MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

E.H.,

Appellant-Respondent,

v.

A.P.,

Appellee-Petitioner.

April 28, 2022

Court of Appeals Case No. 21A-AD-2336

Appeal from the Vanderburgh Superior Court

The Honorable Brett J. Niemeier, Judge

The Honorable Renee A. Ferguson, Magistrate

Trial Court Cause No. 82D04-2001-AD-7

Mathias, Judge.

[1] E.H. ("Father") appeals the trial court's issuance of a decree of adoption of A.H. ("Child") on the petition of A.P. ("Stepfather"). Father raises two issues for our review, which we restate as follows:

I. Whether the trial court committed fundamental error when it stated that it would hold one hearing on whether Father's consent was necessary and, regardless of the outcome of that hearing, a second hearing on the best interests of Child.

II. Whether Stepfather presented sufficient evidence to support the decree of adoption.

[2] Although we do not approve of the procedure employed by the trial court here, in light of all of the facts and circumstances in the record on appeal we cannot say that the court's procedure was fundamental error. And we hold that Stepfather presented sufficient evidence to support the decree of adoption. Thus, we affirm the trial court's judgment.

Facts and Procedural History

[3] K.P. ("Mother") and Father are the natural parents of Child. Mother gave birth to Child in 2011, and Father established his paternity by way of a paternity affidavit.

[4] Since before Child's birth, Father has "had an alcohol problem." Tr. Vol. 2 p. 66. Shortly after Child's birth, Father "went to jail . . . for a few months." *Id.* at 49. After his release, Mother "tried to work" on her relationship with Father, but the relationship did not work, and Mother and Father ended their

relationship about one year after Child's birth. *Id.* Mother retained custody over Child, and the parents agreed that Father would have visitation "whenever" he wanted "as long as [he] was sober . . . and it was a convenient time for [Mother]." *Id.* at 7.

[5] Between Child's birth and November 2018, Father's visitation with Child was sporadic. If Father "was doing well and he was going through one of his sober periods," he would accompany Mother and Child to church or lunch. *Id.* at 50. But Father did not exercise unsupervised visitation with Child or overnight visits. And "if he was going through one of his drinking spells[,] it could be months on end that he wouldn't see [Child]." *Id.*

[6] Father acknowledged that, when he drinks, he "become[s] angry," does "stupid stuff," and is "a whole different person." *Id.* at 77. He further acknowledged having been convicted and incarcerated for at least five offenses. One of those convictions was a Level 6 felony domestic battery offense against Mother.

[7] On one occasion, Father "was drunk and he picked [Mother] up by [the] neck and slammed [her] into a wall." *Id.* at 60. On another occasion, he "got mad and he punched [a] car." *Id.* When drunk, Father would yell and engage in name-calling. He would engage in "ploy[s]" to try and "control" Mother and Child, such as telling Mother "I own you because you have my son," "[y]ou'll never be able to get married," and "[y]ou'll never be happy . . . as long as you have my son." *Id.* at 55-56.

[8] At one point, Father left Mother voicemails on her phone in which he described "graphic ways he would kill" Mother. *Id.* at 56. Mother then petitioned for an order for protection against Father. In her petition for an order for protection,[1] Mother described the voicemails. She also stated that, shortly after Child's birth in 2011, she "had been sent to the hospital [because she] was beat up so bad from [Father]." Ex. Vol. p. 32.

[9] The trial court granted the order for protection, which first went into effect in November 2018. The order for protection ordered Father to stay away from Mother, but it made no mention of Father's ability to be with or near Child. Nonetheless, following the issuance of the order for protection, Father did not contact Child.

[10] Around January 2019, Mother married Stepfather. About one year later, Stepfather filed his petition to adopt Child. Mother consented to Stepfather's petition. However, Father declined to consent.

