

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination  
of the Parent-Child Relationship  
of J.H. (Child);

J.P. (Father) and E.H. (Mother),

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

April 27, 2022

Court of Appeals Case No.  
21A-JT-2637

Appeal from the Marion Superior  
Court

The Honorable Peter P. Haughan,  
Magistrate

Trial Court Cause No.  
49D15-2001-JT-50

**Najam, Judge.**

## **Statement of the Case**

[1] In this consolidated appeal, J.P. (“Father”) and E.H. (“Mother”) (collectively, “Parents”) appeal the juvenile court’s order terminating their parental rights over their minor child, J.H. (“Child”). Mother raises the following issue for our review:

1. Whether certain findings of fact by the juvenile court are supported by the evidence.

In addition, Parents both raise the following issue:

2. Whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of their parental rights.

[2] We affirm.

## **Facts and Procedural History**

[3] Father and Mother have been in a relationship for more than ten years, and they have one child together, Child, born June 22, 2018. When Child was born, he had “a little marijuana in his system.” Tr. at 7. On July 25, 2018, DCS filed a petition alleging Child to be a Child in Need of Services (“CHINS”) because Parents had “failed to provide or are unable to provide the Child with a safe, stable and appropriate home free from substance abuse” and because Mother “struggles with mental health issues” and “has a history of violence toward others.” Mother’s App. Vol. 2 at 20. That same day, the

CHINS court ordered DCS to remove Child from Parents' home. Child was ultimately placed in a foster home.

[4] On November 16, the CHINS court held a hearing on DCS' petition. Mother admitted that Child was a CHINS because she "need[ed] assistance addressing the special medical needs of her child[.]" Ex. at 39. Father waived his right to a fact-finding hearing. Accordingly, the court adjudicated Child a CHINS. The court then entered a parental participation order and ordered Parents to participate in services.

[5] On January 17, 2020, the court held a permanency hearing. The court found that "no service provider is recommending that this [C]hild be returned to the care of the Mother or the Father," that neither Parent had "completed services designed to enhance their ability to parent," and that Mother had not "consistently screened and she continues to struggle with addressing her significant mental health issues." *Id.* at 72. In addition, the court found that the "reasons that resulted in Court intervention have not been remedied." *Id.* Accordingly, the court changed the permanency plan from reunification to adoption. The next day, DCS filed a petition to terminate Mother's and Father's parental rights over Child.

[6] Following a fact-finding hearing, the juvenile court entered the following findings of fact and conclusions thereon:

16. During the pendency of the CHINS action, the Parents had patterns of engaging in services, failing to engage in services,

being consistent in parenting time, and then failing to be consistent in parenting time.

17. The Parents were only able to consistently engage in their services and parenting times for a few months at a time before again becoming inconsistent.

18. To the extent that the Parents did participate in services, they did not remedy the reasons for DCS's involvement with the family.

19. The Parents did not ever consistently engage in random drug screens and have only produced a few screens throughout the life of the case. Neither Mother nor Father has provided a screen to DCS in over a year.

20. Mother did not prove through the life of the CHINS her ability to maintain sobriety.

21. After being unsuccessfully discharged from outpatient treatments, Father did complete a stay at rehab. He told the FCM that he needed to address his alcoholism but testified he needed rehab to address his addiction to marijuana.

22. Father testified that he drank the day before court and used marijuana a couple of days before the hearing.

23. Racia Murray is the parenting time facilitator for the Parents. The Parents have engaged in supervised parenting time with the Child, but it has been inconsistent and there have been issues at parenting times.

24. On the date of the TPR trial, Ms. Murray recommended that Mother's parenting time be suspended due to her behavior during

parenting time in being disengaged, leaving for a significant period of time during the visits, and making threats of violence against the facilitator.

25. These behaviors have resulted in the facilitator being forced to end the visits early.

26. Mother has missed eight to twelve visits of the twelve visits scheduled for her in the last month.

27. Throughout the pendency of the CHINS case, Ms. Murray has always recommended that Mother's parenting time remain supervised and would have concerns for the Child's safety if parenting time with Mother were not supervised.

28. Father has missed six (6) to eight (8) of the last twelve visits scheduled for him in the last month.

29. There were periods where both of the Parents consistently made more of their scheduled visits, but the Parents were only able to maintain consistency for a couple of months before again becoming inconsistent.

