IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2017-CA-00572-COA

J.P. AND N.P. **APPELLANTS**

v.

L.S. AND M.S. **APPELLEES**

DATE OF JUDGMENT:	02/13/2017
TRIAL JUDGE:	HON. HAYDN JUDD ROBERTS
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	CONNIE MARIE SMITH JOHN SAMUEL GRANT IV
ATTORNEY FOR APPELLEES:	WHITNEY MCKAY ADAMS
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED - 01/29/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

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EN BANC.

CARLTON, P.J., FOR THE COURT:

¶1. This appeal concerns a termination-of-parental-rights (TPR) decision involving two minor children. The Rankin County Chancery Court found sufficient grounds existed to terminate the parental rights for both of the children's natural parents, J.P. (the father) and N.P. (the mother).[1] The chancery court then approved and ordered the children's adoption by L.S. (the potential adoptive mother) and M.S. (the potential adoptive father). J.P. and N.P. appeal the chancellor's TPR decision. Finding no reversible error, we affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

¶2. J.P. and N.P. were married and had two children, a girl born in March 2010 and a boy born in February 2012. This appeal concerns the termination of their parental rights as to these two children.

A. Background Information Regarding J.P. and N.P.

¶3. J.P., the children's natural father, has a child from a previous marriage who lives with her mother. The child visits with J.P. regularly. J.P. has a ninth-grade education. J.P. was also convicted for an armed robbery that took place in 2004, but since that time he has had no criminal record. J.P. was close to his mother, and after her death in May 2013, J.P. was prescribed and took Klonopin, a drug used to treat anxiety. Although his father testified at trial that he was worried about J.P. using this drug because it appeared to make him more depressed, there was no evidence presented at trial that J.P. abused this prescription or

[1] Initials are used for all parties and witnesses in order to maintain confidentiality.

became addicted to Klonopin.

¶4. N.P., the natural mother, had a son from a previous marriage who was born in 2004. N.P. and her first husband used methamphetamine (sometimes referred to as meth, crystal meth, or crystal methamphetamine) before their son was born. N.P. testified that she stopped using meth when she was pregnant with her first son, but then when he was about two years old she began using meth again. During this time she also had criminal charges brought against her for false pretenses.[2] N.P. testified that she went to inpatient drug treatment to avoid going to jail, but she did not complete treatment. N.P. then transferred to outpatient rehabilitation, but she also did not complete that program. N.P.'s mother, P.S., had a hair-follicle test conducted on N.P.'s first son's hair. It was positive for meth. N.P.'s parents were granted temporary guardianship of her first son in 2006. N.P.'s mother adopted N.P.'s first son in 2010. N.P. testified that after a third drug-rehabilitation treatment in 2007 she no longer used meth until she started again in late December 2013, as further detailed below.

B. The Time Period from the Birth of the Children Through October 2014

¶5. The trial transcript reflects that from the time the first child was born in March 2010, up until the children were placed in L.S. and M.S.'s custody in October 2014, J.P.'s work history was unstable. N.P., for example, testified that J.P.'s employment was unsteady since the older sibling was born, and J.P.'s father, J.P. Sr., acknowledged that he had hired J.P. several times but that he would not show up for work. When N.P. was working, N.P.

[2] The record also reflects that prior to the children at issue in this case being born, N.P. was also convicted of possession of a controlled substance and shoplifting.

primarily supported the family as a nail technician, and the couple also obtained financial support from N.P.'s mother, P.S. P.S. testified that she paid utility bills, cell phone bills, Mothers' Morning Out expenses, and other bills on a routine basis. Although J.P. testified that P.S. only paid the electricity bill, several other witnesses corroborated P.S.'s testimony, including N.P.'s acknowledgment that her mother "did help a lot [financially]."

¶6. P.S. also testified that throughout the children's lives she cared for them during the day while N.P. worked. P.S. would pick up the children from J.P. and N.P., then take them home and feed them, bathe them, dress them, and take them to Mothers Morning Out, or care for them herself. She likewise would take them to doctor visits when N.P. was at work. N.P. or sometimes J.P. would meet P.S. to get the children or to pick them up from her home. P.S.'s testimony was corroborated by several witnesses at trial, including N.P.'s acknowledgment at trial that when she was working, P.S. was the children's primary caregiver.

¶7. In May 2013, the younger child was burned in a fire while at home with J.P. J.P. testified that he used acetone to build up a fire in the fireplace. It caused an explosion that burned the child's face and surrounding furniture and curtains. J.P. testified that he did not immediately seek medical assistance for the child, but instead he called N.P., and she came home to look at the child's injuries. N.P. testified that she sent a picture of the injury to her mother, P.S. The following day, P.S. took the child to the doctor, where he was treated for the injuries. Neither J.P. nor N.P. accompanied P.S. when she took their son to the doctor. The record reflects that the child continues to have a scar on his face from this incident,

which can be seen when he gets flushed.

¶8. In October 2013, N.P. was arrested on a second-offense shoplifting charge. She testified that she spent one week in jail and the children stayed with J.P.

¶9. In December 2013, J.P. and N.P. separated for two or three months. N.P. testified that this was when she began to use meth again, when she began "hanging out" with B.H. and his girlfriend. N.P. testified that during this time she and J.P. fought a lot because he thought she was cheating on him. She testified that "[J.P.] knew something was wrong . . . but he never said anything to me about smoking meth. He thought more or less that I was cheating."

¶10. J.P. and N.P. reconciled in early 2014. During this time they moved, with the children, a number of times, staying with friends or in motels. It was also during this period that N.P. took unauthorized cash advances from her grandmother's credit card for over $13,000 and made purchases of over $2,000. N.P. acknowledged at trial that she had a gambling addiction, and she testified that this money went toward her gambling and for the motel rooms that she, J.P., and the children were staying in.

¶11. In June 2014, J.P. and N.P. separated again, and N.P. moved in with B.H. N.P. testified that during the separations, the children stayed with her. N.P. testified that J.P. would call to talk to the older child and that sometimes he would have them on a Friday night. There was also testimony at trial that when N.P.'s mother, P.S., went on a two or three-week vacation, J.P. had the children. J.P.'s father testified that when J.P. had the children, he would bring them to his home during his visitation.

¶12. N.P. testified that her meth use got progressively worse during this time, becoming

a daily habit after she moved in with B.H. in July 2014, at which time she not only smoked meth but also began using meth intravenously. She testified that B.H. also used meth daily. Regarding the children's potential exposure to the meth, N.P. testified that she did not use meth around the children and she "thought" she did not leave meth or meth paraphernalia around the house where the children could potentially be exposed.[3] N.P. testified that she was unaware whether B.H. was manufacturing crystal meth in his home and that she did not know whether B.H. exposed the children to meth. N.P. also testified that during this time the older child was bitten by B.H.'s dog, a Rottweiler. After that happened, the dog was kept tied up outside or it was "put up" if the children went outside. Both children were afraid of the dog.

¶13. J.P. testified at trial that he did not "know" that N.P. was on meth or that the children were being exposed to meth. In contrast, the guardian ad litem (GAL) report provides that J.P.'s stepmother told the GAL that J.P. told her that B.H. was on drugs during the time N.P. was living with B.H. J.P.'s father (J.P. Sr.) testified that J.P. told him that he thought N.P. was on drugs. N.P.'s mother, P.S., testified that during the time N.P. was living with B.H., J.P. said to her that B.H. "was not as good as we thought he was and he had seen it with his own eyes." J.P. testified that he told P.S. that he "was worried about my kids, you know, being over there [at B.H.'s home], . . . because I didn't know him at all." J.P. testified that in hindsight, he "should have known" about N.P.'s drug use.

¶14. L.S., the potential adoptive mother and N.P.'s first cousin, testified that in August

[3] As further detailed below, meth leaves a residue that could allow exposure through the skin by means of carpet, furniture, and couches, for example.

2014 she became suspicious that N.P. was using drugs again when she found out N.P. was not going to work but was still having P.S. pick up the children as if N.P. were still employed. In September 2014, L.S., who is a hairdresser, cut a piece of N.P.'s hair when she was fixing it. L.S. sent N.P.'s hair off to be tested. A short time later, the family, including N.P., went to Florida for a family wedding. According to the testimony of N.P.'s family members, based on N.P.'s "odd, odd behavior" that weekend and track marks on her arms, the family became convinced N.P. was using drugs. L.S. received the test results from N.P.'s hair, and they tested positive for amphetamine and meth.

C. N.P.'s Intervention and J.P.'s Hospitalization Due to Bonfire Burns

¶15. L.S.'s mother then took the children for hair-follicle testing, and the family had an intervention with N.P. on October 16, 2014, which resulted in N.P. signing guardianship papers in which she agreed to allow L.S. and M.S. to have guardianship over the children. The request for guardianship was never submitted to the chancery or youth court.

¶16. N.P. testified that after the intervention, she called J.P. that same night and told him "they have the kids" or "the kids are taken," but he hung up on her. J.P. was at a friend's house where they were having a bonfire when he received her call. The record reflects that J.P. did not attempt to find out more information about where the children were or to try and reach them after N.P. called him.

