

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-Child Relationship of:

Dm.W. & Dq.W. (*Minor Children*),

and

M.M. (*Mother*) & D.W. (*Father*),  
*Appellant-Respondent*,

v.

Indiana Department of Child Services,  
*Appellee-Petitioner*.

December 10, 2021

Court of Appeals Case No.  
21A-JT-507

Appeal from the Madison Circuit Court

The Honorable Stephen Koester,  
Judge

Trial Court Cause Nos.  
48C02-2007-JT-130  
48C02-2007-JT-131

**Robb, Judge.**

## Case Summary and Issues

- [1] D.W. (“Father”) and M.M. (“Mother”) (collectively, “Parents”) are the parents of Dm.W. and Dq.W. (“Children”). In early 2019, the Children were each adjudicated a child in need of services (“CHINS”) and in July 2020, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Parents’ parental rights. On February 23, 2021, the juvenile court issued an order making findings and concluding Parents’ parental rights should be terminated. Parents now appeal raising multiple issues, which we consolidate and restate as: (1) whether certain findings of fact utilized by the juvenile court were erroneous; and (2) whether sufficient evidence supported the termination of their parental rights. Concluding that any error in the juvenile court’s findings are harmless and that clear and convincing evidence supports the termination, we affirm.

## Facts and Procedural History

- [2] In December 2018, Parents were arrested and incarcerated after Mother stabbed Father in the eye with a fork in the presence of the Children. When the authorities arrived, Mother was arrested for her role in the incident and Father was arrested due to an outstanding warrant. As a result, no one was able to

care for the Children and the Children were removed from Parents' home.<sup>1</sup> Subsequently, DCS filed a petition alleging that the Children were CHINS. In January 2019, Mother admitted the Children were CHINS as she remained incarcerated for her role in the December 2018 incident and she was unable to care for the Children.<sup>2</sup> In February 2019, Father also entered an admission, and the Children were adjudicated CHINS.

[3] In March 2019, the juvenile court conducted a dispositional hearing. The juvenile court ordered Parents to, among other things: keep all appointments with any service provider; not use or consume any illegal controlled substances; obey the law; complete a substance abuse assessment and follow and successfully complete all treatment recommendations; submit to random drug screens; adhere to terms of probation; actively participate in, cooperate with, and successfully complete all recommendations as a result of any domestic violence assessments; attend all scheduled visitations with the Children; participate in individual counseling and follow all recommendations; successfully complete parenting classes; attend AA/NA on a regular basis; and participate in a batterer's intervention program. Parents were also ordered to have no contact with each other. The permanency plan was reunification.

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<sup>1</sup> The Children have never been returned to Parents' care. The Children were briefly placed with family following their removal from Parents and were later placed in foster care where they have remained since the Spring of 2019.

<sup>2</sup> Mother remained incarcerated until April 2019.

[4] Between March 2019 and November 2019, Parents did not comply with the Children's case plan. Mother was twice discharged from batterer's intervention,<sup>3</sup> once from anger management, and once from domestic violence treatment. Her individual therapy was also closed out. Additionally, Mother struggled to submit to drug screens and not consume illegal drugs. In July 2019, she was found to be in possession of synthetic opioids and tested positive for cocaine and synthetic opioids. Further, Mother was arrested and incarcerated from November 2019 through April 2020 for violating the no-contact order between her and Father.

[5] Meanwhile, Father also struggled to comply with the juvenile court orders. Father did not participate in domestic violence treatment, had active warrants out for his arrest, and failed to comply with drug screening procedures. Father had been told that if he could submit fourteen consecutive clean drug screens, then he could have unsupervised visits with the Children. However, Father never completed the fourteen clean screens, was never granted unsupervised visits, and ultimately, completely disengaged from the drug screening process.

[6] A permanency hearing was held in late November 2019 at which the juvenile court determined that Parents had not complied with the Children's case plan and changed the permanency plan from reunification to reunification with a concurrent plan for adoption. Following the November 2019 hearing, Parents

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<sup>3</sup> Mother's first discharge was for noncompliance and failure to attend. Mother's second discharge was the result of another incarceration.

remained noncompliant with the Children's case plan and in July 2020, DCS filed a petition for the involuntary termination of Parents' parental rights.

