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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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary Termination of the Parent-Child Relationship of:

J.W. (Minor Child),

and

R.C. (Father) and C.W. (Mother)
Appellants-Respondents,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

August 19, 2022

Court of Appeals Case No. 22A-JT-538

Appeal from the Vanderburgh Superior Court

The Honorable Brett J. Niemeier, Judge

Trial Court Cause No. 82D04-2109-JT-1263

Bailey, Judge.

Case Summary

[1] R.C. ("Father") and C.W. ("Mother"), (collectively, "Parents") appeal the trial court's order terminating their parental rights over their minor child, J.W. ("Child"). We affirm.

Issues

[2] Father raises the following issue for our review:

> I. Whether the court abused its discretion when it denied his motion to continue the fact-finding hearing.

In addition, Parents raise the following issue for our review:

> II. Whether certain findings of fact are supported by the evidence.

Finally, Mother presents one issue for our review:

> III. Whether the Indiana Department of Child Services ("DCS") presented sufficient evidence to support the termination of their parental rights.

Facts and Procedural History

[3] Mother gave birth to Child on August 1, 2020.[1] Shortly thereafter, DCS received three reports that Child was the "victim of abuse or neglect" due to Parents' "[h]omelessness" and "unsafe parenting skills" and Mother's "untreated mental health" issues. Ex. Vol. 3 at 189. DCS removed Child from Parents' care on August 26 and placed him with Mother's mother. Then, on August 28, DCS filed a petition alleging Child to be a Child in Need of Services ("CHINS"). On September 15, the court held a hearing on the CHINS petition. Parents failed to appear, and the court adjudicated Child a CHINS. *Id*. at 218.

[4] On October 13, the court entered its dispositional order and ordered Parents to engage in services. Specifically, the court ordered Parents to follow all recommendations of the DCS family case manager ("FCM"), enroll in any program recommended by the FCM, and participate in the programs as scheduled "without delay or missed appointments." Ex. Vol. 4 at 16. The court also ordered Parents to maintain "suitable" housing, secure a "stable source of income," not consume illegal substances, complete a psychological evaluation, and work with a parenting aide. *Id*. at 17. On May 13, 2021, the court entered a modified parental participation plan and additionally ordered Father to submit to drug screens and a substance abuse evaluation. *See id*. at 82.

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[1] Mother and Father had another child together. Their rights as to that child were terminated in October 2018. *See* Ex. Vol. 3 at 217.

[5] Parents were not fully compliant with services. Parents were initially scheduled to participate in supervised visitation with Ireland Home Based Services, but that referral was closed after two weeks when neither Parent appeared. *See* Tr. at 23-24. Thereafter, Maglinger Home Based Services ("Maglinger") began supervising the visits. Mother was "[p]artially" compliant with visitation. *Id*. at 24. She attended ten visits and cancelled five. FCM Madeline Mitchell observed that Mother had "a lack of parenting skills." *Id*. at 25. Father had "more" visits with Child than Mother, but FCM Mitchell also observed a "lack of parenting skills" by Father. *Id*. at 35. And FCM Mitchell had "concerns" for Child's safety if the visits were not supervised. *Id*. at 54. As a result, visits did not progress to unsupervised visits but, rather, "got more restrictive." *Id*. at 55.

[6] DCS provided Parents with a parent aide through Maglinger. Alexandria Elpers ("Elpers") was assigned to be Parent's parent aide. Elpers attempted to help Parents get disability benefits, find housing, and assist with anything "they needed to know[.]" *Id*. at 62. Elpers "showed [Parents] the exact site as to where to go," allowed them to use her phone and computer, and helped them "fill out paperwork[.]" *Id*. However, Parents did not fill out the applications or get jobs, and there was "no follow through" for any of the services Elpers provided. *Id*. at 73. Rather, Elpers "found them on the side of the road multiple times" trying "to collect income." *Id*. at 63. Ultimately, Elper's service as a parent aide ended "due to noncompliance." *Id*. at 25.