[11] The court then informed the parties that it would hold a hearing in September 2020 on whether Father's consent to the adoption was required. That hearing opened with the following colloquy:

> BY MR. KENT [for Stepfather]: Judge, if I may. This matter is on whether or not consent is required of the natural Father, under Indiana Code [§] 31-19-9-8, specifically (a)(2)([A]). . . . It's my understanding from the Court Reporter that the Court wishes

[1] The trial court here took judicial notice of the record on Mother's petition for an order for protection.

to have this hearing and then . . . a best interest of the child hearing, that [the court] want[s] to do those separately, is my understanding. Am I correct in that assumption? The way the statute's written I think they have to be separate. So it makes things a little difficult. But, I mean, it also makes this hearing much more condensed.

BY THE COURT: Yeah, in the practice that we had traditionally is that we bifurcate consent/best interest. If the Court finds the consent is not necessary, then it used to be that we didn't necessarily make a finding on best interest. So then the parent wouldn't be involved in that. Now with the Supreme Court case that came out a couple weeks ago even if consent's not necessary they want [a] finding on best interest.[2] They want to know that the putative[-]Father affidavit's been complied with. All the boxes checked. Now a lot of times it turns out we can, in doing the consent hearing, we get to best interest of the child given what the parties are testifying to. So in this case if consent is not necessary and I've heard enough I will make a finding on best interest.

BY MR. KENT: I understand, Judge, but I also understand that you also can reserve that if you feel that you need more evidence with regard to that issue.

BY THE COURT: Yes, absolutely.

Tr. Vol. 2 pp. 5-6.

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[2] It is not clear to which opinion of the Indiana Supreme Court the trial court was referring, but our Court has long held that, "[e]ven if a court determines that a natural parent's consent is not required for an adoption, the court must still determine whether adoption is in the child's best interests." *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014).

[12] Stepfather then proceeded to argue that Father's consent to the adoption was not required under Indiana Code section 31-19-9-8(a)(2)(A) (2019), which states that a natural parent's consent to an adoption is not required when that parent, for a period of at least one year, "fails without justifiable cause to communicate significantly with the child when able to do so . . . ." In support of his argument, Stepfather demonstrated that Father had failed to communicate with Child following the issuance of the order for protection. However, in his testimony, Father stated that he thought the order for protection applied both to Mother and to Child. At the end of the consent hearing, the trial court found that Father's mistaken understanding of the scope of the order for protection did not vitiate the need for his consent to the adoption.

[13] Following the court's announcement of its finding, the following exchange occurred:

> BY THE COURT: . . . Alright, we need to set a best interest hearing.
>
> BY MR. SMITH [for Father]: Judge, if the Court . . . [has found that Father's] consent's necessary for the adoption, do we need to have a best interest hearing?
>
> BY THE COURT: Yes.
>
> BY MR. SMITH: Okay.
>
> BY THE COURT: We do because *the Court could find that even though he's not consenting it's in the best interest of the [C]hild to be*

> *adopted by [Stepfather], and[,] therefore, basically overrule Father's [lack of] consent.* This new Supreme Court ruling[3] has kind of jumbled this. We bifurcate it. And if the consent was not necessary we'd just move to a final hearing. If consent was necessary then we move to a best interest hearing.
>
> BY MR. SMITH: Fair enough.

Tr. Vol. 2 p. 44 (emphasis added). The parties then agreed on a date for the hearing on the Child's best interests.

