# 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 J.F., Father, N.C., Mother,[1] and G.C., Minor Child,

J.F.,

*Appellant-Respondent,*

v.

June 28, 2021

Court of Appeals Case No. 21A-JT-35

Appeal from the Vanderburgh Superior Court

The Honorable Brett J. Niemeier, Judge

Trial Court Cause No. 82D04-2006-JT-871

[1] Mother is not participating in this appeal because after the Indiana Department of Child Services sought to terminate her parental rights, Mother consented to the adoption of G.C. *Tr. Vol. II* at 16. However, because Mother was a party of record in the juvenile court, she is a party on appeal. *See* Ind. Appellate Rule 17(A).

Indiana Department of Child Services,

*Appellee- Petitioner.*

**Kirsch, Judge.**

[1] J.F. ("Father") appeals the juvenile court's order that terminated his parental rights as to G.C. ("Child"). He raises two issues, which we restate as:

> I. Whether Father was denied due process when the Indiana Department of Child Services ("DCS") failed to make reasonable efforts to preserve the parent-child relationship; and
>
> II. Whether there was clear and convincing evidence to support the termination of his parental rights.

[2] We affirm.

## Facts and Procedural History

[3] Father was born on January 27, 1992. *Ex. Vol. I* at 18. When he was five or six years old, his father ("paternal grandfather") molested Father and forced Father to molest his younger sister. *Tr. Vol. II* at 18-21. Although he received therapy, Father continued to molest his sister for several years even after paternal grandfather left the family. *Id.* at 21-22. In March of 2006, when Father was

fourteen years old, he forced his sister, then eight years old, to perform oral sex on him. *Appellant's App. Vol. II* at 20. Father was adjudicated a juvenile delinquent for actions that would have constituted criminal deviate conduct if committed by an adult. *Id*.

[4] On November 30, 2017, Father pleaded guilty to Class A misdemeanor theft. *Ex. Vol. I* at 79. About twelve weeks later, in March of 2018, Father met N.C. ("Mother"), and in mid-summer of 2018, he moved in with Mother and her two children, M.C. and L.C. *Tr. Vol. II* at 30. M.C. was about five months old at the time. *Id*. On September 21, 2018, Mother was bathing eight-month-old M.C. *Ex. Vol. I* at 167. As she bathed M.C., she did not notice any bruises, cuts, or abrasions on M.C's genitals or lower back. *Id*. After she finished bathing M.C., Mother put a diaper and onesie on M.C. and put him to bed. *Id*. at 168. Between 11:00 p.m. and midnight, Mother went to bed; Father stayed up to watch television. *Id*. at 169. Somewhat later, Father awakened Mother, telling her that he saw a small amount of blood in M.C.'s diaper. *Id*. Father claimed he had checked on M.C. because he was crying; Mother had not heard M.C. crying. *Id*. at 170. Mother then noticed that M.C. had a cut on his penis, so she took him to the emergency room of St. Vincent Hospital in Evansville. *Tr. Vol. II* at 31-33, 82, 92-94, 99. Dr. Wendy Woodard ("Dr. Woodard"), a pediatric hospitalist who specialized in screening for child abuse, attended to M.C. *Ex. Vol. I* at 193. Dr. Woodard described M.C.'s injuries as a laceration around the penis, bruising around the scrotum, a hematoma on the shaft of the penis, bruising on the tip of the penis, and bruising on M.C.'s lower back.

*Appellant's App. Vol. II* at 22; *Ex. Vol. I* at 194; *Ex. Vol. II* at 152-70. Dr. Woodard described M.C.'s injuries as consistent with a bite, pull, tug, strike, or hit. *Ex. Vol. I* at 194. Dr. Woodard was confident the injury was inflicted and not the result of an accident. *Id*. Dr. Woodard also rejected the following explanations for M.C.'s injuries: 1) diaper rash; 2) trauma from a baby bouncing exerciser; 3) trauma from M.C.'s sibling falling on him; and 4) trauma from M.C. touching himself. *Ex. Vol. I* at 197-99.

