

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANTS

Cara Schaefer Wieneke
Brooklyn, Indiana

Victoria Bailey Casanova
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General

David E. Corey
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of A.F. &
T.F (Minor Children),

and

H.B. (Mother) & J.F. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

February 10, 2021

Court of Appeals Case No.
20A-JT-629

Appeal from the Knox Superior
Court

The Honorable Gara U. Lee,
Judge

Trial Court Cause Nos.
42D01-1906-JT-27, 42D01-1906-
JT-28

Appellee-Petitioner.

Altice, Judge.

Case Summary

- [1] In this consolidated appeal, H.B. (Mother) and J.F. (Father) (collectively, Parents) appeal the termination of their parental rights as to their minor children, A.F. and T.F. (Children). Father contends that he was denied his right to due process under the Fourteenth Amendment to the United States Constitution because his counsel was ineffective, and the juvenile court and the Indiana Department of Child Services (DCS) failed to provide him with notice of various hearings. Mother argues that the “unreasonably chaotic” proceedings with regard to Father “infect[ed] the entire legal process” and violated her due process rights. *Appellant’s Brief* at 4. Parents also advance separate arguments, claiming that the juvenile court’s judgment terminating

their parental rights was clearly erroneous and not supported by sufficient evidence.

[2] We affirm.

Facts and Procedural History

[3] Parents were never married to each other and had an “on-again, off-again” relationship that was marred by domestic violence and substance abuse since their relationship began in 2001. *Transcript Vol. II* at 39-41, 86-88. T.F. was born on January 8, 2005, and A.F. was born on November 20, 2013. Parents ended their relationship sometime in 2015, and Children remained in Mother’s care.

[4] In January 2017, DCS became involved with the family after receiving a report that Mother was using methamphetamine. At the time, Mother and Children were living with her mother in Knox County. Mother submitted to a drug screen, tested positive for methamphetamine, and discussed the results with a DCS case manager. Mother ultimately admitted that she had been using methamphetamine for several years on an almost-daily basis.

[5] DCS removed Children from Mother’s care on February 8, 2017, and placed them with J.H., the mother of Children’s half-sibling. DCS did not place the Children with Father because he was residing with an individual “with [Child Protective Service] involvement,” and Father had never lived with A.F. *Exhibit*

2 at 86. Mother told DCS personnel that Father rarely saw the Children and that it had been two weeks since he had last visited.

[6] On February 10, 2017, DCS filed a Child in need of Services (CHINS) petition based on Mother’s substance abuse issues. The CHINS petition also included an allegation that DCS had a reasonable belief that methamphetamine was being manufactured at the residence.

[7] The juvenile court held an initial hearing the same day, but Father failed to appear. Father’s appointed counsel informed the juvenile court that Father was “notified regarding this matter” but he was “currently watching the youngest,” apparently referring to one of the Children. *Supplemental Transcript* at 4, 88. Father subsequently acknowledged that he had received a call that Children had been removed from Mother’s care.

[8] The juvenile court continued the initial hearing to February 27, and Father did not appear again. Mother appeared with counsel, denied the allegations, and waived the sixty-day hearing requirement set forth in Ind. Code § 31-34-19-1.¹

[9] At a status hearing on April 3, 2017, Mother appeared with counsel. Father’s whereabouts remained unknown, but it was established that Father was aware

¹ This statute provides in part that “(a) . . . [U]nless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than . . . 60 days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.” The juvenile court may, however, “extend the time to complete a factfinding hearing, as described in subsection (a), for an additional . . . 60 days if all parties in the action consent to the additional time. I.C §31-34-11-1 (a), (b).

of the Children's removal and had been notified of the proceedings. Mother stated that she had not heard from Father for nearly two weeks. Mother stipulated to the allegations in the CHINS petition, and Children were adjudicated as such. Mother agreed to participate in DCS services and programs, including submitting to drug screens, ensuring a safe and stable environment for the children, and participating in homebased casework.

