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IN THE  
COURT OF APPEALS OF INDIANA

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In re Adoption of: S.P., J.P.,  
K.P., and E.P. (*Minor Children*)

and

J.P (*Mother*) and Jer.P. (*Father*),  
*Appellants-Respondents*,

v.

M.D. and J.D. (*Adoptive Parents*),  
*Appellees-Petitioners*,

and

June 4, 2021

Court of Appeals Case No.  
20A-AD-2205

Appeal from the Monroe Circuit  
Court

The Honorable Stephen R. Galvin,  
Judge

Trial Court Cause Nos.  
53C07-1911-AD-91  
53C07-1911-AD-92  
53C07-1911-AD-93  
53C07-1911-AD-94

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

**Robb, Judge.**

## Case Summary and Issue

[1] J.P. (“Mother”) and Jer.P. (“Father”) (collectively, “Biological Parents”) consented to the adoption of four of their children, J., E., S., and K. (the “Siblings”), during involuntary termination of parental rights proceedings. They later sought to withdraw their consent. The trial court denied their petition to withdraw consent and Mother and Father now separately appeal.<sup>1</sup> They each raise one issue for our review which we consolidate and restate generally as whether the trial court’s decision that Mother and Father were not acting in the Siblings’ best interests in seeking to withdraw their consents was contrary to law. Concluding that it was not, we affirm.

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<sup>1</sup> Mother and Father each filed a Notice of Appeal and were given two separate cause numbers. At the request of Mother, this court consolidated the two appeals.

## Facts and Procedural History

- [2] Mother and Father are the parents of fourteen children. Between August 2011 and March 2017, their children under the age of eighteen were removed from the home three times. In August 2011, the Indiana Department of Child Services (“DCS”) became involved with the family because of an incident of domestic violence between Mother and Father. Mother was offered the opportunity to keep the minor children in the home if she would follow a safety plan that included Father leaving the home, but Mother indicated she would rather the children be removed than Father. Nine children, including J., E., and S. (K. was not yet born), were removed from the home and found to be children in need of services (“CHINS”) but the CHINS cases were dismissed and the children returned to the home in August 2012. In June 2013, nine children, including the Siblings, were removed and found to be CHINS due to Father’s use of controlled substances and alcohol and Mother’s untruthfulness about conditions in the home. The CHINS cases were dismissed and the children were returned to the home in April 2015.
- [3] Most recently, in May 2017, ten children, including the Siblings, were adjudicated CHINS. This CHINS case was initiated after A., Biological Parents’ thirteenth child, was born in March 2017 with withdrawal symptoms and her meconium tested positive for methamphetamine, amphetamine, and hydrocodone, and because Father appeared impaired during the ensuing assessment, the home was in poor condition, and the children had not eaten, were dirty, had bug bites, and had not been to school.

[4] Biological Parents did not comply with services as required during the CHINS case and in December, DCS filed petitions for termination of parental rights as to nine of the ten children, including the Siblings.<sup>2</sup> At the termination hearing on June 11, 2018, Mother and Father, who were represented by separate attorneys and had the opportunity to consult with them, each signed Consent to Adoption forms for the Siblings, and also for Ja. and A.<sup>3</sup> At that time, Mother was pregnant with Biological Parents' fourteenth child. DCS indicated it had been prepared to proceed with the termination hearing, but because Biological Parents signed the consents, no hearing was held and no termination order was issued at that time.

[5] On June 26, 2018, J.M. and S.M. filed a petition to adopt Ja. and A., attaching Mother's and Father's consents to adoption for those children. On July 2, Biological Parents sent a letter to the court stating they wanted to "reverse the consents to adopt" because they were signed under distress and false pretenses.<sup>4</sup> Appellants' Joint Appendix, Volume 3 at 29. The trial court construed the letter as a petition to withdraw consent. The trial court held an evidentiary

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<sup>2</sup> It appears one of the children who was removed in March may have turned eighteen by this time. *See* Appellants' Joint Appendix, Volume 2 at 234.

<sup>3</sup> The status of the other three children is not clear from this record.