[7] Mother completed a dual assessment with Southwestern Behavioral Healthcare ("Southwestern") in December 2020. However, she only attended "4 out of her 14 classes." *Id*. at 20. As a result, Mother was "released" from Southwestern on January 7, 2021 "due to noncompliance." *Id*. Mother also only "[p]artially" participated in random drug screens. *Id*. Mother tested negative six times, refused five screens, and tested positive once for opioids, codeine, and morphine. And FCM Mitchell observed "instances" in which she believed that Mother was "under the influence of substances." *Id*. at 23. On March 12, 2021, the State charged Mother with domestic battery, as a Level 6 felony, and Mother was incarcerated. Mother was released two months later in May but was subsequently incarcerated again in June.

[8] Father also completed his dual assessment at Southwest. However, he did not comply with any treatment recommendations because he was incarcerated following charges for two counts of intimidation, as Level 6 felonies; battery, as a Class A misdemeanor; resisting law enforcement, as a Class A misdemeanor; disorderly conduct, as a Class B misdemeanor; and an allegation that he is a habitual offender. Father was "[p]artially" compliant with drug screens following the modification of the dispositional order. *Id*. at 29. Father tested negative four times, missed four screens, and tested positive for illegal substances twice. There were also "a few times" when Elpers believed Father to be "under the influence." *Id*. at 67. In addition, Father participated in "nurturing classes," that "should have helped address" his lack of parenting skills. *Id*. at 36. The center initially wanted to release Father from the program

due to poor attendance, but FCM Mitchell convinced the center to allow Father the opportunity complete the class. Father only attended "64 percent" of his classes. *Id*.

[9] On September 3, 2021, DCS filed a petition to terminate Parents' parental rights. The court held the fact-finding hearing on the petition on November 29. Prior to the start of the hearing, Father requested that the court continue the hearing until after the trial on his criminal charges because he believed that, by the date of his trial, he will have "probably already served" whatever sentence the court would impose such that he would be released and could participate in services. *Id*. at 16. The State responded that Father had been "out for a full year" prior to his incarceration but that there was "noncompliance" with services during that time. *Id*. at 17. The court denied Father's motion and proceeded with the evidentiary hearing.

[10] FCM Mitchell testified that Mother was "living on the streets" at the beginning of the case but that she had moved with Father into the studio apartment of the Father's mother. *Id*. at 26.

[11] FCM Mitchell testified that that apartment was not "an appropriate place" for Child because it "was too small for three people" and that, given Child's age, "he shouldn't be sleeping in the bed with those three adults." *Id*. And she testified that "there was no room" for a crib because of "how small the apartment was." *Id*. FCM Mitchell additionally testified that Parents have "continual drug use and untreated mental health" issues. *Id*. at 38. She also

testified that Mother and Father "have both disclosed domestic violence" to her. *Id*. at 39.

[12] On February 17, 2022, the court entered extensive amended findings of fact and conclusions thereon. In relevant part, the court found that Parents failed to fully engage with services, that Parents are not likely to provide Child with appropriate housing, that Parents lacked parenting skills, and that there were safety concerns during the visits. The court then concluded that there is a reasonably probability that the conditions which resulted in Child's removal will not be remedied "as the [P]arents continue to struggle with homelessness, substance abuse, lack of financial stability, periodic incarceration, and parenting skills" and that the continuation of the parent-child relationship poses a threat to Child's wellbeing due to "the failure of [P]arents to remedy the conditions[.]" Appellant's App. Vol. 2 at 113.[2] The court also found that termination of the parental rights was in Child's best interests and that DCS had a satisfactory plan for Child's care. Accordingly, the court terminated Parents' parental rights as to Child. This appeal ensued.

Discussion and Decision

[2] While Mother and Father submitted separate briefs, they submitted a joint appendix.

Issue One: Motion to Continue

[13] Father first asserts that the court abused its discretion when it denied his motion to continue the fact-finding hearing. "Generally speaking, a trial court's decision to grant or deny a motion to continue is subject to abuse of discretion review." *K.W. v. Ind. Dep't of Child. Servs (In re K.W.)*, 12 N.E.3d 241, 243-44 (Ind. 2014). An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion, but no abuse of discretion will be found when the moving party has not demonstrated that he was prejudiced by the denial. *Id*. at 244.