[7] After the termination petition was filed, Mother still did not complete domestic violence coursework, anger management services, or a batterer's intervention program. Although Mother restarted visits by initially attending two visits in July 2020, she subsequently failed to show up to three visits and stopped communicating with DCS. Mother also remained noncompliant with drug screening procedures and tested positive for alcohol twice and once for THC that fall. Additionally, she was also reincarcerated in October 2020 for failure to adhere to the terms of her probation. Likewise, Father never participated in substance abuse treatments despite referrals, refused to engage in domestic violence and anger management coursework, and was closed out from drug screening procedures due to his noncompliance. Father had also pleaded guilty to theft and was sentenced to 365 days to be executed on in-home detention. In October 2020, Father was arrested and incarcerated for driving with a suspended license.<sup>4</sup>

[8] A fact-finding hearing on DCS' petition to involuntarily terminate Parents' parental rights was conducted December 15, 2020, and February 9, 2021. At the hearing, DCS presented evidence that Father had not visited the Children

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<sup>4</sup> Between March 2019 and November 2020, the juvenile court held five different hearings. At each hearing, Parents were found to have either failed to comply with the Children's case plan or to enhance their ability to care for the Children.

since February 2019, complied with the services offered, participated in substance abuse treatment, obeyed the law, participated in a batterer's intervention program, or joined AA or NA. Although DCS indicated that Mother had performed better than Father during the CHINS proceedings, DCS presented evidence that Mother was also noncompliant with significant portions of the Children's case plan. Specifically, Mother had failed drug screens, not obeyed the law, and routinely violated her probation.<sup>5</sup> Further, DCS presented evidence that even when Mother did participate, she did so inconsistently. Mother had failed to complete domestic violence training, parenting skills training, and a batterer's intervention program despite completing her assessments, receiving multiple referrals, and even beginning the necessary work. At the time of the fact-finding hearing Mother had not completed any of her recommended programs or training.

[9] Family Case Manager ("FCM") Sarah Day testified that Mother's frequent incarcerations impacted her ability to comply with the juvenile court's orders and DCS' recommendations. Specifically, her multiple incarcerations were often the reason that specific services were closed out. Further, her incarcerations resulted in long stretches without seeing the Children. Although Mother was fairly consistent when it came to visiting the Children while she

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<sup>5</sup> The record indicates that Mother was incarcerated at least twice after her original December 2018 incarceration, pleaded guilty in November 2020 to invasion of privacy for violating the no-contact order between her and Father in the fall of 2019, and was serving in-home detention as of February 2021. At the time of the fact-finding hearing, she was also facing another probation violation for failing to complete a drug screen while on in-home detention.

was not incarcerated, FCM Day testified that even when not incarcerated, Mother was not fully compliant with visitation and she failed to notify DCS that she was no longer incarcerated and ready to restart visitations or services. Further, she confirmed that Mother had not visited the Children since July 2020. FCM Day testified that it was in the Children's best interest that Parents' parental rights be terminated. Court Appointed Special Advocate ("CASA") Holly Pollock also testified and echoed FCM Day's recommendation.

[10] Parents testified on their own behalf. Mother acknowledged that she did not fully participate in the services provided, but also indicated that her multiple incarcerations and the COVID-19 pandemic were partly to blame. However, on cross-examination she acknowledged that there were stretches throughout the CHINS proceeding where she had access to services, but still failed to complete her coursework or engage in services. At the close of her testimony, Mother stated that she was willing to restart her training and coursework and that she was waiting on referrals to be made by DCS.

[11] Father similarly testified that he did not believe his parental rights should be terminated. However, he did not deny that he had not seen the Children since 2019. He further acknowledged that he had not adhered to the terms of his probation, that he had been arrested and incarcerated in October 2020 for driving with a suspended license, and that he was currently working to resolve an issue related to another, recent probation violation. Although Father indicated that he had participated in services provided, he was unable to provide any particulars regarding the courses and when asked if he had

participated in a batterer's intervention program, he said that he had not. Father reasoned that he did not need to attend, because he was the victim of a battery, not the batterer. *See* Transcript of Evidence, Volume I at 65.