[10] At some point, Father was arrested in Lawrence County and was transported from the jail to the dispositional hearing on May 10, 2017. A document service report noted that Father had been personally served with a summons regarding that hearing at the Knox County Jail. At the May 10 hearing, Father informed the juvenile court that he had not "received any of the paperwork in this matter" and "I don't know if they have my address here in town, or if they've mailed to my father's address. I do not know." *Supplemental Transcript* at 34. The CHINS petition listed Father's address as 402 Jefferson Street, Vincennes, and all court orders had been sent to that address. The court reporter confirmed that nothing had been returned by the postal service. Father remarked at the hearing that his address was 402 Jefferson Avenue but then continued to provide conflicting testimony about his address throughout both the CHINS and termination proceedings.

[11] Father was provided with copies of the CHINS petition at the May 10 hearing, new counsel was appointed for him, and the juvenile court continued the initial hearing to May 31. Father appeared with counsel at that hearing, waived the sixty-day statutory hearing requirement, and requested additional time to

review discovery. The juvenile court then set the matter for a status hearing on June 28 and ordered Father to remain in contact with his counsel and prepare for future hearings.

[12] Father did not appear at the June 28 hearing. His court-appointed counsel advised the juvenile court that he was unaware of Father's whereabouts, that he had made numerous attempts to contact him, and that he had not heard from Father since the last court appearance. Counsel then moved to withdraw representation of Father, which the juvenile court granted. The order from the hearing was sent to Father's 402 Jefferson Street address, which was the address that Father testified was his.

[13] Father had not contacted DCS since the May 31 hearing. While Father did not have his own phone, it was determined that DCS personnel relayed messages for Father on Mother's phone. Father did not return any calls to DCS.

[14] Following a June 28 hearing, the juvenile court ordered Mother to participate in reunification services and found that Father's visits with Children were sporadic. The juvenile court declined to reappoint counsel for Father until he "reappeared," and ordered DCS to notify Father of a review hearing set for July 10, 2017.

[15] At the July 10 hearing, the juvenile court proceeded in Father's absence. The juvenile court defaulted Father because of the "failure to appear for today's hearing after previously appearing twice before in this matter." *Exhibit 2* at 148. The juvenile court determined that Parents had not complied with the case

plan, Mother was consistently late for appointments and visits, and Mother regularly tested positive for methamphetamine. Mother was ordered to an intensive outpatient drug program.

- [16] Regarding Father, the juvenile court found that Father was not cooperating with DCS staff, had not met regularly with service providers, and had not been in contact with DCS. Father was ordered to submit to court-ordered random drug screens and individual therapy. The CHINS order remained in effect, and the trial court set the matter for disposition as to Father on August 4, 2017. The juvenile court's order stated that "Father was notified of the hearing at his last known address." *Exhibit 2.*
- [17] Following the August 4 hearing at which Father did not appear, the juvenile court entered an order on August 14, 2017. Parents were ordered to complete substance abuse programs, follow DCS recommendations, submit to random drug screens, attend visitations, and participate in home-based and individual therapy. Parents were also ordered to maintain stable and suitable housing and incomes.
- [18] From October 2017 until March 2018, DCS Case Manager Vanessa Lutchefeld worked with the family toward reunification. On various occasions, Parents both tested positive for drug use. Other DCS case managers became involved through the date of the termination hearing. The evidence showed that Father missed numerous visits with Children and tested positive for methamphetamine

or THC at drug screens on many occasions. Father also failed to complete substance abuse evaluations, and he did not attend family team meetings.

[19] On December 18, 2017, the juvenile court held a permanency hearing. Parents appeared, and the juvenile court appointed counsel for Father and found that Parents had only “partially complied” with the case plans. *Exhibit 2* at 116. The evidence established that Father was unemployed, sleeping in someone’s basement, and had no phone. Mother had enrolled in a drug treatment program where she remained for two weeks in November 2017 but was expelled for missing counseling appointments.

[20] At a May 14, 2018 review hearing, Parents failed to appear, but were each represented by counsel. Father’s counsel told the juvenile court that Father had failed to contact him. The juvenile court found that Mother had participated in home-based case management and some therapy sessions. However, Mother was eventually removed from individual therapy because of non-compliance. She had also continued to test positive for methamphetamine and amphetamine.

[21] Father had partially complied with the case plan, in that he had obtained housing and employment, participated in home-based case management, and visited with A.F. *Exhibit 2* at 92. Father, however continued to test positive for both THC and methamphetamine.

