MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Ernest P. Galos
Public Defender
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary Termination of the Parent-Child Relationship of:

K.H. (Minor Child)
and
K.H. (Mother),

Appellants-Respondents,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

February 28, 2023

Court of Appeals Case No. 22A-JT-2251

Appeal from the St. Joseph Probate Court

The Honorable Ashley Mills Colborn, Judge

Trial Court Cause No. 71J01-2201-JT-5

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] K.H. ("Mother") appeals the trial court's order terminating her parental rights over her minor child, K.H. ("Child").[1] Mother raises one issue for our review, namely, whether the court clearly erred when it terminated her parental rights. We affirm.

Facts and Procedural History

[2] Mother gave birth to Child on May 1, 2018. On December 17, the Indiana Department of Child Services ("DCS") received a report that Mother and her father had gotten into a physical altercation in front of Child during which Mother "pulled a knife out" and her father "pulled a machete out." Tr. at 36. The report also indicated that Mother had unstable housing. In response, DCS opened an informal adjustment and put in place home-based case services to help Mother find housing.

[3] On March 28, 2019, DCS received a report that Child had fallen "over a staircase" and sustained a skull fracture. *Id*. at 37. DCS Family Case Manager

[1] Child's father is unknown, and the court terminated the parental rights of the unknown father in the same proceeding.

("FCM") Ena Boles investigated the report. Mother indicated that she was present at the time of the fall but stated that a friend was supposed to be supervising Child. Mother also informed DCS that she still lacked suitable housing. At that point, Mother sent Child to live with an uncle in Chicago. Approximately two weeks later, Child returned from Chicago, and DCS received a report that Mother had dropped Child off with another family member without food, clothes, or formula.

[4] DCS removed Child from Mother's care on April 11. At that time, Child was "not up to date on her shots or medical care." *Id*. at 76. On April 15, DCS filed a petition alleging that Child is a Child in Need of Services ("CHINS"). At a hearing, Mother admitted to the allegations in the petition, and the court adjudicated Child a CHINS. The court then entered a dispositional order and ordered Mother to "maintain suitable, safe and stable housing"; secure and maintain a legal source of income; "see that the child is properly clothed, fed, and supervised"; complete a parenting assessment and complete all recommendations; complete a psychological evaluation; complete a substance abuse assessment and follow all treatments and recommendations; comply with home based casework services; and participate in supervised visits with Child. Ex. at 32.

[5] Mother completed a psychological assessment and received diagnoses of schizoaffective disorder, paranoid disorder, and delusional disorder. Mother then completed "a couple of sessions" of psychotherapy, but ultimately stopped attending and did not successfully complete that service. Tr. at 43. And

Mother did not follow up with her physician or take any medication to address the diagnoses.

[6] Mother also completed the parenting assessment, but she "never started" the subsequent parenting classes. *Id.* In addition, Mother initially participated in home-based case management. But once she found an apartment, she "no longer used those services." *Id.* at 54. And despite Mother's "daily usage" of marijuana, Mother never completed a substance abuse program. *Id.* at 56.

[7] Mother also initially participated in visitation with Child. The visits were supervised at Mother's home, but DCS had "concerns[.]" *Id.* at 57. In particular, there "was not a lot of interaction" between Mother and Child, and they would spend most of the time "just sitting on the couch watching TV." *Id.* at 75. In addition, the home had "multiple" safety issues, including unsecured stairs and "[s]mall items on the floor" that could be choking hazards. *Id.* As a result, the visits were moved to a facility. Once the visits moved to the facility, Mother "never showed up[.]" *Id.*

[8] In August 2021, DCS placed Child with another uncle in Arizona. However, on DCS's request, Child was returned to Indiana in January 2022. Based on certain statements Child had made about the uncle, DCS had Child submit to a forensic interview. The result of that interview demonstrated that Child had suffered "some type of trauma" while in Arizona. *Id.* at 52. When DCS informed Mother of Child's statements, Mother accused DCS of "making [it] up." *Id.* And Mother continued to request that Child be placed with that uncle.