30. On the date of the TPR trial, Ms. Murray recommended that Father's parenting time continue[] to be supervised due to issues of engagement, cleanliness, and lack of proper supervision of a three-year-old.

31. Mother's behavior throughout the life of the CHINS case has been observed by providers to be volatile. She has schizophrenia and reports to hear voices. This leads to violent outbursts and verbal altercations between parents when Father would try to intervene.

32. On September 19, 2019, Mother was charged with Battery Against a Public Safety Official (Level 6 Felony), Resisting Law Enforcement by Drawing or Using a Weapon (Level 6 Felony), and Resisting Law Enforcement (Class A Misdemeanor) in the Marion Superior Court, Criminal Division, under cause number 49G09-1909-F6-036876. On November 26, 2019, Mother pled guilty to the felony Battery charge pursuant to a plea agreement, and the court sentenced Mother to 365 days in the Marion County Jail, 357 days suspended, the sentence was to run consecutive to all other sentences that Mother is serving on the date of the plea, 357 days of probation, and court-ordered classes including a program of anger management as a condition of probation. On December 16, 2020, Mother failed to appear for a hearing on violation of her probation. The court issued a warrant for her arrest. Mother was taken into custody on January 31, 2021. On February 3, 2021, Mother admitted to allegations 1-3 of the violation of probation, and the court revoked her probation and ordered her discharged from probation.

33. Mother has been working with a Life Skills Clinician, Kirk To[w]les, for ten (10) years. Mr. To[w]les has known Father since 2013 or 2014.

34. Mr. To[w]les works with Mother on her sobriety and managing her illness within normal limits.

35. Her current living conditions are terrible. Her home, which burned down prior to the trial, is littered with trash, and there are burned cigarette butts in the bed, holes in the wall, and broken windows.

36. Mom is not able to manage her own deplorable living conditions and could not have the Child living with her.

37. Father resided with Mother in the deplorable conditions Mr. To[w]les described.

38. Mr. To[w]les saw Mother intoxicated as recently as the week before the trial.

39. Mr. To[w]les has had regular conversations with Mother about her continued use of illegal substances and how they could exacerbate her schizophrenia. However, Mother states that she needs to use non-prescribed substances to help her relax.

40. Based on Mr. To[w]les observations, Mother is not able to care for herself or a three-year old child at this time.

41. Mr. To[w]les has seen Father drunk on many occasions and actively drinking in nearly all of their interactions.

42. He had hoped Father would help Mother's living conditions, but he has observed that Father only contributes to the problem.

43. Mother was engaged in home-based casework with Linda Matthews of Healing Solutions, starting in March of 2020.

44. Ms. Matthews found the conditions of Mother's home to cause concern. There were cigarette butts in the bed, broken glass in the home, a plugged toilet, and a general lack of cleanliness.

45. Ms. Matthews worked with Mother to maintain a clean home but could never get Mother to keep the home up to standard.

46. Ms. Matthews last saw Mother in July or August of 2020 and observed the same issues in the home and discharged mother from her service unsuccessfully.

47. Father was engaged with his home-based caseworker, Brian Burns.

48. Mr. Burns identified four goals to address with Father. Those goals were to obtain transportation, obtain housing, obtain employment, and to develop good parenting skills.

49. As of the date of the termination trial, Father had not successfully completed any of the identified goals.

50. Mr. Burns testified that Father is not able to meet the needs of the Child as of the date of the termination trial.

51. Neither of the Parents has stable housing as the Parents' home burned down approximately a month before the termination trial.

52. Neither of the Parents has stable employment.

53. Neither of the Parents has access to transportation.

54. The Parents' contact information has changed numerous times during the pendency of the CHINS matter and neither consistently have access to a telephone.

55. Father was arrested at Mother's home on May 18, 2021. On May 19, 2021, Father was charged . . . with Criminal Trespass (Class A Misdemeanor) in the Marion Superior Court, Criminal Division, under cause number 49D26-2105-CM-015483. A no-



contact order was issued for Father. Father testified that Mother asked him to leave her home, but he returned later that night and he was subsequently arrested as a result.

56. Neither parent has completed services to address the issues that resulted in the filing of the CHINS petition.

57. FCM Frame-Bailey testified that she has consistently made efforts to address the needs of parents.

58. FCM Frame-Bailey testified that she has safety concerns for the [C]hild due to Mother's mental health and substance abuse, Father's continued substance abuse, and the condition of [P]arents' home.

