to preserve the ultimate issue of best interests for review"). In doing so, she ignores testimony favorable to the trial court's findings thus disregarding our standard of review. Instead, she recites evidence and suggests inferences she deems favorable to her

position. *See A.M.W.*, 652 S.W.3d at 245. We address Mother's more developed arguments.

In regard to factor three, Mother argues she financially provided for her Children until they were removed from her custody. That is only half of the issue. "[A] parent has the responsibility to provide financial support even while the child is in the custody of the Children's Division and even if no support has been ordered." *In re E.R.M.S.*, 667 S.W.3d 239, 254 (Mo. App. E.D. 2023) (quoting *G.G.B.*, 394 S.W.3d at 474). Mother does not acknowledge this requirement.

In regard to factor four and five, Mother largely takes issue with the fact that the trial court allegedly did not address Mother's willingness to participate or actual participation in the services offered to her. However, because Mother has not provided us with a record of any of the underlying juvenile actions, we are left to guess exactly what services were offered to Mother and how she participated in them. Case Manager testified that Mother was offered "individual therapy, parent aide services, [and] substance abuse [treatment]." However, little other testimony was adduced at trial regarding the details of these services and we were not provided any trial court exhibits. Again, we must presume these omissions were favorable to the trial court's ruling. *K.G.K.*, 709 S.W.3d at 452 n.7. Further, Mother focuses on the fact that her own testimony shows she attended almost all visitation available, submitted to regular drug testing, and took multiple parenting courses. However, her testimony indicates that these "parenting courses" were merely the discipline, anger management, and water safety courses. We have no

information about how these courses will affect her parenting. We do know that Mother previously participated in parenting education to some extent after the Children were born, when they were first removed from her care. Evidently, this was to no avail.

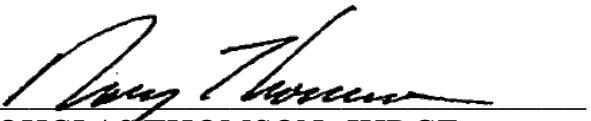
Overall, even if these factors were to weigh in favor of Mother, the trial court was not required to ignore the abuse Mother perpetrated on the Children and the deteriorated mother/child relationship it caused. *See K.N.D.*, 649 S.W.3d at 67 (noting a mother's positive acts do not negate her abusive conduct). Case Manager testified there were no other services that could be offered to Mother to bring about reunification. Grandmother testified she was not yet comfortable with the Children being placed with Mother even if Mother was no longer incarcerated. Grandmother further believes the Children need counseling because of Mother's screaming and yelling. Simply put, the record is replete with evidence of Mother's repeated abuse of the Children and the extensive injuries they suffered at her hand. Understandably, the Twins do not wish to participate in visits with Mother. Mother has stated that the Twins can remain with their aunt, but she really wants Younger Brother back. Mother admits she has a substance abuse problem which dates back to 2017 and it would need to be further addressed before obtaining custody of the Children. This is the second time abuse and neglect petitions were filed on behalf of the Children, whom have been under the custody of the Division for a significant portion of their lives. While the Children were previously aggressive and often in trouble at school, their behavior has improved since being

removed from Mother's custody. The Children have remained with their maternal aunt since they were removed from Mother's care, the same person with whom at least the Twins resided for the first few years of their life during the pendency of the initial juvenile cases, and a person with whom the Children are emotionally bonded.

The trial court's decision is not arbitrary and unreasonable, nor does it shock our sense of justice. The trial court did not abuse its discretion. Point IV is denied.

Conclusion

The record supports the trial court's finding that Mother abused and neglected the Children under 211.447.5(2) and that termination is in the Children's best interest. We affirm the judgment terminating Mother's parental rights.



W. DOUGLAS THOMSON, JUDGE

All concur.