[14] In November, Stepfather filed a "Motion to Advise the Court that Consent of the Biological Father is Not Required." Appellant's App. Vol. 2 p. 91. In that motion, Stepfather re-asserted his position that Father's consent to the adoption was not required under Indiana Code § 31-19-9-8, but this time Stepfather specifically identified four reasons for his conclusion: because Father had allegedly abandoned Child for at least six months immediately preceding the filing of the petition for adoption, *see* I.C. § 31-19-9-8(a)(1); because Father for a period of at least one year had failed without justifiable cause to communicate significantly with Child when able to do so, *see* I.C. § 31-19-9-8(a)(2)(A); because Father for a period of at least one year had knowingly failed to provide for the care and support of Child when able to do so or as required by law or judicial decree, *see* I.C. § 31-19-9-8(a)(2)(B); and because Father "is unfit to be a

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[3] Again, it is not clear to which opinion of our Supreme Court the trial court was referring. The parties agree that there is no Indiana appellate opinion that holds that a best-interests hearing is necessary once a court finds a parent's consent to be required.

parent" and "the best interest of [C]hild . . . would be served if the court dispensed with [Father's] consent," *see* I.C. § 31-19-9-8(a)(11). Appellant's App. Vol. 2 pp. 91-92. Father did not respond to Stepfather's motion, and the trial court appears to have taken no action on the motion.

[15] In August 2021, the trial court held the best-interests hearing. At the commencement of that hearing, the parties agreed that the court would "consolidate" the best-interests hearing with the record from the consent hearing. Tr. Vol. 2 p. 47. The parties further agreed that the court would take judicial notice of the record in concurrent paternity proceedings between Mother and Father, which were centered on Father's exercise of parenting time.

[16] At the best-interests hearing, Mother described Father's history of domestic violence against her and his history of alcohol abuse. She testified that Child experiences "anxiety" when interactions with Father come up and that Child "had seen [Father] do things, and heard" him when he was drunk or abusive. *Id.* at 56, 59. A parenting time supervisor who observed Father's visitations on various occasions reported that Child was "scared" around Father during visits; that Child "fe[lt] better" during visits when an "officer [was] in the room"; and that Child would be "uncomfortable" or "upset" around Father. Ex. Vol. pp. 96, 99, 103, 107.

[17] Mother also testified that Child has lived in the home with Stepfather for more than three years and that granting Stepfather's petition would be in Child's best interests as follows:

> [Child']s actually the one that asked [Stepfather to file the petition]. . . . And we talked to him about it and explained to him that that was a permanent thing. We let him think it over for a while and then when he was sure we sought out you for [c]ounsel. But I believe that for him he needs stability. And it's been 10 years and he doesn't have that stability with [Father]. With [Stepfather] he does. He's got somebody who shows up to his games. He loves him. He supports him. He's been there for every single thing that a parent should be there for. And I understand that biological parents have a right to know their child, but the child should also have a right to have a happy life themselves and feel safe and feel secure and be able to sleep at night and not be afraid that something's going to happen to them.

Tr. Vol. 2 p. 52.

[18] Father also testified at the best-interests hearing. According to Father, he has been sober since September 19, 2019. However, in January 2021, a parenting time supervisor reported that Father showed up to a visit with Child with "slurred" speech and "bloodshot eyes." *Id.* at 165. Father dismissed those concerns, stating that is "how [he] talk[s]" and he "just got out of the shower." *Id.* Further, in April 2021, Mother reported receiving several "drunk text messages" from Father "at like 3:00 in the morning," and when she asked Father about them he told her "he was drinking that day." *Id.* at 184-85. On a different day in April 2021, Father admitted to the trial court that he had had "a slip up" with his sobriety. *Id.* at 166, 184-85. Father also testified that he "got treatment" for his alcoholism at a YMCA batterers' intervention program.

[19] Near the end of Father's testimony, he and his counsel had the following exchange:

> Q You're not asking for custody, you're just asking to be a [f]ather, right?
>
> A Yes.
>
> Q And you come with some flaws *but you're not an unfit person to be a [f]ather* to somebody, are you?
>
> A No.

Id. at 78 (emphasis added).