¶17. Later that evening, J.P. was severely burned. J.P. asserted at trial that someone tossed kerosene on the bonfire and it exploded. J.P. was hospitalized for ten days, and after his release on October 25, 2014, he stayed with his father and stepmother so they could help him

care for his wounds. J.P. had a number of surgeries over the next couple of months and was on pain medication while he healed.

¶18. Regarding the circumstances of the bonfire, J.P.'s father testified that he went to the hospital the next day to see J.P. and there were several people there, one having a number of tattoos, including one on his face. J.P.'s father, himself, had been a crystal meth addict,[4] and he testified that this person's appearance concerned him. The next day, J.P.'s father went to the home where the bonfire occurred to see for himself whether his son was involved in any "crystal meth cooking or anything like that." He described his experience with fire investigations that he gained while in prison, testifying that he had gone through the Mississippi Fire Academy and received a number of certifications, including "crystal meth labs." Based on his visit to the property the next day, J.P. Sr. testified that he was personally satisfied that it was just a bonfire. The GAL testified that she interviewed the woman who was also burned in the bonfire and that this woman also claimed that there were no drugs involved that night and that "[t]here was no meth lab going on that night."

D. Test Results from the Children's Hair-Follicle Testing

¶19. Shortly after their intervention with N.P. and while J.P. was in the hospital, the family received the test results from the children's hair-follicle testing. The testing showed dangerous levels of meth in their systems.[5] A representative from Culpepper Testing Labs

[4] At the time of trial J.P.'s father had been off meth for sixteen years.

[5] Specifically, the older sibling was four-and-a-half years old at the time of testing. Her test results showed 873 picogram per milligram of hair (pg/mg) going back three months, 2,075 pg/mg going back six to nine months, and 2,835 pg/mg going back nine to twelve months. The younger sibling was two-years-and-seven-months old when he was

testified about the test results. She said that with respect to the younger child, in particular, "in all [her] years of testing, [she] could not . . . recall an adult or an overdose that [she's] seen with that much crystal meth in their system." She further testified that she has tested children who died as the result of drug exposure, and even in those children, she has never seen a level that high.

¶20. When they received the hair-follicle test results for the children, L.S. and M.S. immediately began neglect proceedings in Rankin County Youth Court, as described in more detail below.

E. The Children

¶21. At trial, L.S. testified that after she gained custody of the children through the youth-court proceedings, she took both of them to UMMC Children's Hospital for psychological evaluations. The record reflects that the younger sibling, a boy, is in speech therapy and that he was slow to potty train, he had mild development delay, a language disorder, and low-average cognitive skills. Several witnesses testified at trial that the child had seemed to be "slow" and that he appeared dazed looking. They further testified that since he has been with L.S. and M.S., his eyes have cleared and he no longer has a dazed look. A child and family therapist testified at trial regarding her treatment of the older child, a girl. The older child has been diagnosed with an expressive language disorder. The therapist explained that this means that verbal and written language can be difficult for her. The child is also in speech therapy. The therapist also testified that the child has described instances in which she

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tested. His test results showed 7,745 pg/mg going back three months and 10,070 pg/mg going back six months.

appeared to have more sexual knowledge than is normal and where she has acted out sexually. The therapist also believed that the child may also suffer from post-traumatic stress disorder.

¶22. N.P. testified about her close relationship with the children prior to L.S. and M.S. obtaining custody, and N.P. also testified that J.P. had a loving and close relationship with both children.

¶23. Testimony from the children's teachers, as well as testimony from family members and the GAL, shows that the children are currently thriving and, according to the GAL, are doing "exceptionally well" with L.S. and M.S. The older child is continuing to see the child and family therapist on a regular basis. The therapist expressed concerns about the effect of reuniting the older child with her natural parents given the progress she has made with L.S. and M.S. The therapist also testified that it did not appear from her work with the older child that she thought of J.P. as a parent, and the therapist never observed any indication that there was a bond there. Testimony at trial reflected that family members believe that the younger child did not know J.P.

F. J.P. and N.P.'s Current Status

¶24. Testimony from trial, which ended November 29, 2016, including testimony from the GAL, shows that as of that hearing date, J.P. and N.P. were doing well. They reconciled in April 2015, purchased a home with the help of J.P.'s father, and, according to J.P. Sr., they have become financially independent.[6] N.P. had her drug assessment in December 2014 and

[6] J.P. and N.P.'s new home has a fireplace, but the record reflects that due to J.P.'s history of being burned in fires the fireplace has been fixed so a fire cannot be started in it.

began receiving intensive outpatient therapy and aftercare for alcohol and meth abuse in January 2015. However, the record reflects that although she attempted to eliminate her drug use at that time, she relapsed for a couple of weeks in January. The Region 8 specialist who worked with N.P. in her rehabilitation program testified that "relapse is very common," which is a fact N.P. acknowledged in her own testimony.

¶25. As of November 28, 2016, the last date of trial, the record reflects that N.P. has been taking and passing urine drug screens. Both J.P. and N.P. are employed. As of July 2016, when J.P. testified at trial, he had been employed for a year as a driller for SoilTech. N.P. has also regained employment with her prior employer since the spring of 2015. Both J.P. and N.P. regularly attend church. The record also reflects that J.P.'s father and his wife (J.P.'s stepmother) are available to J.P. and N.P. for advice and support.

G. The GAL's Findings

¶26. The GAL testified as the final witness at trial. She was in court during the testimony of the other witnesses. She summarized her report dated February 22, 2016, and this report was admitted into evidence. The GAL testified that her report essentially covers the same issues addressed at trial, which have been addressed above. As she did in her report, the GAL recommended that N.P.'s parental rights be terminated. She summarized her opinion, as follows:

> There's no doubt in my mind as a result of my investigations that [the] children were exposed to methamphetamine while living with their mother . . . . I don't think N.P. purposefully did anything, but . . . I don't . . . think there's any doubt that that's where the exposure came from. She was using [meth]. She was smoking it. She was ingesting it intravenously. In my investigation, my research, I found that there's . . . a residue that crystal meth leaves behind and

> that it will be on countertops and tables and the floor. And . . . children put things in their mouths. I don't have any doubt that . . . this is where the children were exposed to it. I've also learned that chronic effects of methamphetamine exposure in children include development delays, failure to thrive, behavioral problems. These children have been tested at UMMC Children's Hospital. They've had psychological evaluations. And both of the children do have some psychological issues or some learning issues . . . . I think all of these things are a result of the time period in which [the children were] . . . being exposed to the methamphetamine when [N.P.] was living with [B.H.]. . . .
>
> [T]he Court's aware of N.P.'s history[,] . . . [her] behavior and her criminal activity [that] occurred previously with her [first] son . . . . [I]t's just come full circle again in 2014 with [the children at issue here]. And she had been clean apparently from all reports for eight years between losing [her first son] and -- and this relationship with B.H. The idea of putting [the children] back in that situation with the possibility this could happen again is frightening. . . . I'm not willing to risk these children. And I believe it's in their best interests that N.P.'s rights be terminated.

¶27. As for J.P., the GAL recommended in her February 2016 report "supervised visitation [for J.P.], subject to expansion in the future." At the end of trial, however, the GAL changed her decision and recommended that J.P.'s parental rights be terminated, as follows:

> [J.P.] was neglectful. He neglected these children's needs both before -- before the drug use in that he was not financially providing for his children. . . . I think that his neglectful conduct has created an extreme and deep-seated antipathy by the child toward the parent and . . . a substantial erosion of the relationship to the parent and the child, which is subsection f of [Mississippi Code Annotated section] 93-15-121. I think that . . . future contacts between the parent and child are not desirable toward obtaining a satisfactory permanency outcome. I can't see that these children should ever be removed from their current home with [L.S. and M.S.] and placed back into custody [with J.P. or N.P.]. . . . So I do think that it is in their best interests that the parental rights of both J.P. and N.P. terminated.

H. Course of Proceedings

¶28. As noted above, when they learned of the children's hair-follicle test results in

October 2014, L.S. and M.S. began neglect proceedings in Rankin County Youth Court. In their petition filed October 21, 2014, L.S. and M.S. alleged that they suspected drug use on the part of J.P. and N.P. and that J.P. and N.P. had neglected their two children. At that time, the youth-court Department of Human Services (DHS) workers were not able to locate J.P. The record reflects that the youth-court GAL called his phone number but got no answer and could not leave a message because there was no way to leave a message by voicemail. The youth-court GAL also tried to get in touch with J.P. by asking N.P. whether she knew of any other way to contact him. N.P. said that she did not have any information as to his current location. As detailed above, it was at this time that J.P. had been burned in the bonfire. He was recovering from his injuries and subsequent surgeries. J.P. was not present at any of the youth-court proceedings. He testified that no one had notified him of the youth-court proceedings until after they were over. N.P.'s mother, however, testified that she told J.P. about the adjudicatory hearing in the youth court on the Friday before the Monday morning hearing.