59. The plan for the Child is adoption by the pre-adoptive foster care placement. The Child has been placed in his current pre-adoptive foster home [since] February 2019, and it is the only home he can remember. The [C]hild is bonded to his foster mother. The FCM has seen the [C]hild in the home and has no safety concerns.

60. DCS believes adoption by the current foster home is in the [C]hild's best interests.

61. DCS believes there is not a reasonable probability that the Parents will remedy the reasons for DCS's involvement in the case due to the length of time the case has been open and the Parents' progress in the referred services.

62. The Child needs consistency and structure that is being provided by his pre-adoptive foster home.

63. It is not in the Child's best interest to give the Parents more time to complete services. It has been nearly three (3) years since the CHINS case was filed with little to no progress made by parents who have never progressed beyond supervised parenting time.

64. The Child needs permanency.

65. The [Guardian Ad Litem ("GAL")], Alexia Peterson, supports the termination of parental rights so that the Child can be adopted and achieve a permanent and stable home. The GAL has seen the Child in the pre-adoptive foster home and has no safety concerns.

66. The Child appears to be bonded with the pre-adoptive foster parent and all of his needs are being met in the home.

67. The Parents' pattern of engaging in services, followed by ceasing services has caused this case to remain open for this Child for nearly three (3) years.

\* \* \*

70. Conditions Resulting in Removal or Reasons for Placement Outside the Home. IC 31-35-2-4(b)(2)(B)(i).

\* \* \*

g. The conditions that led to the Child's removal or placement and retention outside the home of Mother are: Mother's problems with substance abuse; Mother's issues with mental illness; Mother's lack of safe and stable housing; Mother's lack of stable employment; and

Mother's criminal behavior and the accompanying incarceration.

h. These conditions have not been remedied, and it is highly probable that these conditions will not be remedied, even if Mother was given additional time to remedy the conditions. The Child's CHINS case has been open for almost three (3) years on the day of trial. Mother continues to engage in substance abuse and display erratic behavior. She continues to lack stable housing and employment. She did not consistently engage in or successfully complete court-ordered services.

i. Mother demonstrated a lack of commitment to remedy the conditions and she is responsible for her failure to engage and/or successfully complete the court-ordered services. Mother has not consistently engaged in supervised visitation.

j. There is a substantial probability that future neglect or deprivation will occur because of Mother's failure to remedy the conditions.

k. The conditions that led to the Child's removal or placement and retention outside the home of Father are: Father's problems with alcohol and substance abuse; Father's lack of safe and stable housing; Father's lack of stable employment; and Father's criminal behavior and the accompanying incarceration.

l. These conditions have not been remedied, and it is highly probable that these conditions will not be remedied, even if [Father] was given additional time to remedy the conditions. The Child's CHINS case has been open for almost three (3) years on the day of trial. Father continues

to abuse alcohol and illegal substances and lacks a stable home and employment. He has not consistently engaged in or successfully completed court ordered services.

m. Father demonstrated a lack of commitment to remedy the conditions and he is responsible for his failure to engage and/or successfully complete the court-ordered services. Father has not consistently engaged in supervised visitation.

n. There is a substantial probability that future neglect or deprivation will occur because of Father's failure to remedy the conditions.

o. The Court finds that DCS has shown by clear and convincing evidence 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. IC 31-35-2-4(b)(2)(B)(i).

71. Threat to the Well-Being of the Child. IC 31-35-2-4(b)(2)(B)(ii).

\* \* \*

c. The Child's emotional and physical development are threatened by a continuing parent-child relationship with Mother and by Mother's custody. As stated above, Mother has not remedied her problems with substance abuse, her issues with mental illness, her lack of safe and stable housing, her lack of stable employment, and her criminal behavior and the accompanying incarceration. She did not consistently engage in or successfully complete the court-ordered services designed to remedy these

conditions. The Child's emotional and physical development would be subjected to a high risk of impairment if he was in Mother's custody.

d. The Child's emotional and physical development are threatened by a continuing parent-child relationship with Father and by Father's custody. Likewise, Father has not remedied the conditions that led to the Child's removal and retention from Father's custody. He has not consistently engaged in or successfully completed court-ordered services. It is highly likely the Child's development would be impaired if the Child was in Father's custody.