[5] On September 22, 2018, after DCS substantiated Father for sexually abusing M.C., DCS removed M.C. from the home. *Ex. Vol. II* at 222-25; *Appellant's App. Vol. II* at 20, 22. On September 25, 2018, DCS filed a petition alleging that M.C. was a Child in Need of Services ("CHINS"), and on November 13, 2018, M.C. was adjudicated as a CHINS. *Ex. Vol. II* at 222-25; *Appellant's App. Vol. II* at 20, 22.[2] On November 15, 2018, the State alleged that Father caused M.C.'s injuries and filed criminal charges against him for Level 5 felony domestic battery with bodily injury on a person under 14 and Level 5 felony neglect of a dependent resulting in bodily injury. *Ex. Vol. I* at 175, 221, 223, 224.

[6] Because of the pending CHINS action regarding M.C., Father was ordered to attend Southwestern Behavioral Health for a mental health assessment and to attend the Parenting Beliefs class. *Appellant's App. Vol. II* at 23; *Ex. Vol. III* at 4, 7, 9-10. The November 12, 2018 mental health assessment found Father was

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[2] On September 17, 2019, Father was dismissed from the CHINS action regarding M.C. because he was no longer in a relationship with Mother. *Appellant's App. Vol. II* at 22.

experiencing anxiety, social anxiety, and struggled to maintain his attention and control his impulses. *Appellant's App. Vol. II* at 23. As directed by Family Case Manager Kayla Bradshaw ("FCM Bradshaw"), Father attended the first session of the Parenting Beliefs Group but missed the remaining sessions because he was incarcerated. *Id*. at 24.

[7] Child was born on December 30, 2018, just three months after DCS substantiated Father for sexually abusing M.C. and while Father was in jail awaiting trial on the criminal charges for sexually abusing M.C. *Tr. Vol. II* at 17-18, 36, 103. On or about December 31, 2018, DCS removed Child, because 1) Father was incarcerated and because Mother was homeless, 2) Father and Mother were parties to the pending CHINS action regarding M.C., and 3) Father had past substantiations for sexual abuse. *Ex. Vol. II* at 223-24. On January 2, 2019, DCS filed a petition alleging that Child was a CHINS. *Ex. Vol. II* at 222-25. On February 19, 2019, the juvenile court entered a combined dispositional and parental participation order with a plan of reunification. *Ex. Vol. III* at 26-31. The order required Father, inter alia, to complete a parenting assessment and psychological evaluation, enroll in recommended programs, keep all appointments with service providers, maintain suitable and stable housing, and attend scheduled visitation with Child. *Id*. at 28-30.

[8] The criminal charges against Father proceeded to trial, and on September 4, 2019, Father's first trial ended in a hung jury, and in the retrial held on November 19, 2019, the jury acquitted Father of both charges. *Tr. Vol. II* at 34. Also in November of 2019, Father admitted to violating the terms of his

probation requiring drug screens that was related to a Spencer County conviction. *Id*.

[9] Father returned to Southwestern Behavioral Health for a telehealth assessment on May 18, 2020. *Appellant's App. Vol. II* at 24. He refused to discuss his history of sexual abuse. *Id*. He was diagnosed with Anti-Social Personality Disorder, and he failed to attend any subsequent telehealth appointments and did not respond to a "Concern Letter." *Id*.

[10] Father had supervised visitation with Child through Ireland Home Based Services. *Tr. Vol. II* at 146. Visitations began on December 12, 2019, after Father's release from jail. *Id*. at 150-51. Father had visitation once a week, and he attended twenty-eight visitations and missed thirteen visitations. *Id*. at 147. Father left one visit early so he could buy some boots. *Id*. at 148. Although Father claimed he missed visits because of his job, he failed to provide a work schedule or employment verification, which DCS had requested to corroborate Father's claim about his work schedule interfering with his ability to participate in visitation. *Id*. at 131-32, 156, 167. If Father had provided that information, DCS would have been willing to let Father reschedule the visits. *Id*. at 153-54, 167.