<sup>4</sup> Aside from the timing, it is not clear that this letter was sent in response to the adoption petition. The letter does not contain cause numbers, was sent to the judge who both presided over the 2017 CHINS and termination proceedings for all the children and was presiding over the adoption proceedings for Ja. and A., and referenced only "our children," not specific children. Appellants' Joint App., Vol. 3 at 29-31. Nonetheless, it was filed in the adoption proceedings for Ja. and A. Biological Parents rely on this letter as their petition to withdraw consent in these proceedings as well.

hearing and denied the petition to withdraw on December 13, 2018. On appeal, we affirmed the trial court, holding both Mother's and Father's consents were valid. *See id.* at 9-10; *J.P. v. J.M.*, No. 19A-AD-93 (Ind. Ct. App. June 27, 2019).

[6] At the time of the adoption proceedings for Ja. and A., the Siblings were not yet in a pre-adoptive placement. In May 2019, however, after several months of visits, the Siblings were placed with M.D. and J.D. (collectively, "Adoptive Parents") with the goal of adoption. On October 16, 2019, the Adoptive Parents filed petitions to adopt the children, attaching Mother's and Father's 2018 consents to adoption. On November 14, 2019, Biological Parents filed an objection to the petitions for adoption, refuting the validity of their consents. DCS and the Siblings' court appointed special advocate ("CASA") moved and were permitted to intervene in the adoption proceedings. Separate counsel was appointed for Mother and for Father.

[7] Adoptive Parents filed a motion for summary judgment, alleging there was no genuine issue of material fact that the consents were voluntary, that Biological Parents' petition to withdraw the consents was untimely, and that withdrawing the consents would not be in the best interests of the Siblings. The trial court granted the motion as to voluntariness, finding the issue of whether the consents were voluntarily signed was fully litigated in the adoption proceedings for Ja. and A. and Biological Parents were collaterally estopped from relitigating that issue. But the trial court denied the remainder of the motion, finding the July 2, 2018 letter to the court was timely as it was filed within thirty

days of Biological Parents signing the consents and further finding that Biological Parents were entitled to submit evidence concerning whether withdrawal of their consents was in the best interests of the Siblings. Therefore, the trial court held a best interests hearing.

[8] At the time of the hearing in October 2020, the Siblings ranged in age from almost eight to thirteen. They had been out of Biological Parents' care for three and one-half years and living with Adoptive Parents for nearly eighteen months. They had had regular supervised visits with Biological Parents until summer 2020, when the trial court, at the request of DCS, ordered the visits suspended. Adoptive Parents described the 2020 COVID-19 pandemic as "an unfortunate cause with some happy consequences" in that virtual school, working from home, and stay-at-home orders allowed them to bond with the Siblings as a family and to help the Siblings understand that "they can expect things of us[.]" Transcript, Volume 3 at 70, 76.

[9] Also at the time of the hearing, Biological Parents had been in stable housing for approximately six months through a federally funded permanent supportive housing program designed for people who have previously experienced homelessness. They lived in a three-bedroom apartment with two of their adult children and their youngest child, Ad., who was born in February 2019. The program provides rental assistance and there is no time limit on how long they can participate in the program and virtually no way for them to be removed from the program involuntarily. Father did not work; he was injured in a motorcycle accident and awaiting a disability decision. Mother was employed

for some time cleaning houses in Bloomington but lost her job in July 2020 when the company she worked for stopped doing business in town. Both Mother and Father have a prescription for Suboxone to help “maintain [their] freedom from abuse of drugs[.]” *Id.*, Vol. 2 at 165.

[10] Biological Parents called several witnesses who testified to their parenting skills and family life. Two witnesses, Ann Marie Whaley and Diana Robertson, worked or interacted with Biological Parents at the shelter where they stayed in 2019 prior to getting their permanent housing. Both testified that Biological Parents exhibited strong parenting skills with Ad. and obviously love their children, but both also acknowledged that they had never met the Siblings or seen Biological Parents with them. Neither observed signs of impairment when interacting with Biological Parents, and Robertson testified she had never seen signs of domestic violence between them.