[12] On February 23, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Parents' parental rights. Parents now appeal. Additional facts will be supplied as necessary.

## Discussion and Decision

### I. Standard of Review

[13] We begin by emphasizing that the right of a parent to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *S.S. v. Ind. Dep't of Child Servs.*, 120 N.E.3d 605, 609 (Ind. Ct. App. 2019). Nevertheless, the law provides for termination of these constitutionally protected rights when parents are unable or unwilling to meet their parental responsibilities. *Id.* When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that support the judgment of the juvenile court. *Id.*

[14] The juvenile court entered findings of fact and conclusions of law as required by Indiana Code section 31-35-2-8(c) and this court will not set aside the decision unless it is clearly erroneous. *K.T.K.*, 989 N.E.2d at 1229. In determining

whether a decision is clearly erroneous, we apply a two-tiered standard of review. *S.S.*, 120 N.E.3d at 609. First, we must decide whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.*

## II. Statutory Framework

[15] The involuntary termination of parental rights is an extreme measure designed as a last resort when all other reasonable efforts have failed. *Id.* To terminate parental rights, Indiana Code section 31-35-2-4(b)(2) provides the State must prove, in relevant part:

(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.

\* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office 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.

\* \* \*

(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.

[16] DCS must prove each element by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231; *see also* Ind. Code § 31-34-12-2. If the allegations are true, the juvenile court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). We note that, as in the present case, it is common practice for our juvenile courts to conduct termination hearings involving multiple children and/or multiple parents in a single proceeding. *S.S.*, 120 N.E.3d at 610. However, evidence must be weighed as it pertains to each parent. *Id.*

[17] On appeal, Parents challenge certain juvenile court findings supporting termination as erroneous. Parents also challenge whether the termination of their parental rights was erroneous in that there was insufficient evidence to support the juvenile court's determination that there is reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside the home of Parents will not be remedied and that termination of Parents' parental rights is in the best interest of the Children.

### III. Findings of Fact

[18] Parents challenge nine of the juvenile court's findings of fact as unsupported by the evidence. As noted above, findings are clearly erroneous if the record contains no evidence to support them either directly or by inference. *S.S.*, 120 N.E.3d at 609. As Parents only challenge nine of the juvenile court's numerous findings, we accept the remaining findings as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[19] Parents collectively challenge the sufficiency of the evidence supporting the juvenile court's findings 5, 21(n)(iv), 21(n)(v), 22(s), 22(dd), 23(f), 24(hhh),<sup>6</sup> 24(nnn), and 25(d). Finding 5 indicates that CHINS proceedings were initiated because Mother and Father engaged in an incident of domestic battery. *See* Appealed Order at 15-16.<sup>7</sup> Parents argue this is incorrect because the CHINS proceedings were initiated after the Children were removed following a report of "abuse and/or neglect." Brief of Appellants at 8. However, Parents support their argument by pointing to DCS' July 2020 petition to involuntarily terminate parental rights rather than documentation from the Children's time of removal. At the original detention hearing held on December 27, 2018, it was determined that the Children were removed due to an inability to provide shelter, care, or supervision which was the result of Parents' arrest following the

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<sup>6</sup> Parents challenge finding 23(hhh), but there is no such finding. Finding 24(hhh) includes the actual language contested by Parents.

<sup>7</sup> Citations to the Appealed Order are to the .pdf pagination.

incident of domestic violence. Further, Mother testified that the Children were removed and CHINS proceedings initiated because of a fight between her and Father. *See* Tr., Vol. I at 21. Similarly, Father testified that the Children were removed because of a domestic incident where he was stabbed. *See id.* at 55. FCM Day also testified that the basis for removal and the CHINS proceedings was domestic violence that left the Children without a caregiver. *See id.* at 75, 112. The record supports finding 5.