¶29. On the same day L.S. and M.S.'s petition was filed, the youth court entered a temporary custody order, placing the children with L.S. and M.S. The order also included a no-contact provision applicable to both J.P. and N.P. The next day, the youth court conducted a shelter hearing in which it determined that the children should remain in L.S. and M.S.'s custody and that N.P. should submit to a drug and alcohol test. At the adjudicatory hearing held on November 24, 2014, the youth court found that the children were abused and/or neglected. The youth court ordered for the children to stay with L.S. and

M.S. and continued its prior no-contact order for J.P. and N.P. Subsequently, the youth court transferred the case to Rankin County Chancery Court.

¶30. In February 2015, L.S. and M.S. filed an adoption and TPR petition in Rankin County Chancery Court for both children. At no time, whether in the youth court or before the chancery court, did J.P., on his own behalf or through counsel, appear specially to make any type of jurisdictional challenge with respect to the no-contact order previously entered by the youth court. On November 12, 2015, however, both J.P. and N.P., through counsel, petitioned for a writ of habeas corpus, requesting, among other things, that the chancery court return the children to them. Counsel made a general appearance before the chancery court on behalf of both J.P. and N.P. in these proceedings and did not appear specially with respect to any jurisdictional challenge as to J.P.

¶31. The chancery court denied J.P. and N.P.'s petition for habeas corpus, finding that the youth court had determined that the children were neglected when it entered its order on October 21, 2014, and that order provided that it "remains in effect till such time as the chancery court rules on the issue of custody." The chancery court kept the no-contact order in force throughout the trial on L.S. and M.S.'s adoption and the TPR petition, which was conducted on five separate dates between February and November 2016.

¶32. In February 2017, the chancery court issued its final judgment, first finding that the "the controlling and governing law" in this case was Mississippi Code Annotated section 93-17-7 (Rev. 2013), which sets forth the grounds for allowing an adoption over parental objection, and The Termination of Rights of Unfit Parents Law, Mississippi Code Annotated

sections 93-15-101 through 93-15-111 (Rev. 2013),[7] as in effect when L.S. and M.S. filed their adoption and TPR petition in February 2015. The chancery court terminated both J.P. and N.P.'s parental rights and granted adoption to L.S. and M.S.[8] As to N.P., the chancery court found as follows:

> The Court, taking into consideration all the testimony of the parties and witnesses, finds that the children were repeatedly exposed to [crystal methamphetamine] over a considerable period of time while under the direct care and control of N.P. Further, the Court finds that N.P. has demonstrated a cycle of drug addiction and criminal behavior, repeating the circumstances that led her to originally lose custody and parental rights of [her first son], along with engaging in what this Court finds to be abuse—exposure by these children to crystal methamphetamine over an extended period of time that resulted in substantial harm, luckily not death, which caused deterioration to the children to such an extent that their health and emotional, psychological[,] and physical well-being were endangered. Further, there now exists a substantial erosion of the parent-children relationship which was caused, at least in part, by N.P.'s serious neglect and abuse.

¶33. Regarding J.P., the chancery court found:

> The Court finds that J.P.'s lack of involvement and concern as well as his apathy towards his children combined with knowledge, or knowledge he should have been able to easily ascertain, regarding his children's exposure to crystal methamphetamine rises to the level of neglect. . . . The Court finds that J.P.'s lack of attention and care is not excusable or inadvertent but rather inexcusable and more than mere carelessness. Further, there now exists a substantial erosion of the parent-children relationship with J.P. which was caused, at least in part, by his serious neglect.

¶34. J.P. and N.P. filed a motion to reconsider the chancery court's order, and, at the hearing on their motion, the chancery court reminded the parties that it was "presented with what it found to be a very unique and distinctively different set of facts than other [TPR]

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[7] Now known as The Termination of Parental Rights Law.

[8] To avoid repetition, we address the chancery court's specific findings below.

cases, and that is that the children tested positive for the presence of crystal methamphetamine." The chancery court explained that "[it had] stated [in its judgment] that [this] rose to the level of abuse because that exposure to crystal meth by the children was while they were under the direct care of their mother." Regarding the father, the chancery court reiterated that in its judgment "it found that the father engaged in serious neglect because he knew or should have known that his children were exposed to crystal methamphetamine." The chancery court further explained that "the guardian ad litem [had] recommended termination of parental rights and the [chancery court] gave [that recommendation] the appropriate weight." The chancery court denied J.P. and N.P.'s motion to reconsider by an order entered April 3, 2017.

¶35. J.P. and N.P. appeal, asserting that the chancery court erred in terminating their parental rights by misapprehending and misapplying the controlling law; and, as to J.P., in basing part of its TPR decision on the youth court's no-contact order that was entered without notice to J.P. We disagree. For the reasons addressed below, we affirm the chancery court's judgment terminating J.P. and N.P.'s parental rights and granting adoption to L.S. and M.S. in this case.

STANDARD OF REVIEW

¶36. "Appellate review in a case to terminate parental rights is the manifest error/substantial credible evidence test. . . . As long as there is credible evidence to support the chancellor's findings of fact, we must affirm the decision." *In re Dissolution of Marriage of Leverock & Hamby*, 23 So. 3d 424, 427 (¶14) (Miss. 2009); *accord C.S.H. v. Lowndes Cty.*

Dep't of Human Servs., 246 So. 3d 908, 913 (¶21) (Miss. Ct. App. 2018). In this regard, "we examine whether credible proof exists to support the chancellor's finding[s] of fact by clear and convincing evidence." *W.A.S. v. A.L.G.*, 949 So. 2d 31, 34 (¶7) (Miss. 2007) (internal quotation mark omitted). Finally, "[i]t is not this Court's role to substitute its judgment for the chancellor's." *K.D.F. v. J.L.H.*, 933 So. 2d 971, 975 (¶14) (Miss. 2006).

¶37. We also recognize that "[i]n Mississippi, as in other jurisdictions, there exists a strong presumption in favor of preserving parental rights. Only where that presumption is overcome by clear and convincing evidence is termination appropriate." *In re A.M.A.*, 986 So. 2d 999, 1009 (¶22) (Miss. Ct. App. 2007) (citation omitted). "However, these parental rights may be abridged when the welfare of the children is threatened." *Vance v. Lincoln Cty. Dep't of Pub. Welfare*, 582 So. 2d 414, 417 (Miss.1991); *see In re A.M.A.*, 986 So. 2d at 1009 (¶22).

¶38. "[Q]uestions of law such as statutory construction are subject to *de novo* review, and if a chancellor misapprehends the controlling rules of law or acts pursuant to a substantially erroneous view of the law, reversal is proper." *Chism v. Bright*, 152 So. 3d 318, 322 (¶12) (Miss. 2014). Citing this standard from *Chism*, J.P. and N.P. assert that the chancery court's decision is subject to de novo review in this case because, according to them, the chancery court misunderstood and misapplied the controlling law.[9] We find no merit in this argument

[9] J.P. and N.P. also assert that this Court should apply a de novo standard of review because the chancery court's judgment does not specify that it was applying the requisite "clear and convincing proof" evidentiary standard applicable in a TPR case. We acknowledge that "[i]f the trial court has exercised its discretionary authority against a substantial misperception of the correct legal standards, our customary deference to the trial court is pretermitted. . . ." *3M Co. v. Johnson*, 895 So. 2d 151, 160 (¶30) (Miss. 2005) (other quotation mark omitted). In this case, however, we find no merit in J.P. and N.P.'s argument because we find no basis for determining that a "substantial misperception" of the

for the reasons addressed below. We, therefore, apply the manifest error/substantial credible evidence standard of review in this appeal.

DISCUSSION

I. The Applicable Law

¶39. In its final judgment, the chancery court observed that the controlling law had changed substantially between the first day of trial on February 26, 2016, and the second day of trial on April 22, 2016, and held that the applicable statutory authority in this case is the versions of section 93-17-7 and section 93-15-103 that were in effect when L.S. and M.S. filed their adoption and TPR petition in February 2015, and not the changes that became effective on April 18, 2016. The parties do not dispute the choice of law. We agree with the chancery court's determination that the applicable TPR and adoption statutes are the ones in effect when the adoption and TPR petition was filed. *See Doe v. Attorney W.*, 410 So. 2d 1312, 1315 (Miss. 1982) (finding that a "trial [for termination of parental rights] under the law and facts as they existed when the suit was filed [was] not reversible error" where the revised statute "embod[ied] to a large extent the concept contained in the original [statute]," and the

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applicable clear and convincing burden of proof has occurred. The chancery court cited the controlling law in its opinion, including the Termination of Rights of Unfit Parents Law, which specifically addresses this burden of proof, as follows:

> After hearing all the evidence in regard to such petition [to terminate parental rights], if the chancellor . . . is satisfied *by clear and convincing proof* that the parent or parents are within the grounds requiring termination of parental rights . . . then the court may terminate all the parental rights of the parent or parents regarding the child.