[20] After the best-interests hearing, the trial court entered the following written findings of fact:

> 1. The Court . . . now finds that it is in the best interest of [C]hild to be adopted by [Stepfather].
>
> 2. The Father clearly has no understanding of the concept of sobriety and how the lack of sobriety impacts [C]hild's stability.
>
> 3. The Court makes this finding after considering all the testimony in both the Adoption and Juvenile Paternity case[s].
>
> 4. The Father testified that his sober date was September 19, 2019, but then went on to testify that he has relapsed more than once since that date. The alarming fact is that despite relapses the Father still considers himself sober since that 2019 date. The Father has never undergone substance abuse treatment. The

> program that he credits for his "sobriety" is the Batter[er]s' Intervention Program (BIP), a domestic violence treatment program. BIP is a worthwhile and valuable program, but not for the treatment of substance abuse.
>
> 5. Sobriety is essential for the Father because it was the lack of sobriety that landed him in the Indiana Department of Correction for a number of years.
>
> 6. The Court firmly believes that [C]hild's stability is premised on the Father's sobriety. Clearly Father struggles with sobriety and yet takes no steps toward substance abuse treatment. Quite the opposite, Father believes that he has sustained and maintained sobriety since September 19th, 2019.
>
> 7. The Court cannot reasonably believe that the Father can provide [C]hild with stability that he needs and deserves. On the other hand[,] the Court does believe that [Stepfather] does and can provide [C]hild with stability and everything else that is required for [C]hild to be healthy and happy.
>
> 8. *The Court finds that the Father is unfit to be a parent* and it is in the best interest that [C]hild be adopted by [Stepfather].

Appellant's App. Vol. 2 pp. 163-64 (emphasis added).

[21] Thereafter, the court entered its decree of adoption. This appeal ensued.

Discussion and Decision

Issue One: Whether the Court Erred in Holding a Best-Interests Hearing

[22] On appeal, Father first asserts that the trial court erred as a matter of law when it held a best-interests hearing after finding, at the end of the consent hearing,

that Father's consent to the adoption was required. We review questions of law *de novo*. *See, e.g.*, *Miller v. Patel*, 174 N.E.3d 1061, 1064 (Ind. 2021).

[23] Father's argument is straight-forward. He asserts, correctly, that Indiana Code section 31-19-9-1(a) generally requires natural parents to consent to the adoption of their children, "[e]xcept as otherwise provided in this chapter." And Indiana Code section 31-19-9-8(a) provides for when a natural parent's consent is "not required." As relevant here, section 31-19-9-8(a) provides that consent to an adoption is not required from any of the following:

> (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.
>
> (2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:
>
> > (A) fails without justifiable cause to communicate significantly with the child when able to do so; or
> >
> > (B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.
>
> * * *
>
> (11) A parent if:

> (A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and
>
> (B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

Moreover, it is well-settled that, if a trial court determines that a natural parent's consent to an adoption is *not* required, the court must *then* determine if the adoption is in the child's best interests. *In re Adoption of M.S.*, 10 N.E.3d 1272, 1281 (Ind. Ct. App. 2014). It is the petitioner's burden to prove by clear and convincing evidence that a natural parent's consent is not required. *In re Adoption of T.W.*, 859 N.E.2d 1215, 1217 (Ind. Ct. App. 2006).

[24] Thus, Father's argument is that, once the trial court found at the conclusion of the consent hearing that Father's consent *was* required, there was nothing more for the court to consider because Father had refused to give his required consent.

[25] As an initial matter, we are obliged to conclude that Father did not preserve this argument for appellate review. As this Court has explained on numerous occasions:

> A party generally waives appellate review of an issue or argument unless that party presented that issue or argument before the trial court. . . . Further:

> This rule exists because trial courts have the authority to hear and weigh the evidence, to judge the credibility of witnesses, to apply the law to the facts found, and to decide questions raised by the parties. *See Whiteco Indus., Inc. v. Nickolick*, 549 N.E.2d 396, 398 (Ind. Ct. App. 1990). Appellate courts, on the other hand, have the authority to review questions of law and to judge the sufficiency of the evidence supporting a decision. *Id. The rule of waiver in part protects the integrity of the trial court; it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider. Conversely, an intermediate court of appeals, for the most part, is not the forum for the initial decisions in a case[.]*
>
> *GKC [Ind. Theatres, Inc. v. Elk Retail Inv., LLC*, 764 N.E.2d 647, 651 (Ind. Ct. App 2002)].