[20] Findings 21(n)(iv) and 21(n)(v) indicate that certified copies of the Chronological Case Summaries for Parents' criminal cases were admitted into evidence as exhibits D, E, F, G, and H, but according to Parents these copies are not certified. *See* Appealed Order at 12. DCS confirms that those copies are not certified. *See* Appellee's Brief at 32. However, other evidence in the record supports the content of exhibits D, E, F, and H and it does not appear that the juvenile court relied on exhibit G which deals with Father's ongoing case regarding a theft charge to which he has pleaded not guilty. Therefore, we conclude findings 21(n)(iv) and 21(n)(v) did not prejudice Parents. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (indicating that an erroneous finding did not prejudice the mother because it was surplusage to evidence found in the record), *trans. denied*. Further, the exhibits were admitted without objection. This court has indicated that a party waives error when they do not object to the admission of evidence. *Strunk v. State*, 44 N.E.3d 1, 6 (Ind. Ct. App. 2015), *trans. denied*. Thus, these findings result in harmless error.

[21] Finding 22(s) provides: “[Mother] testified that she has not obeyed the law. She is currently on house arrest and needs to catch up on her fees before she can finish it.” Appealed Order at 13. Parents argue that Mother did not testify that she has not obeyed the law. However, Mother testified that she has had issues with obeying the law as a result of missing court. *See* Tr., Vol. I at 35. Mother further testified that she was incarcerated multiple times, including from November 2019 through April 2020 and again from October 2020 through November 2020. *Id.* at 22-23, 24, 52. Mother also indicated that she was found in possession of spice and had tested positive for spice and benzodiazepine. *Id.* at 51. The record supports finding 22(s).

[22] Finding 22(dd) provides: “[Mother] testified that she was incarcerated from December of 2018 until February of 2019 and was not re-incarcerated until November 2019. [Mother] testified those 9 months that she was out, she did not visit with her children.” Appealed Order at 13. Parents do not argue that this finding is incorrect, only that it is misleading in that it gives the impression that Mother’s failure to visit was voluntary. However, the finding is not just misleading, because the record shows that Mother testified that she *did* visit the Children during this nine-month stretch in 2019. *See* Tr., Vol. I at 52. The finding is therefore erroneous. Nevertheless, the inclusion of this finding is harmless error. When an erroneous finding does not call into question the court’s conclusion in light of the other evidence presented and findings made, we will not reverse. *Matter of A.C.B.*, 598 N.E.2d 570, 573 (Ind. Ct. App. 1992).

[23] Here, the record shows a three- to four-month stretch of time during which Mother was not incarcerated but voluntarily chose to not visit the Children. The record shows that Mother restarted visits in July 2020, attended two visits, and then failed to attend three visits. Subsequently, Mother was incarcerated from October 2020 through November 2020 and then the juvenile court ordered an end to visits. Further, Mother testified that she had not seen the Children since July 2020. This erroneous finding does not alone support a conclusion necessary to sustain the judgment and therefore, it is harmless error. *See In re B.J.*, 879 N.E.2d at 19 (affirming termination of parental rights despite an erroneous finding because the error did not constitute sole support for the judgment).

[24] Finding 23(f) provides: “[Father] testified that he has been incarcerated since the case has been open. [Father] testified that he went to jail in October of 2020 due to a probation violation.” Appealed Order at 14. Parents appear to have misread finding 23(f) and interpret the first sentence of the finding to mean that Father testified that he was incarcerated for the entirety of the CHINS proceedings. However, the second sentence of the finding clarifies the first sentence by providing a specific time frame for Father’s incarceration, October 2020. Indeed, Father testified that he was in jail in October 2020. *See Tr.*, Vol I at 56. Further, the finding is supported by an exhibit admitted at the termination hearing which shows Father was incarcerated in October 2020. Thus, the record supports finding 23(f).

[25] Finding 24(nnn) provides: “FCM Day testified that [Father] and [Mother] are also still disobeying the law which is concerning because both parents have been arrested at least 3 times since the cases have been opened and both parents have also violated the no contact order that was put in place between [them].” Appealed Order at 18. Parents argue that this finding as well as finding 24(hhh)<sup>8</sup> are not supported by the evidence in that two of Father’s criminal cases occurred prior to July 2020 when DCS filed a petition to involuntarily terminate Parents’ parental rights. However, Parents provide no case law to support the contention that arrests occurring prior to a petition to involuntarily terminate parental rights are irrelevant. The record shows Father was arrested in December 2018 following the incident of domestic violence with Mother which opened the CHINS case, he was charged with and pleaded guilty to theft in 2019, he was arrested in October 2020, and a warrant was issued for his arrest in January 2021 for contempt. Findings 24(nnn) and 24(hhh) are supported by the record.

