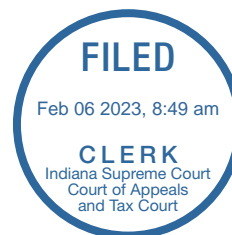


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of Parental Rights of:

CA.J, CI.J. & B.J. (Minor
Children),

M.J. (Mother) & D.J. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

February 6, 2023

Court of Appeals Case No.
22A-JT-1538

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause No.
33C01-2109-JT-21
33C01-2109-JT-22
33C01-2109-JT-23

Memorandum Decision by Judge Robb

Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issues

[1] D.J. (“Father”) and M.J. (“Mother”) (collectively, “Parents”) are the biological parents of three children (“Children”). The Children were removed from Parents’ care and adjudicated children in need of services (“CHINS”) in August 2020. In May 2022, Parents’ parental rights to the Children were terminated. Father and Mother appeal separately in this consolidated action. Father raises the sole issue of whether the juvenile court committed fundamental error in terminating his parental rights, alleging the Indiana Department of Child Services (“DCS”) violated his due process rights by failing to make reasonable efforts to reunify him with the Children. Mother raises the sole issue of whether DCS proved by sufficient evidence that her parental rights should be terminated. Concluding DCS made reasonable reunification efforts and Father’s due process rights were not violated and further concluding sufficient evidence supports termination of Mother’s parental rights, we affirm the judgment as to both Parents.

Facts and Procedural History

[2] The events precipitating this case were described in Mother's appeal from the CHINS adjudication:

In August 2020, Mother and Children were living at Father's grandparent's house, but Father was not allowed in the home due to his known drug abuse. Occasionally, the family would stay at a hotel on the weekends so the Children could spend time with Father.

On Sunday, August 23, 2020, the family was staying at a hotel and traveled to a local Walmart. They either walked to the store or C.A., a family friend, drove them. Shortly after they arrived, Mother and Father were involved in a loud verbal altercation in the parking lot. C.A. removed the Children from the situation by driving them in her vehicle around the lot. At some point, law enforcement was contacted, and officers arrived soon after.

The officers quickly determined that all three adults were impaired. Therefore, law enforcement contacted [DCS] and reported that the Children were victims of neglect. On arrival, DCS case managers also noticed that Mother was showing signs of impairment.

. . . [Family] [c]ase manager Carrie Matthews ("FCM Matthews") was familiar with Mother from previous encounters when Mother admitted to using and relapsing on methamphetamine. . . . FCM Matthews noted that Mother's behavior in the Walmart parking lot was similar to how Mother had previously acted while under the influence of methamphetamine. DCS requested Mother take a drug screen, but she declined.

Meanwhile, Father admitted to [FCM Matthews] that he used marijuana daily and agreed to take an instant drug screen. When

the results came back invalid, DCS asked Father to take another screen; he declined.

* * *

Although the police did not cite or arrest anyone for the events that took place outside Walmart, DCS needed to quickly determine who could care for the Children because all three adults were impaired. DCS and Mother tried to find an alternative to detaining the Children, such as Mother's parents, but they were unavailable to care for the Children at that time. Thus, DCS removed the children from Mother's and Father's care and subsequently placed them in foster care.

In re Ca.J., 21A-JC-44, 2021 WL 2821072, at *1 (Ind. Ct. App. July 6, 2021) (internal record citations omitted). The next day, August 24, DCS filed a petition alleging the Children were CHINS.¹

- [3] On October 22, the juvenile court held a fact-finding hearing on the CHINS petition. Father admitted to his drug abuse and that the Children were CHINS because they lacked a “substance abuse free environment.” *Id.* at *2. Mother did not admit that the Children were CHINS and DCS presented evidence including that in the two months preceding the fact-finding hearing, Parents were given the opportunity to attend supervised visitation with the Children but missed several scheduled visits. Mother was offered drug screening, but she

¹ Father and Mother were married at the time the Children were removed but were divorced during these proceedings.

participated in only one screen and it tested positive for marijuana and Tramadol. And DCS case managers had difficulty getting in contact with Mother. In addition, Mother had no verifiable housing or income.