[22] On October 15, 2018, the juvenile court held another permanency hearing. Father’s counsel appeared, and it was established that although Father had

obtained housing, he was unemployed. Parents continued to test positive for illegal substances, and the juvenile court approved a permanency plan that included termination of parental rights with adoption. The juvenile court also approved Father's visitations with T.F. in a therapeutic setting.

[23] At a review hearing on March 25, 2019, Parents failed to appear. Mother's counsel stated that Mother was at an inpatient drug treatment facility "toward the beginning of a 21 to 30 day stay." *Supplemental Transcript* at 95. Although Mother was participating in various DCS services and had appropriate housing, she continued to test positive for methamphetamine.

[24] Father's counsel believed Father was absent from the hearing because there were two outstanding warrants for his arrest. The evidence showed that Father continued to test positive for methamphetamine and had not submitted to any drug screens since October 15, 2018.

[25] On June 17, 2019, DCS filed a petition to terminate Parents' rights as to the Children. The juvenile court conducted hearings over a three-day period in September, October, and November 2019. Parents appeared and were represented by counsel at those hearings.

[26] The evidence demonstrated that Mother relocated to an apartment in June 2018 but was evicted in August 2019 after the air filters in the apartment returned positive results for methamphetamine. *Transcript* at 34-35, 129, 189. Mother became homeless and stayed with family and friends before entering a sober living facility on October 25, 2019.

- [27] During the pendency of both the CHINS and termination proceedings, Mother consistently relapsed on methamphetamine and missed numerous drug screens. Her employment was sporadic, and she relied on family, friends, and government assistance for financial support. Mother often showed up late or missed scheduled visits with Children. DCS caseworkers were concerned that Mother failed to provide consistent parenting, discipline, or proper nutrition.
- [28] DCS had offered Father parent-aid services, home-based case management, visitation, mental health treatment, and random drug screens. Although Father had been prescribed certain behavioral medications, he refused to take them. DCS caseworkers observed that Father would participate in the offered services and visitation only when he felt like it. Father struggled with housing, employment, and substance abuse throughout the pendency of the action and continued to test positive for methamphetamine and THC. Father's home-based counselor eventually put DCS services on "hold" because of noncompliance. *Transcript* at 88.
- [29] Father visited only with A.F. because T.F. did not want a relationship with him. T.F. had completed a mental health evaluation at some point during the CHINS proceedings, stating that he felt threatened by Father and had seen him hit Mother.
- [30] During visits with A.F., Father just wanted to do the "fun stuff and play with her, has not really done the parenting, and does not want to help [A.F.] with

her homework.” *Transcript* at 181. DCS found new foster care placement for Children in early July 2019, with a plan for adoption.

[31] Case manager Krista Clark testified that termination was in Children’s best interests because the situation had not changed “for almost three years.” *Transcript* at 130. Clark acknowledged that Children needed a sober caregiver, as Mother continued to have substance abuse issues.

[32] Clark further testified that Father’s participation in DCS services was inconsistent, and that he has substance abuse and mental health issues that he refused to address. She believed that Children would “not be safe in [Father’s] care and observed that they had been “through enough trauma,” and needed “permanency and closure.” *Id.* at 132, 133.

[33] CASA Ann Prout, who had been appointed in the CHINS cases since February 2017, testified that Children were thriving in their current foster care arrangement, and T.F. did not want to go back to the “same circumstance” with Parents. *Id.* at 163. Prout further testified that Children deserved a safe, stable place that their current foster parents provide. *Id.* at 164. CASA Prout opined that Parents could not provide a safe and stable home for Children. DCS’s plan for Children was adoption.

[34] The juvenile court granted DCS’s petition to terminate Mother and Father’s parental rights in separate orders. It determined that the conditions which resulted in the Children’s removal and continued placement outside the home

will not be remedied by Parents, that continuation of the parent-child relationship poses a threat to Children’s well-being, and that termination of parental rights is in the Children’s best interests. The juvenile court also noted that adoption was a satisfactory plan for the care and treatment of Children.

[35] Parents now appeal.