[11] Two other witnesses for Biological Parents, Julie Joy and Alyse Davison, were visit supervisors for the family. Joy supervised visits between Biological Parents and eight of the children who were removed in 2017, including the Siblings, beginning in March 2018. Biological Parents’ visits with Ja. and A. ended because of their adoption in late 2018, but Joy continued to supervise visits with the remaining children until July 2019, when Biological Parents’ visits with the Siblings were moved to Adoptive Parents’ hometown. At the time of the hearing, she was still supervising visits between Biological Parents and two of their other children. Joy testified that they are a very affectionate family, that they all seemed bonded and comfortable with each other, that Biological

Parents are very engaged and she would rate their stability as “fairly high[,]” and that she “absolutely” believes Biological Parents can provide a good upbringing for the Siblings. *Id.*, Vol. 2 at 96, 98. However, she also acknowledged that she has not seen the Siblings interact with Biological Parents in over a year and has never seen them interact with Adoptive Parents. Davison supervised seven visits (one virtual) from August 2019 until they were suspended in 2020. Like Joy, she observed the family to be affectionate and their interactions to be generally positive. Neither visit supervisor ever observed signs of impairment in either Mother or Father.

[12] Mother and Father also testified. Mother asserted they were now in stable housing, were working on their substance abuse issues, and had improved their parenting skills. She testified she had been clean and sober for the past three years after seven years of substance abuse and that there had been no instances of domestic violence since the Siblings were removed in 2017. When asked why she believed it was in the Siblings’ best interests for her consents to adoption to be withdrawn, she stated:

I feel that no person can truly be themselves and be happy without all the people that they . . . loved in their life. I feel like the kids are really missing their . . . brothers, their sisters, and just being all together with them like they . . . used to be. [T]hat’s a part of them that . . . they shouldn’t lose.

*Id.*, Vol. 2 at 171. Father asserted that his substance abuse issues are also in the past. He, too, believes they have grown as parents and as people since the Siblings were removed. He believes the Siblings’ “best interest is with us. . . .



[W]e love them [and w]e will help shape them to be the best people they can be for . . . their future. We want to see them graduate and have families of their own.” *Id.*, Vol. 2 at 201. Neither Biological Parent admits that A. was born with drugs in her system in 2017, believing the result was a false positive, and therefore they do not believe DCS was justified in removing the children in 2017. Instead, they believe DCS “could have done more to keep them at home with us.” *Id.*, Vol. 2 at 185.

[13] DCS witnesses testified that Biological Parents have never been in compliance with the 2017 CHINS case plan and therefore still had supervised in-home visits with two of their children who were also removed in May 2017. The current DCS family case manager, Heidi Flynn, testified that Biological Parents are not fully compliant in the services designed to alleviate the reasons for the Siblings’ removal. Both are supposed to be in substance abuse treatment; neither are, yet both continue to use Suboxone.<sup>5</sup> Therefore, stability and safety remain factors of concern for DCS. If the Biological Parents had not signed the consents in June 2018, DCS would have gone forward with the termination hearing and in the interim, they have not made sufficient progress for DCS to believe reunification is an appropriate plan. If the consents are ordered withdrawn,

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<sup>5</sup> Suboxone is the combination of two different drugs, a partial opioid agonist and a pure opioid antagonist, that is used to treat opioid addiction. “It suppresses withdrawal symptoms and cravings for opioids, which can help prevent relapse.” American Addiction Centers, Suboxone Side Effects, Dosage & Cost, <https://www.recovery.org/suboxone/treatment/> (last visited May 20, 2021) [<https://perma.cc/9DQL-URDQ>]. Both Mother and Father have a prescription for Suboxone and see the prescribing doctor every three months.

DCS will file another petition for termination of parental rights. Flynn testified adoption was in the Siblings' best interests.

