

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In re: the Termination of the  
Parent-Child Relationship of:  
Ja.W. (Minor Child) and J.W.  
(Father) and H.W. (Mother)  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*

June 28, 2023

Court of Appeals Case No.  
23A-JT-35

Appeal from the Martin County  
Circuit Court

The Honorable Lynne E. Ellis,  
Judge

Trial Court Cause No.  
51C01-2204-JT-15

**Memorandum Decision by Judge May**  
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

[1] J.W. (“Father”) and H.W. (“Mother”) (collectively, “Parents”) bring this consolidated appeal of the involuntary termination of their parental rights to Ja.W. (“Child”). Mother and Father make several arguments, which we restate and reorganize below:

***Procedural Arguments***

1.1 Father argues the trial court erred when it terminated his parental rights to Child because the Department of Child Services (“DCS”) did not assist him with obtaining services for reunification;

1.2 Mother argues the trial court impermissibly shifted the burden of proof to Mother when it allegedly did not force DCS to prove its case with clear and convincing evidence that termination was in Child’s best interests; and

1.3 Mother argues the trial court violated her due process rights when it allegedly made comments regarding Mother’s demeanor during the fact-finding hearing and asked Mother’s counsel questions during closing argument.

***Arguments About Trial Court’s Findings and Conclusions***

2.1 Mother argues the trial court’s findings do not support its conclusions that the conditions under which Child was removed from Mother’s care would not be remedied and the continuation of the Mother-Child relationship threatened Child’s well-being;

2.2 Father argues the trial court’s findings do not support its conclusion that the conditions under which Child was removed from Father’s care would not be remedied;

2.3 Mother argues the termination of Mother’s parental rights to Child was not in Child’s best interests; and

2.4 Father argues the trial court’s plan for Child’s adoption following termination of his parental rights was not satisfactory because the trial court should have instead put into place a guardianship.

We affirm.

## Facts and Procedural History

[2] Child was born to Parents on January 19, 2020. Father<sup>1</sup> is also Mother’s father. On January 17, 2021, DCS received a report that Mother “was being evasive about her location and that [Child] was not being appropriately cared for, especially in light of his medically fragile condition.” (Ex. Vol. I at 25.) Child previously had been diagnosed with cancer and had a kidney removed on December 22, 2020. Child’s cancer was in remission at the time of the January 2021 report, but he was being monitored by Riley Hospital.

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<sup>1</sup> Father did not establish paternity of Child at birth. On September 8, 2020, as part of another Child in Need of Services (“CHINS”) matter involving Child, Father admitted he was Child’s father.

[3] During DCS's initial investigation regarding Mother's neglect of Child, Mother spoke with DCS multiple times but her exact location remained unknown. Mother refused to take a drug test. DCS discovered Father was in prison in Colorado and there was a no-contact order between Mother and Father. In addition to his incarceration in Colorado, Father had been charged with incest with Mother in Wells County. Regarding those charges, Mother told Detective Cliff Thomas of the Bluffton Police Department that "[Father] threatened her with physical violence if she failed to follow [Father's] instructions regarding what she was to tell law enforcement." (Mother's App. Vol. II at 24.) She also told Detective Thomas about multiple instances of physical violence perpetrated by Father upon her, including multiple times Father kicked her until she had a miscarriage. Mother also told Detective Thomas that Father prostituted her and, if she did not have sex as directed, he helped the other person rape her. Finally, Mother told Detective Thomas that Father compelled her to use methamphetamine.

[4] On February 1, 2021, Mother submitted to a drug test that came back positive for methamphetamine. On the same day, Mother agreed to participate in an informal adjustment with DCS in which Child would reside with his maternal great-grandparents ("Great-Grandparents") in Martin County, as Parents lived on adjacent land and Child had been placed with Great-Grandparents during an earlier Child in Need of Services ("CHINS") adjudication. Mother also agreed to go to Wells County and speak with law enforcement regarding a pending criminal case against Father for incest.

[5] Mother did not participate in the informal adjustment and did not go to Wells County. Instead, she moved to Nebraska. Child remained with Great-Grandparents and has lived with them during the entirety of these proceedings. On February 3, 2021, Father was released from incarceration in Colorado but would not provide the trial court with his current address. On February 16, 2021, Mother told DCS she no longer wanted to participate in services.

[6] Sometime after Mother left Indiana, Child's cancer returned and he needed immediate medical treatment. Great-grandmother could not consent to the treatment as she did not have the legal authority to do so. Parents were unavailable to consent because their whereabouts were unknown. However, Child's doctor agreed to provide the emergency treatment "but emphasized that it was a one-time occurrence and that only someone with legal authority would be able to consent to further treatment." (*Id.* at 18-9.)

[7] On February 26, 2021, DCS filed a petition to declare Child a CHINS based on

Mother's failure to abide by the Safety Plan, Mother's failure to participate in an Informal Adjustment, Mother's failure to engage in services with Department of Child Services, Mother informing [Family Case Manager ("FCM") Stephanie Helton] that she was in Nebraska and would not provide an address to FCM Helton, concerns regarding Mother's substance abuse, Father's criminal charges, domestic violence, and [Child's] medical needs not being appropriately met by Mother.

(*Id.* at 19.) The trial court ordered continued placement with Great-Grandparents. On March 3, 2021, the trial court held its initial hearing on the

CHINS petition. Mother and Father both appeared via Zoom and had not yet provided DCS with their current addresses. Based on the allegations in the CHINS petition, the trial court ordered, regarding Mother:

Mother shall have supervised visitation at the Martin County DCS office if she submits to a drug screen through the Martin County Probation [D]epartment which is currently scheduled for March 5, 2021.

Mother provided an address at the Initial Hearing. DCS confirmed during the hearing Mother was not residing at that address. Mother shall provide DCS her location.