[11] On February 18, 2020, the juvenile court modified the parental participation plan to include sexual perpetrator's treatment, which was required because of Father's history of sexually abusing others. *Id*. at 57-60, 165. Father did not participate in sexual perpetrator's treatment; he thought it was "pointless"

because, as a juvenile, he had participated in the Safe Program. *Id*. at 39-40, 63. Father also did not want to participate in a sexual perpetrator's treatment program that would require him to admit that he had sexually abused M.C. *Id*. at 128, 165. He was told he could find a program that did not require an admission, but he claimed he could not find such a program. *Id*. at 128. FCM Bradshaw was able to find a program that would not require an admission. *Id*. at 165. On July 14, 2020, FCM Bradshaw left Father a voice mail message with the information, and on July 21, 2020, Father acknowledged in court that he had received the message. *Id*. at 165-66. In August and September 2020, FCM Bradshaw followed up with letters to Father, in which she provided the same information to Father, and Father acknowledged that he received the letters. *Id*. at 166. FCM Bradshaw then reached out to the facilities she had recommended to Father, and staff members of those facilities told her that Father had not reached out to them. *Id*. at 166, 181. Father also claimed he could not afford a sexual perpetrator's program. *Id*. at 87. FCM Bradshaw said that DCS did not make formal referrals for sexual perpetrator's treatment for adults, but if Father could not pay for a program, he should reach out to DCS. *Id*. at 180-81.

[12] On June 9, 2020, DCS filed its Verified Petition for Involuntary Termination of Parent-Child Relationship ("Verified Petition") as to Child. *Appellant's App. Vol. II* at 31-39. Among other things, the Verified Petition alleged there was a reasonable probability that continuation of the parent-child relationship posed a threat to the well-being of Child. *Id*. at 31-32. About one month after DCS

filed the Verified Petition, FCM Bradshaw directed Father to continue treatment at Southwestern Behavioral Health, but Father did not contact Southwestern Behavioral Health. *Tr. Vol. II* at 189.

[13] The final hearing on the Verified Petition was held on October 22, 2020. *Id*. at 16. At that time, Father faced criminal charges for Level 4 felony burglary and Class A misdemeanor theft. *Ex. Vol. I* at 83-87. Father was employed at that time, and he lived with paternal grandmother, who had been substantiated for neglect in 2006 for failing to prevent Father and Father's siblings from being sexually abused. *Tr. Vol. II* at 70-71; *Appellant's App. Vol. II* at 20. Also at the time of the termination hearing, Child was in pre-adoptive placement, where he was thriving. *Tr. Vol. II* at 169.

[14] FCM Bradshaw testified that Father completed the Fatherhood Engagement program, the nurturing program, and parenting and mental health assessments. *Id*. at 50-53, 226. Father did not follow through with the treatment recommendation for individual therapy. *Id.* at 126, 164-65. FCM Bradshaw also testified that termination of Father's parental rights was in Child's best interest because Father had not participated in mental health treatment and sexual perpetrator's treatment. *Id*. at 169-70. Also, Father had ongoing criminal cases, and FCM Bradshaw was concerned that Father might continue his criminal activities. *Id*. at 170. She was also worried about Father living with paternal grandmother because in 2006 DCS had substantiated paternal grandmother for neglect, and that if Father's parental rights were not

terminated and Child were to live with Father and paternal grandmother, Child would be at greater risk for being sexually abused. *Id*.

[15] Court Appointed Special Advocate Chelsea Wenderoth ("CASA Wenderoth") testified that termination of Father's parental rights was in Child's best interest because Father had been inconsistent with visits and failed to participate in required programs. *Id*. at 125. CASA Wenderoth testified that Child did not have a strong bond with Father. *Id*. She also testified that the continuation of the parent-child relationship posed a threat to Child's well-being because of Father's abuse of M.C. *Id*. at 125-26, 143.

[16] Mother testified at the final hearing. She had already signed a consent for Child's adoption. *Id*. at 16. She testified that Child had been with his pre-adoptive foster family since he was two weeks old, that Child was bonded to his pre-adoptive family, and it was in his best interests to remain with his foster family because it was the only family he has ever known. *Id*. at 95.