Showalter v. Town of Thorntown, 902 N.E.2d 338, 342 (Ind. Ct. App. 2009) (emphasis added), *trans. denied*.

[26] Here, at no point did Father object in the trial court to its clearly stated procedure that it would hold a best-interests hearing regardless of its finding on Father's consent at the end of the consent hearing. Instead of objecting, Father stated that the court's procedure was "[f]air enough." Tr. Vol. 2 p. 44. We therefore conclude that Father has waived his argument of procedural error.[4]

[4] Likewise, Father's argument on appeal that Stepfather "did not properly raise a challenge to Father's fitness at the trial court" is not preserved for appellate review. *See* Appellant's Br. at 28-30.

[27] To avoid his waiver of this issue, Father asserts in a footnote that we should review his argument under the fundamental-error doctrine. *See* Appellant's Br. at 23 n.3. As our Supreme Court has stated:

> Fundamental error is an exception to the general rule that a party's failure to object at trial results in a waiver of the issue on appeal. An error is fundamental if it made a fair trial impossible or amounted to a clear violation of basic due-process principles. This is a formidable standard that applies only where the error is so flagrant that the trial judge should have corrected the error on her own, without prompting by . . . counsel.

Tate v. State, 161 N.E.3d 1225, 1229 (Ind. 2021) (citations omitted).

[28] Father has not shown fundamental error. To be sure, we do not approve of the procedure employed by the trial court here. The trial court plainly misunderstood the law when it referred to an opinion of the Indiana Supreme Court that, in the trial court's view, compelled a hearing on a child's best interests even where a natural parent's consent has been found to be required.

[29] Nonetheless, Father's fundamental-error argument puts form over substance. Although the trial court repeatedly and confusingly referred to the first hearing as a consent hearing and to the second hearing as a best-interests hearing, in substance the court heard evidence of both concerns at both hearings. The trial court made clear at the consent hearing that it could, at that hearing, enter a finding on Child's best interests. Tr. Vol. 2 pp. 5-6 (stating that, if "I've heard enough[,] I will make a finding on best interest"). Importantly, at the consent hearing, the court made clear that it could find, at the later best-interests

hearing, that Father's consent was not required. *Id.* at 44 (stating that the court could "overrule Father's [lack of] consent" at the best-interests hearing).

[30] Likewise, between the two hearings, Stepfather filed his motion to advise the court that Father's consent was not required. In his motion, Stepfather identified each of the four above statutory reasons as a continuing possible basis for the trial court to find Father's consent to not be required, including Stepfather's already-argued position under section 31-19-9-8(a)(2)(A) and Stepfather's additional allegations including that Father was unfit to be a parent under section 31-19-9-8(a)(11). Again, Father did not object to or move to strike that motion.

[31] Finally, at the best-interests hearing, the parties agreed to "consolidate" that hearing with the so-called consent hearing. *Id.* at 47. Consolidating the two hearings is more than asking the court to take judicial notice of the prior hearing; it is asking the court to treat the two hearings as one and the same. *See Consolidate*, Dictionary.com (last visited Apr. 18, 2022). And, significantly, at the best-interests hearing, Father's own counsel asked Father whether he was "unfit" to be a parent. Tr. Vol. 2 p. 78. This makes it abundantly clear that Father knew that the court was still considering the issue of whether Father's consent was required at the best-interests hearing, specifically under section 31-19-9-8(a)(11).

[32] Thus, we cannot say that the trial court's procedure, while poorly articulated, amounted to fundamental error, and Father's arguments to the contrary on appeal therefore fail.

