

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of T.S., Father, M.B.H., Mother,
and A.S., Minor Child,

M.B.H.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 5, 2022

Court of Appeals Case No.
21A-JT-1832

Appeal from the
Huntington Superior Court

The Honorable
Jennifer E. Newton, Judge

Trial Court Cause No.
35D01-1901-JT-1

Molter, Judge.

- [1] M.B.H. (“Mother”) and T.S. (“Father”) are the parents of A.S. (“Child”). After Mother admitted allegations related to her drug use and the unsanitary conditions of her home, Child was adjudicated a child in need of services (“CHINS”). Father has lived in an assisted living facility for over a year and suffers from several mental health disorders and physical ailments. The juvenile court terminated both Parents’ parental rights, and only Mother appeals.
- [2] She contends the juvenile court erred in concluding the Indiana Department of Child Services (“DCS”) proved by clear and convincing evidence there is a reasonable probability (1) the conditions resulting in Child’s removal or the reasons for placement outside of her home would not be remedied, and (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. Her arguments amount to a request that we reweigh the evidence before the juvenile court, which we cannot do. We therefore affirm.

Facts and Procedural History

I. CHINS Adjudication

- [3] Mother and Father are the parents of Child, who was born on July 16, 2014. When Child was two years old, DCS received a report on September 6, 2016

that her six-year-old half-sibling (“Sibling”)¹ was unable to get into the family’s home after school. After speaking with maternal grandmother, DCS learned that Mother had a history of drug use and was using heroin at the time.

[4] DCS family case manager (“FCM”) John Lane and a deputy sheriff went to Mother’s home, where they encountered Mother and Child. Child “was half dressed[, and] [h]er pants were wet where she had soiled herself. She appeared to need a bath.” Ex. Vol. II at 52. Mother admitted to being a drug user and relapsing, and FCM Lane saw visible track marks and self-mutilation marks on Mother’s arms. Mother also told FCM Lane that she was depressed, was not in therapy, and was not on any medication. FCM Lane observed the home to be “cluttered with trash, laundry, and food on the floor,” so that the floor of the home “was not visible.” *Id.* The kitchen was full of dirty dishes and trash, and there was very little food in the house.

[5] DCS removed Child from Mother’s care that day and initiated CHINS proceedings. The CHINS petition alleged the details of DCS’s visit to Mother’s home, that Sibling was previously adjudicated a CHINS, and that Mother’s September 8, 2016 drug screen was positive for amphetamines, methamphetamines, marijuana, and opiates. On January 12, 2017, the juvenile

¹ Although DCS became involved with Sibling, Sibling was not a subject of the termination proceeding at issue here.

court adjudicated Child a CHINS based on Mother’s admissions to the allegations in the petition.

[6] A dispositional hearing was held on February 17, 2017, and Mother was ordered to participate in reunification services, including: “random drug screens, parenting assessment and follow recommendations, substance abuse assessment and follow recommendations, meet all medical and mental health needs for self and child, attend all scheduled visitations and participate in counseling services.” Ex. Vol. V. at 68–73. At the time of both the CHINS adjudication and the dispositional hearing, Mother was incarcerated in the Miami County Jail on five charges of drug possession, possession of syringe/paraphernalia, and maintaining a common nuisance. She was serving a term from January 2017 to March 2017 with probation following.

II. Mother’s Compliance with Dispositional Order

[7] Following the CHINS adjudication, Mother went through a years-long cycle of progress and relapse.

[8] **June 1, 2017 Review Hearing:** The juvenile court found Mother “partially complied” with Child’s case plan by submitting to random drug screens and participating in home-based counseling. *Id.* at 78. But she did not comply with substance abuse services and only “infrequently” visited Child “due to positive drug screens.” *Id.* at 78.

[9] **August 31, 2017 Permanency Hearing:** The juvenile court found Mother had been released from jail on March 13, had complied with the case plan, and had

visited Child in an unsupervised setting. Mother tested negative for all substances on multiple dates from June through August 2017 and was engaging in group substance abuse treatment. She was meeting with home-based services where they addressed the need to secure stable housing and transportation, and she secured employment. The permanency plan remained reunification.