Miss. Code Ann. § 93-15-109 (Rev. 2013) (emphasis added).

parties did not challenged the applicable law); *see also C.S.H.*, 246 So. 3d at 914 (¶23) (recognizing that the amended TPR statute does not apply retroactively); *Doe v. Doe*, 2015-CA-00652-COA, 2017 WL 499189, at *3 (¶13) (Miss. Ct. App. Feb. 7, 2017) (rejecting the argument that the current TPR statute applied where statute was amended after case was appealed), *cert. denied*, 220 So. 3d 979 (Miss. 2017).

II. Adoption Over Parental Objection and Termination of Parental Rights under Section 93-17-7

¶40. As addressed above, the chancery court found that J.P. and N.P.'s parental rights should be terminated under both section 93-17-7 section 93-15-103. We concur. In so doing, we first address section 93-17-7, which allows a child to be adopted over the objection of a natural parent under certain circumstances. Under section 93-17-7, "[w]hether a person should be permitted to adopt a child [over a parent's objection] is a two-step process. The court must first find that one of the grounds for adoption is present: desertion or abandonment, or moral unfitness. Then, there must be a definite adjudication that the best interest of the child is promoted or enhanced by the proposed adoption." *Adoption of M.C. v. M.W.*, 92 So. 3d 1283, 1287-88 (¶21) (Miss. Ct. App. 2012) (citation omitted).

A. Parental Unfitness

¶41. With respect to the first step, a chancery court may allow the adoption of a child over a non-consenting parent's objection where the party seeking adoption proves by "clear and convincing evidence that the objecting party is 'mentally, or morally, or otherwise unfit to rear and train his child.'" *Hartley v. Watts*, 255 So. 3d 114, 118 (¶17) (Miss. 2017) (quoting Miss. Code Ann. § 93-17-7(1) (Rev. 2013)). A determination that a parent is "unfit" may be

based upon a finding which includes, but is not limited to, certain enumerated factors under section 93-17-7(2). *Id.* at 118 (¶¶16-17). The relevant enumerated factors include the following:

> (2) An adoption may be allowed over the objection of a parent where:
>
> > (a) The parent has abused the child. For purposes of this paragraph, abuse means the infliction of physical or mental injury which causes deterioration to the child . . . .
> >
> > . . . .
> >
> > (d) Viewed in its entirety, the parent's past or present conduct, including his criminal convictions, would pose a risk of substantial harm to the physical, mental, or emotional health of the child.
> >
> > (e) The parent has engaged in acts or omissions permitting termination of parental rights under Section 93-15-103.
> >
> > (f) The enumeration of conduct or omissions in this subsection (2) in no way limits the court's power to such enumerated conduct or omissions in determining a parent's . . . unfitness under subsection (1) of this section.

¶42. In summarizing its findings under section 93-17-7(2) at the hearing on J.P. and N.P.'s motion to reconsider, the chancery court first observed that in this case it had been presented with a "very unique and distinctively different set of facts" because the children had tested positive for the presence of crystal methamphetamine. The chancellor stated that he had, he thought, "very pointedly" found in his judgment that this rose to the level of abuse on N.P.'s part because the children's exposure to crystal meth occurred when they were under her direct care. As to J.P., the chancellor explained that "[l]ikewise . . . as it pertains to the father, [the court finds that he] engaged in serious neglect because he knew or should have

known that his children were exposed to crystal methamphetamine."

¶43. We find that there was substantial credible proof supporting the chancery court's findings of fact by clear and convincing evidence that J.P. and N.P. were "otherwise unfit to rear and train [their children]" under section 93-17-7 so as to allow the children's adoption over J.P. and N.P.'s objections under this statute.

1. N.P.'s Parental Unfitness

¶44. Regarding the children's mother, N.P., the record contains substantial credible evidence the children were exposed to dangerous levels of meth while under N.P.'s direct care when she was living with B.H. from June 2014 through the time when the children were placed with L.S. and M.S. in October 2014. The two-year-old boy's test results, in particular, were so high that the lab analyst testified that his levels were higher than those of children who had died as the result of drug exposure. As detailed above, N.P. and B.H. were using meth daily, and although N.P."thought" she was careful about making sure no meth or items used to inject or consume the meth were left around the house, she was not sure whether they were; nor did she know whether B.H. was manufacturing crystal meth in his home, whether B.H. exposed the children to meth, or whether the children could have climbed on the workbench where he stored the meth.[10] Further, as detailed above, the four-year-old girl was

[10] The representative from Culpepper Testing Laboratories testified that meth leaves a residue and exposure could come through the skin by means of carpet, furniture, and couches, for example. She further testified that the residue stays on surfaces in the home until the areas are decontaminated. Similarly, the GAL referenced studies in her report in which it was found that children could be exposed to meth from residue left on surfaces such as floors, tables, or countertops. At trial the GAL testified that she had no doubt that this is how the children were exposed to meth in this case.

bitten by B.H.'s Rottweiler when N.P. was living with B.H.

¶45. The record reflects that N.P. began rehabilitation in January 2015, but during that month she suffered a relapse for a couple of weeks. Both the Region 8 specialist who worked with N.P. in her rehabilitation program and N.P. acknowledged in their testimonies that relapse is common.

¶46. The record also reflects that N.P. was arrested on a second-offense shoplifting charge in October 2013, and she also admitted to a gambling addiction, which she funded with unauthorized cash advances from her grandmother's credit card for over $13,000. Some of this money also went toward the motel rooms where she, J.P., and the children were staying during their reconciliation from early 2014 to June 2014.

¶47. The record also reflects N.P.'s criminal activity and her meth use in 2006 and 2007, which resulted in N.P.'s older son by a previous marriage testing positive for meth when he was two years old and under N.P.'s care. Her conduct resulted in N.P. losing custody and parental rights to her older son. During this time, testimony from a number of witnesses, including N.P., reflects that N.P. had several arrests for shoplifting and forgery, and she used rehabilitation treatment as a means of avoiding jail time.

¶48. A number of witnesses, including a day care worker and a teacher, testified that while under N.P.'s care, the children appeared disoriented, dirty, disheveled, and dazed. The record reflects that the younger sibling, a boy, is in speech therapy, and was slow to potty train. His evaluation showed that he had developmental delay, he was diagnosed with a language disorder, and he had low-average cognitive skills. Testimony from the family therapist, the

GAL, and L.S. (the children's adoptive mother), also reflects that the older sibling, a girl, was evaluated and has psychological and learning issues, including expressive-language disorder, post-traumatic stress disorder, and instances where she has acted out sexually.

¶49. We find that there was substantial credible proof supporting the chancery court's findings of fact by clear and convincing evidence to allow termination of N.P.'s parental rights under section 93-17-7 on two grounds. First, N.P.'s conduct constituted "abuse" under section 93-17-7(2)(a), defined as "the infliction of physical or mental injury which causes deterioration to the [children] . . . ." Second, section 93-17-7(2)(e) allows for termination of parental rights where a "parent has engaged in acts or omissions permitting termination of parental rights under Section 93-15-103." We find that there is substantial credible proof in the record to support the chancellor's finding that N.P.'s conduct supports termination of her parental rights under section 93-15-103(3)(f), which provides as follows:

> (3) Grounds for termination of parental rights shall be based on one or more of the following factors:
>
> . . . .
>
> (f) When there is an extreme and deep-seated antipathy by the child toward the parent *or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's* serious neglect, *abuse*, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment . . . .

(Emphasis added). In particular, we find that ample proof supports the chancery court's "abuse" determination by clear and convincing evidence because the children were repeatedly exposed to meth over a considerable period of time while under the direct care and

control of N.P. We also find that there is substantial evidence supporting the chancery court's finding that there exists a substantial erosion of the parent-child relationship that was caused, at least in part, by N.P.'s serious neglect and abuse.

¶50. J.P. and N.P. assert that there is no evidence of a substantial erosion of the parent-child relationship before the no-contact order was put in place and that they are effectively being held responsible for erosion of the parent-child relationship that only occurred because they were prohibited from seeing their children since October 2014 when the no-contact order was first put into place. The Mississippi Supreme Court rejected a similar argument in *G.Q.A. v. Harrison Cty. Dep't of Human Res*., 771 So. 2d 331 (Miss. 2000). In that case, A.N.A. was removed from her parents' home and placed in foster care due to severe abuse, including her parents' decision to wait more than a week to take her to the hospital to treat third-degree burns incurred during a scalding bath. *Id.* at 332-33, 335 (¶¶2-6, ¶18). The severity of the burns caused A.N.A. to develop a cardiac condition, and A.N.A. was also found to be malnourished. *Id.* The parents challenged the family court's finding that substantial erosion of the parent-child relationship existed due, in part, to their abuse. They argued "that they should not be penalized for failing to maintain a bonded relationship with A.N.A. since they have been restricted by court order to only limited, supervised visitation." *Id.* at 337-38 (¶28).

