MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of:

B.K. (Minor Child),

and

J.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

February 5, 2021

Court of Appeals Case No. 20A-JT-1757

Appeal from the Allen Superior Court

The Honorable Charles Pratt, Judge

Trial Court Cause No. 02D08-2001-JT-24

Appellee-Petitioner.

Altice, Judge.

Case Summary

[1] J.F. (Mother) appeals from the involuntary termination of her parental rights to her minor daughter B.K. (Child). Mother presents one issue for review, which we restate as follows: Did the Indiana Department of Child Services (DCS) present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Child's removal from Mother's care will not be remedied?

[2] We affirm.

Facts & Procedural History

[3] Child was born to Mother and S.K. (Father) (collectively, Parents) in March 2018. At that point, DCS was already involved with the family because A.K., Parents' two-year-old daughter, had been adjudicated a CHINS and removed from their care since the end of 2016 due to unstable housing and drug abuse.

Parents were generally noncompliant with services in A.K.'s CHINS matter until early 2018, when they began to partially comply with services, visit A.K., and submit to drug screens.

[4] After Child's birth, Parents and Child lived in the home of Father's mother (Grandmother) and her husband, with Grandmother caring for Child. Around September 2018, Parents stopped complying with services ordered in A.K.'s CHINS matter and were testing positive for drugs. On November 1, 2018, Mother tested positive for fentanyl. Parents had also been removed by police from the home around this time after Father injured Grandmother with scalding liquid. Grandmother has not communicated with Parents since November 2018.

[5] On or about November 6, 2018, DCS took Child into emergency custody and placed her in foster care. Parents appeared at the detention hearing two days later, and the juvenile court entered a provisional order, providing for supervised parenting time through Lifeline and directing Parents to, among other things, cooperate with DCS caseworkers, submit to random drug screens, participate in homebased services, and comply with substance abuse treatment recommendations.

[6] Parents partially complied with services in November and December 2018, while they lived out of a car. On December 28, 2018, DCS family case manager (FCM) Jessica Norfleet, who had been working with the family since 2017 and had encountered difficulty reaching Parents, went to Lifeline to talk

with them during a supervised visit and obtain a drug screen. Parents became defensive, began using obscenities toward FCM Norfleet, and refused to submit to the drug screens. They also indicated that they did not need homebased services. This was the last date that Parents saw Child or participated in services.[1]

[7] On March 4, 2019, the juvenile court held a CHINS factfinding hearing,[2] which Parents did not attend. Their whereabouts were unknown. The court determined that Child was a CHINS and entered a dispositional order. The court ordered parents to, among other things, cooperate with caseworkers, maintain contact with DCS, participate in homebased services and all drug treatment recommendations, submit to random drug screens, and participate in supervised visits with Child. Upon recommendation of DCS, Child was returned to the care of Grandparents, where she has since remained.

[8] After December 2018, Parents became totally noncompliant with services, did not visit Child, and failed to stay in contact with DCS. In June 2019, FCM Norfleet spoke with Father in jail, where he indicated that he was homeless and not with Mother anymore. Father did not know of Mother's whereabouts and opined that the best thing for Child was to stay with Grandparents. Mother

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[1] Parents also did not comply with court-ordered services in A.K.'s CHINS case, which proceeded toward termination of parental rights in April 2019. Their parental rights with respect to A.K. were terminated on April 28, 2020.

[2] An amended CHINS petition was filed at this hearing.

contacted DCS once in October 2019 and spoke with FCM Norfleet's supervisor. Mother asked for a referral to Genesis House because she was afraid that she would end up killing herself if she remained on the same path. The supervisor made the referral and told Mother to go to Parkview Hospital for an evaluation to determine if she was stable and healthy enough for inpatient treatment. The next day, FCM Norfleet learned that Mother did not go to the hospital or Genesis House. DCS did not hear from Mother again.

[9] At the CHINS permanency hearing in January 2020, the juvenile court changed the permanency plan for Child to termination of parental rights. DCS then filed the instant termination petition on January 27, 2020. Mother and Father were each represented by appointed counsel, but neither personally appeared in the termination proceedings. Further, Mother never appeared for any of the CHINS hearings after 2018, and Father appeared only once for a review hearing in September 2019.