- [4] On October 28, the juvenile court issued an order adjudicating the Children as CHINS. In that order, the court specifically concluded that the Children were seriously endangered by “their lack of a sober caregiver and their lack of stable housing.” *Id.*
- [5] The dispositional hearing was held about a month later, and the court issued its dispositional order on December 8. Among other things, Parents were ordered to maintain regular contact with the FCM and inform the FCM of any changes in address or telephone number, participate in random drug screens and therapy, undergo a substance abuse assessment and follow the recommendations therefrom, undergo a parenting assessment and enroll in any recommended services, participate in a domestic violence assessment and complete all recommended programs, obey the law, refrain from drug and alcohol use, maintain financial and housing stability, and attend all scheduled visitations with the Children. The permanency plan was reunification.²
- [6] In an order on periodic case review entered April 15, 2021, the juvenile court found that neither Father nor Mother had complied with the case plan and had

² Mother appealed the CHINS adjudication as unsupported by the evidence. This court affirmed the juvenile court. *See In re Ca.J.*, 21A-JC-44, 2021 WL 2821072, at *4.

not enhanced their abilities to fulfill their parental obligations. Specifically, the court found:

A. Mother is not remaining in contact with DCS; does not have stable housing or income; and is not participating in home-based counseling, a parenting assessment, a substance abuse assessment, or a domestic violence assessment. Mother admitted to the FCM immediately prior to this court hearing that she ha[d] used methamphetamine 2 days prior.

B. Father does remain in contact with DCS, informs DCS of updates/changes in his circumstances, and did complete a substance abuse assessment. Father does not have stable housing or income; has not participated in random drug screens; was arrested in January 2021, and is not currently participating in home-based counseling, a parenting assessment, substance abuse services, or domestic violence services.

Exhibits, Volume 3 at 35. In addition, neither Parent was consistently participating in visits with the Children. Mother's last in-person visit with the Children was in December 2020 and she slept through the entire visit. Her last virtual visit was in January 2021. Father's last visit was in March or April 2021. On May 14, 2021, on the motion of the court-appointed special advocate ("CASA") due to the Parents' failure to comply with services and the recommendation of the Children's therapist, the juvenile court ordered visits suspended. *See* Appealed Order at 13 ¶ 21. "The Order allowed DCS to reinstate visitation for Mother or Father when they began complying in services." *Id.* Visits were never reinstated. In July, finding the Parents were

still not in compliance with the case plan, the juvenile court added a concurrent permanency plan of adoption.

[7] DCS filed a petition seeking the involuntary termination of Parents' parental rights on September 8, 2021. At the termination hearing held over two days in May 2022, various DCS employees and service providers testified, as did Father and Mother.

[8] With respect to Father, the testimony showed he was arrested and briefly incarcerated in January 2021, was arrested in June 2021 and incarcerated for three months, and was arrested in December 2021 and incarcerated at the time of the termination hearing. Father's most recent arrest was for possession of methamphetamine, and he was awaiting an imminent plea agreement and referral to drug court. At the time of his arrest, he was on probation for a previous conviction for possession of methamphetamine and was facing a petition to revoke. Services were not provided during his periods of incarceration for various reasons, including that the jail did not allow service providers because of COVID-19 and/or that due to the scarcity of service providers, they were not going out into the community to provide services. FCM Matthews acknowledged DCS is supposed to offer services while a parent is incarcerated, but because of the limitations, she just ensured that referrals stayed open for when Father was released.

[9] During periods when Father was not incarcerated, he was not compliant with the case plan. He completed a substance abuse assessment and attended

orientation for a drug and alcohol group in December 2020 but only attended two sessions before the referral was closed in March 2021. Father generally maintained regular contact with DCS until his most recent incarceration. Father's last drug screen, in September 2021, was negative. But he was "forthcoming about his substance abuse" – primarily marijuana but also methamphetamine – and advised FCM Matthews when, in the fall of 2021, he relapsed. Transcript of Evidence, Volume 2 at 25. Prior to visits being suspended in May 2021, Father last visited with the Children in March or April 2021. At a permanency hearing in July 2021, Father asked if he could participate in video visits with the Children from the jail but that was never arranged.