[10] **March 1, 2018 Review Hearing:** The juvenile court found Mother tested positive for methamphetamine on October 25, 2017, but she had completed the parenting portion of her home-based program, had complied with substance abuse treatment, was visiting Child in a supervised setting, and had entered a substance abuse program at Huntington House. The juvenile court approved a concurrent plan of reunification with Mother as well as termination of parental rights and adoption.

[11] **June 13, 2018 Review Hearing:** Mother completed the Huntington House substance abuse program, which began in December 2017. She was also participating in a Suboxone program—a medication-assisted treatment for her substance abuse—but she relapsed on cocaine on March 20, 2018. While staying in Huntington House, Mother had unsupervised overnight visits with Child, but there were concerns because she napped while Child played, which was against Huntington House’s rules. There were also concerns about Mother’s “decision making.” *Id.* at 87.

[12] **September 21, 2018 Second Permanency Hearing:** The juvenile court found Mother had stable housing and employment, had not tested positive for illegal

substances since March 2018, consistently attended services, and visited Child in an unsupervised setting, including overnight and weekends. However, Mother expressed “feelings of being stressed due to all of the things she must do prior to being reunified with the child” and stated, “that she may need additional support once the child is returned to her care.” *Id.* at 89.

[13] **October 22, 2018 Trial Home Visit Hearing:** The juvenile court approved DCS’s request for a trial home visit (“THV”), with Child being returned to Mother’s care in her home, starting November 2, 2018. But the THV only lasted a few weeks, and on December 10, 2018, the juvenile court held a detention hearing and ordered Child removed from Mother’s care. The juvenile court found that Mother “tested positive for unprescribed substances since [Child] was returned to her care.” *Id.* at 93. Further, Mother had not continued Child’s therapeutic services nor fully engaged in her own services.

[14] **December 21, 2018 Review Hearing:** The juvenile court’s findings show that Mother tested positive on the following drug screens: November 1, 2018, amphetamine; November 14, 2018, methamphetamine and amphetamine; November 28, 2018, methamphetamine, amphetamine, hydromorphone, and morphine (prescribed); December 5, 2018, methamphetamine, amphetamine, hydromorphone, morphine, and fentanyl; December 6, 2018, methamphetamine, amphetamine, heroin metabolite, hydrocodone, and morphine (prescribed); and December 10, 2018, methamphetamine, amphetamine, heroin metabolite, and hydrocodone (prescribed). The juvenile court also found that Mother had not been “consistently engaging in services”

and had canceled several of her appointments; did not take Child to her therapy sessions; “continued to express feelings of being stressed and overwhelmed by having the child back in her care” and managing all of her own and Child’s appointments; and faced instability in being able to maintain her housing because she had lost her employment and her transportation. *Id.* at 95–96.

[15] **January 24 and February 19, 2019 Charges:** The State charged Mother with Level 6 felony unlawful possession of a syringe, and on April 25, 2019, Mother pleaded guilty as charged. On February 19, 2019, the State charged Mother with Level 6 felony possession of methamphetamine and Level 6 felony unlawful possession of a syringe. Mother pleaded guilty to possession of methamphetamine and was sentenced for both convictions simultaneously, resulting in concurrent sentences of one and one-half years with 180 days executed and “1 year and 3 days” suspended to probation, with a requirement that Mother enter a halfway house within two days after her release. *Ex. Vol. VI* at 2, 12.

[16] **May 15, 2019 Review Hearing:** The juvenile court found that Mother was incarcerated from February 8 through May 9, 2019, during which time she could not participate in services. Before her incarceration, she had not been engaging in services in late 2018 and early 2019, including not submitting to drug screens. Mother tested positive on January 25 for methamphetamine and amphetamine, she had been evicted from her home, and she was planning to move in with her mother. The juvenile court also found that Mother had not visited Child since the THV ended because she had not maintained her sobriety,

and Child's therapist stated that visits should not begin until Mother could provide Child with consistency and stability. The court found that Child "regressed in her behavior at her return from the [THV] to behaviors that had been improving during her placement" in foster care, but those behaviors "have lessened" and Child needs therapy and a consistent life. *Id.* at 99.