[10] The termination factfinding hearing was held on June 11, 2020. Several exhibits were admitted, and FCM Norfleet, Grandmother, and CASA Nicole Fischer testified. Grandmother indicated that she and her husband wished to adopt Child. FCM Norfleet and Fischer both opined that termination of parental rights was in Child's best interests, as Child was in a very loving environment and thriving with Grandparents, and Parents had not participated in services or seen Child since December 2018. FCM Norfleet testified that Parents had an established pattern of not being willing or able to care for their

children and noted the recent termination of their parental rights to A.K. and their relinquishment of custodial rights to another child, A.H., in 2010.[3]

[11] On August 28, 2020, the juvenile court issued its order terminating Mother and Father's parental relationship with Child. Mother now appeals.[4]

Discussion & Decision

[12] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. In deference to the trial court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

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[3] When parental rights were terminated with respect to A.K. in April 2020, A.K. had been in the care of relatives – an aunt and uncle – for more than three years. These relatives wished to adopt A.K. The details regarding the custody of A.H. are not set out in the record.

[4] Father does not participate in this appeal.

[13] We recognize that the traditional right of parents to "establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.,* 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

[14] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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.
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> (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
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> (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. Here, the juvenile court found subsection (b)(2)(B)(i) satisfied by clear and convincing evidence.

[15] As the sole basis of her appeal, Mother *asserts* that DCS failed to present clear and convincing evidence that the conditions that resulted in Child's removal will not be remedied. Danielle L. Flora, Mother's appellate counsel, however, makes this bald assertion in a single sentence with absolutely no supporting argument or analysis, not even an adequate summary of the argument. We direct counsel to Indiana Appellate Rules 46(A)(7) and (8), which provide in relevant part:

> (7) Summary of Argument. The summary should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. It should not be a mere repetition of the argument headings.
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> (8) Argument. This section shall contain the appellant's contentions why the trial court or Administrative Agency committed reversible error.
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> > (a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.
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> > (b) The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the

> appeal were raised and resolved by any Administrative Agency or trial court.
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[16] While counsel provided us with the applicable standard of review and statutory requirements of I.C. § 31-35-2-4(b)(2), she did not set out any of the caselaw relevant to subsection (b)(2)(B)(i). Even more shocking, she does not discuss any of the facts of this particular case or apply them to the applicable law. Counsel simply leaves it to this court to fashion an argument for Mother. That is not our responsibility. *See Ramsey v. Review Bd. of Ind. Dep't of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003) ("We will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.") (quoting *Terpstra v. Farmers & Merchants Bank*, 483 N.E.2d 749, 754 (Ind. Ct. App. 1985), *trans. denied*); *see also Galvan v. State*, 877 N.E.2d 213, 216 (Ind. Ct. App. 2007) (finding a violation of App. R. 46(A)(8) where counsel "cited and summarized/quoted from a plethora of sentencing cases" but did not "take the time to apply any of them to the specific case at hand" and, thus, "offer[ed] no assistance to us in addressing [the] appeal"). As a result of counsel's absolute failure to present a cogent argument, we find the only issue raised on appeal to be waived. *See, e.g.*, *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 373 n.2 (Ind. Ct. App. 2006) (finding issue waived where the father failed to develop a cogent argument), *trans. denied*.

[17] Waiver notwithstanding, we conclude that the evidence overwhelmingly – indeed, completely – supports the juvenile court's determination that a reasonable probability exists that the conditions that resulted in the Child's removal from Mother's care will not be remedied. In making this determination, the juvenile court was tasked with judging Mother's fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed circumstances. *See In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). This included an evaluation of Mother's habitual patterns of conduct to determine the probability of future neglect and her response to services offered by DCS. *See id*. ("A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment.").

[18] The undisputed evidence establishes that after Mother tested positive for fentanyl and Child was removed from her care in early November 2018, she cooperated with DCS for no more than two months and attended only one hearing, the detention hearing on November 8. After December 2018, Mother did not engage in services, keep in contact with DCS, attend hearings, visit with Child, or do *anything else* to show that she had any interest in reunification. Similarly, Mother's noncompliance in A.K.'s CHINS case, which had been pending since 2016, resulted in termination of her parental rights with respect to A.K. in April 2020. At the time of the factfinding hearing in this case, Mother's whereabouts were unknown and she had not seen Child or participated in services for eighteen months. It would be folly to suggest that the juvenile

court's decision to terminate Mother's parental rights was anything but proper under the circumstances.

[19] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.