[26] Finding 25(d) provides: “[CASA Pollock] testified that there have been numerous arrests dealing with domestic violence and this could be a damper for the children to be around that.” *Id.* at 19. Parents argue that that the evidence does not support the CASA’s testimony that multiple arrests for domestic violence occurred. However, the record shows that Mother was arrested in

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<sup>8</sup> Finding 24(hhh) provides: “FCM Day testified that [Father] has not obeyed the law since these [CHINS] cases have been open. [Father] has had three arrests since these causes have been open.” Appealed Order at 18.

December of 2018 for domestic violence and in 2019 for domestic violence that occurred when Parents violated their no-contact order. Indeed, CASA Pollock testified about the 2018 incident between Parents and that at least one parent was arrested when Parents broke their no-contact order and domestic violence ensued in 2019. On cross-examination of CASA Pollock, Father's attorney acknowledged the 2019 breach of the no-contact order, although indicated that the domestic violence charges were ultimately dropped. Therefore, the record supports Finding 25(d).

[27] Parents' arguments are requests for this court to reweigh the evidence, something that we cannot do. *Bester v. Lake Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 149 (Ind. 2005). We conclude there is evidence in the record to support most of the challenged findings. To the extent that findings 21(n)(iv), 21(n)(v) and 22(dd) are erroneous, they did not prejudice Parents as they are not the sole basis for the juvenile court's ultimate determination to terminate Parents' parental rights. Therefore, the error is harmless.

## IV. Conclusions of Law

### A. Remedy of Conditions Resulting in Removal

[28] Parents next contend that DCS did not provide sufficient evidence to support the juvenile court's conclusion that there is a reasonable probability that the conditions resulting in the Children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, we engage in a two-step analysis. *In*

*re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). First, we identify the conditions that led to removal. *Id.* at 643. Second, we determine whether a reasonable probability exists that those conditions will not be remedied. *Id.*

[29] When considering whether there is a reasonable probability that the conditions will not be remedied, we evaluate a parent's fitness as of the time of the termination proceeding while taking into account evidence of changed circumstances. *S.S.*, 120 N.E.3d at 610. However, habitual patterns of conduct and engagement in services offered by DCS may also be considered. *Id.* Ultimately, past patterns may be considered the best predictor of future behavior. *In re E.M.*, 4 N.E.3d at 643.

[30] Here, the Children were removed from Parents' care after Mother stabbed Father in the presence of the Children in December 2018. Parents were arrested and the Children had no one to care for them. As a result, the Children were removed from Parents' home and placed in foster care where they have remained for the past three years. Since December 2018, neither Mother nor Father has engaged in the services offered by DCS that are aimed at addressing their domestic violence issues. This court has previously determined that a parent's response to the services offered by DCS is indicative of whether conditions will be remedied. *S.S.*, 120 N.E.3d at 610.

[31] In the present case, despite multiple referrals, Mother has never completed her domestic violence courses and has twice been discharged from her batterer's intervention program. Similarly, Father has never completed domestic violence

course work and refused to engage in a batterer's intervention program. Parents' three-year pattern of failing to engage in the necessary domestic violence coursework is quite simply not indicative of remedying the conditions that led to the Children's removal. *See In re I.L.*, No. 21A-JT-418, 2021 WL 4537795 at \*7 (Ind. Ct. App. Oct. 5, 2021) (reasoning, in part, that failure to complete services directed at the original issues that led to the children's removal supported the juvenile court's conclusion that conditions would not likely be remedied).

[32] Further, the Children were also removed, in part, because both Mother and Father were incarcerated following the December 2018 incident and were incapable of caring for the Children. In addition to their incarcerations stemming from the December 2018 incident, both Father and Mother have spent time incarcerated in the previous three years. Father was incarcerated in October 2020 and Mother was incarcerated multiple times between April 2019 and November 2020. Even if Parents were to remain out of incarceration, they have done nothing to show an improved ability to care for the Children. Indeed, when not incarcerated, Parents have not engaged in the parenting skills courses offered by DCS. Such a pattern of behavior does not demonstrate that Parents can remain out of the system long enough to care for the Children or remedy their inability to provide care when not incarcerated.