[10] The testimony with respect to Mother showed that, aside from her inconsistent visitation with the Children which was suspended in May 2021, she did not participate in any services for nearly a year after the Children's removal. She attended five therapy sessions in August and September 2021. When Mother did not attend further scheduled sessions, the referral was closed. Mother continued to use drugs, primarily methamphetamine, throughout the proceedings, telling FCM Matthews that she would "be able to stop using drugs when she has her children." *Id.* at 20. The three drug screens that FCM Matthews was able to conduct on Mother all occurred at court appearances in 2021 and all were positive. Mother requested to restart services shortly before the termination hearing after largely failing to maintain contact with DCS throughout these proceedings. Mother completed a substance abuse intake

appointment in April 2022, telling the therapist that she “had issues with substance use” over a prolonged period and had used methamphetamine and marijuana “a couple of days prior” to the appointment. *Id.* at 81-82. She also reported to the therapist that she was homeless and sleeping outside. Mother testified at the hearing that she now had a “stable spot to live,” was working, and had a support system. *Id.* at 107.

[11] FCM Matthews had never recommended that the Children be returned to either Parent because “during the length of the case, [M]other nor [F]ather have been able to sustain stability or sobriety for the [C]hildren to be . . . returned to them.” *Id.* at 35. FCM Matthews’ concerns with Mother as of the time of the termination hearing were that “she hasn’t followed through with any type of treatment to help her stay sober throughout the life of the case. . . . [S]he’s homeless and she’s been sleeping on the streets, so for me, the same allegations that led us to the case are still apparent today[.]” *Id.* at 21-22. FCM Matthews’ concerns about Father included that he “is incarcerated and per probation, his time incarcerated is possibly a year[.] Father has not been able to follow through with services, to stay clean and sober, and [he has] instability with housing and . . . employment.” *Id.* at 34. Essentially, FCM Matthews believed the concerns that led DCS to remove the Children initially had not been resolved and were still present.

[12] The therapist for the two oldest children testified that they both had suffered from instability and trauma due to their past home environment and that the behaviors and emotional regulation issues that engendered had stabilized in the

foster placement. She opined they needed stability, structure, and consistency going forward, and recommended on-going therapy. She was concerned that if Children were returned to the Parents, they would suffer continued instability, and she believed they were currently in a placement where all of their needs were being met.

[13] The CASA director³ expressed concern about returning the Children to the Parents because of their failure to complete any services and the fact the Children had been out of the Parents' care for the majority of their young lives.⁴ She recommended termination of the Parents' parental rights and adoption of the Children so the Children can "achieve permanency and have a forever home." *Id.* at 98.

[14] On May 31, the juvenile court issued its Order for Involuntary Termination of Parental Rights, making findings of fact and concluding that DCS had met its burden of proving, in relevant part:

2. There is a reasonable probability that:

³ The director testified that although there was a CASA volunteer assigned to the Children, she also attended all child and family team meetings, interviews with prospective placements, and met with the FCM so she had firsthand knowledge of this case.

⁴ The Children were almost four, three, and one when they were removed from the Parents. Nearly two years passed from removal to the termination order.

a. the conditions that resulted in the Children's removal or the continued placement outside the home will not be remedied by Mother and Father;

b. continuation of the parent-child relationship poses a threat to the Children's well-being; [and]

3. Termination of parental rights is in the Children's best interests[.]

Appealed Order at 16. Mother and Father now separately appeal. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[15] Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). Indiana Code section 31-35-2-4 sets out the elements that DCS must allege and prove by clear and convincing evidence to terminate a parent-child relationship, including:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]

(C) that termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2);⁵ Ind. Code § 31-37-14-2 (stating burden of proof in termination proceedings).