[14] On appeal, Father asserts that the court abused its discretion when it denied his motion to continue because he was "drug free," "participating in services," and "had housing" prior to his incarceration and because his incarceration rendered him "unable to complete" the services required to ensure the continuation of his parent-child relationship. Father's Br. at 12-13. In other words, Father maintains that, had the court granted his motion to continue, he could have completed the services necessary to reunify with Child. He also asserts that "DCS would not have been prejudiced" by the delay and that Child would "not have been detrimentally affected" because he had been residing with his maternal grandmother since his removal from Parent's care. *Id*. at 13. We cannot agree.

[15] DCS removed Child from Parent's care on August 26, 2020. The court then issued a dispositional decree on October 20 and ordered Father to work with a parent aide, engage in parenting classes, engage in a parenting assessment, and

engage in supervised visits with Child. Thereafter, on May 12, 2021, the court modified Father's dispositional order and further ordered Father to participate in drug screens and to obtain a substance abuse assessment. However, as discussed in more detail below, Father had "almost a year" to engage in services before his incarceration, but he did not fully participate. Tr. at 44. Indeed, while Father completed his dual assessment, he did not engage in "any treatment" after the assessment. *Id*. at 28. And Father was only "[p]artially" compliant with drug screens. *Id*. at 29. Father missed four drug screens and tested positive twice. In addition, both FCM Mitchell and Elpers attempted to help Father find suitable housing and income and address his issues with parenting skills, substance abuse, mental health, and domestic violence, but Father did not utilize those services.

[16] Because Father failed for almost one year prior to his incarceration to participate in services, he has not demonstrated that he would have completed those services after his incarceration. He has therefore not demonstrated good cause in support of his motion to continue or that he was prejudiced by its denial. We affirm the court's denial of Father's motion to continue.

Issue Two: Findings of Fact

[17] Parents next challenge certain findings by the trial court. Here, in terminating Parents' parental rights, the trial court entered specific findings of fact and conclusions thereon. In such appeals, this Court "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind.

Trial Rule 52(A). When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cty. 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. *Judy S. v. Noble Cty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[18] Father first challenges the court's findings B(j) and (k), in which the court outlined the requirements of the dispositional decree. *See* Appellants' App. Vol. 2 at 100. Father contends that those findings are "ambiguous" because DCS requested that the court order Father to submit to a substance abuse assessment but the court took that request "under advisement" and did not modify the dispositional decree until May 2021. Father's Br. at 15-16. While it is not clear, it appears as though Father challenges the portion of the findings where the court indicated that it had modified the dispositional order to include a mental health evaluation. Father is correct that, in the dispositional order, the court ordered Father to complete a substance abuse assessment, and it took the request for a mental health evaluation under advisement. Ex. Vol. 4 at 17-18. However, in the modified parental participation order, the court did not order Father to participate in a mental health evaluation. *See id*. at 82. Rather, it

again ordered Father to obtain a substance abuse evaluation. *See id*. However, it is undisputed that Father submitted to a dual assessment through Southwest. As a result, Father has not demonstrated that any error in the court's finding constitutes reversible error.

[19] Father, joined in part by Mother, also challenges the court's findings C(a), (b), and (f), in which the court found that Parents had not applied for Section 8 housing, had lived in tents and "couch surfed" with friends, and had planned to live in Father's mother's apartment despite its small size. *See* Appellants' App. Vol. 2 at 101-02. Mother contends that, while the studio apartment was "not the most appropriate living arrangement," it was "a stable living situation and an improvement" from her prior homelessness. Mother's Br. at 16. And Father contends that FCM Mitchell "did not have safety concerns," that his testimony demonstrates that he had been accepted onto a list for Section 8 housing, and that he never testified that he had been living in tents or couch surfing. Father's Br. at 17.

[20] However, FCM Mitchell testified that the apartment was not appropriate for Child because it was "too small" for everyone, that there was "no room" for a crib, and that Child "shouldn't be sleeping in the bed" with three adults. Tr. at 26. In addition, Elpers testified that she had "helped [Parents] try to apply for Section 8," housing but that they "did not apply" for that. *Id*. at 63. And while Father is correct that he did not testify to living in tents or couch surfing, Elpers testified that Parents had slept "in tents in the parks" and that they had "jump[ed] from different housing just to try to find shelter." *Id*. As such, while

the court misidentified the source of the testimony that Parents had lived in tents and couch surfed with friends, the evidence supports that finding. And we hold that the totality of the evidence supports all of the court's findings regarding Parents' lack of appropriate housing.