[17] **August 20, 2019 Hearing:** The juvenile court held a hearing on Mother's motion for visitation, and on September 3, 2019, it issued its order that Child's therapist "will determine when it is time for the Child to resume therapeutic visitation as [Child] is currently showing negative reactions to having had a visit with Mother." *Id.* at 101.

[18] **September 13, 2019 Third Permanency Hearing:** The juvenile court found Mother had been staying at Women's Life House after she was released from incarceration, but she was terminated from that program on May 24, 2019, because she failed a drug screen (testing positive for methamphetamine) and did not comply with the program's terms. Mother moved to Huntington House on June 3, 2019, but she was also terminated from that program. She then moved in with her mother, and then to Harriet House in Fort Wayne on August 26, 2019. The juvenile court's order suspending visits until the Child's therapists recommended that they restart remained in effect. The permanency plan included reunification and adoption as a concurrent plan.

[19] **February 21, 2020 Review Hearing:** The juvenile court found, among other things, that Mother had participated in some services, but she had not

completed substance abuse services and was not employed. The juvenile court also found that “due to her instability and sporadic sobriety she only partially enhanced her ability to fulfill her parental obligations.” Ex. Vol. VI at 38. At that time, Child still needed to participate in therapy “to assist her in processing through her past trauma,” and the juvenile court maintained its prior visitation order. *Id.*

[20] **August 14, 2020 Fourth Permanency Hearing:** The juvenile court found Child was progressing well in her foster home and “in overcoming her emotional trauma through [her therapies] for PTSD after the [THV] with Mother.” *Id.* at 41. Mother continued to take Suboxone “through the . . . program that she had participated in off and on for several years”; she was complying with her treatment program at Huntington House; she tested negative on drug screens; and she had transferred to a program at Hope House. *Id.* at 42. Mother was employed and was in the “discharge planning of the portion of her treatment program.” *Id.* at 42. The juvenile court granted Mother’s request for therapeutic visits with Child to begin before the finalization of the termination fact-finding.

III. Termination Proceedings

[21] After DCS filed a petition to terminate Mother’s parental rights, fact-finding hearings were held on February 28, September 3, and December 11, 2020. At the fact-finding hearings, DCS presented evidence that it referred Mother for services at the Bowen Center in Huntington County in November 2017,

including a substance abuse assessment, which recommended substance abuse treatment, and skills coaching. From the beginning of the CHINS case, Mother had constant referrals for services but did not complete any of them. Mother attended only “24 out of 91 individual therapy sessions” before she moved to Fort Wayne in August 2019. Tr. Vol. II at 128–29. Mother also began living at the Huntington House, “a shelter and recovery home” in November 2017. *Id.* at 164.

[22] FCM Lisa Hoekje, who supervised the case from February 2018 through May 2018, testified that Mother was on probation and was referred to services: drug screens, parenting services, and home-based case work. *Id.* at 85–86, 89.

Mother was doing moderately well with mostly negative drug screens, but she relapsed on March 20, 2018. *Id.* at 89–90. There were concerns with Mother’s choice of surrounding people and her “lack of full compliance with what was asked of her despite her attendance at most appointments.” *Id.* at 90–91. FCM Hoekje had concerns about Child returning to Mother’s care because Mother’s release from Huntington House kept getting extended, and the plan for her leaving “was very uncertain and unstable.” *Id.* at 96. She was also concerned with Mother’s history of relapse and her ability to care for Child. *Id.* at 96–97.