e. The Court finds that DCS has shown by clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship between the Parents and the Child poses a threat to the well-being of the Child. IC 31-35-2-4(b)(2)(B)(ii)-

72. Termination in Best Interests of the Child. IC 31-35-2-4(b)(2)(C).

\* \* \*

f. Mother has not demonstrated the ability and willingness to parent the Child, to provide the Child with a permanent, safe and stable home environment, and to provide for the Child's long-term and short-term needs.

g. Father has not demonstrated the ability and willingness to parent the Child, to provide the Child with a permanent, safe and stable home environment, and to provide for the Child's long-term and short-term needs.

h. Both the FCM and the GAL believe that the termination of parent-child relationship between the Parents and the Child and the adoption of the Child by his pre[-]adoptive foster care placement is in the Child's best interests.

i. The Court finds that DCS has shown by clear and convincing evidence that termination of the parent-child relationship between the Parents and the Child is in the best interests of the Child. IC 31-35-2-4(b)(2)(C).

Mother's App. Vol. 2 at 20-28. The juvenile court also found that DCS' plan to have Child adopted by his current foster placement was a satisfactory plan for the care and treatment of Child. Accordingly, the court terminated both Mother's and Father's parental rights over Child. This appeal ensued.

## **Discussion and Decision**

### *Standard of Review*

[7] Parents challenge the juvenile court's termination of their parental rights over Child. We begin our review of this issue by acknowledging that "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child

relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[8] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove:

(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.

\* \* \*

(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) (2021). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R.Y. v. Ind.*

*Dep't of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[10] Here, in terminating Parents' parental rights, the trial court entered extensive findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.



### *Issue One: Findings of Fact*

[11] Mother first contends that the juvenile court erred when it terminated her parental rights because several of the court's findings are not supported by the evidence. Specifically, Mother challenges findings number 20, 31, and 32. We address each argument in turn.

#### Finding Number 20

[12] Mother first challenges the juvenile court's finding number 20, in which the court found that "Mother did not prove through the life of the CHINS her ability to maintain sobriety." Mother's App. Vol. 2 at 21. Mother asserts that DCS "had not seen any drug screens from Mother for over a year prior to the termination trial," that the GAL "understood that Mother had not recently tested positive for any drug screens," and that "Mother testified that she passed recent drug screens from Gallahue [Community Hospital]." Mother's Br. at 16. And Mother maintains that "DCS produced absolutely no evidence to contradict" her testimony. *Id.* However, Mother's argument amounts to a request that we reweigh the evidence, which we cannot do.

[13] The evidence most favorable to the juvenile court's judgment demonstrates that Mother continues to use drugs. In its parental participation order, the court ordered that any drug screen that was not timely completed "will result in a positive indication." Ex. at 36. Despite that order, FCM Frame-Bailey testified that Mother had not screened for DCS "in over a year." Tr. at 136. In addition, Towles testified that he had been working with Mother to help her try

“to stop using” drugs. *Id.* at 73. But he testified that “she doesn’t refrain from using them.” *Id.* He also testified that Mother was “open” about her drug use and that she said she “need[s]” to use drugs because they help her “calm down.” *Id.* at 74. And Towles testified that he had seen Mother under the influence “a lot,” including as recently as “maybe a week” before the fact-finding hearing.” *Id.* Based on that evidence, a reasonable fact-finder could conclude that Mother did not demonstrate an ability to maintain her sobriety. Finding number 20 is supported by the evidence.

### Finding Number 31

[14] Mother next contends that the court erred when it found that “Mother’s behavior throughout the life of the CHINS case has been observed by providers to be volatile. She has schizophrenia and reports to hear voices. This leads to violent outbursts and verbal altercations between [P]arents when Father would try to intervene.” Mother’s App. Vol. 2 at 22. Mother first asserts that the court “did not have sufficient evidence” to find that she suffers from schizophrenia. Mother’s Br. at 15. Specifically, Mother contends that DCS “never introduced medical records or a qualified physician’s testimony that Mother is medically diagnosed with schizophrenia.” *Id.* However, Mother testified that she was diagnosed with “paranoid schizophrenia” when she was fifteen or sixteen years old. Tr. at 170. And Mother has not directed us to any authority to demonstrate that a person’s testimony regarding her own medical diagnosis is insufficient to support a finding that she suffers from that illness. The juvenile court was free to conclude from Mother’s testimony that she

suffers from schizophrenia. That portion of finding 31 is supported by the evidence.