[21] Father, again joined in part by Mother, next challenge findings C(i), (n), (o), (q), (s), and (t), in which the court found that Parents had not fully participated in services. *See* Appellants' App. Vol. 2 at 103-06. Mother asserts that she "completed her initial assessment," that she "partially attended her classes," and that she "complete[d] forms and made progress." Mother's Br. at 16-17. Father contends that he completed his initial assessment and that he attended three sessions prior to his incarceration. He also asserts that Elpers' records demonstrate that he worked with her "on 7 occasions over a period of 34 days[.]" Father's Br. at 21-22.

[22] But Parents' assertions are simply requests for this Court to reweigh evidence and give more weight to certain exhibits than to witness testimony, which we cannot do. *See Peterson v. Marion Cty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. As for Mother, FCM Mitchell testified that Mother: only attended four out of fourteen classes following her dual assessment, only "[p]artially" complied with drug screens, cancelled five visits with Child, did not utilize the services DCS put in place to address parenting issues, and was discharged from the parenting aide service for noncompliance. Tr. at 20. And as for Father, FCM Mitchell testified that Father completed his dual assessment but did not complete any services

thereafter because of his incarceration, that he only partially complied with drug screens, and that he did not "utilize the services" DCS put into place. *Id*. at 38. And Elpers testified that, while she helped Parents fill out forms for disability benefits and housing, they never submitted the applications. That evidence supports the court's findings that Parents did not fully participate in services.

[23] Father next challenges the court's finding that he "testified that he had been previously diagnosed with anger issues and Bi-Polar Disorder." Appellants' App. Vol. 2 at 105. Father contends that that finding "contains facts not in evidence." Father's Br. at 19. Father is correct that his testimony does not reference "anger issues or bipolar disorder." *Id*. However, FCM Mitchell testified that Father "informed [her] that he has bipolar disorder and anger issues." Tr. at 58. The court's finding that Father has mental health issues is supported by the evidence. To the extent the court misidentified the source of that testimony, any error is harmless.

[24] Finally, Father, again joined in part by Mother, challenge the court's findings C(w), (x), (y), (z), (aa), and (ee), which all address the supervised visits between Parents and Child. *See* Appellants' App. Vol. 2 at 106-108. Mother contends that, while visits were "'rough at first,'" they started to improve. Mother's Br. at 17 (quoting Tr. at 65). And she contends that she "felt the visits overall went well and testified that no one ever told her differently[.]" *Id*. at 18. Father contends that, based on Elper's notes "made at the time" of the visits, there is nothing to demonstrate "any concern about Father's parenting skills[.]"

Father's Br. at 26. And Father contends that the court "placed undue weight on Elpers'" testimony, which he contends was "contradicted" by her records. *Id*. at 29. But Parents' arguments are, again, an improper request for us to reweigh the evidence.

[25] The evidence most favorable to the trial court's findings demonstrate that FCM Mitchell observed "a lack of parenting skills from both [P]arents." Tr. at 25. FCM Mitchell also testified that the visit supervisor would "have to do things like prompt [Father to] change a diaper, help him with those kind[s] of things." *Id*. at 35. In addition, FCM Mitchell testified that neither Parent "has shown that they are knowledgeable of how to parent" a child. *Id*. at 40. And FCM Mitchell testified that there were "safety concerns," which not only resulted in the visits never progressing to unsupervised but, rather, caused the visits to get "more restrictive." *Id*. at 54-55. Further, Elpers testified that, while she provided Parents with vouchers for "items for the baby," Parents never went to obtain them. *Id*. at 64. Instead, she testified that she was "the one who went" to the store "to collect all their stuff for the baby," such as "onesies, diapers, a bottle, formula, pacifier, [and] anything that the child would need." *Id*. She further testified that visits were "rough at first," and that "[i]nstead of bonding" with Child, Parents would communicate with her. *Id*. at 65. Finally, the Court Appointed Special Advocate ("CASA") testified that, during one visit, Child was "restless" while with Father and that Father only gave baby food but not a bottle. *Id*. at 79. That evidence supports the court's findings that Parents lacked parenting skills, that they were not prepared with items for the Child,

that they did not bond with the Child, that visits could not progress, and that Child was restless with Father.