[17] On December 16, 2020, the juvenile court entered its findings of fact and conclusions of law. *Appellant's App. Vol. II* at 19-29. Among other things, the juvenile court found that even though Father had been acquitted in the criminal trial of sexually abusing M.C., the evidence in this termination matter, under a lower burden of proof, was sufficient to conclude that Father sexually abused M.C.: "Although the jury may not have found the prosecution met its burden beyond a reasonable doubt in the criminal trials, the evidence presented in this case was more voluminous and constitutes clear and convincing evidence that

[Father] caused the injuries to M.C." *Id*. at 22. The juvenile court also found and concluded:

> **A. FACTS RELATED TO CHILD'S CONTINUED REMOVAL . . .**
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> . . . .
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> 26. Despite frequent and repeated attempts to encourage [Father] to complete court ordered services by the family case manager and court appointed special advocate, [Father] was unwilling to engage in therapy or sexual perpetrator's treatment, or to provide his work schedule to facilitation visitation.
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> . . . .
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> 28. During the course of the CHINS proceeding, [Father] has not obtained suitable housing and continues to reside with [paternal grandmother], [who] has substantiations for neglect/lack of supervision due to her inability and refusal to protect [Father's] younger sister from his sexual abuse when they were children.
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> . . . .
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> **B. CHILD'S BEST INTERESTS . . .**
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> . . . .
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> 7. DCS and the Court Appointed Special Advocate (CASA) believe that adoption is in [Child's] best interest. The Court finds that adoption is in [Child's] best interest.

. . . .

9. Father's pattern of perpetrating sexual abuse, his mental illness, criminal behavior, and lack of appropriate housing indicates that maintaining a parent-child relationship with Child is not in the best interests of Child;

10. Father's pattern of perpetrating sexual abuse and refusal to participate in mental health or sexual perpetrator's treatment presents a threat of harm to [Child].

**I. CONCLUSIONS**

. . . .

4. There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of [Child] as [Child] has been a victim of [Father] and [Father] still has not alleviated his personal issues.

5. Termination is in the best interests of [Child] as [Child] needs a home where he will be safe, appropriately loved, and have stability.

*Id.* at 19-28. Father now appeals.

# Discussion and Decision

## I. Due Process

[18] Father argues that his right to due process was violated because DCS failed to provide adequate services to him. Because Father did not raise this issue in the juvenile court, he has waived this issue on appeal. *See In re N.G.*, 51 N.E.3d

1167, 1173 (Ind. 2016) ("[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal."). Nonetheless, we will address this issue on the merits.

[19] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). A parent's interest in the care, custody, and control of his or her child is one of the oldest fundamental liberty interests, and the parent-child relationship is one of the most valued in our society. *Id.* Thus, when the State seeks to terminate the parent-child relationship, it must do so in a manner that meets due process requirements. *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). However, parental rights are not absolute and must be subordinated to the child's interests. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013).

[20] The process due in a termination case 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, 1249 (Ind. 2012). Both a parent's interest in the care, custody, and control of a child, and the State's *parens patriae* interest in protecting a child's welfare are substantial. *In re I.P.*, 5 N.E.3d 750, 751-52 (Ind. 2014). Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Due process entitles a parent to (1) cross-examine witnesses, (2) obtain witnesses or

tangible evidence by compulsory process, and (3) introduce evidence on his behalf. *In re E.T.*, 152 N.E.3d 634, 640 (Ind. Ct. App. 2020), *trans. denied*. When the State seeks to terminate parental rights, it must provide the parents with "fundamentally fair procedures." *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982).

[21] Father correctly observes that that DCS shall make reasonable efforts to preserve and reunify families. Ind. Code § 31-34-21-5.5. However, Father acknowledges that in seeking to terminate parental rights, DCS has no obligation to plead and prove that services had been offered. *In re J.W., Jr.*, 27 N.E.3d 1185, 1190 (Ind. Ct. App. 2015), *trans. denied*. Even a complete failure to provide services cannot serve as a basis to attack the termination of parental rights. *Id*. Moreover, Father's arguments about the purported inadequacies of DCS's services ask us to reweigh the evidence, which our standard of review does not allow. *See In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). For instance, Father contends his right to due process was denied because DCS did not tell him he needed to continue mental health services. To the contrary, DCS communicated with Father about mental health services. Father completed the required mental health assessment, but even though he had a referral, he did not follow through with individual therapy. *Tr. Vol. II* at 126, 165. FCM Bradshaw told Father to contact Southwestern Behavioral Services and reschedule his missed appointments, but Father refused. *Id*. at 189. FCM Bradshaw talked to Father many times about seeking out mental health

services: "Every time we met, I talked to him about needing to do his services . . . . *Id*. at 189.

