

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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ATTORNEY FOR APPELLANT:  
N.C. (MOTHER)

Cara Schaefer Wieneke  
Brooklyn, Indiana

ATTORNEY FOR APPELLANT:  
L.P. (Father)

Victoria Bailey Casanova  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:  
INDIANA DEPARTMENT OF  
CHILD SERVICES

Theodore E. Rokita  
Attorney General of Indiana

Abigail R. Recker  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of: E.C. and D.C.-  
W. (Minor Children),

and

N.C. (Mother) and L.P. (Father),  
*Appellants-Respondents,*

v.

April 15, 2021

Court of Appeals Case No.  
20A-JT-1979

Appeal from the Putnam Circuit  
Court

The Honorable Matthew Headley,  
Judge

Trial Court Cause No.  
67C01-2006-JT-19  
67C01-2006-JT-20

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The Indiana Department of  
Child Services,  
*Appellee-Petitioner.*

**Tavitas, Judge.**

### **Case Summary**

- [1] In this consolidated appeal, N.C. (“Mother”) appeals the termination of her parental rights to D.C.-W. and E.C., and L.P. (“Father”) appeals the termination of his parental rights to E.C. Mother and Father challenge the sufficiency of the evidence to support the termination of their parental rights. Despite three years of services, Mother and Father were unable to achieve the stability needed by D.C.-W. and E.C. Finding that the Putnam County Department of Child Services (“DCS”) presented sufficient evidence, we affirm.

### **Issue**

- [2] Mother and Father raise one issue, which we restate as whether DCS presented sufficient evidence to support the termination of Mother’s and Father’s parental rights.

## Facts

- [3] Mother has three children: D.C.-W., who was born in July 2007; E.C., who was born in October 2008; and D.M., who was born in September 2016. T.W. is the biological father of D.C.-W<sup>1</sup>; L.P., Father, is the biological father of E.C.; and S.M. is the biological father of D.M.<sup>2</sup>
- [4] Beginning in March 2017, DCS received seven reports regarding Mother's children. The reports alleged domestic violence, child neglect, physical abuse, and sexual abuse of the children by S.M.<sup>3</sup> Mother and S.M. were living in a motel with the children. Mother suffers from bipolar disorder, has seizures and "some blackouts," and refused to take medication. Tr. Vol. II p. 32.
- [5] E.C. was "very aggressive" toward Mother and exhibited "sexualized behaviors" toward D.C.-W., including "hump[ing] her." *Id.* at 28. On May 4, 2017, E.C. kicked Mother in the chest as Mother tried to get him out of the backseat of her car, and D.M., the infant, was bruised during the incident.
- [6] On May 16, 2017, the children were present during a domestic violence incident between Mother and S.M. S.M. held Mother down by her neck as

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<sup>1</sup> T.W. voluntarily terminated his parental rights to D.C.-W., and he is not a party to this appeal.

<sup>2</sup> D.M. and S.M. are not involved in this termination of parental rights action.

<sup>3</sup> S.M. was convicted in 1999 of "2 counts of rape with a 12 year old." Tr. Vol. IV p. 62.

D.M. was “laying [sic] right next to her.” *Id.* at 29. E.C. jumped on S.M.’s back to protect Mother, and E.C. hit S.M.

[7] The family case manager (“FCM”) met with Mother to prepare a safety plan. Part of the safety plan included: (1) Mother requesting a protective order against S.M.; (2) the placement of D.C.-W. and D.M. with maternal grandmother; and (3) the placement of E.C. with Father. Three days later, however, Mother texted the FCM and said that she wanted “to get back together” with S.M. *Id.* at 30.