There shall be no unsupervised visitation or contact between Mother and [Child], to include telephone calls or video chats.

Mother requests a change of placement to paternal grandparents in Wells County, Indiana. Father requests a change of placement to paternal grandparents in Wells County, Indiana. The Court after hearing the arguments of parties denies the request. [Child] shall remain placed with [Great-Grandparents] in Martin County, Indiana.

(Ex. Vol. I at 33.) The trial court ordered, regarding Father:

Father is alleged to be the biological father of the [Mother] who is the biological [Mother] of [Child] in this matter. The Court orders that [neither Father] nor paternal grandparents shall have any contact or visitation with [Child] until further order of the Court.

Father is to provide information about his Colorado parole to his counsel.

(*Id.*) In May 2021, Father was arrested for domestic violence against Mother in Las Vegas, Nevada.

[8] On August 23, 2021, Mother admitted Child was a CHINS based on her substance abuse, current incarceration in Martin County on a probation violation for an earlier conviction of Level 6 felony possession of methamphetamine,<sup>2</sup> her inability to take care of Child, and Child’s need for continued medical treatment. During the same hearing, Father also admitted Child was a CHINS based on his incarceration in Colorado for a parole violation, pending incest charges in Wells County, his inability to take care of Child, and Child’s continued need for medical treatment. The trial court adjudicated Child as a CHINS the same day. On September 15, 2021, the trial court entered a no-contact order, prohibiting Father from having contact with Child, Mother, and Great-Grandparents.

[9] On September 21, 2021, the Martin County Probation Department withdrew its petition to revoke Mother’s probation. On September 29, 2021, the trial court held a dispositional hearing. Parents were both present at the hearing via Zoom. In its dispositional order entered October 5, 2021, the trial court ordered Mother to, among other things, maintain communication with the Family Case Manager (“FCM”) regarding changes in address, any other people in her household, employment, and telephone number; keep all appointments

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<sup>2</sup> Ind. Code § 35-48-4-6.1(a).

with service providers, DCS, or the Guardian ad litem or provide advance notice and good cause for not doing so; obtain and maintain stable employment and stable housing; refrain from using or selling illegal substances; submit to random drug screens; obey the law; participate in all assessments and recommendations based thereon; not permit Father to have contact with her or Child; report to the FCM if Father attempts to have contact with Child; participate in supervised visitation with Child; and attend Child's medical appointments. The trial court ordered Father to, among other things, maintain communication with the Family Case Manager ("FCM") regarding changes in address, any other people in his household, employment, and telephone number; keep all appointments with service providers, DCS, or the Guardian ad litem or provide advance notice and good cause for not doing so; obtain and maintain stable employment and stable housing; refrain from using or selling illegal substances; submit to random drug screens; obey the law; participate in all assessments and recommendations based thereon; not commit any acts of domestic violence on anyone; and "not have any access to or communication with [Mother], [Child] and/or placement, and . . . abide by the terms of any no-contact order and/or protective order." (*Id.* at 90.)

[10] Mother remained in Nebraska and did not complete any services as ordered. Father was incarcerated in Nebraska and DCS did not provide services because of his incarceration. Father participated in parenting classes while incarcerated. Based on Parents' non-compliance with services, the trial court changed Child's permanency plan from reunification to adoption on April 13, 2022.



[11] On April 25, 2022, DCS filed a petition to terminate Parents' parental rights to Child. On July 13, August 16, and August 31, 2022, the trial court held fact-finding hearings on the termination petition and Parents participated via Zoom. Mother would not tell the trial court where she was located at the time of the hearing and Father participated while incarcerated in Nebraska. DCS witnesses recounted Parents' non-compliance with services. Mother had not seen Child since February 2021 and Father had not seen Child since June 2020. Additionally, Child was receiving proper medical care while placed with Great-Grandparents and Child's doctor, Dr. Gerard Hill, testified Child's cancer was currently in remission but Child "comes for routine surveillance, to make sure that his cancer isn't coming back." (Tr. Vol. II at 25.)

[12] Detective Thomas testified regarding what Mother told him about Father's abusive actions. During a portion of that testimony, Father laughed and interrupted Detective Thomas's testimony. When asked why he was laughing, Father indicated he was talking to someone else. When the trial court tried to remove Father from the proceedings, his counsel objected. The trial court sustained the objection and allowed Father to remain. Father told the trial court he had "nothing to say" and was "going to plead the Fifth Amendment here." (*Id.* at 79.) Father's counsel asked Father to "just be respectful and don't compound the issue." (*Id.* at 79-80.) Father continued to argue with the trial court about whether he would stay at the hearing and finally said to those in the courtroom, "[f]uck you all." (*Id.* at 80.) Father had a short conversation with

the correctional officer supervising him and then agreed to remain in the hearing.

[13] In addition, during Detective Thomas’s testimony, the trial court stopped Detective Thomas and asked Mother’s counsel, “do you see what your client’s doing? Perhaps you can pay attention to what’s going on or I can remove her from the proceedings as well.” (*Id.* at 88.) The trial court told Mother’s counsel, “[s]he’s yawning. She’s messing with her fingernails. I think that she probably needs to pay attention. She is sitting in court.” (*Id.*) Mother’s counsel directed Mother to “sit up, pay attention as the Judge requests.” (*Id.*) Presumably Mother complied because the trial court then returned to Detective Thomas’s testimony.

[14] At the end of the hearing that day, the trial court worked with counsel to determine another court date. Mother’s counsel indicated Mother was unable to attend the hearings in person because she was pregnant and her doctor advised her not to travel. The trial court stated:

You know what? Okay. For the record, I understand your objection, and I’m telling you and letting your client know, she has a warrant out for her in Indiana. She has refused – absolutely refused – to appear in person. She was ordered to appear in person today. And she’s had 33 days maybe notice to be here in person, and she waited until, let’s say 8:00 our time today, Eastern Daylight Time, 8 a.m., to notify you of the problem.