Issue Two: Whether Stepfather Presented Sufficient Evidence to Support the Decree of Adoption

[33] We thus turn to Father's other argument on appeal, namely, whether Stepfather presented sufficient evidence to show that Father was unfit to be a parent and that granting Stepfather's petition for adoption was in Child's best interests. As our Supreme Court has held:

> We generally show "considerable deference" to the trial court's decision in family law matters "because we recognize that the trial judge is in the best position to judge the facts, determine witness credibility, get a feel for the family dynamics, and get a sense of the parents and their relationship with their children." *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018) (cleaned up). So, "when reviewing an adoption case, we presume that the trial court's decision is correct, and the appellant bears the burden of rebutting this presumption." *Id.* And we will not disturb that decision "unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion." *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). "We will not reweigh evidence or assess the credibility of witnesses." *E.B.F.*, 93 N.E.3d at 762 (citation omitted). "Rather, we examine the evidence in the light most favorable to the trial court's decision." *Id.* (citation omitted).

In re Adoption of I.B., 163 N.E.3d 270, 274 (Ind. 2021).

[34] First, we note that, in his briefs on appeal, Father repeatedly asserts that the trial court made no finding as to whether he was unfit to be a parent. *E.g.*, Reply Br. at 12. In support of this assertion, Father cites the trial court's minute entry in the Chronological Case Summary, which does omit any reference as to whether the court found Father to be unfit. *See* Appellant's App. Vol. 2 p. 14. However, the trial court's actual, written order explicitly finds that "Father is unfit to be a parent." *Id.* at 164. We therefore conclude that Father's repeated assertions that the trial court failed to make this finding are without merit. Likewise, Father's repeated assertions that the trial court failed to find that Father's consent is not required are also without merit—the trial court's finding that Father is unfit to be a parent and its additional finding that the adoption is in Child's best interests meet the requirements of Indiana Code section 31-19-9-8(a)(11).

[35] We thus turn to the merits of Father's arguments: whether Stepfather presented sufficient evidence that Father is unfit to be a parent and that the adoption is in Child's best interests. According to Father, he "has been involved in [Child's] life since birth, with the exception of the period of time where Mother" had the order for protection in place; during that period, Father nonetheless "unsuccessfully attempted to regain time with his son" and filed *pro se* pleadings to resume supervised visits the day the order for protection ended; Father "behaved appropriately during [those] visits"; the supervised visits "were generally going well"; "Father had been sober since September of 2019" except for "one relapse"; he never "failed to complete any treatment that he was

required to do by a court or a medical professional"; and the "only evidence about Stepfather's fitness is Mother's self-serving testimony." Appellant's Br. at 31-33.

[36] We first consider the evidence most favorable to the judgment as to whether Father is unfit to be a parent. As we have explained:

> Black's Law Dictionary defines "unfit" as "[u]nsuitable; not adapted or qualified for a particular use or service" or "[m]orally unqualified; incompetent." BLACK'S LAW DICTIONARY 1564 (8th ed. 2004). Father and the Adoptive Parents have both looked to cases where parental rights have been terminated as a result of a petition made by the Department of Child Services ("DCS") for guidance. In termination cases, DCS is required to allege, *inter alia*, that 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," that there is "a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child," or that the child "has, on two (2) separate occasions, been adjudicated a child in need of services." Ind. Code § 31–35–2–4(b)(2). Although Indiana Code Section 31–35–2–4 does not use the word "unfit," we have frequently referred to its provisions as indicators of a parent's fitness, and termination cases clearly deal with a parent's suitability or competence to be a parent. *See, e.g.*, *In re A.B.,* 924 N.E.2d 666, 670 (Ind. Ct. App. 2010) ("In determining whether the conditions that led to a child's removal will not be remedied, the trial court must judge a parent's fitness to care for her child at the time of the termination hearing . . . "). The termination statutes and adoption statutes strike a similar balance between the parent's rights and the child's best interests.
>
> Therefore, we agree that termination cases provide useful guidance as to what makes a parent "unfit." In these cases, we