[23] FCM Aubri Cox, who took over the case in May 2018, testified that at that time, Mother complied with services and remained at the Huntington House. Tr. Vol. III at 177–78, 179, 181. Mother graduated from Huntington House in “May or June 2018,” and she tested negative for illegal substances from May through October 2018. Tr. Vol. II at 164; Tr. Vol. III at 181. During the THV,

FCM Cox observed Child in Mother's home, and Child "appeared to be very shut off or closed in" and "didn't want to engage with anyone." Tr. Vol. III at 197–98. Although Mother tested positive for illegal substances multiple times during the THV, FCM Cox explained that DCS did not end the THV immediately after the first positive test because DCS and service providers tried to help Mother to stop abusing drugs. *Id.* at 203.

[24] After Mother's incarceration in early 2019, she was ordered to complete intensive outpatient treatment, submit to random drug screens, and participate in a halfway house program as part of her probation. Tr. Vol. II at 158. Mother first went to Woman's Lifehouse, a "programming shelter," for less than two weeks and was exited from the program for failing a drug screen. *Id.* at 159, 174. This "was not the first time she had used there," and she was asked to leave because she "was not improving in the program." *Id.* at 176. Mother re-entered Huntington House soon after but was exited from there as well for taking more Suboxone than prescribed and not following rules of the program. *Id.* at 159, 165, 167, 169.

[25] Mother then moved to Fort Wayne and entered the Harriet House, a six-to-nine-month inpatient residential treatment program, on August 26, 2019. *Id.* at 180, 189. Huntington County Probation either ordered or recommended that Mother enroll into Harriet House. *Id.* at 212. At the time of the February 2020 hearing, Mother was at level 3, where she was expected to be self-sufficient, including finding employment and saving thirty percent of her paychecks, but she had not yet met the expectations of that level. *Id.* at 183–84, 207–08.

[26] Jennifer Pappert, a counselor at Harriet House, worked with Mother and testified that Mother had been given the tools to reach her goals, which included time management, stable housing, reunification with Child, and “skills of recovery.” *Id.* at 211, 213. According to Pappert, given how long Mother had been in the program, Mother was “[n]ot as consistent as one would expect with the amount of time that’s she’s been there. There’s definitely room for improvement or better consistency.” *Id.* at 216–17.

[27] Mother had left the Harriet House by the time of the December 11, 2020 fact-finding hearing and had moved into a one-bedroom apartment in Fort Wayne in a complex that had case managers, group therapy, and activity coordinators on-site through Park Center. Mother testified that, at the December fact-finding hearing, she had been sober for nineteen months—the longest period of sobriety she’s had since she started using drugs when she was eleven years old.

[28] In August 2020, Mother completed a parenting and psychological evaluation at the Bowen Center, and during the evaluation, she reported that she began her substance abuse when she was eleven years old and started drinking alcohol and smoking marijuana daily. *Ex. Vol. VI* at 29. When she was seventeen, she started abusing Xanax and her prescribed Methadone. When she was twenty-six, she started using methamphetamine and heroin, would have periods of sobriety, and then relapse. She “injected meth daily from 2016 to 2019” and reported that she overdosed “approximately [ten] times throughout her life.” *Id.* at 29–30. The evaluator testified that Mother used illegal substances as a coping mechanism.

[29] Mother revealed a long history of aggression, including abusive romantic relationships both as the abuser and the abused. This level of aggression “is concerning and shows difficulty controlling her behavior.” Tr. Vol. III at 16–17. Mother’s score on the Child Abuse Potential Inventory was “extremely elevated,” which indicated that Mother “shared characteristics of known physical child abusers” and that “her parenting could be unpredictable, and she may be aggressive with” Child. Ex. Vol. VI at 32; Tr. Vol. III at 14–15. The evaluation also diagnosed Mother with several mental disorders including borderline personality disorder, major depressive disorder, generalized anxiety disorder, amphetamine-type substance use disorder, and opioid use disorder. Ex. Vol. VI at 34–35; Tr. Vol. III at 14. The substance abuse disorders were classified as in early remission in controlled environment, and the “controlled environment” portions of the diagnoses referred to Mother living at Harriet House at the time of the evaluation. Tr. Vol. III at 22, 29. In that controlled environment, Mother was getting drug tested and could face other consequences, such as jail, for positive tests. *Id.* at 29.