Now, she either provides that information [a note from Mother’s doctor indicating she cannot travel] within 48 hours of today’s

date, and you file it with the Court, or she will not be appearing via Zoom, and she will be held to the standard that she is to be here in Court and appear in Court, or I will not let her appear via Zoom.

(*Id.* at 219.)

[15] During Guardian ad Litem Beth Hatfield Luff's testimony on the final day of hearings, the trial court again addressed Mother's behavior:

[Trial Court]: [Mother's counsel] your client is yawning and rolling her eyes. Does she need to bow out and take a nap and then come back when she feels more awake? Do you want to talk to her and ask her? Or does she want to stay?

[Mother's counsel]: I would urge my client to sit attentively.

[Trial Court]: [Mother] can you hear me? You need to turn yourself off mute.

[Mother]: Yeah, I can hear you.

[Mother's counsel]: Would you like to stay in the hearing room?

[Mother]: I just signed up so I'd say so.

[Mother's counsel]: Well, please sit attentively.

[Trial Court]: And [Mother], if you decide you need to take a nap, you can just put that in the chat room and you can bow out and take a nap, if that's necessary.

(Tr. Vol. III at 54.) Mother remained in the hearing.

[16] On December 9, 2022, the trial court issued its order terminating Parents' parental rights to Child. The trial court made several findings to support its conclusions:

3. In a prior CHINS action, Cause Number 51C01-2006-JC-00044 ("JC-44" or "2020 CHINS"), [Father] admitted he is the biological father of [Child] and the Court issued an [A]greed Order Establishing Paternity wherein [Father] was adjudicated [Child's] father. Wardship was terminated in that case in December, 2020. [Child] had one of his kidneys removed on the same day DCS [p]etitioned to terminate the case. The kidney removal was based upon the discovery of a Wilms tumor on the kidney.

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5. Christopher Thatch, a forensic biologist for the Indiana State Police Laboratory, conducted a DNA test on samples provided to him by the Bluffton Police Department. Mr. Thatch testified at the fact-finding [hearing] in this cause, that it is extremely likely [Father] is [Mother's] biological father. No genetic testing had been done regarding the relationship between [Father] and [Child]. (However, a recent report filed with the Court in the underlying CHINS action indicates [Father] is now being held in the Wells County (Indiana) Jail on a criminal warrant alleging Incest with [Mother] as victim.)

6. Not quite a month after DCS closed JC-44, on January 17, 2021, DCS received a report of abuse or neglect regarding [Child]. Between January 17 and January 26, 2021, DCS investigated the report and had several meetings with Mother.

7. On February 1, 2021, DCS, Mother, and [great-grandmother] entered into a safety plan wherein [Child] would remain in [great-grandmother's] care while Mother went to Wells County, Indiana to speak with law enforcement regarding an open investigation. Under the provisions of the safety plan, [Child] was supposed to stay with [great-grandmother], "until further notice," presumably while Mother dealt with the Wells County situation. (Note: Mother and Father lived on [Great-Grandparents' property when the JC-44 case arose, and [Child] was placed with [Great-Grandparents] during that case.) Mother had the ability to visit [Child] at [Grant-Grandparents'] residence, but [great-grandmother was] required, under the terms of the safety plan, to contact the DCS Hotline if Mother attempted to come get [Child] and remove him from the residence.

8. In February 2021, [Child] became very ill, and his treating physician needed consent to provide treatment to [Child]. At this point, [Great-Grandparents] had not sought guardianship or any other legal status vis-a-vis [Child] and did not have legal authority to consent to treatment. [Child's] physician agreed to provide treatment to [Child] but emphasized that it was one-time occurrence and that only someone with legal authority would be able to consent to further treatment. DCS consequently requested detention of [Child] and initiated CHINS proceedings on February 26, 2021, under Cause Number 51C01-2102-JC-00007 (hereinafter sometimes referred to as "JC-7" or "2021 CHINS"), alleging that [Child] was child in need of services based upon Mother's failure to abide by the Safety Plan, Mother's failure to participate in an Informal Adjustment, Mother's failure to engage in services with Department of Child Services, Mother informing FCM Helton that she was in Nebraska and would not provide an address to FCM Helton, concerns regarding Mother's substance use, Father's criminal charges, domestic violence, and [Child's] medical needs not being appropriately met by Mother. The Court found detention

was necessary due to Mother and Father's unavailability to consent to medical treatment associated with [Child's] cancer treatment. [Child] had been placed with [Great-Grandparents] at the time of the Safety Plan on February 1, 2021. Detention Hearing was held in JC-7 on February 26, 2021 at which time [Child] was made ward of the Martin County DCS and remained in current placement with [Great-Grandparents]. [Child] has remained in placement with [Great-Grandparents] throughout these proceedings and was never returned to Mother or Father's care.

9. Mother admitted CHINS on August 23, 2021. Mother also admitted that she has a history of substance use and was then currently incarcerated on Petition to Revoke Probation in Martin County, Indiana in Cause Number 51C01-2006-F6-000109. Mother admitted that she was unable to take care and custody of [Child] at that time and that [Child] needed medical care and treatment for ongoing medical issues. Mother agreed that [Child] was [a] CHINS and that the coercive intervention of the Court was necessary.

10. On August 23, 2021, Father also entered an admission to the CHINS. Father admitted: [Child] resided in Martin County at the time of removal and Father was unable to take care and custody of [Child] at the time of removal due to his incarceration in Colorado for parole violation and pending criminal charges in Indiana in Cause No. 90C01-2102-F5-000004. Father also admitted [Child] needs medical care and treatment for ongoing medical issues, that [Child] is a Child in Need of Services, and the coercive intervention of the Court is necessary.