[8] Due to Mother’s failure to provide a home free of domestic violence and Mother’s failure to follow the safety plan, DCS removed the children from Mother’s care and filed a petition alleging that the children were children in need of services (“CHINS”) on May 24, 2017, based on Indiana Code Section 31-34-1-1.<sup>4</sup> In support of the petition, DCS alleged:

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<sup>4</sup> Indiana Code Section 31-34-1-1 provides:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent, guardian, or custodian is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

- [Mother] has physically abused her son [E.C.].
- [Mother] and [S.M.] have committed acts of domestic violence against one another, in the presence of the children, and involving the children such that the children were left with marks on their persons.
- [Mother] has untreated mental health issues which negative [sic] impact the children's safety and well-being.
- All of the children are not able to get proper sleep due to frequent violent arguments in the home.
- [E.C.] has become aggressive as a response to fights between [Mother] and [S.M.], feeling a need to protect his mother, which has in turn affected his academic performance.
- [D.C.-W.] has stated that she does not feel safe in the home.
- [D.M.], the baby, has had visible injuries due to fighting between the parents.
- [Mother] has violated safety plans she put in place to protect the children.
- [Mother] has failed to obtain a Protective Order between [S.M.] and the children.
- [Mother] has been unwilling to cooperate with the DCS in order to provide safety for the children.

- [S.M.] has been unwilling to cooperate with the DCS in order to provide safety for the children.

Tr. Vol. IV p. 74. The parents admitted that the children were CHINS, and the trial court adjudicated the children to be CHINS on July 26, 2017.

[9] In October 2017, the trial court ordered Mother, in part, to: (1) maintain suitable, safe, and stable housing; (2) secure and maintain a legal and stable source of income; (3) refrain from consuming illegal controlled substances; (4) complete a parenting assessment and follow all recommendations; (5) complete a substance abuse assessment and follow all treatment recommendations; (6) submit to random drug screens; (7) complete a psychological evaluation and complete all recommendations; (8) take all prescribed medications; and (9) attend all scheduled visitations.

[10] The trial court ordered Father, in part, to: (1) notify the FCM of changes of address; (2) ensure that the children are not removed from the county for a period of more than seventy-two hours without the specific consent of the FCM; (3) maintain suitable, safe and stable housing; (4) secure and maintain a legal and stable source of income; (5) refrain from using illegal controlled substances; (6) abstain from alcohol; (7) complete a parenting assessment and follow all recommendations; and (8) attend all scheduled visitations.

Additionally, in August 2019, the trial court ordered Mother and Father to participate in the children's mental health services.

[11] Mother struggled with “stability in housing, employment, transportation, [and] relationships.” Tr. Vol. II p. 37. Although Mother participated in individual therapy and home-based case management services, she was unsuccessful in resolving the issues that led to the CHINS proceeding.

[12] Mother failed to successfully complete therapy because her “thinking patterns were very, very rigid and there was a lot of emotionality.” *Id.* at 143. Mother had difficulty following through with plans and accepting accountability for her own role in her problems. Mother did, however, make some progress with the management of her mood and emotions. According to Mother’s therapist, in order to successfully complete therapy, Mother needed to obtain employment, housing, a driver’s license, and learn to function without “getting off track” by “blaming someone else” for problems. *Id.* at 145.

[13] Mother repeatedly changed her employment and housing during the proceedings. Mother often lived with her parents in a one-bedroom home in which multiple people resided. At one point, Mother lived in a vehicle outside her parents’ residence. Mother also maintained an occasional relationship with S.M. and sometimes lived with him. In 2018, Mother was convicted for invasion of privacy, a Class A misdemeanor, for violating a no contact order prohibiting contact with S.M. Furthermore, at the time of the termination of parental rights hearing, DCS did not know where Mother was living. Mother claimed to reside with her parents, but Mother would not allow DCS to visit the residence. Mother was employed at the time of the termination of parental rights hearing; however, she was unable to work due to a health issue. Mother

did obtain both a valid driver's license and a vehicle in the fall of 2019. Soon thereafter, however, Mother totaled the vehicle in a crash. Mother often relied on S.M. for transportation.

[14] Beginning in October 2017, DCS instituted trial home visits between Mother and the children; the trial home visits were terminated in January 2018 because of "continued violence between the parents." Tr. Vol. IV p. 107. Mother's visitations were supervised after she tested positive for spice in November 2019.

[15] DCS was concerned that, if Mother failed to participate in D.C.-W.'s mental health treatment during the CHINS and termination of parental rights proceedings, Mother would not be involved with D.C.-W.'s treatment during reunification, which could be "catastrophic for [D.C.-W.]" Tr. Vol. II p. 204. Mother's only involvement in the children's mental health treatment was one phone call to E.C.'s therapist.