[30] Erin Hollowell, Child’s therapist, had worked with Child since July 2018, and Hollowell supervised visits. When Hollowell began working with Child, Child “showed separation anxiety and was fearful of everyone other than her foster family.” *Id.* at 117, 119. Hollowell testified that Child “would try to sooth[e] herself, which, again, we see more often than not in cases of neglect or abuse where they don’t trust a caregiver to be able to provide them with that emotional support.” *Id.* at 122.

[31] Before the THV with Mother, Child “had some attachment tremor reactions” after visits with Mother where Child would become “a lot more fearful.” *Id.* at 122. After the THV, Child met the diagnostic criteria for post-traumatic stress disorder, and Hollowell observed “a big regression in terms of [Child’s] trauma response.” *Id.* at 126. Child was irritable, confused, and insecure and had “the nightmares, she had the re-experiencing, she would want to avoid visits or anything that reminded her of, [] her birth home, and when there were things to—that did remind her of that she would regress.” *Id.* at 126–27. Child regressed by wetting her bed and crying and was “really sensitive to noises” to the point where “she would cover her ears, drop, shake, cry—just freak out.” *Id.* at 126. Child did not feel safe unless she was “literally attached to” Foster Mom’s leg or arm or being held by Foster Mother. *Id.*

[32] After the THV with Mother ended in early December 2018, Child had no contact with Mother through June 2019 because DCS did not schedule visits as Mother could not produce two consecutive, clean drug screens and did not consistently maintain contact with DCS. Mother had a telephonic visit with Child in June 2019, and afterward, Child regressed in her behavior and “returned to . . . wetting the bed.” *Id.* at 92–94. During the next year, Child had no contact with Mother and continued to engage in therapy and improved emotionally and behaviorally to the point where she was able to open up and where Hollowell would have stopped therapy, but therapy continued because visits with Mother restarted. *Id.* at 146–47.

[33] Therapeutic visits between Child and Mother started in September 2020 and continued bi-weekly until the termination order, with Hollowell supervising. After these visits resumed, Child did well behaviorally but was scared to go to bed by herself, was wetting herself during the day, and generally shut down emotionally. Child had expressed fear that she would be taken away from the foster family because the foster family was the only stability Child had known, and she never experienced stability with Mother. Child tried to leave the visits every time and when told she could not leave, she would try to stay far away from Mother. Child's negative behaviors did not improve, and she continued to have accidents both during the day and at night, had withdrawn socially and refused to play with others, spit on other children on the bus, got into fights with other children, had nightmares and sleeplessness most nights, and had trouble with forgetfulness. Hollowell testified that she recommended the visitations be stopped for Child's mental health and that Child wanted and needed permanency. *Id.* at 91; Tr. Vol. III at 137–38, 153.

[34] At the time of the fact-finding hearings, Child had been removed from Mother's care since September 2016 and had been placed with the foster family since November 2017. Child, who was three years old when placed with the foster family, "acted more like a baby than a toddler" and "needed to be held constantly, was fearful, would hide under a desk and rock during dinner, and wouldn't go to the bathroom alone." Tr. Vol. III at 81. After the THV failed, DCS placed Child back with the foster family, and the foster mother testified

that Child regressed to the way she had been when she first came to them. *Id.* at 88–89, 90–93.

[35] FCM Cox testified that she did not recommend returning Child to Mother’s care because of ongoing concerns of instability based on Mother’s pattern of conduct over the life of the case, Mother’s relapses after stressful events, the length of the case, which had been ongoing for four years, and Mother’s progress had occurred in a highly structured and therapeutic environment that was also a condition of her probation. FCM Cox also stated that Child needs long-term stability, which she is getting in the foster home, and that Child had progressed greatly when there was no contact with Mother. Hollowell agreed that termination of parental rights and adoption would provide Child with the stability Child needs.