11. As result of [Parents'] admission, the Court adjudicated [Child] a child in need of services on August 23, 2021, and set the matter for dispositional hearing. DCS filed its predispositional report, including its recommendations, on September 13, 2021.

12. Because of the pending criminal charges against Father, on September 15, 2021, this Court issued a No Contact Order against Father, prohibiting Father from having direct or indirect contact with [Child, Mother, and Great-Grandparents].

13. On or about September 21, 2021, the Petition to Revoke Probation against Mother in Cause Number 51C01-2006-F6-000109 was ordered withdrawn. On September 29, 2021, the Court held the dispositional hearing previously scheduled in JC-7 and entered dispositional decree.

14. [Comprehensive list of services the trial court's dispositional order required Mother to complete] . . . Unfortunately, Mother chose to remain out of the State of Indiana and refused to comply with any of the requirements of the Dispositional Order.

15. DCS did not make any formal referrals for Father to participate in services due to his incarcerations in States outside of Indiana. It is noted, however, that while incarcerated in Nebraska, Father participated in parenting classes through Lutheran Family Services of Nebraska, Inc., which consisted of two (2), two (2) hour classes over thirteen (13) week period. At the time of the Fact Finding hearing, Father was also participating in therapy on weekly basis through Lutheran Family Services of Nebraska, Inc. (NOTE: In the most recent Progress Report, DCS stated Father contacted DCS and advised them his legal counsel in the Wells County incest case advised Father not to communicate with DCS in any manner. Father appeared at the most recent hearing via Zoom, stated he was currently incarcerated in Wells County, IN[.] [T]he Report was correct and he would not have any future contact with DCS.) Unrefuted evidence regarding Father was presented at the Fact Finding, including: Father has been incarcerated in different facilities throughout the underlying CHINS case and admitted at the termination hearing that his criminal history is so extensive that he cannot keep track of it all and that he has been

incarcerated consistently at some point in time between 2002 and 2022; on or about 6/3/2013, Father entered a guilty plea under Cause No. 01D01-1305-FD-000063 for Unlawful Possession of Syringe-Knowingly Possesses Syringe with Intent to Violate this Act; on or about 7/14/2016, Father entered a guilty plea under Cause No. 90D01-1605-CM-000140 for Domestic Battery; on or about 8/6/2016, Father entered a guilty plea under Cause No. 01C01-1504-F5-000013 for Dealing in Methamphetamine; on or about 4/9/2018, Father entered guilty plea under Cause No. 90D01-1802-CM-000061 for Possession of Marijuana; Father has not seen [Child] since June of 2020; at the time of the adjudication hearing, Father was incarcerated in Washington County, Colorado for a parole violation. Since that time, Father has been incarcerated in Nebraska and Nevada and faces further incarceration upon his release from Sarpy County, Nebraska in Wells County, IN and/or Colorado; Father was arrested in Omaha, Nebraska in 2020 for operating motor vehicle without valid license, leaving the scene of an accident, and resisting arrest; upon his release from Washington County, Colorado, in February of 2021, Father lived in homeless shelter in Denver, Colorado; Father was arrested in Las Vegas, Nevada in May of 2021 for alleged domestic battery against Mother and was subsequently incarcerated in Washington County, Colorado from approximately June 2021-July 2021.

16. Detective Cliff Thomas (“Thomas”), lead investigator for the Bluffton Police Department, testified at the Fact-Finding in the instant cause. At the time of his initial interview with Mother in 2018, Mother denied any kind of sexual relationship with [Father]. Thomas obtained DNA swabs pursuant to a search warrant in 2018 and sent them for analysis in 2020. In 2018, Thomas prepared a report and submitted a probable cause affidavit to the Wells County prosecutor’s office. Thomas testified that, according to Mother, [Father] sent her to the Bluffton Police Department with instructions to deny their relationship.



17. On February 2, 2021, Mother re-initiated contact with Detective Thomas at which time Mother provided considerable information regarding her relationship with [Father]. At one time, Mother told him that she had been given conflicting information regarding whether [Father] is her father, and that [Father] denied being her father and began romantic relationship with her. Thomas testified Mother told him that [Father] threatened her with physical violence if she failed to follow [Father's] instructions regarding what she was to tell law enforcement. Mother described several instances of physical violence to Thomas. Mother told Thomas that [Father] was very controlling of her; at times [Father] would not let her work; she suffered from several instances of physical violence from [Father]; that [Father] compelled Mother to engage in prostitution; and that when Mother refused to have sex with an individual, [Father] helped the individual rape her. Mother also told Thomas that [Father] caused her to miscarry pregnancies by means of physical violence such as hitting and kicking her in the stomach to cause miscarriage. Mother also told Thomas that once [Child] was born in January 2020, [Father] became extremely upset and wanted nothing to do with the baby. Mother further described a car wreck which caused her to miscarry another pregnancy and, at which time, [Child] was in the vehicle with both Mother and [Father]. Other actions Mother described to Thomas included: [Father] hitting her in the face while she was driving and his subsequent arrest; [Father] tracking her down and "taking her with him" after he was released from jail; and [Father] compelling her to use drugs, including methamphetamine. Detective Thomas was cross-examined by Mother's legal counsel about "Stockholm syndrome" and whether it would be unusual for someone in Mother's position to have complex feelings regarding her abuser. Thomas agreed that such feelings would not be unusual.

18. Detective Thomas testified that Mother later called him and claimed she was high on methamphetamine during her interview

with him and thus her statements against [Father] could not be used in court. However, Mother made essentially the same allegations in a separate conversation she had with DCS FCM Stephanie Helton. During Thomas' testimony, Father interrupted Thomas and told all present to "f\*\*\*k off" and told Thomas to come and get him.