[33] Further, when determining whether there is a reasonable probability that conditions will be remedied, we not only look at the initial reasons for removal, but also those factors that have led to continued placement outside of the home.

*In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013), *trans. denied*. Here, the record is replete with examples of Parents failing to address the issues that originally caused the Children’s removal and Parents’ three-year pattern of failing to comply with the Children’s case plan. Parents were found to be noncompliant with the Children’s case plan during five separate juvenile court hearings between March 2019 and November 2020. Indeed, during this timeframe the permanency plan was changed from reunification to reunification with a concurrent plan for adoption. Also, during this timeframe, DCS presented extensive evidence of Mother’s failure to engage in services, multiple incarcerations, multiple probation violations, failed drug tests, and failure to visit the Children since July 2020. There was also evidence of Father’s complete disengagement from the Children’s case plan, refusal to utilize services, and failure to visit the Children since February 2019.

[34] We note that Mother individually contends that her circumstances have changed for the better. However, she points to no specific portions of the record as evidence of those changes. As detailed above, her engagement can be considered only intermittent at best. As recently as November 2020, she was incarcerated and again had services cancelled. It is true that Mother has expressed a desire to start again, but her inconsistent engagement does not reflect an ability to correct the circumstances that led to the Children’s removal. *See In re I.L.*, No. 21A-JT-418, 2021 WL 4537795 at \*7 (reasoning that a mother’s inconsistent pattern of case involvement supported the conclusion that conditions leading to her children’s removal would not be remedied).

[35] Therefore, we agree with the juvenile court that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions resulting in the Children's removal will not be remedied.

## **B. Best Interests of Child**

[36] Finally, Parents argue that DCS did not provide sufficient evidence to support the juvenile court's conclusion that termination is in the best interest of the Children. However, a determination of the best interest of a child is not based merely on the evidence identified by DCS, but instead is based on the totality of the circumstances. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. In making such a determination, the juvenile court must subordinate the interest of the parents to those of the child. *In re A.B.*, 887 N.E.2d 158, 168 (Ind. Ct. App. 2008). The termination of a parent-child relationship is proper when a child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. Also, a child has a paramount need for permanency and courts "need not wait until the child is irreversibly harmed such that the child's physical, mental and social development is permanently impaired before terminating the parent-child relationship." *Id.*

[37] The Children have been removed from Parents' care since December 2018. The Children spent a brief amount of time with family in early 2019 but have been in foster care since approximately March 2019. While both Mother and Father believe they deserve more time to prove their capability to parent, the

Children have already waited three years while both Mother and Father have continued to be noncompliant with the Children’s case plan and have not remedied the original causes for the Children’s removal. Forcing the Children to wait indefinitely for Parents to prove their capability is not in their best interest. *See Matter of Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (reasoning, in part, that forcing the child to wait an undetermined amount of time in foster care after the parents failed for two years to comply with the child’s case plan is not in the best interest of the child). Parents have had their opportunity and we will not continue to place the Children “on a shelf until [Parents] are capable of caring for [the Children] appropriately” after three years of noncompliance with the case plan. *Id.*

[38] Further, testimony of the CASA and FCM, coupled with evidence that conditions resulting in the placement outside the home will not be remedied, is sufficient to show that termination of the parent-child relationship is in a child’s best interest. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*. Such is the case here as both FCM Day and CASA Pollock testified that termination was in the Children’s best interest and, as discussed above, there is a reasonable probability that the conditions that led to the Children’s removal will not be remedied. Therefore, the totality of evidence supports the juvenile court’s judgment that termination of the parent-child relationship is in the Children’s best interest.

## Conclusion

[39] We conclude that the majority of the challenged findings of fact are supported by the record and any findings that were erroneous did not prejudice Parents and result in harmless error. Further, DCS presented sufficient evidence that there is a reasonable probability that the reasons for the Children's removal from Parents' care will not be remedied and that termination of Parents' parental rights is in the Children's best interest. Therefore, we conclude the juvenile court's decision was not clearly erroneous, and we affirm.

[40] Affirmed.

Bradford, C.J., and Altice, J., concur.