[22] Father complains DCS denied his right to due process because it did not do a check of his home, where he resided with paternal grandmother, to see if it was an appropriate dwelling for Child. However, according to FCM Bradshaw, there was no reason for DCS to conduct a home visit because, in 2006, paternal grandmother "had been substantiated on for lack of supervision" of Father and his younger siblings. *Id*. at 80-81, 190.

[23] Father claims DCS violated his right to due process because it made no effort to accommodate his work schedule when arranging visits with Child. This, too, is false. DCS was willing to reschedule visitation because of Father's work schedule if Father provided documentation to corroborate his work schedule; Father refused to provide such documentation. *Tr. Vol. II* at 131-32, 156, 167. Father also complaints that FCM Bradshaw did not attend any of the supervised visitation sessions. Father fails to show how this prejudiced him. Furthermore, FCM Bradshaw testified that all visits between Father and Child were supervised by Johnna Cruz ("Cruz") from Ireland Home Based Services and that she reviewed Cruz's notes from each visitation session. *Id*. at 146.

[24] Finally, Father argues his right to due process was violated when he was required to participate in sexual perpetrator's treatment. Father claims DCS failed to refer him to an organization that provided such a program that did not require him to admit that he had sexually abused M.C. In support, he quotes

the testimony of FCM Bradshaw: "We do not put in referrals for sexual perpetrator's treatment for adults." *Tr. Vol. II* at 180. However, despite DCS's policy, FCM Bradshaw testified that DCS did, in fact, provide such referrals to Father. *Id*. at 165-66, 81. FCM Bradshaw testified that she was able to find a program that would not require Father to admit that he had sexually abused M.C. *Id*. at 165. On July 14, 2020, FCM Bradshaw left Father a voice mail message with information about such programs, and on July 21, 2020, Father acknowledged in court that he had received the message. *Id*. at 165-66. In August and September 2020, FCM Bradshaw followed up with letters, in which she gave Father the same information, and Father acknowledged that he received the letters. *Id*. at 166. FCM Bradshaw then reached out to the facilities she had recommended to Father, and staff members of those facilities told her that Father had not reached out to them. *Id*. at 166, 181.

[25] Father further claims he told DCS he might not be able to pay for such a program and that DCS made no effort to address this concern. Once again, Father ignores the evidence that supports the judgment. Father was informed that if he could not pay for a program, he should reach out to DCS. *Id*. at 180-81.

[26] Finally, Father claims that the requirement to participate in a sexual perpetrator's program violated his right to due process because he was acquitted in his criminal trial of allegations that he sexually abused M.C. However, as the juvenile court noted, the burden of proof in a termination case – clear and convincing evidence – is lower than the reasonable doubt burden the State

carries in a criminal prosecution. *Appellant's App. Vol. II* at 22. Because the juvenile court, and not this court, weighs the evidence, it was the juvenile court's prerogative to conclude that despite Father's acquittal in the criminal action, DCS presented clear and convincing evidence that Father sexually abused M.C.

[27] Thus, the facts most favorable to the judgment do not support the factual assertions Father makes in support of his due process claim. Moreover, Father has failed to demonstrate that he was denied "the opportunity to be heard at a meaningful time and in a meaningful manner," *see Mathews*, 424 U.S. at 333, and he has not shown that he was denied "fundamentally fair procedures" and that he was deprived of the right to (1) cross-examine witnesses, (2) obtain witnesses or tangible evidence by compulsory process, and (3) introduce evidence on his behalf. *See Santosky*, 455 U.S. at 753-54; *In re E.T.*, 152 N.E.3d at 640. Accordingly, we reject Father's claim that he was denied his right to due process.

## II. Sufficiency of Evidence

[28] Father contends the evidence was insufficient to support termination of his parental rights, arguing, inter alia, that DCS failed to present clear and convincing evidence that the continuation of his relationship with Child posed a threat of harm to Child and that termination of his parental rights was in Child's best interest. Termination of parental rights is proper where the child's emotional and physical development is threatened. *In re D.P.*, 994 N.E.2d

1228, 1231 (Ind. Ct. App. 2013). We will not reweigh the evidence or judge the credibility of the witnesses. *In re H.L.*, 915 N.E.2d at 149. We consider only the evidence and reasonable inferences most favorable to the judgment. *Id*. We will set aside the juvenile court's judgment only if it is clearly erroneous. *Id*. at 148-49. A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *In re S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004).