> have considered factors such as a parent's substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child's special needs. *See In re J.S.*, 906 N.E.2d 226, 235 (Ind. Ct. App. 2009) (affirming termination of parental rights based on parents' drug use and inability to maintain stable housing and employment); *C.T. v. Marion Cnty. Dep't of Child Servs.*, 896 N.E.2d 571, 582 (Ind. Ct. App. 2008) (affirming termination of parental rights based on mother's pattern of failing to address mental health deficiencies, long-standing addiction to drugs, and past and present inability to provide safe, stable, and nurturing home), *trans. denied* (2009); *In re A.B.*, 887 N.E.2d 158, 169–70 (Ind. Ct. App. 2008) (affirming termination of parental rights based on mother's instability, lack of participation in counseling, and inability to provide permanency for special needs child); *In re Termination of Parent–Child Relationship of D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004) (affirming termination of parental rights where mother failed to follow through with treatment for mental health issues and substance abuse), *trans. denied*; *In re J.T.*, 742 N.E.2d 509, 512–13 (Ind. Ct. App. 2001) (affirming termination of parental rights based on mother's lack of progress and insight), *trans. denied*.

In re Adoption of M.L., 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012).

[37] Similar factors are present in this case. The trial court expressly found that Father "clearly has no understanding of the concept of sobriety"; that Father has "relapsed more than once" yet "still considers himself sober"; that Father "has never undergone substance abuse treatment" and instead asserted that his participation in a domestic-violence treatment program was equivalent to substance-abuse treatment; that Father's history with his "lack of sobriety" has "landed him in the Indiana Department of Correction for a number of years";

and that Father continues to "struggle[] with sobriety and yet takes no steps toward substance abuse treatment." Appellant's App. Vol. 2 pp. 163-64.

[38] All of those findings are supported by the record, including in substantial part by Father's own testimony. And we further note that Father's substance-abuse issues have been present during Child's entire life. Father's arguments to the contrary are simply requests for this Court to reweigh the evidence, which we will not do. We cannot say that the trial court's finding that Father is unfit to be a parent based on his long history of and continuing issues with substance abuse is clearly erroneous.

[39] We thus turn to the court's finding that granting Stepfather's petition for adoption is in Child's best interests. On this issue, the court found that Father's substance-abuse issue negatively "impacts [C]hild's stability," and that Child's stability "is premised on the Father's sobriety." *Id.* The court similarly found that Father cannot "provide [C]hild with [the] stability that he needs and deserves," while Stepfather "does and can provide [C]hild with stability and everything else that is required for [C]hild to be healthy and happy." *Id.* at 164.

[40] Again, the trial court's findings are supported by the record. In particular, Mother testified that Father's visitations with Child prior to the issuance of the order for protection were sporadic and dependent on Father's sobriety. She further testified that Child experiences anxiety when interacting with Father. Mother's testimony was corroborated by a parenting time supervisor who observed on various occasions that Child was "scared" around Father during

visits; that Child "fe[lt] better" during visits when an "officer [was] in the room"; and that Child would be "uncomfortable" or "upset" around Father. Ex. Vol. pp. 96, 99, 103, 107. Further, while Father might disagree with Mother's "self-serving" testimony that Stepfather "supports" Child and is "there for every single thing that a parent should be there for," Tr. Vol. 2 p. 52, it was the trial court's prerogative to credit and give weight to Mother's testimony, and we will not reweigh her testimony on appeal. We cannot say that the trial court's finding that granting Stepfather's petition is in Child's best interests is clearly erroneous. We therefore affirm the trial court's decree of adoption.

Conclusion

[41] For all of the above reasons, we affirm the trial court's decree of adoption.

[42] Affirmed.

Brown, J., and Molter, J., concur.