¶51. The supreme court found this argument without merit, beginning its analysis by stating that "[a] finding of substantial erosion of the parent/child relationship necessarily involves a consideration of the relationship as it existed when the termination proceedings were

initiated." *Id.* at 338 (¶29); *see In re K.D.G. II*, 68 So. 3d 748, 752-53 (¶22) (Miss. Ct. App. 2011). In this regard, the supreme court held that "[w]hile it is true that evidence of the erosion of the natural parent/child relationship consists in part of the developing relationship between A.N.A. and her foster parents, the fact that foster parents care for A.N.A. today is a direct result of the abuse she suffered at the hands of her natural parents." *G.Q.A.*, 771 So. 2d at 338 (¶30). From this determination, the supreme court concluded that "[t]he Family Court's decision that there had been a substantial erosion of the relationship between A.N.A. and her natural parents due at least in part to their abuse is supported by substantial evidence and cannot be said to be manifestly erroneous." *Id.*

¶52. The record shows that the extremely serious circumstances in this case likewise compel that the same analysis is applied here. At the time L.S. and M.S. initiated youth-court proceedings in October 2014, the record reflects that N.P. had exposed her children to dangerous levels of meth for at least five months, resulting in substantial, documented harm to her children's health and their emotional, psychological, and physical well-being. N.P.'s actions, together with J.P.'s inability to recognize, and remove, his children from these dire circumstances, led L.S. and M.S. to initiated the youth court proceedings. In the words of the supreme court, "the fact that [L.S. and M.S.] care for [the children] today is a direct result of the abuse [and serious neglect they] suffered at the hands of [their] natural parents." *G.Q.A.*, 771 So. 2d at 338 (¶30).

¶53. We recognize that the record shows that as of the time of trial in November 2016, N.P. has been taking and passing urine-drug screens, but there is also undisputed evidence in the

record, which the chancellor acknowledged, about N.P.'s cycle of drug addiction and criminal behavior and how, in having her children removed in this case, she was essentially repeating the circumstances that led her to originally lose custody and parental rights of her first son. Further, there is ample testimony that the children have developed strong bonds with L.S. and M.S. and their daughter. There is also testimony from family members, as well as the GAL and the family therapist, expressing grave concerns about potentially exposing the children to these conditions again, particularly in light of N.P.'s prior history. We find that substantial evidence supports the chancery court's decision by clear and convincing evidence that there had been a substantial erosion of the relationship between the children and N.P. due at least in part to her abuse and that the chancellor's decision on this issue is not manifestly erroneous. *G.Q.A.*, 771 So. 2d at 338 (¶30).

¶54. J.P. and N.P. also assert that the chancery court erred in terminating N.P.'s parental rights because the court "wrongly considered evidence relating to acts [on N.P.'s part] that occurred before both children's births." This argument is without merit. The record reflects that N.P.'s meth use in 2006 and 2007 resulted in her older son testing positive for meth and her losing custody and parental rights to him. An application of the law to the facts of this case shows that this evidence is highly relevant because N.P. essentially repeated the same conduct with respect to her and J.P.'s children in this case.[11] Not only does this evidence support the chancery court's termination decision under section 93-17-7(2)(a) and section 93-

[11] *See* M.R.E. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the case.").

17-(2)(e) in combination with section 93-15-103(3)(f), it also supports termination of N.P.'s parental rights under section 93-17-7(2)(d). This provision allows for adoption over a natural parent's objection where, "[v]iewed in its entirety, the parent's past *or* present conduct, . . . would pose a risk of substantial harm to the physical, mental or emotional health of the [children]." Miss. Code Ann. § 93-17-7(2)(d) (emphasis added). We find no error in the chancery court considering this relevant evidence in this case.

2. J.P.'s Parental Unfitness

¶55. As addressed above, the record contains ample proof that the children were exposed to dangerous levels of meth while under N.P.'s care when she was living with B.H. Regarding J.P., the chancery court found that "J.P.'s lack of involvement and concern as well as his apathy towards his children combined with knowledge, or knowledge he should have been able to easily ascertain, regarding his children's exposure to crystal methamphetamine[,] rises to the level of neglect. . . ."[12]

¶56. J.P. and N.P. assert that this is an insufficient basis to terminate J.P.'s parental rights because the record lacks clear and convincing proof that J.P. "knew" that N.P. was on drugs when she was living with B.H., or that he "knew" that the children were exposed to dangerous levels of meth during that time. We find this assertion lacks merit because we find no authority for the proposition that if a child is being neglected or otherwise being exposed to dangerous conditions by one parent, the other parent is absolved of any responsibility to

[12] Similarly, at the hearing on J.P. and N.P.'s motion to reconsider, the chancery court reiterated that in its judgment "it found that the father engaged in serious neglect because he knew or should have known that his children were exposed to crystal methamphetamine."

apprise himself of the situation and remedy it if it is in his power to do so. J.P. and N.P. were not divorced, and both had full custody rights. The record also does not support J.P.'s denial of any knowledge that N.P. was on drugs or that his children were being exposed to meth when N.P. was living with B.H. At trial J.P. testified that he told his mother-in-law that he had concerns about his children being in B.H.'s home, and J.P. admitted that he "should have known" about N.P.'s drug use. However, despite his concerns about his children living with B.H., J.P. did nothing and allowed them to continue to live there, as discussed below.

¶57. We observe that neither "neglect" nor "serious neglect" is defined under section 93-17-7 or the Termination of Rights of Unfit Parents Law, Mississippi Code Annotated sections 101 through 111 (Rev. 2013). We find, however, that *In re A.M.A.*, 986 So. 2d 999 (Miss. Ct. App. 2007), is instructive on this issue. In that case we addressed whether grounds for terminating parental rights existed pursuant to Mississippi Code Annotated section 93-15-103(h) (Rev. 2004).[13] *In re A.M.A.*, 986 So. 2d at 1016 (¶41). In our discussion on that issue, we analyzed the term "neglected child" under Mississippi Code Annotated section 43-21-105(l) (Rev. 2004) of the Mississippi Youth Court Law.[14] *Id.* We began by observing that

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[13] Under section 93-15-103(h) at that time, and during the time relevant to this appeal, grounds for termination of parental rights included the situation where "the child has been adjudicated to have been abused or neglected and custody has been transferred from the child's parent(s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest."

[14] Section 43-21-105(l) provided at that time, and during the time relevant to this appeal, as follows:

(l) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person

"the language of the neglect statute defines a 'neglected child'—not a 'neglecting parent'—and defines a 'neglected child' in such a way that both parents have the responsibility to insure that a child is not being neglected, regardless of who the custodial parent is." *Id.* "In other words," we explained, "if a child is being neglected by the custodial parent, that child is also being neglected by the non-custodial parent if that parent fails to remedy the situation when he or she is able to do so." *Id.* Applying this standard to the facts before it, this Court found as follows:

> In the case before this Court, Tammy and Ashley were adjudicated neglected based on the living conditions at Diane's [the custodial parent's] house and also because of Ashley's fractured elbow that went untreated for at least ten days. While Paul [the non-custodial parent] did initiate. . . medical care for Ashley's arm, he failed to follow-up as directed by the treating physician *when he knew or should have known* that Diane would not follow-up with the physician. . . . Because of this delay Ashley's bones began healing incorrectly.[15] . . . According to the language of the "neglected child" statute, Tammy and Ashley were neglected *as much because of Paul's inaction as they were because of anything Diane did or did not do.*

Id. at 1016-17 (¶42) (emphasis added).

¶58. Based upon this analysis, we find no error in the chancery court's use of the same "knew or should have known" standard in this case. We further find that there is substantial

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> responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being. . . .

[15] We also found that "[i]n addition to the medical neglect, Paul was undoubtedly aware of the living conditions that Tammy and Ashley were forced to endure, as he had lived at the very same residence in the past. He also undoubtedly witnessed the continuing nature of the living conditions when he came for his regular visits with the children." *In Re A.M.A.*, 986 So. 2d at 1017 (¶42).

credible proof in this case that the children "were neglected as much because of [J.P.'s] inaction as they were because of anything [N.P.] did or did not do." *Id.* at 1016-17 (¶42).

¶59. In particular, although J.P. testified that he did not "know" that N.P. was using drugs before L.S. and M.S. obtained custody of the children in October 2014, or the children's potential exposure to meth, the record contains substantial credible proof that he should have known. Indeed, J.P. acknowledged during his direct examination at trial that, in hindsight, he "should have known" about N.P.'s drug use.

¶60. The record reflects that although J.P. and N.P. were separated in December 2013 when N.P. first began using meth again, they reconciled in early 2014 during her continued drug use, and they did not separate again until June 2014 when she began living with B.H. Even though J.P., N.P., and the children were living together for these five to six months, J.P. was oblivious to N.P.'s drug use or any effect it may have had on the children.[16] N.P. testified that during this time she and J.P. argued a lot and that "he knew something was wrong . . . [and that] she was lying and stuff," but he did not ask her about any drug use. This is true despite the fact that J.P. testified that he knew about the circumstances surrounding N.P. exposing her first son to meth when N.P. and her first husband were using the drug in 2006 and 2007. The record also reflects that although J.P. testified at trial that "he would know if [N.P.] were doing drugs now," he could offer no basis for how he would now be able to tell she was doing so, when he was unable to do so in 2014.

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[16] J.P. also testified that he did not know about N.P.'s gambling addiction that surfaced during this time or the unauthorized advances that N.P. took from her grandmother's credit card. N.P. testified that she used this money to fund her gambling and also to pay for the motel rooms she, J.P., and the children were staying in during this time.