[29] When a juvenile court enters specific findings and conclusions, 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 determine whether the evidence supports the findings, 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 therefrom 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.* Findings that are not challenged "must be accepted as correct." *See v. Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[30] Before an involuntary termination of parental rights may occur, DCS is required to allege and prove:

> (A) that one (1) of the following is true:

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

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS's burden of proof for establishing these allegations is clear and convincing evidence. *In re H.L.*, 915 N.E.2d at 149. If the juvenile court finds that the allegations in a petition are true, it shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

### *Threat to Well Being of Child*[3]

[31] Father contends the juvenile court committed clear error in determining there is a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of Child because the juvenile court "failed to consider Father's accomplishments." *Appellant's Br.* at 35. According to Father, these accomplishments include obtaining employment, completing two mental health assessments, completing Fatherhood Engagement and the ESP Parenting Group, and commencing visitation with Child.

[32] Father, yet again, asks us to reweigh the evidence and ignores the substantial evidence that supports the juvenile court's determination that Father posed a threat to Child. When he was a child, Father sexually abused his siblings,

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[3] Because Indiana Code section 31-35-2-4 (b)(2)(B) is written in the disjunctive, we may affirm the termination of Father's parental rights if DCS proved only one of the elements of subsection (b)(2)(B) by clear and convincing evidence. *See K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 646 n.4 (Ind. 2015). Therefore, because we address whether the evidence supported the juvenile court's conclusion that continuation of the parent-child relationship posed a threat to Child, we need not address whether there is a reasonable probability that the conditions that resulted in Child's removal would not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i). Also, Father does not challenge whether the evidence supported the juvenile court's finding that Child had been removed from the parent and had been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months or that there was a satisfactory plan for care and treatment of Child. *See Appellant's Br.* at 27-28; *see also* Ind. Code § 31-35-2-4(b)(2)(A)(iii), (b)(2)(D).

including forcing his sister to perform oral sex on him. *Appellant's App. Vol. II* at 20. In this case, Child was removed from Father because, just three months earlier, DCS had substantiated that Father had sexually abused M.C. *Ex. Vol. II* at 222-25; *Appellant's App. Vol. II* at 20, 22. Even though Father was acquitted of those charges, the juvenile court correctly observed that DCS carried a lower burden of proof to prove those allegations in this termination case than the prosecutor carried in the criminal case. *Appellant's App. Vol. II* at 22. Furthermore, it was within the juvenile court's discretion to conclude that the evidence that Father sexually abused M.C. was "more voluminous" in this termination action than the criminal matter and that this evidence clearly and convincingly established that Father did, in fact, sexually abuse M.C. *Id*. This evidence included the fact that when Mother bathed M.C., he had no bruises and cuts to his genitals, but Mother discovered such injuries immediately after Father had been with M.C. in M.C.'s bedroom. *Ex. Vol. I* at 167; *Tr. Vol. II* at 31-33, 82, 92-94, 99.

[33] Further supporting the juvenile court's conclusion that Father posed a threat to Child was Father's refusal to address his history of sexual abuse by refusing to participate in sexual perpetrator's treatment. *Tr. Vol. II* at 39, 128, 165-66, 180-81. FCM Bradshaw testified that she brought several such programs to Father's attention, first by phone and later in writing, and, despite being given that information, Father did not reach out to any of those programs. *Id*. at 166, 181. Father did not contact any of these programs and because he testified these programs were "pointless," the juvenile court could have concluded that Father

was not serious about addressing his issues related to sexual abuse. *Id*. at 39-40, 63. Father's attitude is similar to the father in *In re Ma.H.*:

> Father displayed resentment toward the court-ordered [sex-offender treatment program.] When Father was asked if he agreed that he needed to attend sex-offender treatment, he responded, "No." When asked whether he felt that he could benefit from the treatment, Father responded, "I don't know how I could." . . . By his own words, Father conceded he has done nothing to remedy a primary reason for the children's removal.