[16] Father also made minimal progress during the proceedings. Father failed to establish stable housing, his employment "chang[ed] a lot," he was inconsistent with staying in contact with DCS, and he was unable "to provide for [E.C.'s] needs." *Id.* at 37, 44. E.C. was placed in Father's care at the beginning of the CHINS proceeding; however, Father moved with E.C. to Indianapolis without informing DCS. The home in Indianapolis had other families living in it and did not have enough beds for all of the residents. In September 2017, the trial court removed E.C. from Father's care, and E.C. was placed in foster care. Father continued to change his housing every few months. Although Father



maintained employment for the most part, Father had trouble budgeting and repeatedly had trouble with his possessions and money being stolen. Father lived with various relatives, in a tent, in a rooming house, in a truck, and in motels. Father's life was "full of drama." *Id.* at 191. DCS lost contact with Father until Father's family consultant saw Father in Terre Haute in May or June of 2020. At that time, Father, his fiancé, and their three teenagers were renting a four-bedroom house in Terre Haute. According to Father, they moved into the house in mid-May 2020.

[17] Father visited with E.C. inconsistently, and E.C. would become disappointed, frustrated, and anxious when Father did not appear for scheduled visits. During the proceedings, Father repeatedly tested positive for THC, methamphetamine, and amphetamine.<sup>5</sup> In February 2020, Father tested positive for methamphetamine after a supervised visit. Accordingly, Father's visitations were suspended, and Father was ordered to enroll in substance abuse treatment and to present negative drug screens on at least four random drug screens at least one week apart in order for the visits to resume. Father did not enroll in substance abuse treatment, and visitation never resumed.

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<sup>5</sup> In January and February 2020, Father tested positive for methamphetamine and amphetamine. Further, a trial court order admitted at the termination of parental rights hearing provides that Father tested positive for methamphetamine immediately after a semi-supervised visit in September 2019. In July 2020, February 2020, September 2019, April 2018 (twice), and March 2018 (twice), Father tested positive for THC. Furthermore, Father was arrested for operating a vehicle as an habitual traffic violator, and in November 2019, Father was charged with possession of paraphernalia, a Class C misdemeanor.

[18] E.C. has been in the same pre-adoptive foster home for three years. When he arrived at the foster home, E.C. had defiant behaviors and would hit his head against the wall and floor after visiting Mother. E.C. received wraparound services, which is an intensive program providing services for four to eight hours a week depending on the child's mental health needs. E.C. made progress and completed the wraparound services. E.C. then received home-based case management and individual therapy. Additionally, a life skills specialist worked with E.C. on “[f]ollowing rules, being more respectful, making good choices,” and “[l]earning to communicate his feelings.” Tr. Vol. II p. 97. E.C.'s therapist also worked with E.C. on expressing himself and talking about his feelings. E.C. has improved his ability to manage his emotions, to communicate, and to be respectful. E.C.'s grades have improved, he is on the honor roll, and he is taking more advanced classes. E.C. is happy about going to school. E.C. also helps around the house, plays the violin, and participates in sports. A “safe consistent environment” is important to continue E.C.'s progress. *Id.* at 105.

[19] D.C.-W. has received school-based therapy and school-based case management services. D.C.-W. was diagnosed with chronic post-traumatic stress disorder. D.C.-W. struggled with lying and “sexually inappropriate behaviors.” *Id.* at 91. According to D.C.-W.'s foster care coordinator, D.C.-W. needs “continued structure, a routine, [participation in] her services such as [with] her therapist, life skills, and then continuing to do after-school activities.” *Id.* at 93. D.C.-W.'s therapist's goals are for D.C.-W. to learn to express herself more openly,

to tell the truth more, and to “tell her own truth.” *Id.* at 133. D.C.-W. was, unfortunately, moved to a different foster home after the discovery that D.C.-W. was watching pornographic materials on YouTube and the discovery that she took nude photographs of herself and two foster siblings. Although D.C.-W. has made progress, she needs continuing therapy. D.C.-W. was “retraumatized” by the loss of permanent relationships, including the change of foster parents. *Id.* at 135. D.C.-W. needs “stability and some sort of permanence and closure in her life.” *Id.* at 136.