[14] Diana Lambdin, CASA for the Siblings beginning with their 2013 CHINS case, has seen the Siblings with both Biological Parents and Adoptive Parents. She testified the Siblings are very bonded with Biological Parents but are now also very bonded with Adoptive Parents. She admits she was a “cheerleader” for Biological Parents in the 2013 CHINS case and was happy the family was able to be reunited, but significant problems occurred after the Siblings were returned necessitating another removal and the Siblings have “moved on to a different . . . situation, to a different bonding” since. *Id.*, Vol. 3 at 104. The Siblings have been removed from Biological Parents' care for five out of the last seven years. The CASA believes they have become confused because this case has gone on so long without them knowing what is ultimately going to happen and “they long for permanency and stability.” *Id.* She opined that the stability Adoptive Parents can offer is “essential”; the Siblings have been through a lot and “we're well beyond . . . the point of them returning to [Biological Parents].” *Id.*, Vol. 3 at 112. She, like Flynn, believed the Siblings' best interests would be served by staying with Adoptive Parents.

[15] Following the hearing, the trial court entered an order concluding, in pertinent part:

3. [Biological Parents] assert that they are acting in the best interests of their children in seeking to withdraw their consent for the children to be adopted. In light of their lengthy history of

domestic violence, substance abuse, neglect of their children, and failure to benefit from services, the Court concludes that this assertion is without merit.

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9. [Biological Parents] have been repeatedly offered extensive services over the last 10 years. These services have clearly not been effective. [They] take no responsibility for their actions that led to the removal of their children. [Mother] testified that [A.] was not born with methamphetamine in her system. She does not believe that her children should have been removed from her care [in 2017]. She blames the [DCS] for the removal of her children in 2017. [Father] testified that the children should not have been removed because DCS did not do enough to keep the children in the home. He testified that he does not believe that [A.] was born with methamphetamine in her system.

10. [Biological Parents] have failed to regularly participate in drug screens since the children were removed in 2017. [They] clearly understand the necessity for providing regular drug screens. They participated in drug screens during the prior CHINS cases and their children were returned. The full nature and extent of their substance abuse cannot be determined due to their failure to comply.

11. [Biological Parents] produced a series of witnesses, including visit supervisors and personnel from the New Hope homeless shelter, who have had regular, if limited, contact with [them] and their children over the past two years. These witnesses testified that [Biological Parents] have a strong bond with their children and appear to be good parents. They also testified that they had not seen [Biological Parents] under the influence of controlled substances. However, these witnesses have no meaningful

knowledge of [their] history or ongoing use of controlled substances. . . .

12. [Biological Parents] argue that they have made progress over the last 3 1/2 years. . . .

13. Unfortunately, [Biological Parents] have a pattern of short-term stability followed by relapse and subsequent neglect of their children. This pattern spans a period of 10 years. . . .

14. [The Siblings] were removed from [Biological Parents'] care three times in the last 10 years. They have spent almost 5 1/2 years in placement during this period. With [Biological Parents], they have only known instability and disruption. . . .

15. [T]he children have been placed with [Adoptive Parents]. [They] are providing these children with the safe and stable home that [Biological Parents] have never provided. [Adoptive Parents] love these children and wish to adopt them. The children are bonded to [Adoptive Parents]. The children continue to benefit from the love and stability they receive in [Adoptive Parents'] home.

16. [Biological Parents] are clearly not acting in the best interests of [the Siblings] in attempting to withdraw their consents for the children to be adopted. Indeed, the evidence is overwhelming that it is in the best interests of the children that they be adopted by [Adoptive Parents].

17. [Biological Parents] bear the burden of proving, by clear and convincing evidence, withdrawal of their consents is in the best interests of their children. [They] have failed to meet their burden.

Appealed Order at 13-16. Accordingly, the trial court denied Biological Parents' request to withdraw their consents to the adoption of the Siblings. Biological Parents now appeal.