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

Issue Three: Termination of Parental Rights

[27] Finally, Mother challenges the court's legal conclusions supporting the termination of their parental rights.[3] We begin our review of this appeal 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 Cty. 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

[3] The State contends that Father "does not challenge" the court's conclusions and has, thus, waived any argument regarding those conclusions. Appellee's Br. at 34. We acknowledge that the crux of Father's argument is that the court's "findings are clearly erroneous." Father's Br. at 15. However, because Mother challenges the court's conclusions, we will consider whether the court's conclusions regarding both Parents are clearly erroneous.

child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[28] 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) (2022). 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).

[29] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d at 265. 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. *In re L.S.*, 717 N.E.2d at 208.

[30] Mother contends that the court erred when it concluded that the conditions that resulted in Child's removal and the reasons for his placement outside of Parents' home will not be remedied and that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Child's well-being. However, as Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only address on appeal the sufficiency of the evidence to support one prong of that subsection of the statute. Accordingly, we will address whether DCS presented sufficient evidence to prove that the conditions that resulted in Child's removal and the reasons for his placement outside of Parents' home will not be remedied. In addition, we also address Parents' contention that the termination of their parental rights is not in Child's best interests.

Reasons for Child's Placement Outside of Parents' Home

[31] Mother contends 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.*

Vanderburg Cnty. Off. Of Fam. & Child. (In re A.I.), 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

[32] According to Mother,

> [a]t the time of the termination hearing, Mother was incarcerated. She had availed herself of the services available to her while she was housed at the Perry County Jail including participating in Celebrate Recovery, AA, and a GED program. She had also started taking Zyprexa while incarcerated. Mother anticipated being released on her next court appear[ance] in December 2021. She had made arrangements to stay with Father's mother when she was released from incarceration and had plans to apply for employment. Mother was aware of developmental changes that had occurred to the Child while she was incarcerated[.]

Mother's Br. at 19 (citations omitted). In other words, Mother contends that she has remedied or will soon remedy the conditions that led to Child's removal and the continued placement of Child outside of her care. We cannot agree.

[33] 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 court should judge Parents' fitness to care for the Children at the time of the termination hearing, taking into consideration evidence of changed circumstances. *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 Child. *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 that the parents' behavior will not change. *Id*.

[34] Mother has not demonstrated that the court erred when it concluded that Parents will not remedy the conditions that resulted in Child's removal. DCS initially removed Child because of Parents' homelessness and unsafe parenting skills, and Mother's untreated mental health issues. *See* Ex. Vol. 3 at 189. But following Child's removal, Parents, at best, only partially engaged in services that were put in place to help address their issues. And despite being offered those services, Parents have not remedied their issues.

[35] Parents never obtained suitable housing or employment. Indeed, FCM Mitchell testified that Parents' housing arrangements following their respective releases from incarceration, which involved them living in the studio apartment of Father's mother, were not appropriate for Child because of its small size and lack of space for Child to have his own crib. While Elpers attempted to help Parents obtain Section 8 housing, she testified that Parents never followed through with submitting their applications. *See* Tr. at 63. And Elpers attempted to help Parents find "little side jobs," but Parents never participated. *Id*. at 62. Instead, she found Parents on the side of the road "multiple times" trying to "collect income." *Id*. at 63.

[36] In addition, Parents' first referral for supervised visits with Child ended after only two weeks because Parents failed to appear. When visits began with Maglinger, FCM Mitchell observed a lack of parenting skills. DCS then put in a referral for a parenting aide to assist parents with that issue, but that service was also closed due to noncompliance. Parents' visits never progressed to unsupervised visits because Parents "lacked education" on child development and because of "safety concerns." *Id*. at 54. And Mother only attended four out of fourteen classes following her dual assessment. Thereafter, DCS offered to put a referral in place for Mother to obtain counseling, but Mother never went. *Id*. at 50.