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22. The Martin County Department of Child Services also introduced evidence at the Fact Finding in this cause through DCS FCM Stephanie Helton. Helton's main concern for [Child] was Mother's failure to participate in [Child's] medical care during 2021 and Mother's complete refusal to participate with any portion of the Dispositional Decree. Helton reiterated her concerns that Mother refuses to have physical contact with [Child] because Mother is afraid she will be arrested on her Probation Revocation Warrant out of Martin County. Helton also voiced concerns that Mother continued to claim she can have bonded relationship with [Child] via virtual visits even though Mother has not seen [Child] in person since February 1, 2021.

23. As of the date of fact-finding, the Martin County warrant against Mother has not been served, and each Progress and Permanency Report states Mother advised DCS that she would not return to the State of Indiana because Martin County has an outstanding warrant on her and it is not extraditable. Mother has been made aware of these statements through legal counsel, and there has been no objections to the Reports, nor requests for additions/corrections to the Reports for this reason. The Court notes that Mother did participate in some services while she was incarcerated in Martin County. Mother also reported participation in services in Omaha, Nebraska; however, the local DCS office was unable to obtain any relevant information

regarding those services, and Mother made no attempt to provide same.

24. The Guardian Ad Litem testified the relationship between Mother and Father is toxic with several domestic violence issues, and that both need services for the domestic violence issues, including therapy.

25. Based on Mother and Father's lack of progress, lack of compliance with DCS and this Court's orders, criminal history, substance use history, domestic violence history, lack of stability, and their refusal or inability to improve their ability to provide proper care and nurturing for [Child], FCM Helton and [Guardian ad litem] both agree that adoption of [Child] by [Great-Grandparents] and termination of parental rights is in [Child's] best interests. The [Guardian ad litem] testified that termination of the parent-child relationship is in the best interest of [Child] because there is no evidence that Mother has been able to address any of the issues that led to [Child]'s removal, including without limitation, substance use, inability to provide [Child] with proper medical treatment, and not admitting that [Father] is her father and that she was in relationship with [Father]. FCM Helton testified she is unable to ensure the safety of [Child] if he is returned to the care of either parent, with Father being in and out of jail and Mother being out of state and neither having addressed the issues that led to [Child's] initial removal. Further, Mother admitted to FCM Helton that she is currently not emotionally and/or mentally able to care for [Child]. FCM Helton believes that Mother will go back to Father upon his release from incarceration despite the numerous disturbing domestic violence incidents reported by Mother. FCM Helton and the [Guardian ad litem] concluded that the return of [Child] to either parent poses a threat to his well-being due to Mother and Father's pattern of substance use and domestic violence and lack of treatment for both.

(Mother's App. Vol. II at 17-29.) Additionally, as part of its Conclusions of Law, the trial court determined:

4. In the present case, Mother failed to engage in any Court-ordered services to help her through past traumatic circumstances and failed to address her substance-abuse related issues. Mother has consistently shown that she is unable or unwilling to care for [Child] in person and even failed to attend his critical medical appointments at Riley's despite being under Court order to attend. Mother has not bathed, fed, held, or clothed [Child] since he was placed with [Great-Grandparents] on February 1, 2021. Mother has failed to address any of the issues which led to [Child's] initial removal.

5. Likewise, Father has failed to address the issues which led to [Child's] removal and has remained in and out of prison for all but a few months in [Child's] life. Father testified that he lived in a homeless shelter in Denver, Colorado when he was released from jail. Father has failed to engage in any services other than parenting classes provided at the Sarpy County jail. Father has not seen [Child] since June of 2020.

(*Id.* at 31-2.)

## Discussion and Decision

[17] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment

terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied* 534 U.S. 1161 (2002).

[18] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[19] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (A) that one (1) of the following is true:
  - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
  - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made.
  - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child

- is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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;
  - (C) that termination is in the best interests of the child; and
  - (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh’g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

## **1. Procedural Arguments**

### ***1.1 Father’s Argument Regarding Lack of Services***

[20] Father argues he was denied due process because DCS did not offer him services to reach the goal of reunification with Child. However, Father did not raise this issue before the trial court and thus it is waived for failure to do so.

*See McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (issue waived for failure to first present it to the trial court). Waiver notwithstanding, it is well-established that a challenge to the services offered during the CHINS proceedings cannot be used to overturn the termination of parental rights. *See, e.g., In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). Further, DCS’s refusal to provide services when a parent is incarcerated “does not amount to a denial of due process.” *Id.* at 148. Such a decision seems especially appropriate when Father was incarcerated in Colorado and Nebraska during these proceedings, which would have made it especially difficult for DCS to provide services.

### ***1.2 Mother’s Argument that the Trial Court Impermissibly Shifted the Burden of Proof***

[21] Mother argues the trial court impermissibly shifted the burden of proof because the trial court required Mother to “mount a positive defense” against DCS’s evidence to support the termination of Mother’s parental rights. (Tr. Vol. III at 227.) Mother directs us to a series of questions from the trial court during Mother’s closing arguments:

[Trial Court]: Let me stop you again, [Mother’s counsel]. I asked you at one of the hearings we had, I can’t remember when it was, but it was back. How are we -- if we don’t terminate and we’re going to reunify with [Mother], how do we get [Child] with [Mother]? How am I supposed to reunify if Mother refuses to appear personally has -- is there -- what’s the plan.

[Mother’s counsel]: Noting for the record that it is the Department’s burden of proof, Your Honor, I would say --

[Trial Court]: I would like to know, how am I supposed to give [Child] to [Mother] if she doesn't come to Indiana to get her baby? I asked you the question several appearances ago and never really got an answer. So I'm interested to know what the plan would be if the decision was to reunify.

[Mother's counsel]: If the decision were for immediate reunification and not merely the denial of a termination petition, then I believe that [Child] could be placed in a vehicle with [Great-Grandparents] and driven to Omaha, Nebraska, Your Honor.