Discussion and Decision

I. Due Process

[36] Parents argue that the termination order cannot stand because their due process rights were violated. Father claims that he was not served with a CHINS petition prior to that adjudication, that a factfinding hearing was conducted without notice to him, and that his counsel was ineffective. Father contends that these alleged due process violations deprived him of his right to be heard “in a meaningful . . . and time[ly] manner.” *Appellant Father’s Brief* at 19. Mother contends that her rights to due process were violated because the numerous “irregularities” that occurred in Father’s case “tainted the entire proceedings.” *Appellant Mother’s Brief* at 2.

[37] The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. When the State seeks to terminate the parent-child

relationship, it must do so in a manner that satisfies due process requirements. *C.G. v. Marion Cty Dep't of Child Servs.*, 954 N.E.2d 910, 917 (Ind. 2011). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Thompson v. Clark Cty Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)), *trans. denied*.

[38] The nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012). When confronted with a due process challenge in a termination of parental rights proceeding, this court often focuses on the risk of error created by the State's actions in the case. *In re C.G.*, 954 N.E.2d at 918.

[39] Parents acknowledge that neither of them raised a due process argument at the trial court level. Thus, the issue is waived. *See In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (holding that a constitutional claim may be waived when it is raised for the first time on appeal). Waiver notwithstanding, Parents contend that the alleged due process errors constituted fundamental error.

[40] On rare occasions, we will analyze an issue under the fundamental error doctrine to examine an otherwise procedurally defaulted claim. *Matter of Eq. W.*, 124 N.E.3d 1201, 1215 (Ind. 2019). Review is extremely narrow and

“available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.” *Id.*

[41] First, we reject Father’s contention that the alleged incorrect address that DCS had on file for him was a denial of his right to due process. Father provided conflicting testimony about his addresses throughout the pendency of the proceedings, and the court reporter confirmed that the orders and documents from the juvenile court had never been returned as undeliverable. In fact, Father appeared at the May 10, 2017 initial hearing and confirmed that DCS had his correct address. And by the time Children had been adjudicated CHINS, Father in fact knew that they had been removed from Mother’s care and that he had been notified of the proceedings. Father also appeared at the subsequent May 31 hearing with counsel and requested additional time to prepare and conduct discovery.

[42] The record also shows that even though Father was aware of the June 28, 2017 hearing, he failed to stay in contact with counsel and did not appear. As a result, the juvenile court permitted counsel to withdraw and stated that replacement counsel would not be appointed until Father again appeared. That order was sent to the address that Father had provided to DCS.

[43] In short, Father’s failure to appear at hearings and/or maintain contact with counsel that resulted in withdrawal of representation was invited error, and

Father cannot take advantage of that error. *See Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020).

- [44] We further reject Father’s argument that the juvenile court violated Father’s procedural due process rights in the CHINS case by not dismissing the cause pursuant to I.C. § 31-34-11-1 and I.C. § 31-34-19-1. Father maintains that his rights were violated because factfinding hearings were not conducted in a timely fashion. Notwithstanding Father’s claim, both statutes cited above require a party to file a motion to dismiss.
- [45] Here, it is undisputed that Father never moved to dismiss at any point during the CHINS proceeding. Moreover, Father fails to demonstrate how not dismissing the CHINS actions deprived him of due process in the termination proceedings, where he appeared and was represented by counsel.
- [46] Father’s argument that his counsel in the CHINS case was ineffective for not moving to dismiss the action fails for the same reason. When Parents claim that counsel underperformed, we “deem the focus of the inquiry to be whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination.” *Baker v. Marion Cty. OFC*, 810 N.E.2d 1035, 1041 (Ind. 2004). The question is whether counsel’s overall performance was so defective that we cannot say with confidence that the conditions leading to the removal of the children from parental care are unlikely to be remedied and that termination is in the child’s best interest. *Id.*

[47] While Father complains about what counsel *should* have done in the CHINS case, i.e., move to dismiss the case, that is not the focus of the analysis. *See id.* Moreover, in determining whether Parents received effective representation, “we must also examine the evidence supporting the termination of [their] parental rights.” *In re A.P.*, 882 N.E.2d 799, 806–07 (Ind. Ct. App. 2008).

[48] The record reflects that Father’s counsel cross-examined witnesses, objected to testimony, and presented his own witnesses and exhibits. Additionally, as discussed below, the evidence presented clearly and convincingly supported the termination of his parental rights. And while Father directs us to *In re A.P.*, 734 N.E.2d 1107 (Ind. Ct. App. 2000), *trans. denied*, where this court pointed out seven procedural violations that included, among others, the lack of a permanency hearing, copies of case plans were not provided to the parents, none of the orders included statutory findings, and the father’s denial of his right to be present at hearings, those circumstances are not present here.