[9] Following Child's return to Indiana, DCS put services back in place for Mother to visit with Child. However, Mother "never show[ed] up to one visit." *Id*. at 53. As a result, Mother's last visit with Child was in October 2020. Mother did not participate in any service after Child returned to Indiana.

[10] On January 12, 2022, DCS filed a petition to terminate Mother's parental rights over Child. Approximately eleven days prior to the scheduled hearing on DCS's petition, Mother contacted DCS and asked for services to be put into place. FCM Boles put in referrals "that day." *Id*. at 57. Mother scheduled an assessment with one referral but ultimately "was a no-call, no-show." *Id*.

[11] Thereafter, on May 13, the court held a fact-finding hearing on DCS's petition. During the hearing, Mother testified that she had started all of the services but that she "just stopped going to the classes." Tr. at 9. She further testified that she did not believe that she had any mental health diagnosis and that she was not currently on any medication to treat a mental health issue. In addition, she acknowledged that she had not "participated in anything" since Child returned from Arizona. *Id*. at 15. And she admitted that she "did smoke some marijuana" during the course of the proceedings. *Id*. at 31.

[12] FCM Boles testified that Mother has another child, R.H. FCM Boles testified that DCS had opened two assessments regarding R.H. but that DCS ultimately had to close the assessments because Mother kept sending R.H. to live with other relatives. FCM Boles also testified that Mother did not complete any services "within those two years" before Child went to Arizona and that

Mother had not "started or completed" any services since Child's return. *Id*. at 56. FCM Boles then testified that Child deserves permanency and that the termination of Mother's parental rights was in Child's best interests.

[13] Child's Court Appointed Special Advocate ("CASA") also testified that Child deserves permanency. In particular, the CASA testified that Mother has completed "nothing" from the dispositional order and that she has not made "any progress" toward reunification. *Id*. at 74. The CASA then testified that the termination of Mother's parental rights was in Child's best interests.

[14] On August 23, the court entered its findings of fact and conclusions thereon. In relevant part, the court found the testimony that Mother uses marijuana daily to be "credible," but that Mother "never completed a substance abuse assessment." Appellant's App. Vol. 2 at 17. The court also found that "Mother last visited with [Child] in October 2020" after she "just stopped attending visitation." *Id*. And the court found that, since Child's return to Indiana, "Mother has failed to complete any services." *Id*. at 18. The court then concluded that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside of Mother's home will not be remedied, that the continuation of the parent-child relationship poses a threat to Child's well-being, that termination of the parent-child relationship is in Child's best interest, and that there is a satisfactory plan for the care and treatment of Child. As such, the court terminated Mother's parental rights over Child. This appeal ensued.

Discussion and Decision

[15] Mother challenges the trial court's termination of her parental rights over Child. We begin our review of this issue by acknowledging that "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id*. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id*. at 836.

[16] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

> (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. . . .
>
> (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) (2022). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R.Y. v. Ind. Dept of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[17] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (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 that are most favorable to the judgment. *Id*. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[18] Here, in terminating Mother's parental rights, the trial court entered extensive findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of

review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine 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 trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[19] On appeal, Mother does not challenge any of the factual findings made by the trial court. And while Mother does not specifically challenge any of the court's legal conclusions, Mother appears to assert that the court erred when it concluded that the reasons for Child's removal or placement outside of Mother's home are not likely to be remedied and that the termination of Mother's parental rights is in Child's best interests. We address each argument in turn.

Reasons for Removal

[20] To determine whether there is a reasonable probability that the reasons for Child's continued placement outside of Mother's home will not be remedied, the trial court should judge Mother's fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren]." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind.

Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id*. Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id*.

[21] On appeal, Mother contends that the court erred when it concluded that there is a reasonable probability that the reasons for Child's removal and continued placement outside of her home will not be remedied because, while she did not complete any services, she "has obtained a three (3) bedroom apartment that is appropriately furnished" and has "gained employment." Appellant's Br. at 14. And Mother contends that she has a "desire to engage in services and is in a position now to successfully complete them." *Id*. at 15.