[20] In June 2020, DCS filed a petition to terminate the parental rights of Mother and Father. After a hearing in August 2020, the trial court issued findings of fact and conclusions thereon terminating Mother’s and Father’s parental rights. Mother and Father now appeal.

## Analysis

[21] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*,

134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[22] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.<sup>6</sup> Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s and Father’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we

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<sup>6</sup> Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

consider only the evidence and reasonable inferences that support the court's judgment. *Id.*

[23] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

***A. Probability that Removal Conditions will be Remedied***

[24] Father argues that the trial court’s finding regarding whether there is a reasonable probability that the conditions that resulted in E.C.’s removal or the reasons for placement outside the home of the parents will not be remedied is clearly erroneous.<sup>7</sup> “In determining whether ‘the conditions that resulted in the [E.C.’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “First, we identify the conditions that led to removal; and second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that

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<sup>7</sup> Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence a reasonable probability exists that either: (1) the conditions that resulted in E.C.’s removal or the reasons for placement outside the home of the parents will not be remedied; (2) the continuation of the parent-child relationship poses a threat to the well-being of E.C.; or (3) E.C. has, on two (2) separate occasions, been adjudicated a CHINS. *See, e.g., Ma.H.*, 134 N.E.3d at 46 n.2. The trial court also found “by clear and convincing evidence that each Child’s continuing emotional and physical development would be harmed by a return to their parents.” Appellants’ Joint App. Vol. II p. 82. Father does not challenge this finding and, thus, has waived any argument regarding the sufficiency of the evidence to support this statutory element. *See* Ind. Appellate Rule 48(A)(8)(a) (issue must be supported by cogent argument, including citations to the record and relevant case law). Waiver notwithstanding, we will address Father’s argument regarding whether the conditions that resulted in E.C.’s removal or the reasons for placement outside the home of the parents will not be remedied.

delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *Id.*

"Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

[25] Regarding whether there is a reasonable probability that the conditions that resulted in E.C.'s removal or the reasons for placement outside the home of the parents will not be remedied, the trial court found:

7. In applying the law to this case, the Court expressly finds by clear and convincing evidence that there is a substantial probability of future neglect. Mother still does not have stable housing, employment, or transportation. [Father], while he does finally have a home, has failed to do anything whatsoever regarding his methamphetamine usage<sup>[8]</sup> and thus his visitation with [E.C.].

8. In applying the law to this case, the Court expressly finds by clear and convincing evidence that the conditions that resulted in each Child's placement outside the home have not been

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<sup>8</sup> Father argues that the evidence does not support the trial court's finding that he "failed to do anything whatsoever regarding his methamphetamine usage." Appellants' Joint App. Vol. II p. 83. DCS presented evidence that Father did not comply with the order to obtain substance abuse treatment despite repeated positive test results for methamphetamine. Father argues that he simply stopped using methamphetamine and that negative drug tests on April 2, 2020, and July 28, 2020, demonstrate Father's success. Father's argument is merely a request that we reweigh the evidence, which we cannot do.

Father also argues that Finding 43 is clearly erroneous. This finding provides, in part: "[E.C.'s] Father tested positive for methamphetamine while Mr. Fissell had the case, and he tried to get him into substance abuse treatment to no avail." *Id.* at 73. Father correctly argues that FCM Fissell did not refer Father to substance abuse treatment. The error, however, is harmless, as Father was later referred to substance abuse treatment and did not comply.

remedied. Neither [Father] nor Mother are [sic] in a position to reunify safely at the present time, and the Court declines to make the Children wait—3 years is too long already.

9. The Court is terminating parental rights as a result of a combination of failings and not as the result of a single incident or factor. It is the Court's finding that there is an untenable risk of future removals if either Child is returned to a Parent's care.

Appellants' Joint App. Vol. II pp. 82-83.