## Discussion and Decision

### I. Standard of Review

- [16] A party who has previously executed a consent to an adoption can withdraw that consent by filing a motion with the court. Ind. Code § 31-19-10-1(c). However, there are limits on a party's ability to withdraw a consent to adoption. A consent to adoption may be withdrawn not later than thirty days after the consent to adoption is signed if: 1) after notice and an opportunity to be heard has been afforded to the petitioner for adoption, the court finds that the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and 2) the court orders the withdrawal. Ind. Code § 31-19-10-3(a). The person seeking to withdraw the consent bears the burden of proof by clear and convincing evidence. Ind. Code § 31-19-10-0.5; *K.F. v. B.B.*, 145 N.E.3d 813, 824 (Ind. Ct. App. 2020), *trans. denied*.
- [17] Where a ruling is entered against the party with the burden of proof, that party appeals from a negative judgment. *J.W. v. Hendricks Cnty. Off. of Fam. & Child.*, 697 N.E.2d 480, 481 (Ind. Ct. App. 1998). A party appealing from a negative judgment must show that the evidence points unerringly to a conclusion different from that reached by the trier of fact. *Id.* at 481-82. We will reverse a negative judgment only if the decision of the trial court is contrary to law. *Id.* at

482. In determining whether a negative judgment is contrary to law, we neither reweigh evidence nor judge witness credibility. *Id.* Rather, we consider only the evidence most favorable to the prevailing party together with all reasonable inferences flowing therefrom. *Id.*

[18] Similarly, in decisions relating to adoptions, we will presume the trial court’s decision is correct and will not disturb the court’s ruling unless the evidence leads to only one conclusion and the trial court reached the opposite conclusion. *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014).

## II. Best Interests of the Siblings

[19] Biological Parents argue that the trial court erred in failing to find that it is in the best interests of the Siblings to permit them to withdraw their consents to adoption.<sup>6</sup> They have each filed a brief and made different arguments which we address in turn.

### A. Mother’s Argument

[20] Mother argues that the trial court should have considered evidence only from the time she moved to withdraw her consents until the Siblings were placed in the Adoptive Parents’ home, July 2018 to May 2019, and asks that we remand to the trial court “with instructions to limit its determination of whether Mother

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<sup>6</sup> Biological Parents do not appeal the trial court’s determination on summary judgment that the consents were signed voluntarily.

was acting in the best interest of the children in seeking the withdrawal of her consents” to that period. Brief of Appellant [Mother] at 15-16.

[21] Mother relies on *In re Hewitt*, 396 N.E.2d 938 (Ind. Ct. App. 1979), to support her argument. In *Hewitt*, the biological mother executed a consent for adoption two days after giving birth. The same day, the adoptive parents filed their petition for adoption. Ten days later, the biological mother filed a petition to withdraw her consent, alleging a change in circumstances and a better ability to raise the child as its natural mother. The trial court denied the petition to withdraw consent and granted the petition for adoption. On appeal, we affirmed the trial court’s judgment. As to whether the biological mother was acting in the best interest of the child in seeking to withdraw her consent, we stated:

The trial judge must recognize there are three parties whose interests and feelings are involved in the adoption process and all must be treated fairly. That judge must balance the interest of the natural parents and their sacred relationship to their child against the hope, expectation, reliances, and desires of the adoptive parents all against the best interest of the child which, after all, rules supreme.

*Hewitt*, 396 N.E.2d at 942. Pointing to that quote from *Hewitt*, Mother argues that at the time she filed her request to withdraw the consents,

there were only two groups of parties whose interests and feelings were involved in the adoption process, not three. . . .

[Therefore], the trial court erred as a matter of law by balancing the interest of the natural parents and their sacred relationship to their children against the interests of the adoptive parents rather than only against the best interest of the children.

Br. of Appellant [Mother] at 15 (citations omitted).