[16] If the juvenile court concludes the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship[.]” Ind. Code § 31-35-2-8(a), and must enter findings supporting its conclusion, Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. If the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment, the judgment is not clearly erroneous. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable

⁵ There are four elements total. Mother, the only party on appeal to challenge the proof supporting termination, specifically challenges only these two elements. As Mother did not challenge proof of the remaining two elements (the period of removal from the home/efforts at reunification and the plan for the care and treatment of the child), we consider any argument regarding them waived. *See* Ind. Appellate Rule 46(A)(8)(a).

inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). Finally, where the findings are not challenged, we accept them as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

II. Father’s Appeal: Due Process

[17] Father asserts that his state and federal constitutional rights to substantive due process were violated when DCS failed to provide reunification services to him while he was incarcerated and offer opportunities for meaningful contact with the Children.⁶ As noted above, a parent has a substantive due process right to establish a home and raise his children. *See supra* ¶ 15 (citing *In re R.H.*, 892 N.E.2d at 149). Father concedes he did not object to this alleged due process violation during the CHINS proceedings and did not specifically raise this issue during the termination proceedings. Generally, a party waives on appeal an issue that was not raised before the trial court. *In re D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019), *modified on reh’g*, 122 N.E.3d 832, *trans. denied*. However, to avoid waiver, Father asserts the error rises to the level of fundamental error. Fundamental error review “is extremely narrow and available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is

⁶ Father asserts his due process claim under the Fourteenth Amendment to the United States Constitution and his due course of law claim under Article 1, section 12 of the Indiana Constitution are entitled to separate analyses. *See* Brief of the Appellant Father at 11-12. We have generally held otherwise in this context. *See In re D.H.*, 119 N.E.3d 578, 586 n.16 (Ind. Ct. App. 2019).

so prejudicial to the rights of the defendant as to make a fair trial impossible.”
Matter of Eq. W., 124 N.E.3d 1201, 1214-15 (Ind. 2019) (quotation omitted).

[18] Father argues it was fundamental error for the juvenile court to terminate his parental rights when DCS failed to make reasonable efforts to reunify him with the Children.⁷ Specifically, Father notes DCS failed to identify any reunification services he could do while incarcerated, asked for visits with the Children to stop just five months after the CHINS disposition, and failed to restart visits when the court charged DCS with “look[ing] into” allowing visits to resume. *Ex.*, Vol. 3 at 47.

[19] When the State seeks to terminate parental rights, it must do so in a manner that meets the requirements of due process. *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015). “[F]or a parent’s due process rights to be protected in the context of termination proceedings, DCS must have made reasonable efforts to preserve and/or reunify the family unit in the CHINS case[.]” *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*; *see also* Ind. Code § 31-34-21-5.5 (stating DCS is generally required to make reasonable efforts to preserve and reunify family during CHINS proceedings). But what constitutes “reasonable efforts” varies by case and the requirement that DCS make reasonable efforts to

⁷ Essentially, Father argues DCS’s failure was so obvious and of such magnitude that the juvenile court should have recognized and *sua sponte* remedied it even though he himself did not object to it. *See Matter of Eq. W.*, 124 N.E.3d at 1215 (“We subscribe to the idea that [a] finding of fundamental error essentially means that the trial judge erred . . . by not acting when he or she should have, even without being spurred to action by a timely objection. Certainly, [a]n error blatant enough to require a judge to take action *sua sponte* is necessarily blatant enough to draw any competent attorney’s objection.”) (quotations and citations omitted).

reunite a family “does not necessarily always mean that services must be provided to the parents.” *T.W.*, 135 N.E.3d at 615. Moreover, the general requirement to make reasonable efforts to reunify families during CHINS proceedings is not an element of the termination statute, “and a failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). We recognize, however, that CHINS and termination proceedings are “deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter[.]” *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014).

[20] In *T.W.*, we held that where father consistently attempted to engage with DCS and participate in reunification services during the CHINS proceeding but DCS made no genuine effort to provide him with support and services, a risk of the erroneous filing of a termination petition was created by DCS’s inaction and father’s due process rights were violated. 135 N.E.3d at 618.