[26] According to Father, this conclusion is clearly erroneous because he stopped using methamphetamine and secured proper housing. Although E.C. was initially placed in Father's care, E.C. was soon removed due to Father's unstable housing situation. E.C. was never returned to Father's care. DCS presented evidence that, during the proceedings, which commenced in May 2017, Father moved every few months and was unable to maintain housing that was appropriate for E.C. Father also tested positive for methamphetamine on three occasions and failed to participate in substance abuse treatment. Father was also inconsistent in attending visits with E.C. and has not seen E.C. since February 2020.

[27] In May 2020, Father was able to secure appropriate housing in Terre Haute, and at the time of the termination of parental rights hearing, Father claimed that he had stopped using methamphetamine. Father, however, continued to test positive for THC. Service providers were concerned with Father's ability to maintain his housing given his historic housing instability. The trial court was entitled to weigh Father's past behavior and habitual conduct in determining



the sustainability of his recent changed conditions. The trial court's finding is not clearly erroneous.

### ***B. Best Interests***

[28] Next, Father challenges the trial court's finding that termination of Father's parental rights was in E.C.'s best interests, and Mother challenges the trial court's finding that termination of Mother's parental rights was in E.C.'s and D.C-W's best interests. When determining what is in a child's best interests, trial courts may consider a variety of factors. *Matter of M.I.*, 127 N.E.3d 1168, 1171 (Ind. 2019). "To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *Ma.H.*, 134 N.E.3d at 49. "Central among these interests is children's need for permanency." *Id.* "[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification." *Id.*

[29] Although the trial court found that termination of Mother's and Father's parental rights was in the children's best interests, Father argues that "the trial court's conclusion . . . appears to be little more than a conclusion that there is a better home for him than that which Father could ever provide." Father's Br. p. 23. Mother argues that termination of parental rights is not in the children's best interests because: the children wanted to live with her; D.C.-W. did not have a pre-adoptive home; D.C-W and E.C would be separated; termination of parental rights would be traumatic on the children; and Mother was preparing a suitable space for the children and had found a new vehicle.

[30] During these proceedings, Mother and Father both struggled to maintain stable housing suitable for the children. Mother also struggled with maintaining employment, transportation issues, and questionable relationships. Father additionally struggled with drug use and failed to participate in substance abuse treatment.

[31] The parents' neglect of the children's needs has resulted in trauma, mental health issues, and behavior issues. D.C.-W. struggles with sexualized behaviors and has been diagnosed with chronic post-traumatic stress disorder. D.C.-W.'s therapist testified that D.C.-W. needs "stability and some sort of permanence and closure in her life." Tr. Vol. II p. 136. Stability for D.C.-W. would involve a "safe" home where "she knows that there's not going to be a major change around the corner." *Id.* at 137. When E.C. entered foster care, he had significant mental health needs. E.C., however, has made significant strides, and he excels in a structured, stable environment. A "safe consistent environment" is important to continue E.C.'s progress. *Id.* at 105. Mother and Father are simply unable to address the children's special needs.

[32] The CASA, who was assigned to the children in September 2017, testified as follows regarding D.C.-W's best interest:

Concerning the present situation, I believe [D.C.-W's] best interest would be that she be allowed a stable home environment, one that could provide for her physical needs, her mental needs, . . . and even her spiritual needs. One that would encourage her to excel. One that would lead by example. One that she would not have to fear or be afraid of a situation arising or fear for her care.

*Id.* at 230. Regarding E.C., the CASA testified that E.C. needs “the same thing as [D.C.-W.]” *Id.* E.C. “excel[s] in a stable home environment” and also excels at school. *Id.* E.C. responds positively to his counselors, therapist, and life skills coordinator, practices the skills they teach him, and achieves his goals.

[33] Despite more than three years of services, Mother and Father are unable to provide E.C. and D.C.-W. with the stable, structured environment that both need to continue the progress made regarding their mental health. The trial court’s conclusion that termination of Mother’s and Father’s parental rights is in the children’s best interests is not clearly erroneous.

### **Conclusion**

[34] Sufficient evidence supports the termination of Mother’s parental rights to E.C. and D.C.-W. and Father’s parental rights to E.C. Accordingly, we affirm.

[35] Affirmed.

Najam, J., and Pyle, J., concur.