[36] The guardian ad litem, Lindsey Franklin (“GAL Franklin”), filed her court report on September 20, 2019 and recommended termination and adoption would be in Child’s best interests. This recommendation was based on Child’s doing well in placement with the foster parents, Child’s regression since visits with Mother resumed, the time the case had been pending, the failed THV, the stability and bond of Child with the foster family, and Child’s need for permanency. *Tr Vol. III* at 245–47. DCS’s plan for Child if termination was granted was adoption by Child’s foster family, and the foster parents were willing to adopt Child. *Id.* at 104–05, 204–05.

IV. Termination Order

[37] On March 4, 2021, the trial court issued its order terminating Mother’s parental rights and concluded that: Child has been removed from Mother’s care for the requisite statutory timeframes; there was a reasonable probability that the conditions that resulted in Child’s removal or the reasons for the placement outside Mother’s home will not be remedied; there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of Child; termination was in Child’s best interests; and DCS had a satisfactory plan for Child’s care and treatment, which was adoption. Appellant’s App. Vol. 2 at 165–67. Mother now appeals.

Discussion and Decision

I. Standard of Review

[38] While the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children, the law allows for the termination of parental rights based on the inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child’s interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is

proper where the child’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[39] Where, as here, the juvenile court enters specific findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn from it that support it. *Id.* If the evidence and inferences support the trial court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[40] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014).

² Mother does not challenge the juvenile court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

II. Sufficiency of the Evidence

[41] Before an involuntary termination of parental rights may occur, the State must 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.

(iii) The child has, on two (2) separate occasions, been adjudicated a [CHINS];

(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). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d at 149. Moreover, "if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship." Ind. Code § 31-35-2-8(a) (emphasis added).

On appeal, Mother challenges only the juvenile court's conclusions with respect to subpart (B). The juvenile court found that DCS proved, by clear and

convincing evidence, that there was a reasonable probability that: (1) the conditions that resulted in Child’s removal or the reasons for placement outside the home of the parents will not be remedied and (2) the continuation of the parent-child relationship poses a threat to the well-being of Child. *See* Ind. Code § 31-35-2-4(b)(2)(B). We address each of those two findings in turn below.

A. Subpart (B)(i)

[42] Mother first argues the juvenile court’s conclusion that there was a reasonable probability the conditions resulting in the removal of Child or the reasons for placement outside of her home would not be remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must determine what conditions led to the child’s placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[43] In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against “‘habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.’” *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, “trial 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.” *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011). In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent’s behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). “We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *E.M.*, 4 N.E.3d at 643. When determining whether the conditions for the removal would be remedied, the juvenile court may consider the parent’s response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[44] Here, Child was removed from Mother’s care and adjudicated a CHINS based on Mother’s admitted abuse of illegal substances, including heroin, methamphetamine, marijuana, and opiates, as well as the unsanitary conditions of the home. During the lengthy duration of this case, Mother had both successes and failures in her attempts to overcome her substance abuse issues and in her participation in services. She struggled to maintain her sobriety and relapsed several times, and her recent extended period of sobriety occurred while Mother was in a controlled environment.

[45] Mother’s substance abuse started with alcohol and marijuana when she was just eleven years old, progressed to abusing prescription drugs at seventeen, and then using methamphetamine and heroin for many years with periods of

sobriety and relapses. She injected methamphetamine daily from 2016–2019 and reported that she had overdosed around ten times throughout her life. Mother participated in various substance abuse programs since DCS became involved in 2016 and did not always do well. She first went to Huntington House, which she graduated from in June 2018, and she did “moderately well,” but there remained concerns about Mother’s compliance, including her failure to attend appointments, and her relapse on cocaine in March 2018. Tr. Vol. II at 89–91, 96–97. There were also concerns about Mother’s decision making and the fact that she would fall asleep during visits with Child.

[46] After several months of sobriety, the THV started on November 2, 2018, but was short-lived and ended on December 10 because Mother relapsed and continued to use illegal substances, including methamphetamine and heroin throughout the THV. During the THV, Mother also had not been “consistently engaging in services” and had canceled several appointments, did not take Child to therapy sessions, “continued to express feelings of being stressed and overwhelmed by having [Child] back in her care” and managing all of her own and Child’s appointments, and faced instability in maintaining her housing because she had lost her employment and her transportation. *Id.* at 95–96.