[15] Still, Mother also challenges the portion of finding 31 in which the court found that her schizophrenia “leads to violent outbursts and verbal altercations[.]” Mother’s App. Vol. 2 at 22. Mother contends that the evidence demonstrates that she “was not violent.” Mother’s Br. at 16. However, Racia Murray, the visit facilitator, testified that Mother gets “really really upset,” and she will “wave her arms a lot.” Tr. at 64. In addition, Murray testified that Mother said she “was going to blow [Murray’s] brains out or that she was going to kill” Murray. *Id.* Murray also testified that she had overheard Mother say “that she was going to blow Ms. Rossy’s brains out” and “I am going to kill her, I am going to kill her, I am going to blow her brains out, I am going to kill her.” *Id.* at 37-38. Further, Murray testified that she has seen Mother become “verbally aggressive” and that Mother has “unpredictable behavior,” which makes her feel “unsafe.” *Id.* at 38. And Murray testified that Mother and Father “get into verbal altercations.” *Id.* That evidence supports the juvenile court’s finding that Mother has violent outbursts and gets into verbal altercations. Finding number 31 is supported by the evidence.

### Finding Number 32

[16] Finally, Mother challenges the court’s finding number 32, in which the court found that she had pleaded guilty to battery against a public safety official, that she was initially placed on probation, and that that placement was revoked.

Mother contends that that finding was not “supported by admissible evidence.” Mother’s Br. at 14. In particular, Mother asserts that, in order to make that finding, the court took judicial notice of the criminal records provided by the GAL, which were “printouts from ‘MyCase.’” *Id.* And Mother asserts that those printouts were “unofficial records that are not certified” and, thus, that the court erred when it took notice of them. *Id.*

[17] However, we need not determine whether the court erred when it took judicial notice of the records provided by the GAL. First, we note that Mother testified that she was convicted of battery against a public safety official in November 2019 and that she was placed on probation as a result of that conviction. *See Tr.* at 181. In other words, there is independent evidence beyond the MyCase records to support the court’s finding that Mother was convicted of battery and placed on probation. As such, that portion of finding number 32 is supported by the evidence.

[18] Still, Mother is correct that the only evidence that she violated the terms of her placement came from the MyCase records provided by the GAL. But even if the finding that Mother violated the terms of her probation were erroneous, we conclude that any error “was not so serious that it affected the trial court’s ultimate decision.” *A.B. v. Ind. Dep’t of Child Servs.*, 61 N.E.3d 1182, 1190 (Ind. Ct. App. 2016). Indeed, the court’s remaining findings demonstrate that Mother failed to consistently engage in services, continued to use drugs, had volatile behavior, had terrible living conditions, and failed to make any progress with services during the three years the case had been open. Based on those

other findings, we hold that any error in the portion of finding number 32 regarding the revocation of Mother’s probation was “not of such magnitude that it calls into question the court’s conclusion[.]” *St. John v. Marion Cnty. Dep’t of Pub. Welfare (In re A.C.B.)*, 598 N.E.2d 570, 573 (Ind. Ct. App. 1992). When considered in conjunction with the other evidence presented, any error in that portion of finding number 32 is harmless. *See id.*

[19] In sum, the findings challenged by Mother are either supported by the evidence or constitute harmless error.

### ***Issue Two: Sufficiency of the Evidence***

[20] Next both Mother and Father challenge the court’s conclusions (1) that the conditions that resulted in Child’s removal and the reasons for his placement outside of Parent’s care will not be remedied and (2) that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of Child. But because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only consider whether DCS presented sufficient evidence to prove that the conditions that resulted in Child’s removal and the reasons for placement outside of Parents’ home will not be remedied. In addition, Father contends that the court erred when it concluded that the termination of the parent-child relationship is in Child’s best interests. We address each contention in turn.

### **Reasons for Child’s Placement Outside of Parents’ Home**

[21] Mother and Father both contend that DCS did not present sufficient evidence to prove that the reasons for Child’s placement outside of their home will not be remedied. This Court has clarified that, given the wording of the statute, it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent’s rights should be terminated, but also any basis resulting in the continued placement outside of a parent’s home. *Inkenhaus v. Vanderburgh Cnty. Off. of Fam. & Child. (In re A.I.)*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Here, the juvenile court properly considered both the reasons for Child’s removal from Parents’ home and the conditions that prevented Child from being returned to Parents’ care. Put simply, Parents have not demonstrated any willingness or ability to provide a stable home for Child.