[22] Mother extrapolates the facts of *Hewitt* past the breaking point. Yes, in *Hewitt*, the child was already in the care of the adoptive parents at the time the mother filed her motion to withdraw consent and here, the Siblings were not yet in their pre-adoptive placement when Mother filed her request to withdraw her consents. But nowhere in *Hewitt* does the court indicate that the specific timing of a pre-adoptive placement affected or imposed a limitation on the evidence that could be considered in assessing whether withdrawal of mother's consent would be in the best interests of the child. In fact, the court specifically noted that in undertaking the "awesome responsibility of determining what was, in fact, in the best interest of the child," the trial court "had evidence before it *as to the present circumstances*" of the mother and the adoptive parents. *Hewitt*, 396 N.E.2d at 942 (emphasis added). And as the court in *Hewitt* stated, the best interest of the child "rules supreme." *Id.* Therefore, any and all evidence weighing on what is in the child's best interests is relevant. See *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014) (noting the strong similarities between the adoption statute and the termination of parental rights statute when it comes to determining the best interests of the child and further nothing that in termination cases, the trial court is required to look to the totality of the evidence to determine the child's best interests).



[23] Excluding nearly eighteen months of evidence and especially any evidence regarding the Siblings' relationship with and adjustment to Adoptive Parents is antithetical to an accurate and complete assessment of what would be in the Siblings' best interests at the present time.<sup>7</sup> The trial court did not err in considering all the available evidence in determining whether Mother was acting in the Siblings' best interests in requesting to withdraw her consents to adoption.

## **B. Father's Argument**

[24] Father contends that he was acting in the Siblings' best interests in requesting to withdraw his consents to adoption and that there is no "clear, cogent and indubitable evidence to the contrary." Brief of Appellant [Father] at 18. Therefore, Father argues, the trial court erred in denying his request to withdraw his consents.

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<sup>7</sup> We also find it confusing that Mother would want to exclude evidence from May 2019 to the time of the hearing since much of the progress she argues she has made has occurred since May 2019. Mother asserts that her life has "changed for the better" since she filed her request to withdraw her consents to adopt. Br. of Appellant [Mother] at 7. But Biological Parents did not obtain their current stable housing situation until March 2020, well after the arbitrary time limit Mother would impose upon the trial court's consideration of evidence impacting the Siblings' best interests. Mother testified she had been clean and sober for three years as of the best interests hearing but excluding evidence of the most recent eighteen months of that sobriety would severely undermine the significance of that achievement. Several witnesses testified to Biological Parents' strong parenting skills with their youngest child, but she was not born until February 2019 and again, excluding evidence of the most recent eighteen months of their parenting of the child would diminish the impact of that testimony. It appears Mother wants the benefit of the trial court considering the ways in which she has bettered her life in the past eighteen months in determining the best interests of the Siblings while simultaneously excluding from the trial court's consideration any evidence of the Siblings' lives since being placed in their pre-adoptive home.

[25] First, it appears Father misunderstands the burden of proof in these proceedings. As the party seeking to withdraw his consents, it was his burden to prove that he was acting in the Siblings’ best interests, not anyone else’s burden to provide evidence that he *was not*. *K.F.*, 145 N.E.3d at 824. Second, in order to meet the burden of proving that allowing withdrawal of consent to adoption would be in the Siblings’ best interests, the parent seeking to withdraw consent must specify precisely why it is in the child’s best interest to permit him to withdraw his consent. *Bell v. A.R.H.*, 654 N.E.2d 29, 34 (Ind. Ct. App. 1995).

[26] In *Bell*, the biological mother signed consents to adoption for her four oldest children and they were placed with a prospective adoptive couple. Several months later, the mother filed a petition to withdraw the consents.<sup>8</sup> The trial court denied the petition and the mother appealed. With respect to whether the mother was acting in the best interests of the children, she argued that “no one said anything negative about her, and all of her witnesses testified that she was a good mother who loves her children.” *Id.* (internal quotations omitted). We held that in order to meet her burden of proof, she was required to show more. Where the record showed the adoptive parents had a stable home life, the children participated in family activities and began calling the parents “mom” and “dad” shortly after their arrival, and the mother had not alleged the adoptive parents were unfit, the evidence supported the trial court’s finding that

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<sup>8</sup> At the time *Bell* was decided, the statute providing for withdrawal of consent did not have a thirty-day limitation as Indiana Code section 31-9-10-3(a) does now. Instead, “prior to the entry of the decree of adoption” was the only time limitation. Ind. Code § 31-3-1-6(h) (repealed).

the mother was not acting in the children's best interests in seeking to withdraw her consents. *Id.* at 34-35; *cf. Matter of Adoption of Johnson*, 612 N.E.2d 569, 573 (Ind. Ct. App. 1993) (holding, where the evidence showed the adoptive parents were HIV-positive and likely to develop AIDS within a year or two and become unable to care for the child, that trial court did not err in determining mother's request to withdraw her consent to child's adoption was in the child's best interest), *trans. denied*.