[Trial Court]: That would be the way to resolve this issue, [Mother's counsel]? Is that your -- I mean, I've got a two-year-old and you're arguing [to] the Court that it is appropriate to stick [Child] in the car with [Great-Grandparents] and drive [Child] to Omaha, Nebraska and leave [Child] with [Mother] and we have no more communication? Is that what your whole theory is here?

[Mother's counsel]: No, Your Honor. My theory, and again, at this point I am going to object. I believe that this is -- I don't believe that the line of questioning by the Court is consistent with my client's right to due process.

That having been said, I believe --

[Trial Court]: I beg to differ with you, but you may continue.

[Mother's counsel]: I believe that we're here today about termination. If termination is denied --

[Trial Court]: And whether termination is in the best interest of [Child]. That is what we're here for today, is what is in the best



interest of [Child]. Is it termination or is it not termination. And if it's termination, what is the plan. There must be a plan subsequent to the termination. And is that not what we're here for is the best interest of [Child] to terminate parental rights or to not terminate parental rights and let [Parents] proceed?

[Mother's counsel]: I disagree with that characterization of the process, Your Honor.

[Trial Court]: Then what is the process?

[Mother's counsel]: As I understand, termination is a separate, stand-alone proceeding from the CHINS case. The resolution of the termination case does not have any bearing on the resolution of the CHINS case. If termination is granted, in fact it does not result in the end to the CHINS case. The CHINS case remains open while this case - while the denial of the term -- while the granting of termination is appealed to the court of appeals or supreme court.

[Trial Court]: If it's not grant -- if termination is not granted and the termination case is dismissed, it goes back to the [CHINS] case, because the [CHINS] case stays open and underlies the case the entire time.

[Mother's counsel]: Correct, Your Honor.

[Trial Court]: Okay. What's the plan?

[Mother's counsel]: [DCS] would continue to have to provide services. We'd be working toward reunification which remains the primary plan.

[Trial Court]: Well that's the-- haven't we been doing that all along and [Parents] have failed to communicate at all? I'm just asking because it's a big deal. I don't normally terminate parental rights and I just am having difficulty trying to understand what your argument is and what [Father's counsel's] argument will be. I've listen -- this is the third day of hearings, and I've not heard anything to indicate your clients have done anything to come forth and scoop [Child] up and provide parental love and attention for [Child] and I'm waiting to hear something.

(Tr. Vol. III at 224-6.) Mother's counsel continued to object to the trial court's questions regarding whether Mother would participate in services should the trial court not terminate Mother's parental rights to Child. Mother's counsel reiterated it was DCS's burden to prove the statutory requirements for termination of parental rights and it was not Mother's burden to show "cooperation and a desire to participate in the underlying CHINS [case,]" (*id.* at 227), that Parents "do not have a positive burden like they would in a criminal case to mount a positive defense[,]'" (*id.*), and were not "required to do anything in a termination case." (*Id.*) Mother's counsel also told the trial court that Mother had completed a parenting class within "the last month or so" (*id.* at 228); was participating in "medication management monthly and [] participating in therapy" (*id.*); and maintained contact with FCM Helton. Based thereon, Mother's counsel argued Mother's parental rights to Child should not be terminated.

[22] In *Baker v. Marion County Office of Family and Children*, 810 N.E.2d 1035 (Ind. 2004), our Indiana Supreme Court explained the roles of the parties and the

trial court when determining if termination of a parent’s parental rights to a child is in the child’s best interests:

[T]he odds of an accurate determination in a termination case are enhanced by the fact of judicial involvement that is much more intensive than it is the usual criminal case. . . .

[B]ecause of the doctrine of *Parens Patriae* and the need to focus on the best interest of the child, the trial judge, who is the fact finder, is required to be an attentive and involved participant in the process. While he must depend upon the litigants to present the evidence to establish the particular elements or defenses in the termination case, he is not limited to their presentations, and as in any custody case, he may require more than they present and direct further investigation, evaluations or expert testimony to assure him that the interests of the child and the respective parties are properly represented. . . .

*In re Adoption of T.M.F.*, 392 Pa.Super. 598, 573 A.2d 1035, 1042-43 (1990).

*Id.* at 1041. Based thereon, we conclude the trial court’s extended questioning of Mother’s counsel to ascertain any evidence or argument to counter DCS’s presentation of evidence was not an impermissible shift in the burden of proof.<sup>3</sup>

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<sup>3</sup> Additionally, even if the trial court erred, the error was harmless because, as we will explain hereinafter, the evidence to support the termination of Parents’ parental rights to Child was overwhelming. *See, e.g., North v. State*, 406 N.E.2d 657, 661 n.11 (Ind. Ct. App. 1980) (“[W]here the purpose and intent of a statutory

### ***1.3 Mother's Argument Regarding Court's Comments about her Behavior***

[23] Mother also argues the “trial court’s intemperance toward [Mother] and counsel denied her due process and allowed for insufficient evidence to support the order.” (Mother’s Br. at 24.) She contends the trial court’s statements regarding Mother’s behavior, as recounted in the Facts section of this opinion, “demonstrate a pattern of patronizing and demeaning communication that has no place in the court of law, especially when dealing with a matter of such gravity in an involuntary termination proceeding.” (*Id.* at 25.) She asserts the trial court’s statements “demonstrate[] the trial court failed to preside over the hearing as a neutral, impartial decision maker in violation of [Mother’s] due process rights.” (*Id.*)

[24] Our Indiana Supreme Court observed in *In re J.K.*:

We afford trial judges ample “latitude to run the courtroom and maintain discipline and control of the trial.” Particularly in bench trials, courts have considerable discretion to question witnesses *sua sponte* “to aid in the fact-finding process as long as it is done in an impartial manner.” We even tolerate a “crusty” demeanor towards litigants so long as it is applied even-handedly.