[22] We hold that the evidence supports the juvenile court’s findings and conclusion on this issue. To determine whether there is a reasonable probability that the reasons for Child’s continued placement outside of Parents’ home will not be remedied, the trial court should judge Parents’ fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep’t of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also “evaluate the parent[s]’ habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren].” *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered 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. *Id.* Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Id.*

[23] As to Mother, the evidence demonstrates that Mother did not successfully complete any service. Murry testified that Mother “always struggled with consistency with her supervised visits” and that Mother would leave visits “early.” Tr. at 30-31. Murray also testified that Mother would “sporadically” engage with Child during visits and that she had fallen asleep [m]ultiple times.” *Id.* at 34. In addition, Towles testified that Mother’s living conditions were “terrible” as there was “trash everywhere.” *Id.* at 70-71. Towles then testified that, while he attempted to help her manage her home, Mother “just could not do it.” *Id.* at 72. Towles also testified that Mother cannot “effectively” care for herself even with services in place and that Mother is not able to take care of her home. *Id.* Further, Towles testified that Mother is open about her drug use and continues to use drugs despite the effect it has on her schizophrenia. And Towles testified that Mother is not able to care for Child and that she is unlikely to obtain the skills to care for Child with more time. *See id.* at 79.

[24] As for Father, while he was initially compliant with parenting time, he missed six to eight of the last twelve visits and, when Father was at the visits, he was “not present in the moment.” Tr. at 30. Murray also testified that Father had only made “minor” improvements since she began working with him in October 2019. Further, Father continues to use drugs and consume alcohol.

By Father's own admission, he used marijuana a couple of days before the hearing, and he had "a couple" of beers the day before. *Id.* at 8. Indeed, Towles testified that "most times" he had seen Father, Father had "been drinking." *Id.* at 77. In addition, FCM Frame-Bailey testified that Father "lacked engagement in any DCS recommended service." *Id.* at 132. In particular, she testified that Father was not compliant with the random drug screens and that Father did not complete the parenting assessment.

[25] In regard to both Parents, the GAL testified that she still has the "same concerns" that she had in 2018 and that she had not seen "significant progress" from either Parent. *Id.* at 95. The GAL also testified that she did not believe additional time would be "helpful." *Id.* at 98. And FCM Frame-Bailey testified that, because Parents had not successfully completed services despite the "ample amount of time" they had been given, she did not believe Parents would remedy the reasons for DCS' involvement if given more time. *Id.* at 143.

[26] Parents' arguments on appeal are simply an invitation for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Based on the totality of the circumstances, we hold that the juvenile court's findings support its conclusion that there is a reasonable probability that the conditions that resulted in Child's removal and the reasons for his placement outside of Parents' home will not be remedied.



## Best Interests<sup>1</sup>

[27] Finally, Father contends that the juvenile court erred when it concluded that the termination of the parent-child relationship was in Child's best interests. In determining what is in a child's best interests, a juvenile court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[28] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not

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<sup>1</sup> At the beginning of her Argument, Mother purports to challenge the court's conclusion that termination of the parent-child relationship was in Child's best interests. *See* Mother's Br. at 19. However, Mother only argues that DCS failed to prove that the conditions that resulted in Child's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to Child.

be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

[29] As the juvenile court's extensive findings demonstrate, Father has not shown that he is capable of parenting Child. Child is thriving in his pre-adoptive home. The GAL testified that adoption is in Child's best interest. And FCM Frame-Bailey testified that termination of Father's parental rights was in Child's best interests. Given the totality of the evidence, Father has not shown that the juvenile court erred when it concluded that termination of his rights is in Child's best interests.

### ***Conclusion***

[30] In sum, the findings challenged by Mother are either supported by the evidence or amount to harmless error. In addition, DCS has shown by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside of Parents' home will not be remedied and that termination is in the best interests of the Child. We therefore hold that the juvenile court did not err when it terminated Parents' parental rights.

[31] Affirmed.

Bradford, C.J., and Bailey, J., concur.