[27] Similarly here, no one seems to dispute that Biological Parents love the Siblings and wish to have them returned to their care. Biological Parents provided witness testimony that they are being good and loving parents to Ad., who was born after the Siblings' removal. But caring for one child who has always been in their custody is an entirely different circumstance than caring for five children, four of whom have spent a significant amount of their lives away from Biological Parents, especially given Biological Parents' fragile circumstances. They allege they are free of substance abuse but still use Suboxone and have not fully participated in the treatment that would make Suboxone therapy ultimately successful, they have only recently moved into a permanent housing situation that would not be adequate to accommodate four more children, neither are working, and they are still involved with DCS regarding two of their children three and one-half years after the CHINS case was opened. Moreover, Father has not alleged with specificity why withdrawal of his consent to adoption would be in *the Siblings'* best interests. Biological Parents' testimony centered on themselves and their youngest child. For instance, Mother stated

in an affidavit and affirmed at the best interests hearing that she believed it would be “unfair” not to allow withdrawal of the consents because Ad. is “already missing out” on having a relationship with Ja. and A. and the family should be reunited “so this wonderful baby girl can have a normal life with the rest of her family and they with her.” Tr., Vol. 2 at 176. Father testified that “[w]e want to see [the Siblings] graduate and have families of their own. I want to be a part of their life . . . and I believe that this is the strongest place for them[;] they have brothers and sisters here [and] they also have nieces and nephews that I think it will be good for them to be role models for[.]” *Id.*, Vol. 2 at 201.

[28] What Biological Parents fail to acknowledge is that this is not a binary choice between returning the Siblings to them or allowing the Siblings to be adopted by Adoptive Parents. If the petition to withdraw consents were to be granted, the Siblings would not necessarily be returned to Biological Parents. Instead, because the CHINS case is still active and Biological Parents are not in compliance, reunification is no longer the case plan. DCS testified that it would file another termination petition if the consents were allowed to be withdrawn, meaning the Siblings would remain in limbo for an indeterminate amount of time while the process plays out again. As such action would unnecessarily prolong the upheaval of the Siblings’ lives, Father has not proven by clear and convincing evidence that he is acting in the Siblings’ best interests in seeking to withdraw his consents.

[29] Father also argues the trial court erred in relying too heavily on his past conduct. But as we stated above, in determining whether Father is acting in the Siblings' best interests, any and all evidence weighing on that question is relevant. *See In re Adoption of M.S.*, 10 N.E.3d at 1281. Given that this family has a repeated history of removal, reunification, and then removal again – or, as the trial court described it, “a pattern of short-term stability followed by relapse and subsequent neglect of their children[,]” Appealed Order at 16 – it was absolutely appropriate for the trial court to look to Biological Parents' past and how they have handled having the Siblings in their custody because past conduct is a predictor of future behavior. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[30] Biological Parents' conduct for the past decade has been leading inexorably to this resolution. In the absence of evidence that Biological Parents are acting in the Siblings' best interests and with no allegation, let alone evidence, that Adoptive Parents are unfit – Mother agreed that Adoptive Parents have provided for and taken care of the Siblings and stated that if the Siblings were not returned to her care, she is okay with the adoption – the trial court's denial of Biological Parents' motion to withdraw their consents to adoption was not contrary to law.

## Conclusion

[31] Biological Parents failed to meet their burden of proving on appeal that the evidence points unerringly to a conclusion different from that reached by the trial court. Therefore, the trial court's judgment is affirmed.

[32] Affirmed.

Bailey, J., and May, J., concur.