MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Renee M. Ortega
Lake County Juvenile Public Defender's Office
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

David E. Corey
Supervising Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR CASA

Donald W. Wruck
Wruck Paupore PC
Dyer, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of A.H. (Minor Child) and

E.M. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

January 31, 2024

Court of Appeals Case No. 23A-JT-1961

Appeal from the Lake Superior Court

The Honorable Thomas P. Stefaniak, Jr.

Trial Court Cause No. 45D06-2211-JT-187

Appellee-Petitioner

and

Lake County Court Appointed Special Advocate,

Co-Appellee

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

[1] E.M. (Mother) appeals the involuntary termination of her parental rights to her minor child, A.H. (Child).[1] We affirm.

Facts and Procedural History

[2] On August 9, 2020, the Indiana Department of Child Services (DCS) received a report that there had been an infant death in Mother's home. At the time, Mother and her then-boyfriend, now-fiancé, R.H. (Fiancé), lived in the home with eleven-year-old Child, his twelve-year-old sister An.H., his one-year-old

[1] O.H. is Child's biological father. He was unable to be located for purposes of the termination proceedings. His parental rights were also terminated. He does not participate in this appeal.

sister Ab.H., and Mother and Fiancé's four-month-old child, B.H. Mother and Fiancé had been in the habit of tasking Child with caring for B.H. overnight. Child was permitted to play video games in exchange for caring for the infant. On August 9, Mother and Fiancé left Child to care for B.H. while they slept in the basement of the home. During the night, B.H. started crying, and Child tried unsuccessfully to feed him. Thereafter, Child put B.H. on his chest and sat down on the couch to watch television. Child fell asleep, and when he woke up, B.H. was not breathing. B.H.'s manner of death was ruled accidental due to asphyxia.

[3] Following the death report, DCS attempted to interview the family. During a surprise visit to the home on August 13, DCS family case manager (FCM) Elena Makarenko observed Mother and Fiancé in the backyard. Both Mother and Fiancé appeared to be intoxicated. Fiancé had a "strong odor of alcohol" and slurred speech, and Mother was very emotional and "crying." Tr. Vol. 2 at 121-22. Mother cursed at FCM Makarenko and would not let her speak to Child or the other children or look inside the home.

[4] FCM Makarenko attended a scheduled visit with the family at the home on August 17. Child told FCM Makarenko that he was frightened of Fiancé because Fiancé blamed Child for B.H.'s death. FCM Makarenko discussed Child's feelings with Mother and Fiancé. Mother responded by assuring FCM Makarenko that nobody was blaming Child, but Fiancé reacted to the discussion by "walking back and forth … and … clenching his fists … and rolling his eyes." *Id.* at 127. FCM Makarenko offered counseling services to the

family, but Mother and Fiancé refused and stated they would obtain services on their own.

[5] On September 10, 2020, FCM Makarenko followed up with the family. On that date, FCM Makarenko observed that Child was "in distress" and that he had a "fairly large healing bruise on [his] right thigh." *Id*. at 129-31. Child was "tearful" and told FCM Makarenko that he was "scared" and "frightened" of Fiancé. *Id.* at 131. FCM Makarenko recounted,

> He told me that [Fiancé] caused this bruise. And he told me that he was interrogated several times by [Fiancé] in regards to the baby's death. And at the time of the incident when he sustained that bruise that [Fiancé] was interrogating him in the garage of their home in Merrillville where [Mother] was present during interrogation. And with the intent of [Child] admitting that he killed the [baby]. Every single time when [Child] was saying, I'm sorry and crying and weeping, waiting for him to stop, he would hit him upside the head[.]
>
> ….
>
> And he stated that he would punch on his body as well with his hands. And finally, at the end of the interrogation when [Child] was in a lot of distress, he said that [Fiancé] took him and threw him across the garage where he landed on the steps and then he hit his head and the right side of his thigh. [Child] stated that [Fiancé] kept asking the questions and [Child] said, "I just wanted – for all of this to stop so I finally said, yes, I did it. I did it."

Id. at 131-32. Child also revealed that Fiancé had threatened him with a kitchen knife and that Child believed that Fiancé would kill him. FCM Makarenko filed

a report, and Child was removed from the home the following day and placed in the custody of his maternal grandmother. The day Child was removed from the home, Mother screamed at him, "[Y]ou're such a liar, look what you did." *Id*. at 133.

[6] On September 15, 2020, DCS filed a petition alleging that Child was a child in need of services (CHINS). The trial court held a factfinding hearing on December 22, 2020. Mother made a general admission that Child was a CHINS. The trial court entered a dispositional order requiring Mother to participate in reunification services, including home-based caseworker services, individual therapy, supervised visitation, and substance abuse and parenting assessments. A protective order was entered in January 2021 to protect Child from Fiancé.

[7] Thereafter, Mother was largely noncompliant with services. Mother also relocated to Georgia. Child participated in therapy and was diagnosed with PTSD, insomnia, anxiety, and major depressive disorder. To the extent that Mother participated in supervised visitation and family therapy, those services were stopped due to lack of progress and the continued traumatization of Child by Mother. Child's placement was eventually changed to his maternal cousins upon his grandmother's request due to her age and inability to take care of Child on her own. In September 2022, DCS changed the permanency plan to adoption based upon Mother's lack of progression and noncompliance with services.

[8] On November 9, 2022, DCS filed a petition to terminate Mother's parental rights. A factfinding hearing was held on June 29 and July 11, 2023. On July 28, 2023, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside Mother's care will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship between Mother and Child poses a threat to Child's well-being; (3) termination of the parent-child relationship between Mother and Child is in Child's best interests; and (4) DCS has a satisfactory plan for Child's care and treatment, which is adoption by his current relative placement. Accordingly, the trial court determined that DCS had proven the allegations of the termination petition by clear and convincing evidence, and therefore it terminated Mother's parental rights. This appeal ensued.