134 N.E.3d 41, 48 (Ind. 2019), *cert. denied sub nom. M.H. v. Ind. Dep't of Child Servs.*, 140 S. Ct. 2835 (2020). We conclude the juvenile court did not commit clear error in determining that Father's dismissive attitude toward sexual perpetrator's treatment posed a threat to Child.

[34] Other evidence supported the juvenile court's conclusion that Father posed a threat to Child. For instance, Father participated in only some of the required programs to address his mental health problems. *Appellant's App. Vol. II* at 24; *Tr. Vol. II* at 189. Also, Father has a history of criminal behavior, including his adjudication as a juvenile delinquent for what would be criminal deviate conduct if committed by an adult, a 2017 conviction for Class A misdemeanor theft, a violation of the terms of probation for a Spencer County conviction, and charges for Level 4 felony burglary and Class A misdemeanor theft that were pending at the time of the termination hearing. *Appellant's App. Vol. II* at 20; *Ex. Vol. I* at 79, 83-87; *Tr. Vol. II* at 34. Therefore, the juvenile court did not commit clear error in determining there was a reasonable probability that

continuation of the parent-child relationship posed a threat to the well-being of Child.

### *Best Interests of Child*

[35] Father claims the juvenile court committed clear error in determining that termination of the parent-child relationship was in Child's best interest. The juvenile court's findings and conclusions regarding Child's best interests included: 1) the testimony of FCM Bradshaw and CASA Chelsea Wenderoth that termination was in Child's best interest; 2) Father's mental illnesses; 3) Father's history of sexually abusing children and his refusal to participate in court ordered therapies, including sexual perpetrator's treatment; 4) Father's criminal behavior; and 5) Father's failure to provide safe and adequate housing for Child.

[36] In determining the best interests of a child, the juvenile court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children,* 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The juvenile court must subordinate the interests of the parent to those of the children. *Id.* The recommendation by a DCS case manager and a guardian ad litem to terminate parental rights is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S.*, 987 N.E.2d at 1158-59.

[37] In challenging the juvenile court's best-interest findings and conclusions, Father again contends that the juvenile court overlooked the progress he has made. At the same time, Father acknowledges his shortcomings by asking for "additional

time to comply with services." *Appellant's Br*. at 38. Father again asks us to reweigh the evidence. Here, the totality of the evidence supported the juvenile court's conclusion that termination of Father's parental rights was in the best interest of Child. FCM Bradshaw testified that termination of Father's parental rights was in Child's best interest because Father had not participated in mental health treatment and sexual perpetrator's treatment. *Tr. Vol. II* at 169-70. Also, Father had ongoing criminal cases, and FCM Bradshaw was concerned that Father might continue his criminal activities. *Id*. at 170. FCM Bradshaw also worried about Father and Child living with paternal grandmother because in 2006 DCS had substantiated paternal grandmother for neglect. *Id*.

[38] CASA Wenderoth testified that termination of Father's parental rights was in Child's best interest because Father had been inconsistent with visits and failed to participate in required programs. *Id*. at 125. She testified that Child does not have a strong bond with Father. *Id*. She also testified that the continuation of the parent-child relationship would pose a threat to Child's well-being because of Father's abuse of M.C. *Id*. at 125-26, 143.

[39] Finally, the record supports the juvenile court's best-interest findings and conclusions that: 1) Father's suffers from mental illnesses; 2) Father has a history of sexually abusing children and has refused to participate in court ordered therapies, including sexual perpetrator's treatment; 3) Father has a criminal record; and 4) Father has failed to provide safe and appropriate housing for Child. *Tr. Vol. II* at 18-22, 34, 39-40, 63, 80-81, 125-26, 128, 143, 165-66, 169-70, 181, 190; *Ex. Vol. II* at 4, 7, 9-10, 79, 83-87. Thus, the juvenile

court did not commit clear error in concluding that terminating Father's parental rights was in the best interests of Child, and we decline Father's request for more time to comply with services.

[40] Based on the foregoing, we conclude the evidence supports the juvenile court's findings, and the juvenile court's findings support its legal conclusions and judgment. Accordingly, we affirm the juvenile court's termination of Father's parental rights.

[41] Affirmed.

Altice, J., and Weissmann, J., concur.