[49] In sum, Father has failed to show any conduct by DCS or the juvenile court that adversely affected his ability to participate in hearings and complete services aimed at reunifying him with Children. Thus, Father’s due process claims fail.

[50] While Mother joins in the due process argument, DCS argues—and we agree—that she lacks standing to assert those claims. “[A] plaintiff must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a

result of the conduct at issue” to have standing to complain. *Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind. 1985).

[51] Mother argues that she has standing and may raise a due process argument because she and Father were part of a “family unit.” *Appellant Mother’s Brief* at 18. Notwithstanding this claim, Parents were never married, their relationship was marred by domestic violence, and Father visited only one of the children—A.F.—on rare occasions. What is more, Mother’s assertion that her due process rights were violated because of the alleged procedural irregularities that occurred during the pendency of Father’s case is speculative. Mother has failed to show specific harm or prejudice.

[52] Finally, it is undisputed that Mother was represented by counsel throughout the CHINS proceedings and she admitted to the CHINS allegations. Mother was afforded the opportunity to be heard in a timely manner in both the CHINS and termination proceedings. As a result, Mother has failed to show a violation of her due process rights.

II. Termination Order

A. Standard of Review

[53] The Fourteenth Amendment to the United States Constitution protects a parent’s right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the

fundamental liberty interests[,]” parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, the parent-child relationship may be terminated when a parent is unable or unwilling to meet their parental obligations. *Id.* We are cognizant that involuntary termination of parental rights is the most severe sanction a court can impose because it severs all rights of a parent to his or her child. *Matter of D.G.*, 702 N.E.2d 777, 780-81 (Ind. Ct. App. 1998). Therefore, termination is considered a last resort, “available only when all other reasonable efforts have failed.” *Id.* at 781.

[54] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re G.F.*, 135 N.E.3d 654, 660 (Ind. Ct. App. 2019). Rather, 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 its 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*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re G.F.*, 135 N.E.3d at 660.

[55] Before an involuntary termination of parental rights may occur in Indiana, Ind. Code § 31-35-2-4 provides that the petition filed by DCS must allege in relevant part, that

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree [and]

. . .

(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. . . .

[56] If the juvenile court finds that the allegations in the termination petition are true, it “shall” terminate the parent-child relationship and enter findings supporting its conclusions. I.C. § 31-35-2-8.

B. Conditions Not Remedied

[57] Parents separately challenge the juvenile court’s determination that there is a reasonable probability that they would not remedy the reasons for Children’s initial removal.

[58] In resolving this issue, we engage in a two-step analysis: we first identify the conditions that led to Children’s removal, and then determine whether there is a reasonable probability that those conditions will not be remedied. *K.E.*, 39 N.E.3d 641, 647 (Ind. Ct. App. 2015). The second step requires the juvenile court to evaluate a parent’s fitness to care for a child at the time of the termination hearing and consider a parent’s pattern of conduct to determine whether there is a “substantial probability of future neglect or deprivation of the children.” *In re T.F.*, 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), *trans. denied*. When evaluating a parent’s fitness, the juvenile court may properly consider a parent’s criminal history, substance abuse issues, history of neglect, failure to provide support, lack of adequate housing and employment, and services offered by DCS to a parent and the parent’s response to those services. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. In balancing current circumstances and historical patterns of conduct, the court can disregard recent efforts. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). Moreover, this court has held that a pattern of unwillingness to deal with parenting problems and to cooperate with counselors and those providing services, in conjunction with unchanged and unacceptable home conditions, supports a finding that there is no reasonable probability the unacceptable conditions in the home will be remedied. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). DCS need not rule out all possibilities of change; rather, it must establish that there is a reasonable probability that the parent’s behavior will not change. *In re B.J.*, 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008), *trans. denied*.