[47] In early 2019, Mother was convicted of two felony drug charges and served several months of incarceration. After she was released from jail, Mother first went to Woman’s Lifehouse for twelve days in May 2019 but was “exited” from the program because she did not improve and failed a drug screen. *Id.* at 176. She re-entered Huntington House on June 3, 2019 but was discharged on

August 5 because she took more Suboxone than she was prescribed and did not follow program rules. Mother then moved to Fort Wayne and started yet another treatment program on August 26, 2019, at the Harriet House, which was a requirement of her probation. During the termination fact-finding hearings, Mother's providers from Harriet House expressed concerns about Mother, including that she was not as consistent in her services and therapy and in taking her medication as she should have been given how long she had been there. *Id.* at 216–18.

[48] At the time of the final fact-finding hearing in December 2020, Mother had left the Harriet House and was again living in a structured environment with case managers and group therapy. At that time, she had been sober for nineteen months—the longest period of sobriety she's had since she started using drugs. But Mother's recent success at sobriety occurred when she was in structured treatment environments and was subject to drug tests and could face other consequences for testing positive for illegal substances. Further, throughout the proceedings, Mother expressed “feelings of being stressed due to all of the things she must do prior to being reunified with the child” and stated, “that she may need additional support once the child is returned to her care.” Ex. Vol. V at 89.

[49] Mother argues the juvenile court's conclusion that the conditions resulting in Child's removal or continued placement outside her care would not be remedied was not supported by the court's findings because of her recent successes of being drug-free for nineteen months, having an acceptable home

environment, maintaining employment, and improving mental health. But Mother misunderstands the delicate balance the juvenile court must strike. *E.M.*, 4 N.E.3d at 643 (“We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.”). The juvenile court must not only consider evidence of changed conditions at the time of the termination proceeding, but it must also balance a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). Here, as discussed, Mother has an extensive history of substance abuse and inability to maintain a stable environment when faced with stressful situations such as caring for Child. The trial court properly balanced Mother’s history—which included abusing substances since she was just a child herself—against her recent progress and sobriety after many failed attempts at substance abuse treatment along with continued setbacks.

[50] In *K.T.K.*, our Supreme Court affirmed termination where the parent, similar to Mother, had not used illegal drugs in seventeen months and had tested clean on her drug screens. 989 N.E.3d at 1234. The Court determined that the trial court “was within its discretion to consider” that the mother’s sobriety resulted from not being “subjected to the types of stressors—namely the responsibility of maintaining a household and raising [children] that would normally trigger a desire to pursue an escape from the pressures of everyday life that drugs often provide” *Id.* This case presents a similar situation. Since Child’s removal on

September 6, 2016, over four years before the final fact-finding hearing, the only time Mother had Child back in her care was for the short-lived THV for a few weeks in November and December 2018, which ended after Mother relapsed and tested positive for illegal substances multiple times. Mother also expressed feelings of being stressed with having Child back in her care as in *K.T.K.*

[51] DCS need not rule out all possibilities of change; rather, it need only establish that there is a reasonable probability that the parent's behavior will not change. *A.D.S.*, 987 N.E.2d at 1157. To be sure, at the time of the termination order, Mother had made strides in maintaining sobriety, but the juvenile court was within its discretion to discount these recent improvements when weighed against her lengthy history of substance abuse and lack of proof that she can maintain sobriety outside of a restrictive environment. Because in the over four years that this case was pending, Mother failed to show that she can sustain her sobriety under less restrictive conditions and under the stress of caring for Child, we conclude that clear and convincing evidence supported the juvenile court's conclusion that there was a reasonable probability that the conditions that led to Child's removal and continued placement outside Mother's care will not be remedied.