Discussion and Decision

[9] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed." *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

> (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 must prove that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[10] "We have long had a highly deferential standard of review in cases involving the termination of parental rights." *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

> We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court's judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the

> findings and then determine whether the findings support the judgment. In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous.

Id. at 92-93 (citations omitted). "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

Section 1 – Sufficient evidence supports the trial court's conclusion that there is a reasonable probability of unchanged conditions.

[11] Mother first challenges the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from and continued placement outside her care will not be remedied.[2] In determining whether there is a reasonable probability that the conditions that led to Child's removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention in foster care." *Id*. Second, "we 'determine whether there is a reasonable probability that those conditions will not be

[2] Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Thus, although Mother also challenges the trial court's conclusion that there is a reasonable probability that continuation of the parent-child relationship poses a threat to Child's well-being, we address only the evidence pertaining to 4(b)(2)(B)(i).

remedied.'" *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS "need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change." *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[12] Here, Child was originally removed from Mother's home due to Fiancé's physical, mental, and emotional abuse and Mother's active participation in and failure to protect Child from that abuse. Mother was offered numerous services and she was either wholly noncompliant or failed to make significant or sustained improvements in her parenting skills or her relationship with Child. During the multiple years that Child has been removed from her care, Mother has continually retraumatized him when given the opportunity by repeatedly blaming him for B.H.'s death. This blame continued during more recent family

therapy sessions, which eventually had to be terminated due to Mother's behavior toward Child. Mother calls Child a killer and a murderer. Child is absolutely terrified of Fiancé and fears that he intends to kill Child. Mother has also repeatedly accused Child of lying about Fiancé's abuse, and she chose to move to Georgia with Fiancé rather than stay in Indiana and attempt to reunify with Child. Every step of the way, Mother has put her relationship with Fiancé well above her relationship with Child.

[13] In short, there is no question that Mother's habitual pattern of behavior over the course of several years has resulted in Child's continued traumatization such that there exists no reasonable probability that the conditions will change. Mother's suggestion that the trial court's findings indicate that it failed to consider "the situation as it presents today" rings hollow. Appellant's Br. at 10. Indeed, her claims that she is presently "clearly able to parent children" because Child's siblings remain in her care, and that repairing the relationship between Child and Mother "is something that [is] going to take time[,]" wholly ignores the trauma she has caused and continues to cause Child, due to her lack of empathy and unwillingness to accept any responsibility for "the issues surrounding this case." *Id*. at 11-12. Ample evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that led to Child's removal and continued placement outside Mother's care will not be remedied.

Section 2 – Sufficient evidence supports the trial court's conclusion that termination is in Child's best interests.

[14] Mother also challenges the trial court's conclusion that termination of her parental rights is in Child's best interests. To determine whether termination is in a child's best interests, the trial court must look to the totality of the evidence. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. Termination of parental rights is not appropriate solely because there is a better home available for the child. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). However, in assessing a child's best interests, the trial court "must subordinate the interests of the parents to those of the child." *A.D.S.*, 987 N.E.2d at 1155. "[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification–and courts 'need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship.'" *E.M.*, 4 N.E.3d at 648 (quoting *K.T.K.*, 989 N.E.2d at 1235). "Permanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Recommendations of service providers, in addition to evidence that the conditions resulting in removal will not be remedied, 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.

[15] Here, DCS FCM Jessica Burge testified that termination of Mother's parental rights was in Child's best interests. FCM Burge testified that Mother was

substantially noncompliant with services and uncooperative with DCS throughout the entirety of this case, and then eventually "abandoned" Child and moved to Georgia. Tr. Vol. 2 at 206. FCM Burge was concerned about Mother's seeming unwillingness to love and support Child or to put Child's needs above her own. She recalled how Child was often traumatized by visits and/or therapy sessions with Mother, but that Child was doing "phenomenal" in his preadoptive placement. *Id*. at 209. FCM Burge opined that termination was in Child's best interests because he deserves "permanency. And he deserves to be in a stable home where he feels safe, where[] he [is] able to be a child. Where he's able to be loved." *Id*.

[16] Similarly, Child's therapist of three years, Laria Crews, opined that termination of Mother's parental rights was in Child's best interests. Child told Crews that he would "run away" if he had to go back to live with Mother. *Id*. at 175. Crews believed that Child had made considerable progress in therapy and that termination, and removing his considerable fears about reunification with Mother, was imperative to his mental and emotional health.

[17] This testimony, in addition to the already mentioned evidence that the conditions resulting in Child's removal from Mother's care will not be remedied, is sufficient to show by clear and convincing evidence that termination of Mother's parental rights is in Child's best interests. Child himself testified in detail regarding the lack of love he feels for and from Mother and that his wish is for termination and adoption by his current placement. The trial court found Child's testimony "compelling[,]" noting that "permanency is so

important and paramount to this young man" that it would be "unfair to [Child] to delay such permanency." Appealed Order at 4.

[18] Mother directs us to testimony suggesting that allowing for Child's current placement family to have a guardianship would be an appropriate alternative to termination of her parental rights. This is simply a request to reweigh the evidence, which we may not do. The trial court considered the totality of the evidence and concluded that the less restrictive "option of guardianship would actually be detrimental to [Child's] well-being" and that Child deserves to "move on with his life." *Id*. We reiterate that a trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022)*, trans. denied* (2023). We affirm the trial court's termination order.

[19] Affirmed.

Bailey, J., and Pyle, J., concur.