¶61. When J.P. and N.P. separated again in June 2014 and N.P. moved in with B.H., the record reflects that both N.P. and B.H. used meth daily, either ingesting it or using it intravenously. The record also reflects that J.P. had concerns about the children living with N.P. and B.H., but he did nothing about it. As noted, J.P. testified that he told his mother-in-law that he "was worried about my kids, you know, being over there [at B.H.'s home], . . . because I didn't know him at all."[17] The GAL's report shows that J.P. told the GAL that he talked to N.P. during this time about "stuff he heard about [B.H.]," but N.P. did not "really . . . respond," and there is no indication in the record that J.P. pressed N.P. for an answer. The GAL report also provides that according to J.P.'s stepmother, during the time N.P. was living with B.H., J.P. told his stepmother that B.H. was on drugs. J.P.'s father also testified that J.P. told him that he thought N.P. was on drugs and that J.P. told him this "before even the [bon]fire or anything," which would have been before the children were placed into L.S. and M.S.'s custody in October 2014. Despite his concerns, the record reflects that J.P. did not get the children out of B.H.'s home because, according to J.P., he did not "know" that they were in danger.

¶62. The record also shows that J.P. had the children at least every other Friday through Saturday when N.P. was living with B.H. and that J.P. kept the children for two to three weeks in June and July 2014 when N.P.'s mother was on vacation. Nevertheless, J.P. testified that he did not know the children were being exposed to meth—despite the fact that

[17] N.P.'s mother, P.S., testified that during the time N.P. was living with B.H., J.P. said to her that B.H. "was not as good as we thought he was and he had seen it with his own eyes."

family members and the children's teachers testified that the children appeared disoriented and dazed during this time. Even up to the day he testified at trial in July 2016, J.P. admitted in response to the chancellor's questioning that he did not really have a conversation with N.P. about the children's exposure to meth and that he had "no idea" how his children were exposed to the dangerous levels of meth revealed by their hair follicle testing. We find that there was substantial credible proof to support the chancery court's findings by clear and convincing evidence that "[J.P.] knew or certainly should have known that his children were being exposed to drugs while he and [N.P.] were separated and she took up residence with [B.H.]"

¶63. We also find that there is substantial credible proof supporting the chancery court's finding by clear and convincing evidence that J.P. was unable to provide for his children with any stability, be it financial or otherwise. There is ample evidence that from the time the first child was born in March 2010, J.P.'s work history was unstable, unsteady, and that he had trouble keeping a job. We recognize that the record reflects that as of July 2016, when J.P. testified at trial, he had been employed for a year as a driller for SoilTech, which takes him out of town for days at a time. We also observe, however, that when the chancellor questioned J.P. about what plans he had with respect to childcare given his work schedule, J.P. acknowledged that he and N.P. really did not have a plan.

¶64. J.P.'s response typifies the substantial credible evidence demonstrating J.P.'s lack of involvement with his children's care. The record also reflects that despite the fact that J.P. did not have steady employment, the children's primary caregivers were N.P. and N.P.'s

mother, P.S., when N.P. was at work. The record further reflects that when the younger child was an infant, he was burned in a fireplace explosion while in J.P.'s care. J.P. did not take the child to the emergency room, and it was not until the next morning that P.S. took the child to a doctor. Neither J.P. nor N.P. accompanied P.S. to the doctor with their son.

¶65. Further, as detailed above, N.P. testified that after the intervention between her and her family, she called J.P. that same night and told him that "they have the kids," or something to that effect. J.P. hung up on her. As it turned out, J.P. was at a friend's house where they were having a bonfire, and J.P. was burned later that evening.[18] The chancellor questioned J.P. closely about why he did not immediately attempt to retrieve his children (before his accident). J.P.'s responses further support the chancery court's finding regarding J.P.'s "apparent lack of concern for his children's safety and well-being and his attitude of apathy towards the children," as follows:

> BY THE COURT:
> Q All right. I hate to keep talking about this bonfire, but I'm completely confused. You got a call before the bonfire that the kids were removed from [N.P.]?
> [BY J.P.]
> A Yes, sir.
> Q Okay. And explain to me why you chose to go anywhere else in this world other than to go get your children right after you got that phone call.
> A I didn't -- I didn't know -- well, one – one thing, you know, I didn't

[18] As addressed above, later that evening J.P. was severely burned when, according to the testimony at trial, someone tossed kerosene on the bonfire and it exploded. Although the chancery court found that "in all probability there was something nefarious going on [at the bonfire]," the record reflects that investigation by J.P. Sr. and the GAL did not reveal that there were drugs involved that night. In any event, we find substantial credible proof supporting the chancery court's termination of J.P.'s parental rights without having to consider the potential that there were "nefarious" circumstances surrounding the bonfire.

have a ride at the time.

Q Why didn't you walk?

A I don't know.

Q Did you know who had them?

A Not really. I didn't know, you know, if her mama had them or, you know, if they had them.

Q So you didn't even ask [N.P.] who had the kids?

A Yeah.

Q Okay. So then you knew who had them?

A Her mama or, you know, [L.S.] did. You know, [L.S.].

Q And you know where [L.S. and M.S.] live?

A Yes, I do.

Q And you know where her mama lives?

A Right.

Q So could have taken --

A If I went over there, you know, they probably would have called the law on me and stuff.

Q And going over there to check on your kids would not have been worth that risk?

A Yes, it would have.

J.P. was released from the hospital on October 25, 2014, and we acknowledge that he had additional surgeries after this time and was in recovery at his father and stepmother's home. The record also reflects, however, that J.P. made little, if any, effort to learn of the whereabouts of his children or the youth court proceedings. Indeed, J.P. and N.P. did not take any court action with respect to their children until over a year after the children had been removed when their counsel filed a petition of habeas corpus on their behalf in Rankin County Chancery Court on November 12, 2015.

¶66. We find that the record contains ample credible proof supporting the chancery court's findings by clear and convincing evidence allowing termination of J.P.'s parental rights under section 93-17-7 on two grounds. First, J.P.'s failure to remedy his children's circumstances when he knew or should have known of their exposure to dangerous levels of

meth; the lack of evidence that J.P. would be able to recognize whether N.P. was abusing drugs in the future; and J.P.'s inability to provide for his children with little, if any, stability during the time they were with him and N.P., support termination under section 93-17-7(2)(d). This statute allows for adoption over a natural parent's objection where, "[v]iewed in its entirety, the parent's past or present conduct . . . would pose a risk of substantial harm to the physical, mental or emotional health of the [children]." Miss. Code. Ann. § 93-17-7(2)(d).

¶67. Second, these same factors support the chancery court's determination that J.P.'s conduct constituted "serious neglect" which contributed, at least in part, to a substantial erosion of his relationship with his children, which is grounds for termination under section 93-15-103(3)(f).[19] We recognize that as of July 2016, when J.P. testified at trial, he had been employed for over a year and that he and N.P. had reunited and purchased a home together. There is ample proof in the record, however, that J.P. previously had been unable to provide his children with a stable environment, and that he was unable to recognize, and remove, his children from the seriously harmful circumstances that exposed them to dangerous levels of meth. In short, J.P.'s inaction, in combination with N.P.'s actions, led to the children being placed in L.S. and M.S.'s care. *See G.Q.A.*, 771 So. 2d at 338 (¶30). (recognizing that the court may properly consider reasons for removal of children from their natural parents in

[19] As addressed above, section 93-15-103(3)(f) allows for termination of parental rights based upon a "substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect . . . ." *See* Miss. Code Ann. § 93-17-7(2)(e) (providing that the court may allow the adoption of a child over the natural parent's objection based upon grounds permitting termination of parental rights under section 93-15-103).

assessing whether a substantial erosion of the parent-child relationship had occurred); *In re A.M.A.*, 986 So. 2d at 1016-17 (¶¶41-42) (recognizing that "if a child is being neglected by the custodial parent, that child is also being neglected by the non-custodial parent if that parent fails to remedy the situation when he or she is able to do so").

¶68. Further, J.P.'s own testimony at trial reflects that he has no real way of recognizing if N.P. begins abusing drugs again, potentially exposing the children to the same dangerous environment. The record shows that J.P. failed to acknowledge or identify signs of neglect and disorientation displayed by his children. Indeed, as we stated above, numerous witnesses expressed concern about reuniting the children with J.P. and N.P. for fear of exposing the children to these conditions again. Finally, there is substantial evidence that the children have bonded with their new family and are being well-cared for in their new environment. For these reasons, we find that the chancery court's decision that there had been a substantial erosion of the relationship between the children and J.P. due at least in part to his serious neglect is supported by substantial evidence and is not manifestly erroneous. *G.Q.A.*, 771 So. 2d at 338 (¶30).