[21] In *T.W.*, DCS “wholly failed to make reasonable efforts to preserve” the parent-child relationship despite father’s diligent and consistent efforts. *Id.* Here, DCS did make reasonable efforts to preserve the family. Father points out that he was incarcerated for half the life of the CHINS proceedings and that DCS provided no services to him while he was in jail. But the FCM explained why services were not provided at the jail – because of COVID-19 and/or the lack of service providers – and the inability to provide services because of a parent’s incarceration does not amount to a denial of due process. *In re H.L.*, 915

N.E.2d at 148 (finding no due process violation where father was incarcerated throughout the CHINS proceedings in multiple counties and those jails did not provide reunification services).

[22] As the juvenile court found in its termination order, “DCS was unable to offer services to Father during his incarcerations, however, Father did not consistently participate in services during the periods of time he was not incarcerated.” Appealed Order at 12. If Father was incarcerated for half the time the CHINS proceeding was pending, then he was not incarcerated for half the time as well. DCS made the appropriate referrals and left them open while Father was incarcerated so he could engage when he was released, but Father largely failed to do so. The juvenile court found that Father’s participation in services “was slightly better than Mother’s when he was not incarcerated,” including staying in contact with DCS and completing a substance abuse assessment, but he was discharged from substance abuse services and supervised visitation for noncompliance and lack of communication, and he did not complete a parenting assessment or participate in home-based casework or domestic violence services. *Id.* at 12-13. Father had the opportunity to restart visitation if he complied with other facets of the case plan, but he never did so and so DCS did not reinstate visits. Father’s own actions and omissions kept him from participating in services, not DCS’s failure to provide them.

[23] Father’s due process rights were not violated where DCS made reasonable reunification efforts in which Father failed to participate when able. Thus, the

juvenile court did not commit fundamental error and the judgment terminating Father's parental rights is affirmed.

III. Mother's Appeal: Insufficient Evidence

A. Remedy of Conditions

[24] Mother challenges the juvenile court's conclusion that there is a reasonable probability the conditions that resulted in the Children's removal will not be remedied.⁸ *See* Ind. Code § 31-35-2-4(b)(2)(B)(i). We note that Mother has not challenged any of the juvenile court's findings of fact, and we therefore take them as true and need only determine whether the unchallenged findings clearly and convincingly support the judgment. *See In re S.S.*, 120 N.E.3d at 610.

[25] There is a two-step analysis for addressing whether the conditions that resulted in a child's removal will not be remedied: first, identifying the conditions that led to removal, and second, determining whether there is a reasonable probability those conditions will be remedied. *See E.M.*, 4 N.E.3d at 642-43. In the second step, the juvenile court must judge a parent's fitness as of the time of

⁸ The juvenile court also concluded there was a reasonable probability that continuation of the parent-child relationship poses a threat to the Children's well-being. *See* Appealed Order at 16. Mother ostensibly challenges this conclusion, although she makes no argument regarding this prong that is independent of her argument regarding the reasonable probability of remedied conditions prong. *See* Appellant/Mother's Brief at 12-13. Regardless, because this element of the statute is stated in the disjunctive, *see* Ind. Code § 31-35-2-4(b)(2)(B), DCS need not have proven both prongs, the juvenile court need not have made both conclusions, and we need not address them both on appeal if we find one is sufficiently proven, *In re S.K.*, 124 N.E.3d 1225, 1233-34 (Ind. Ct. App. 2019), *trans. denied*.

the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* at 643. We entrust that "delicate balance" to the juvenile court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.*

[26] Here, the juvenile court made the following findings supporting its conclusion that there is a reasonable probability the conditions resulting in the Children's removal from Mother's care would not be remedied:

- The Children were removed in part because Mother displayed characteristics consistent with her behavior on previous occasions when she was using methamphetamine and due to financial and housing instability, *see* Appealed Order at 2 ¶ 6; at 5-6 ¶¶ 11.O, 11.U, 11.V, and 11.AA;
- The juvenile court found at periodic review hearings during the CHINS proceedings that Mother still did not have stable housing, *see* Appealed Order at 10 ¶ 13.B; at 11 ¶ 14.B;
- Mother continued to use illegal substances throughout the CHINS proceedings, providing five drug screens in 2020 and 2021 that were positive for illegal substances, *see* Appealed Order at 12 ¶ 2; at 13 ¶ 16;

- Mother admitted to a DCS service provider in April 2022 that she had recently used methamphetamine and was homeless, *see* Appealed Order at 12 ¶ 5;
- Mother admitted to FCM Matthews that she had used illegal substances as recently as the beginning of May 2022, *see* Appealed Order at 12 ¶ 3;
- As of the date of the termination hearing in May 2022, Mother reported she had stable housing, employment, and a solid support system, including a recovery coach, *see* Appealed Order at 14 ¶ 26; however, the juvenile court did not find this evidence persuasive of “long-term or permanent changes due to [Mother’s] own admission in April 2022 that she was homeless and using methamphetamine at that time[,]” *see id.* at 14 ¶ 27.

[27] The juvenile court acknowledged Mother’s testimony that her circumstances at the time of the termination proceeding had recently improved from earlier in the CHINS proceeding. However, the juvenile court also noted that Mother had continued to use illegal substances as recently as a month before the termination hearing and gave more weight to that habitual conduct than to her recent improvements. This is within the juvenile court’s discretion. *See E.M.*, 4 N.E.3d at 643.

[28] The juvenile court’s unchallenged findings clearly and convincingly support its conclusion that DCS proved by clear and convincing evidence that there is a

reasonable probability the conditions that resulted in the Children's removal from Mother's care will not be remedied.

B. Best Interests

[29] Mother also challenges the juvenile court's conclusion that termination was in the Children's best interests. *See* Ind. Code § 31-35-2-4(b)(2)(C). The determination of a child's best interests should be based on the totality of the evidence. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports the conclusion that termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). And a service provider's opinion that termination is in a child's best interests combined with evidence that removal conditions will likely not be remedied, is sufficient to support the juvenile court's conclusion that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[30] The juvenile court stated that each of its findings supported its conclusion that termination was in the Children's best interests. *See* Appealed Order at 16 ¶ 38. In addition to the findings described above regarding Mother's substance use and instability, *supra* ¶ 26, the juvenile court made the following findings relevant to the Children's best interests:

- Mother has not participated in in person visits with the Children since December 2020, *see* Appealed Order at 13 ¶ 19;

- The Children’s therapist believed the Children remaining in their current placement would provide them with the stability and consistency they need, *see* Appealed Order at 13 ¶ 23;
- The CASA director supported termination of parental rights as necessary in order for the Children to have permanency and a forever home and she would not recommend delaying termination as that would prioritize adult needs over the Children’s, *see* Appealed Order at 13-14 ¶¶ 24-25;
- FCM Matthews believed the Children’s best interests would be served by termination as it would allow them to be adopted and achieve much needed permanency, *see* Appealed Order at 14 ¶ 33.

[31] The juvenile court’s unchallenged findings clearly and convincingly support its conclusion that DCS proved by clear and convincing evidence that termination is in the Children’s best interests.

[32] Accordingly, the juvenile court’s judgment terminating Mother’s parental rights to the Children is supported by the findings and is not clearly erroneous. The judgment as to Mother is affirmed.

Conclusion

[33] Father failed to show that DCS did not meet its obligation to make reasonable efforts to reunify the family during the CHINS proceeding and therefore failed to show that his due process rights were violated or that the juvenile court

committed fundamental error in terminating his parental rights. The juvenile court's judgment concluding DCS proved the requirements for termination is not clearly erroneous as it is supported by the unchallenged findings.

Accordingly, the judgment terminating Father's and Mother's parental rights is affirmed.

[34] Affirmed.

Mathias, J., and Foley, J., concur.