30 N.E.3d 695, 698-9 (Ind. 2015) (internal citations omitted). Here, the trial court noted Mother’s behavior, such as yawning, rolling her eyes, and looking at her fingernails and reminded Mother to remain attentive during the hearing.

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mandate are satisfied, our courts will not reverse for mere procedural errors unless the defendant can demonstrate he was harmed by such errors.”).

After observing those behaviors, the trial court told Mother’s counsel, “do you see what your client’s doing? Perhaps you can pay attention to what’s going on or I can remove her from the proceedings as well.” (Tr. Vol. II at 88.) After Mother’s counsel asked Mother to “sit up, pay attention as the Judge requests[,]” (*id.*), Mother complied because the trial court then returned to the hearing.

[25] Additionally, the trial court also seemingly became frustrated at the fact that Mother would not provide her location and refused to appear in person. The trial court did not advocate for DCS and ensured Mother’s argument was clearly understood.<sup>4</sup> These practices fall squarely within the trial court’s latitude to maintain the courtroom in a way they see fit as long as it does not show bias against a party. Based thereon, we conclude the trial court was impartial and not biased when it noted Mother’s behavior in open court and asked her to act appropriately.<sup>5</sup>

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<sup>4</sup> Mother also argues the trial court impermissibly asked questions of Mother’s counsel during closing argument. However, there is no procedural rule prohibiting such questioning. Additionally, *Baker* specifically indicates it is appropriate for a trial court to request a party provide additional evidence to ensure it has the most information possible when deciding whether termination of parental rights is in the child’s best interests. 810 N.E.2d at 1041.

<sup>5</sup> Further, even if the trial court erred, the error was harmless because, as we will explain later, the evidence to support the termination of Parents’ parental rights to Child was overwhelming. *See, e.g., North*, 406 N.E.2d at 661 n.11 (“[W]here the purpose and intent of a statutory mandate are satisfied, our courts will not reverse for mere procedural errors unless the defendant can demonstrate he was harmed by such errors.”).

## 2. Challenges to the Trial Court’s Conclusions

[26] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

### ***2.1 Mother’s Argument Concerning the Trial Court’s Conclusion that the Conditions Under Which Child was Removed from Parents’ Care Would Not Be Remedied***

[27] Mother argues the trial court’s conclusion that the conditions under which Child was removed from her care would not be remedied is not supported by the trial court’s findings. The trial court must judge a parent’s fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007),

*trans. denied.* Mother does not challenge the trial court's findings and thus we accept them as correct.

[28] As listed in the Facts and Procedural History section of this opinion, the trial court made numerous findings to support its conclusion that the conditions under which Child was removed from Mother's care would not be remedied. The trial court's findings outlined Mother's noncompliance with services, failure to visit Child for over a year, failure to attend Child's cancer treatments, and overall inability or unwillingness to engage in any way that would justify reunification with Child. Based thereon, we hold the trial court's findings support its conclusion that the conditions under which Child was removed from Mother's care would not be remedied.<sup>6</sup> *See In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (mother's pattern of behavior during the CHINS and termination proceedings supported the trial court's conclusion that the conditions under which her children were removed from her care would not be remedied), *reh'g denied, trans. denied.*

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<sup>6</sup> Mother also argues the trial court's findings do not support its conclusion that the continuation of the Mother-Child relationship poses a threat to Child's well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code Section 31-35-2-4(b)(2)(B). *See, e.g., In re B.J.*, 879 N.E.2d at 20 (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need prove only one of the enumerated elements therein).

## ***2.2 Father's Argument Concerning the Trial Court's Conclusion that the Conditions Under Which Child was Removed from Parents' Care Would Not Be Remedied***

[29] Father argues the trial court's findings do not support its conclusion that the conditions under which Child was removed from Father's care would not be remedied, but he does not challenge any other factors required for the termination of parental rights under Indiana Code Section 31-35-2-4(b)(2)(B). As that statute is written in the disjunctive, DCS is required to prove only one of the three factors. *See, e.g., In re B.J.*, 879 N.E.2d at 20 (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*. Therefore, we need not address Father's argument because he does not challenge the trial court's finding that the continuation of the Father-Child relationship was a threat to the well-being of Child. However, as we prefer to decide a case on its merits, we will address the issue. *See Omni Ins. Group v. Poage*, 966 N.E.2d 750, 753 (Ind. Ct. App. 2012) (appellate court prefers "to decide a case on the merits whenever possible"), *trans. denied*.

[30] As an initial matter, Father does not challenge the trial court's findings and thus we accept them as correct. The trial court made numerous findings to support its conclusion that the conditions under which Child was removed from Father's care would not be remedied such as: Father's noncompliance with services, Father's near-constant incarceration, Father's pending incest charges wherein Mother was the alleged victim; and Father's not seeing Child since June 2020. Based thereon, we hold the trial court's findings support its



conclusion that the conditions under which Child was removed from Father's care would not be remedied. See *In re D.J.*, 755 N.E.2d at 685 (mother's pattern of behavior during the CHINS and termination proceedings supported the trial court's conclusion that the conditions under which her children were removed from her care would not be remedied).