B. Best Interest of the Children

¶69. We also find that substantial evidence supports the chancery court's findings by clear and convincing evidence that terminating J.P. and N.P.'s parental rights was in the best interests of the children, thus meeting the second requirement necessary to allow an adoption over the natural parents' objection and termination of their parental rights under section 93-17-7. *See Adoption of M.C.*, 92 So. 3d at 1287-88 (¶21). As the chancellor found, "these

children were harmed by the drug use of their mother . . . and the absence and neglect of their father in allowing it to happen unchecked over a considerable period of time." The record reflects that N.P. essentially repeated the same circumstances that had occurred with her first son, and there is no evidence in the record that J.P. would be able to recognize these circumstances if N.P. began using drugs again. As the GAL expressed at trial, "The idea of putting [the children] back in that situation with the possibility this could happen again is frightening. . . . I'm not willing to risk these children. . . . I believe it's in their best interests that N.P.'s rights be terminated . . . [and] that J.P.'s rights be terminated also."

¶70. There is also ample evidence of the deep bonds that have developed among L.S. and M.S. and the children, as well as among the children and L.S. and M.S.'s daughter. The older girl, born in March 2010, has lived with L.S. and M.S. since she was four-and-a-half-years old, and her younger brother, born in February 2012, has lived with L.S. and M.S. since he was two-and-a-half-years old. The family therapist testified that it did not appear from her work with the older child that she thought of J.P. as a parent. The family therapist testified that she never observed any indication that there was a bond there. As for the younger child, the record reflects that family members believe he did not know J.P.

¶71. The record also reflects that L.S. and M.S. have cared for both children and have seen that they receive therapy for the problems identified after L.S. and M.S. gained custody of them. As to the younger child, in particular, several witnesses testified that he had seemed to be "slow" and appeared dazed looking before he was brought into L.S. and M.S.'s home. These same witnesses further testified that since he has been with L.S. and M.S., his eyes

have cleared and he no longer has a dazed look. Testimony from the children's teachers, as well as testimony from family members and the GAL, shows that the children are currently thriving and, according to the GAL, are doing "exceptionally well" with L.S. and M.S. The therapist treating the older child expressed concerns about the effect of reuniting the older child with her natural parents, given the progress she has made with L.S. and M.S. In short, there is substantial credible evidence supporting the chancery court's finding that termination of J.P. and N.P.'s parental rights, and adoption by L.S. and M.S., were in the children's best interest.

III. Termination of Parental Rights under Section 93-15-103

¶72. Grounds for termination of parental rights are set forth in section 93-15-103, and the chancellor must be "satisfied by clear and convincing proof" that any one, or a combination, of these grounds are met before terminating parental rights under this statute. Miss. Code Ann. § 93-15-109 (Rev. 2013); *see In re B.A.H.*, 225 So. 3d 1220, 1240 (¶64) (Miss. Ct. App. 2016). "Once the clear and convincing burden has been met, the best interest of the child is to be considered. Parental rights should be terminated only if the court determines that termination is in the child's best interest." *In re B.A.H.*, 225 So. 3d at 1241 (¶64) (citation omitted).

A. The Statutory Prerequisites under Section 93-15-103(1)

¶73. Section 93-15-103(1) sets forth certain prerequisites a court must consider before terminating parental rights under this statute. Specifically, section 93-15-103(1) provides as follows:

> (1) When a child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or the parent is unable or unwilling to care for the child, relatives are not appropriate or are unavailable, and when adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child''s bonds to his natural parents and the effect of future contacts between them, the grounds listed in subsections (2) and (3) of this section shall be considered as grounds for the termination of parental rights. The grounds may apply singly or in combination in any given case.

Miss. Code Ann. § 93-15-103(1).

¶74. In *In re B.A.H.*, this Court found that the correct interpretation of the statutory prerequisites under section 93-15-103(1) was a "two-alternative" reading, as follows:

> [We] should interpret [this statute] as directing the . . . court to consider whether there are grounds for termination of parental rights if either [1] the child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or [2a] the parent is unable or unwilling to care for the child, [2b] relatives are not appropriate or are unavailable, and [2c] adoption is in the best interest of the child.

In re B.A.H., 225 So. 3d at 1238 (¶59) (quotation mark omitted) (quoting section 93-15-103(1)); *see C.S.H.*, 246 So. 3d at 914 (¶24) (also utilizing the "two-alternative" approach).

¶75. In Mississippi Supreme Court cases a "three-element" interpretation of the statutory pre-requisites has been adopted, as follows:

> (1) the child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time or the parent is unable or unwilling to care for the child; (2) relatives are not appropriate or are unavailable; and (3) adoption is in the best interest of the child.

Chism, 152 So. 3d at 323 (¶15); *see also Leverock & Hamby*, 23 So. 3d at 428 (¶15) (same).

This Court also used the "three-element" approach in *Doe*, 2017 WL 499189, at *3 (¶12).

¶76. Regarding the statutory prerequisites under section 93-15-103(1), the chancery court held as follows:

> The Court specifically finds, as to the prerequisites of the former section 93-15-103(1) and enumerated in *Chism*, that these minor children were removed from the home of their natural parents by the Rankin County Youth Court after a family intervention and could not be returned to that home within a reasonable length of time because the parents are unable to care for them properly. While it is true that [L.S.] and [N.P.] are first cousins, [N.P. and J.P.] offered no evidence of relatives that were available or willing to care for these children or willing and able to facilitate and supervise visitation; rather N.P.'s family was supportive of the Petitioners pursuing adoption. Further, the Court finds that adoption is in the best interests of the minor children. The Court also specifically finds that these children were harmed by the drug use of their mother (as both children tested positive for methamphetamine) and the absence and neglect of their father in allowing it to happen unchecked over a considerable period of time.

J.P. and N.P. assert that the chancery court's parental termination determination should be reversed because the court misunderstood and misapplied these statutory prerequisites under either the *In re B.A.H.* "two-alternative" or the *Chism* "three-element" approach.

¶77. We find no merit in this assertion for two reasons. First, as detailed above, the chancery court terminated J.P. and N.P.'s parental rights under both section 93-17-7 and section 93-15-103. Under *Hartley v. Watts*, where a chancery court terminates parental rights under section 93-17-7, as the court did in this case, the chancery court may consider grounds for termination under section 93-15-103(3), but it is under no obligation to consider the statutory prerequisites under section 93-15-103(1). *Hartley*, 255 So. 3d at 125-26 (¶44). Second, we find that substantial credible proof supports the chancery court's finding that section 93-15-103(1)'s statutory prerequisites were met by clear and convincing evidence in

this case.

1. No Requirement that the Chancery Court Consider Section 93-15-103(1)'s Prerequisites

¶78. In *Hartley*, the Mississippi Supreme Court analyzed the chancellor's application of the same version of section 93-17-7 that is applicable here. *Hartley*, 255 So. 3d at 125-26 (¶44). The chancery court in *Hartley* terminated a father's parental rights based upon section 93-17-7 and also used the statutory grounds for termination enumerated in section 93-15-103 as support for its decision. *Id.* at 123-26 (¶¶34-44). On appeal, the father argued that the chancery court's decision should be reversed because the court "failed to consider all the prerequisites under . . . [s]ection 93-15-103(1) before terminating [his] parental rights, as required by *Chism v. Bright*, 152 So. 3d 318 (Miss. 2014)." *Id.* at 125 (¶40). The supreme court rejected this argument, holding that because "the chancellor ruled under . . . [s]ection 93-17-7 in terminating parental rights, the court was not required to consider all the prerequisites or factors under [s]ection 93-15-103(1) and used that section only as additional support of his final judgment." *Id.* at 126 (¶44).

¶79. Like the chancellor in *Hartley*, the chancellor in this case utilized section 93-17-7 in terminating J.P. and N.P.'s parental rights, and also the chancellor herein addressed grounds under section 93-15-103. Although we find in this case that the chancery court properly considered and applied the statutory prerequisites under section 93-15-103(1), we hold that based on precedent, even if the chancellor had not done so, this does not constitute reversible error in this case. As the supreme court held in *Hartley*, under section 93-17-7(2)(e) the chancery court was free to consider grounds for termination under section 93-15-103(3), but

it was under no requirement to address the statutory prerequisites under section 93-15-103(1). *Hartley*, 255 So. 3d at 125-26 (¶44).