[59] In this case, CASA and DCS caseworkers testified that Mother missed most of her group and individual therapy sessions during the pendency of both the CHINS and termination proceedings. She was expelled from several drug rehabilitation programs because of missed appointments and failed drug screens. Mother has an eighteen-year period of substance abuse, and she consistently tested positive for methamphetamine use on the several occasions that she complied with court-ordered drug screens. Mother continued to relapse, and while she claimed to have been sober for nearly two months during the pendency of these proceedings, that sobriety period could not be verified because of her missed and refused drug screens during that period.

[60] Mother was evicted from her apartment in September of 2019 for using methamphetamine in the residence, and she was homeless until she entered a sober living residence in late October 2019. Mother was habitually late on scheduled visitation days with Children and was not prepared for them.

[61] Although Mother was employed at some point, she left her employment because of transportation issues. She did not find other employment until shortly before the final hearing, and she was never able to find suitable housing for Children. CASA and DCS representatives testified that Mother made little progress over the DCS's three-year involvement, and she failed to comply with many DCS programs and the juvenile court's orders.

[62] Father habitually used methamphetamine and marijuana and was only partially compliant with visits. Father was depressed, consistently missed drug screens,

and did not pursue services offered by DCS. At the time of the termination hearing, Father had pending charges for felony nonsupport of a dependent child and domestic battery. Although Father was on work release, he had no residence, and his release date was not until at least February 2020.

[63] T.F. underwent therapy for post-traumatic stress disorder after observing Father batter Mother on many occasions. The instances of domestic violence revealed Father's clear pattern of abuse. T.F. did not want a relationship with his father, and at some point, the visits were stopped. Although Father had somewhat bonded with A.F., DCS caseworkers testified that Father was not parenting the child and just wanted to do the "fun stuff." *Transcript* at 181.

[64] In light of the evidence presented, Parents' historical and current inability to provide for Children's care supports the juvenile court's conclusion that there was a reasonable probability that they would not remedy the conditions that led to the removal.²

C. Best Interests of the Children

[65] Parents contend that the juvenile court erred in concluding that termination of their parental rights was in Children's best interest. Specifically, Parents

² Although Parents also challenge the juvenile court's conclusion that continuation of the parent-child relationship poses a threat to Children's well-being, we have already concluded that DCS met its burden of showing there was a reasonable probability that the conditions resulting in removal would not be remedied. Because I.C. §31-35-2-4(b)(2)(B) is written in the disjunctive, we need not address whether the parent-child relationship poses a threat to Children's well-being. *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009).

contend that most of the issues had been corrected that “earlier had proved problematic,” *Appellant Father’s Brief* at 46, and Mother asserts that she had “consistently visited with the children and maintained a strong bond with them.” *Appellant Mother’s Brief* at 28.

[66] When determining whether termination of parental rights is in a child’s best interests, courts look to “the totality of the evidence.” *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019), *cert. denied*. This includes a child’s need for permanency because “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *Id.* In doing so, the trial court must subordinate the interests of the parents to those of the child. *A.D.S.*, 987 N.E.2d at 1158. The juvenile court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*; *see also In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). When determining a child’s best interests, it is appropriate for this court to rely on the recommendations of DCS, a child’s advocate, and/or service providers. *See K.T.K.*, 989 N.E.2d at 1235-36.

[67] As discussed above, the evidence established that Parents were unlikely to remedy the conditions that led to the Children’s removal, given their unresolved long-term substance abuse issues, lack of stability, and their failure to consistently participate and benefit from DCS services. This same evidence is applicable in proving more than one termination element. *In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010).

[68] Additionally, FCM Clark testified that termination was in Children’s best interests because the situation had not changed for Parents since DCS’s involvement. Clark opined that Children required a sober caregiver, permanency, and closure. In fact, T.F. stated that he “wanted to put himself into a better situation” if Mother could not remain sober and that he would “absolutely” be open to adoption. *Transcript* at 166, 173.

[69] CASA Prout opined that neither Parent could provide a safe, stable, drug-free home for Children, and that Parents had been afforded ample time and a fair opportunity to work toward reunification with no success.

[70] Given Parents’ inability to provide appropriate care and supervision for Children, the juvenile court did not err in concluding that termination of the parent-child relationship was in Children’s best interest. Thus, we conclude that DCS presented clear and convincing evidence to support the juvenile court’s determination to terminate Parents’ parental rights.

[71] Judgment affirmed.

Najam, J. and Mathias, J., concur.