B. Subpart (B)(ii)

[52] Mother also claims error from the juvenile court's conclusion regarding Indiana Code section 31-35-2-4-(b)(2)(B)(ii), which was that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. But because Indiana Code section 31-35-2-

4(b)(2)(B) is written in the disjunctive and requires the juvenile court to find only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence, our decision regarding Subpart (B)(i) requires us to affirm regardless of the juvenile court's conclusion under Subpart (B)(ii). In any event, we do not find any error with respect to Subpart (B)(ii) either.

[53] Neither actual physical abuse nor a physical threat to a child is required to find that continuation of the parent-child relationship poses a threat to the child's well-being. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*. Instead, when determining whether continuation of the parent-child relationship poses a threat to the child's well-being, termination is proper when the evidence shows that the emotional and physical development of a child is threatened. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 94 (Ind. Ct. App. 2014). A juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re G.F.*, 135 N.E.3d 654, 661 (Ind. Ct. App. 2019). In addition, the juvenile court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding the termination. *Id.* at 660.

[54] The evidence showed that Mother's continued relationship with Child was causing Child to suffer emotionally, behaviorally, and physically. Child's therapist, Hollowell, testified that when she began working with Child in July 2018, Child showed separation anxiety and was fearful of others. Child would exhibit behaviors that Hollowell testified were often seen in cases of neglect or

abuse where children do not trust that they will be provided with emotional support. Prior to the THV with Mother, Child acted more fearful after having visits with Mother. And after the failed THV, Child showed the criteria for post-traumatic stress disorder, and Hollowell observed a big regression in Child, where she acted irritable, confused, and insecure. Child also had nightmares and wanted to avoid anything that reminded her of her birth home. She began wetting her bed again and was “really sensitive to noises” to the point where she would cover her ears, cry, and “just freak out.” Tr. Vol. III at 126.

[55] Child had no contact with Mother again until June 2019 when Mother had a telephonic visit with Child, and afterward, Child’s behavior again regressed, and she returned to wetting the bed. On September 3, 2019, in response to Mother’s motion on visitation, the juvenile court issued an order that Child’s therapist “will determine when it is time for the Child to resume therapeutic visitation as [Child] is currently showing negative reactions to having had a visit with Mother.” Ex. Vol. V at 101.

[56] During the next year, Child had no contact with Mother and continued to engage in therapy and showed improvement emotionally and behaviorally to the point where she could open up and where therapy could possibly be stopped. Therapeutic visits between Child and Mother began in September 2020, and after these visits resumed, Child was scared to go to bed by herself, was wetting herself during the day, and generally shut down emotionally. Child expressed fear that she would be taken away from her foster family—the only stability Child had known. Hollowell recommended that visitations with

Mother be stopped for Child's mental health because the negative behaviors did not improve; the accidents continued; Child had withdrawn socially; she would spit on other children; and she engaged in fights with other children.

[57] Mother argues that DCS did not allow enough time for her to reunify with Child and show a clear picture of how Child would adjust to regular time with Mother. But the evidence does not support this contention, and the juvenile court did not have to wait even longer to terminate her parental rights. First, DCS became involved on September 6, 2016, and the case was pending for over four years. Mother was given ample time to reunify with Child and had visits with Child, but she engaged in criminal activities, relapsed on drugs, and failed in the THV with Child. Second, after visitations with Mother, Child's mental health declined, and she regressed in her behaviors, showing signs of post-traumatic stress disorder. In sum, Mother had the opportunity to visit and reunify with Child, but she did not make that opportunity fruitful, and Child's mental, physical, and emotional health suffered as a result.

[58] In evaluating the circumstances surrounding termination, the juvenile court must subordinate the interests of the parent to those of the child, and termination is proper when the evidence shows that the emotional and physical development of a child is threatened. *In re G.F.*, 135 N.E.3d at 660; *C.A.*, 15 N.E.3d at 94. Clear and convincing evidence supported the juvenile court's conclusion that continuation of the parent-child relationship posed a threat to Child's well-being, and we therefore affirm the juvenile court's order terminating Mother's parental rights.

[59] Affirmed.

Riley, J., and Robb, J., concur.