[22] However, Mother's argument on appeal is simply a request for this Court to reweigh the evidence, which we cannot do. The evidence most favorable to the court's findings demonstrates that DCS removed Child because of issues with Mother's supervision of Child, which resulted in Child falling over the stairs and fracturing her skull. As a result of Child's removal, the court ordered Mother to participate in various services, but Mother did not successfully complete a single service.

[23] While Mother completed the psychological evaluation and received several mental health diagnoses, she did not agree with those diagnoses, follow up with

her primary physician, or take any medication to treat the mental health illnesses. In addition, because of Mother's "daily usage" of marijuana, the court ordered Mother to submit to a substance abuse assessment. Tr. at 56. Mother participated in that assessment, but she failed to complete any of the substance abuse classes. And, while Mother initially participated in supervised visits with Child, DCS had "concerns" with those visits because Mother would simply sit on the couch and watch TV and because there were "issues of safety" with unsecured stairs and choking hazards. *Id*. at 75. As a result, the visits were moved to a facility, but Mother "never showed up to a visit after that." *Id*. at 57. Indeed, Mother's last visit with Child was in October 2020.

[24] In the two years prior to Child's placement in Arizona, Mother did not complete a single service. Following Child's return to Indiana, DCS again put services in place for Mother. But Mother did not "start[] or complete[]" any services after Child's return. *Id*. at 56. Then, eleven days prior to the hearing on DCS's petition, Mother again asked for services to be put in place. FCM Boles put services in place that day, and Mother scheduled an assessment with one, but she "was a no-call, no-show." *Id*. at 57. In other words, Mother has been given numerous opportunities of which she consistently failed to take advantage.

[25] Still, Mother seems to contend that she has demonstrated that she has remedied the conditions that resulted in Child's removal because DCS has not removed R.H. from her care. But contrary to Mother's assertions, the fact that DCS has not removed R.H. from her care is not dispositive of her improvement. Indeed,

FCM Boles testified that DCS had opened two assessments involving Mother and R.H. but that DCS had to close the assessments after Mother voluntarily sent R.H. to live out of her care both times.

[26] The evidence demonstrates that, despite the numerous chances over three years to improve her parenting abilities, Mother has not completed a single service. And Mother has not demonstrated an ability to safely parent Child. We therefore hold that the trial court's findings support its conclusion that there is a reasonable probability that the conditions that resulted in Child's removal and the reasons for Child's placement outside of Mother's home will not be remedied.

Best Interests

[27] In determining what is in a child's best interests, a court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id*.

[28] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.*), 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id*. Moreover, this Court has previously held that recommendations of the

family case manager and court-appointed special advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id*.

[29] Mother asserts that the court erred when it concluded that the termination of her rights is in Child's best interests because Child has "likely been harmed by being placed with five (5) different homes during the course of the case" and that it is "hardly" in Child's best interests "to continue in DCS' care if she is constantly moved around." Appellant's Br. at 15. We acknowledge that Child has been in five placements since her removal from Mother's care. But Child needs permanency. At the time of the termination hearing, Child had been removed from Mother's care for three of the four years of her life. And FCM Boles testified that there are numerous families who have expressed an interest in adopting Child.

[30] Further, there is no evidence that, even if Mother were to have more time, she would take advantage of the opportunities and complete the services. On the contrary, the evidence demonstrates that, despite the number of times DCS had put services in place for Mother, she never completed them. In addition, Child's CASA testified that it was in Child's best interests for the court to terminate Mother's parental rights because Mother had not made "any progress" during the three years of the case. Tr. at 74, 81. And FCM Boles testified that termination of the parent-child relationship was in Child's best interest. Mother's historic refusal to complete services, coupled with the

testimony from FCM Boles and Child's CASA, supports the court's determination that termination of Mother's parental rights is in Child's best interests.

Conclusion

[31] The trial court did not clearly err when it concluded that the reasons for Child's removal from Mother's care and continued placement outside of Mother's home will not be remedied or that termination of Mother's rights is in Child's best interests. We therefore hold that the trial court did not err when it terminated Mother's parental rights over Child. We affirm the trial court.

[32] Affirmed.

Brown, J., and Weissmann, J., concur.