2. Application of Section 93-15-103(1)'s Prerequisites

¶80. J.P. and N.P. assert that the statutory prerequisites were not met in this case because both the *In re B.A.H.* and the *Chism* tests require that the petitioners (L.S. and M.S.) show by clear and convincing proof either (1) that the parents are unable or unwilling to care for the children (the first element under *Chism*, 152 So. 3d at 323 (¶15)); or (2) the children cannot be returned to the home of their natural parents within a reasonable length of time because doing so would be damaging to the children (the first alternative under *In re B.A.H.*, 225 So. 3d at 1238 (¶59)). According to J.P. and N.P., L.S. and M.S. did not meet this burden.[20] We find no merit in this assertion. The evidence delineated above shows that substantial credible proof supports the chancery court's determination that section 93-15-103(1)'s prerequisites were met based upon clear and convincing evidence for all the reasons

[20] J.P. and N.P. also assert that under *Chism*'s "three-element" interpretation of section 93-15-103(1)'s prerequisites, the chancery court must find that "relatives are not appropriate or are unavailable." *Chism*, 152 So. 3d at 323 (¶15). In addressing this factor, the chancery court found that "[w]hile it is true that [L.S.] and [N.P.] are first cousins, [N.P. and J.P.] offered no evidence of relatives that were available or willing to care for these children or willing and able to facilitate and supervise visitation; rather N.P.'s family was supportive of L.S. and M.S. pursuing adoption." J.P. and N.P., however, assert that the availability of L.S. (N.P.'s cousin) precludes the termination of their rights. This argument is waived, as it was not raised in the court below. *In re B.A.H.*, 225 So. 3d at 1239 (¶62). We also find instructive this Court's observation in *In re B.A.H.* that "the precise enumeration of the prerequisites in *Chism* [and other cases using the "three-element" test] was not necessary to those rulings and, thus, may be considered dicta." *Id.* at (¶63). We likewise consider this factor dicta in this case. Indeed, in this case, the chancery court was not bound to consider any of section 93-15-103's prerequisites because it also terminated J.P. and N.P.'s parental rights under section 93-17-7. *Hartley*, 255 So. 3d at 125-26 (¶44).

that the same proof supports the chancery court's determination that J.P. and N.P. were "unfit" under section 93-17-7.

¶81. J.P. and N.P., however, assert that under *Doe v. Doe*, No. 2015-CA-00652-COA, 2017 WL 499189 (Miss. Ct. App. Feb. 7, 2017), N.P.'s successful drug rehabilitation refutes the chancery court's determination that the children could not be returned to the home within a reasonable time. *Id.* at *5 (¶24). *Doe* is distinguishable and does not support J.P. and N.P.'s argument in this case. Although we took the natural mother's successful drug rehabilitation into account in *Doe*, the relevant point applicable to this case is that in *Doe* we also specifically recognized that "[t]here was no evidence at trial that Jane [the natural mother] abused drugs in the presence of the child, nor had she ever harmed the child." *Id.* In this case, as detailed above, the record contains ample proof that the children were exposed to dangerous levels of meth while under N.P.'s direct care and due to J.P.'s inaction in failing to remove the children from this dangerous condition.

¶82. J.P. and N.P. also assert that it was improper for the chancery court to consider N.P.'s past conduct in finding that the statutory prerequisites as to her were not met. Just as we addressed this argument in the context of terminating N.P.'s parental rights under section 93-17-7, we likewise find no error in the chancellor considering this evidence under 93-15-103(1). This evidence is a highly relevant consideration in the chancery court's determination that N.P. was "unable or unwilling to care for the children," *see Chism*, 152 So. 3d at 323 (¶15), and that returning the children to J.P. and N.P.'s home would be damaging to them. *See In re B.A.H.*, 225 So. 3d at 1238 (¶59). N.P.'s meth use in 2006-

2007 resulted in her older son testing positive for meth and her losing custody and parental rights to him—essentially the same conduct she repeated with respect to her and J.P.'s children in this case.

¶83. Finally, J.P. and N.P. assert that, as to J.P., the chancery court misapplied the statutory prerequisite that the children were " removed from the home of [their] natural parents," Miss. Code Ann.§ 93-15-103(1), because the children's removal was based upon the youth court's no-contact order that was entered without proper notice to J.P. We recognize that J.P. was not served with proper notice under Mississippi Code Annotated section 43-21-505 (Rev. 2009) and that the adjudicatory order, which continued the no-contact ruling initially set in the youth court temporary custody order, was entered in J.P.'s absence.

¶84. J.P., however, did not timely appeal the youth court's adjudicatory order pursuant to section 43-21-651(1);[21] nor did J.P. challenge the validity of the order based on defective process by moving to set it aside as void for lack of personal jurisdiction under Mississippi Rule of Civil Procedure 60(b)(4). *See In Interest of M.M.*, 220 So. 3d 285, 288 (¶11) (Miss. Ct. App. 2017) ("[T]here is no effective time limit for seeking relief from a void judgment

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[21] Section 43-21-651(1) provides:

> (1) The court to which appeals may be taken from final orders or decrees of the youth court shall be the Supreme Court of Mississippi. In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within the time, and costs in the youth court and the filing fee in the Supreme Court shall be paid, as is otherwise required for appeals to the Supreme Court.

Miss. Code Ann. § 43-21-651(1) (Rev. 2009). Rule 3 of the Mississippi Rules of Appellate Procedure allows thirty days within which an appeal must be taken.

under [Rule] 60(b)(4).”). At no time, either in the youth court or before the chancery court, did J.P. appear specially to make any type of jurisdictional challenge with respect to the youth court’s adjudicatory order.

¶85. Instead, nearly a year after the adjudicatory order was entered, J.P. and N.P., through counsel, petitioned the chancery court for a writ of habeas corpus, requesting, among other things, that the court return the children to them. In this case, counsel made a general appearance in chancery court on behalf of both J.P. and N.P., and did not appear specially with respect to any jurisdictional challenge as to J.P. The petition, in fact, did not contain any challenge to the validity of the adjudicatory order as to J.P., nor did J.P.’s counsel challenge its validity as to J.P. at the hearing on the petition. Accordingly, J.P. has waived his right to challenge the validity of the adjudicatory order for lack of proper process, or the chancery court’s purported reliance on that order, because he has since appeared generally in these proceedings. *Pace v. Pace*, 16 So. 3d 734, 738 (¶¶14-15) (Miss. Ct. App. 2009) (explaining that an objection to the validity of a divorce decree based upon the court’s lack of jurisdiction due to defective process is waived when a movant makes a general appearance).

B. Grounds for Termination under Section 93-15-103(3)

¶86. Section 93-15-103(3) provides that grounds for termination of parental rights shall be based on one or more enumerated factors. In this case, the chancellor based his termination decision with respect to both J.P. and N.P. on section 93-15-103(3)(f), which, as we have addressed above, allows for termination “when there is some . . . substantial erosion of the

relationship between the parent and child which was caused at least in part by the parent's serious neglect [or] abuse." As we found above in addressing this ground for termination in the context of section 93-17-7, there is substantial credible evidence supporting the chancery court's findings by clear and convincing evidence in ordering termination of parental rights based upon 93-15-103(3)(f).

¶87. We observe that even if the chancery court erred in terminating J.P. and N.P.'s parental rights under section 93-15-103(3)(f), this would not constitute reversible error in this case. This is so because, as addressed above, the chancery court's decision to terminate J.P. and N.P.'s parental rights under other grounds pursuant to section 93-17-7 was fully supported by the evidence in this case. *See Mason v. S. Mortg. Co.*, 828 So. 2d 735, 738 (¶15) (Miss. 2002) ("An appellate court may affirm a trial court if the correct result is reached, even if the trial court reached the result for the wrong reasons."); *Harbit v. Harbit*, 3 So. 3d 156, 163 (¶24) (Miss. Ct. App. 2009).

C. Best Interest of the Children

¶88. Similarly, for all the reasons set forth above in which we affirm the chancery court's determination that terminating J.P. and N.P.'s parental rights under 93-17-7 was in the children's best interests, we likewise find that termination of their parental rights under 93-15-103 was in the children's best interest.

IV. Alternatives to Termination

¶89. J.P. and N.P. assert that the chancery court erred because it did not indicate in its opinion that it had considered alternatives to termination of their parental rights. We

recognize that section 93-15-103(4) provides that "[l]egal custody and guardianship by persons other than the parent . . . should be considered as alternatives to the termination of parental rights, and these alternatives should be selected when, in the best interest of the child, parental contacts are desirable and it is possible to secure such placement without termination of parental rights." As we held in *In re K.D.G. II*, however, the paramount concern in determining the proper disposition *continues to be the best interest of the child, not reunification of the family*." *In re K.D.G. II*, 68 So. 3d at 753 (¶28) (emphasis added) (quoting *May v. Harrison Cty. Dep't of Human Servs*., 883 So. 2d 74, 81 (¶22) (Miss. 2004)).

¶90. In this case the chancery court found that terminating J.P. and N.P.'s parental rights was in the best interests of the children for all the reasons detailed above. Moreover, the GAL's report shows that she considered alternatives to termination, particularly as to J.P.[22] This information was considered and given the appropriate weight, by the chancery court, as expressly stated in its opinion. We find that the record reflects that the chancery court properly considered the best interests of the children when rejecting alternatives to termination, and thus we find no merit in this issue. *See In re K.D.G. II*, 68 So. 3d at 754 (¶30).

¶91. **AFFIRMED.**

GRIFFIS, C.J., BARNES, P.J., WILSON, GREENLEE AND WESTBROOKS,

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[22] The GAL found in her report that J.P.'s parental rights should not be terminated and that, instead, he should be given supervised visitation. After hearing all the testimony at trial, however, the GAL recommended that J.P.'s parental rights be terminated as well, in light of his neglectful conduct both before N.P.'s drug use and after, and her evaluation that future contacts between J.P. and the children would not be desirable toward obtaining a satisfactory permanency outcome.

JJ., CONCUR. TINDELL, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. McDONALD, LAWRENCE AND McCARTY, JJ., NOT PARTICIPATING.