### ***2.3 Mother's Argument Concerning the Trial Court's Conclusion that Termination of her Parental Rights was in Child's Best Interests***

[31] Mother argues the termination of her parental rights to Child was not in Child's best interests because she "has communicated her desire to reunite with [Child] and is willing to do the work." (Mother's Br. at 22.) In determining what is in a child's best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child's best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[32] As noted in the above section of this opinion regarding the trial court's conclusion that the conditions under which Child was removed from Mother's

care would not be remedied, there are a number of reasons why it is in Child's best interests for Mother's parental rights to be terminated including, but not limited to: Mother's noncompliance with services; Mother's failure to visit with Child in person since at least February 1, 2021; Mother's pending criminal charges; and Mother's substance abuse issues. As noted in the trial court's order, Child has resided with Great-Grandparents for the majority of his life and they have attended to all of his needs, including his cancer treatment and recovery. Additionally, FCM Helton and the Guardian ad litem testified it was in Child's best interests for Mother's parental rights to be terminated. Based thereon, we conclude the trial court's findings support its conclusion that it was in Child's best interests for Mother's parental rights to be terminated. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (trial court's findings based on testimony of service providers coupled with evidence that conditions resulting in placement outside the home would not be remedied supported trial court's conclusion that termination was in child's best interest), *trans. denied*.

#### ***2.4 Father's Argument Regarding the Trial Court's Conclusion that There Existed Satisfactory Plan for the Care and Treatment of Child after the Termination of Father's Parental Rights***

[33] Father also argues the trial court erred when it did not order Great-Grandparents to assume guardianship over Child and instead approved DCS's recommendation that Great-Grandparents proceed with adoption as the plan for the care and treatment of Child following the termination of Parents' parental rights. However, Father did not raise this issue before the trial court

and thus it is waived for failure to do so. *See McBride*, 798 N.E.2d at 194 (issue waived for failure to first present it to the trial court).

[34] Waiver notwithstanding, pursuant to Indiana Code section 31-35-2-4(b)(1)(D), DCS must provide sufficient evidence there is a satisfactory plan for the care and treatment of the child following termination of parental rights. We have held “[t]his plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013) (quoting *In re L.B.*, 889 N.E.2d 326, 341 (Ind. Ct. App. 2008), *abrogated on other grounds by In re G.P.*, 4 N.E.3d 1158, 1163-4 (Ind. 2014)). The trial court found, regarding the plan for Child’s care following the termination of Parents’ parental rights:

[Great-Grandparents are] [Child’s] current placement and prospective adoptive placement. During her testimony at the Fact Finding in the instant case, [great-grandmother] recalled the following: [Child] had chemotherapy every three weeks during his treatment; [Child] was admitted to the hospital for chemotherapy treatments; [Child] had radiation treatment; July 2 to July 25, 2021, [Child] was hospitalized due to side effects from his treatment. [Great-grandmother] testified she never left [Child’s] side during his July 2021 hospitalization and that her husband was also present during that time. [Great-Grandparents] have been [Child’s] placement, informally or formally, since the beginning of February 2021, and it is their intention to adopt [Child] if termination is granted. Both DCS and the Guardian Ad Litem (“GAL”) support the adoption of [Child] by [Great-Grandparents]. Some of the reasons [Great-Grandparents] are appropriate adoptive parents are: [Great-Grandparents] are Mother’s maternal grandparents and [Child’s] maternal great-grandparents; Mother agreed under the February

1, 2021 safety plan that [Child] would remain with [Great-Grandparents] “until further notice,” and [Child] has continuously remained with [Great-Grandparents] to date. [Great-Grandparents] had placement of [Child] during [Child’s] cancer treatment throughout 2021; [a]ll parties agree [Great-Grandparents] attended medical appointments and were present with [Child] during his treatments and during his periods of hospitalization; [great-grandmother] has been educated regarding the signs she needs to look for with respect to a recurrence [sic] of [Child’s] cancer; [great-grandmother] has been very vigilant regarding [Child’s] health – for example, she has kept [Child] relatively isolated as a result of his immunocompromised status following radiation and chemotherapy; [Great-Grandparents] have been responsible for getting [Child] to his doctor’s appointments, both at Indiana University Health Riley Hospital for Children and his primary-care provider; [Child] has his established bedroom in [Great-Grandparents’ home]; [great-grandmother] stays at home with [Child] while [great-grandfather] is employed outside the home, working at Southern Indiana Hardwoods; [great-grandmother] leaves the home only when necessary for appointments or to go shopping; [great-grandmother] receives significant assistance from [J.C.], her daughter, and [W.C.], her son; and [J.C.] is a CNA who can help administer [Child’s] medication. Overall, significant evidence was presented that [Great-Grandparents] have an established and significant relationship with [Child].

(Mother’s App. Vol. II at 25-6.) Based thereon, we conclude the trial court’s findings supported its conclusion there existed a satisfactory plan for Child’s care following the termination of Parents’ parental rights. *See In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014) (adoption is a satisfactory plan for children after termination, even if the plan is not detailed), *trans. denied*.

## Conclusion

[35] We conclude Father waived his argument regarding DCS's failure to provide services to him as part of the CHINS proceedings because he did not first present the issue to the trial court. Waiver notwithstanding, the termination of Father's parental rights to Child cannot be reversed because DCS did not offer services. Next, we hold the trial court did not impermissibly shift the burden of proof to Mother when it asked questions regarding Mother's plan to participate in services if the trial court denied DCS's petition to terminate her parental rights. Additionally, had there been error, the error was harmless because there was overwhelming evidence to support the trial court's termination of Mother's parental rights. Further, we conclude the trial court did not display bias or prejudice when it commented on Mother's behavior during the hearing and reminded her to behave appropriately. Additionally, had there been error, the error was harmless because there was overwhelming evidence to support the trial court's termination of Mother's parental rights. We also hold the trial court's findings supported its conclusion that the conditions under which Child was removed from Mother's care would not be remedied. Similarly, we hold the trial court's findings supported its conclusion that the conditions under which Child was removed from Father's care would not be remedied. We also hold the trial court's findings supported its conclusion that termination of Mother's parental rights to Child was in Child's best interests. Finally, we hold the trial court's plan for adoption by Great-Grandparents was a satisfactory

plan for Child's care and treatment following the termination of Parents' parental rights. Accordingly, we affirm.

Affirmed.

Altice, C.J., and Foley, J., concur.