[37] Further, during the underlying proceedings, there were concerns with Parents using drugs. After the court ordered Parents to submit to drug screens, Mother only "[p]artially" complied. *Id*. at 20. Of the twelve screens Mother was supposed to participate in, she only tested negative for illegal substances on six occasions. For the other six tests, she refused to submit to five, and she tested positive in one. Similarly, Father only tested negative on four occasions, and he missed four screens and tested positive twice. And there is evidence that Parents continued to use illegal substances. FCM Mitchell testified that there were "instances" where she believed that Mother was "under the influence of substances." *Id*. at 23. Elpers also testified that there were "a few times" when she believed that Parents were "under the influence," and she had to terminate one visit early due to their intoxication. *Id*. at 67. In addition to drug use, both Parents have a history of incarceration, and they were both incarcerated at the

time of the fact-finding hearing. And while Parents both blame their incarceration for their inability to complete services, Mother had approximately eight months and Father had approximately one year to complete services before their incarceration, but neither participated. *See id*. at 44.

[38] There is also a history of domestic violence as disclosed by both Mother and Father that Mother does not acknowledge. But despite the fact that Mother and Father admitted to a problem with domestic violence, there is no indication in the record that she or Father have sought assistance for that issue.

[39] Mother's 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 trial court's findings support its conclusion that there is a reasonable probability that the conditions that resulted in the Child's removal and the reasons for his continued placement outside of Parents' home will not be remedied.

Best Interests

[40] Finally, Mother contends that the court erred when it concluded that the termination of Parents' parental rights was in Child's best interest. In determining what is in a child's best interest, a 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 a finding that termination of parental rights is in the best interests of the child. *Id*.

[41] When making its decision, the court must subordinate the interests of the parent to those of the child. *See Steward v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 9Ind. 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 the recommendation 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 be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

[42] In her brief on appeal, Mother asserts that

> Father testified that he did not believe it would be prejudicial to the Child to wait to issue a decision in this case since the Child was placed with the maternal grandmother. This would allow him and Mother to get back on track after being released from jail. There is no other indication in the record that the Child would be affected if termination were delayed giving Mother an opportunity to complete services and resume visitation. Further, there is also no indication that the Child's current placement's willingness to adopt would be affected.

Mother's Br. at 21 (citations omitted). Mother acknowledges that Child "needs permanency in a stable environment where his needs would be met[.]" *Id*. But she argues that Parents "can provide this" and that their rights should not be terminated solely because Child has "a better place to live." *Id*.

[43] But once again, Mother asks that we reweigh the evidence. Child was removed from Parents' care when he was not quite one month old, and he remained out of their care during the course of the underlying proceedings. During that time, Parents only partially engaged in services, but did not progress. Indeed, not only did Parents' visits with Child never progress to unsupervised visits, they got "more restrictive" because of "safety concerns." Tr. at 54-55. FCM Mitchell testified that "it was evident that both [P]arents lacked education" on the development of Child. *Id*. at 54. FCM Mitchell also testified that it was in Child's best interests for Parents' parental rights to be terminated "due to the instability and the safety concerns that are still present" and because "they do not have the ability to parent" Child. *Id*. at 45. And the CASA testified that the Child's adoption by maternal grandmother would be in his best interests because of "the love that's there between them," and because of the "way she goes out of her way to protect [Child] and to care for him and to play with him and give him nurturing, as well as safety and security." *Id*. at 81.

[44] In sum, as the court's findings demonstrate, Parents have not shown that they are capable of parenting Child. Both the FCM and the CASA testified that termination of Parents' parental rights and adoption of Child by his current placement is in his best interests. Child is in a loving home where he receives everything he needs. Given the totality of the evidence, Mother has not shown that the trial court erred when it concluded that the termination of Parents' parental rights is in Child's best interests.

Conclusion

[45] The trial court did not abuse its discretion when it denied Father's motion to continue the fact-finding hearing. In addition, the challenged findings are either supported by the evidence or constituted harmless error. And DCS presented sufficient evidence to demonstrate that the conditions that resulted in Child's removal or the reasons for his placement outside of Parents' care will not be remedied and that the termination of Parents' parental rights is in Child's best interests. We therefore hold that the trial court did not err when it terminated Parent's parental rights.

[46] Affirmed.

Bradford, C.J., and Pyle, J., concur.