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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of I.L., O.L., V.N., and M.P.N. (Minor Children) and S.T. (Mother)

S.T. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

October 5, 2021

Court of Appeals Case No. 21A-JT-418

Appeal from the Monroe Circuit Court

The Honorable Stephen R. Galvin, Judge

Trial Court Cause Nos.
53C07-1911-JT-651
53C07-1911-JT-652
53C07-1911-JT-653
53C07-1911-JT-654

Vaidik, Judge.

Case Summary

[1] Beginning in March 2020, the Indiana Supreme Court issued a series of orders relating to the COVID-19 pandemic that granted emergency relief to courts throughout the state, including an order allowing courts to "use audiovisual communication to conduct proceedings whenever possible to ensure all matters proceed expeditiously and fairly under the circumstances," so long as the remote proceedings are consistent with the parties' constitutional rights. In this case, the trial court held a remote final hearing on the petition to terminate the parental rights of S.T. ("Mother"). During the hearing, some technological and logistical issues arose—witnesses referenced unauthorized notes, had unknown persons present, or were inaudible during parts of their testimony. Following the hearing, Mother's parental rights were terminated. She now appeals and argues that the remote proceedings deprived her of due process and that the evidence was not sufficient to terminate. We disagree and affirm, concluding that the minor errors, which were all quickly addressed by the trial court, do not amount to a due-process violation and that the evidence was sufficient to terminate.

Facts and Procedural History

[2] Mother is the biological mother of O.L., born in 2011, I.L., born in 2013, M.P.N., born in 2016, and V.N., born in 2018. D.L. is the biological father of O.L. and I.L., and M.N. is the biological father of M.P.N. and V.N. Both fathers' parental rights were also terminated, but neither participates in this

appeal, so we limit our narrative to the facts relevant to Mother. Mother is also the noncustodial parent to two teenaged sons.

[3] In 2014, Mother entered into an Informal Adjustment with the Department of Child Services (DCS) in Greene County to address "her ongoing substance abuse and her acts of domestic violence." Appellant's App. Vol. II p. 61. This case was closed in 2015, but in February 2017 Mother entered into another Informal Adjustment with DCS in Monroe County to address her substance abuse. The following month, Mother was found caring for I.L. while intoxicated. The children[1] were removed and placed with M.N. The next day, DCS filed petitions alleging the children were children in need of services (CHINS). Following a fact-finding hearing, the trial court found the children to be CHINS and returned them to Mother's care pending disposition. At the dispositional hearing, the children were placed with Mother and Mother was ordered to, among other things, abstain from drugs and alcohol, submit to random drug and alcohol screens, participate in home-based counseling, complete a domestic-violence assessment and any recommended programs, and complete a substance-abuse assessment and any recommended treatment.

[4] For the next two years, Mother complied on-and-off with the case plan. She began individual therapy for her mental health and substance abuse after the children were removed; however, she was discharged a few months later for

[1] Excluding V.N., who was not born until February 2018.

poor attendance. Domestic violence between Mother and M.N. continued, with law enforcement called to their home four times in late 2017 and once in 2018. At least two of these incidents occurred in front of the children. Mother and M.N. began home-based therapy to prevent removal of the children, but Mother attended only three scheduled appointments, after which she canceled several appointments and was discharged from the program.

[5] Mother also continued to struggle with alcohol and substance abuse. She began an alcohol-monitoring program but tested positive several times in 2017 and discontinued the program later that year. Mother gave birth to V.N. in February 2018, and a few months later the trial court found V.N. to be a CHINS, noting Mother had been offered services to address her substance abuse and had been unsuccessful. Thereafter, Mother "often" tested positive for THC and tested positive for amphetamine twice in December 2018 and once in February 2019. *Id.* at 66. In March, she stopped participating in drug screening.

[6] In April 2019, DCS removed the children from Mother's care due to "ongoing substance abuse, [her] failure to regularly participate in substance abuse treatment and related services, and the ongoing domestic violence in the home." *Id.* at 67. The children were placed in a foster home, where they have since remained. For several months after the children's removal, Mother rarely participated in drug screens, and when she did, her screens were positive for THC. She started attending an alcohol-abuse program but quickly stopped attending. She also enrolled in "Abuse Awareness and Accountability," a substance-abuse and domestic-violence program. *Id.* at 71. However, she did

not return after the program's "orientation." *Id.* Following another domestic-violence incident in September 2019, Mother and M.N. separated. In November 2019, DCS filed petitions to terminate all three parents' rights.

[7] After her separation from M.N., Mother's participation in DCS services improved. She "consistently" attended individual therapy and made progress on her stated goals. *Id.* at 68. Mother also consistently attended visits with the children and "interact[ed] well" with them. *Id.* at 71. However, visit supervisors reported Mother had issues adequately supervising all four children at once, and the visits remained supervised.

[8] Mother again started participating in Abuse Awareness and Accountability and made "some progress." *Id.* However, she had to restart the program three or four times due to attendance violations and did not complete the program. In April and May 2020, Mother tested positive for alcohol three times, and in the following months she missed several drug screens. By August, she had been discharged from individual therapy due to poor attendance. In September, law-enforcement officers responded to a report of a domestic-violence altercation between Mother and her teenage son, J.T. Officers found J.T. alone on the side of the road, and he reported Mother was driving intoxicated. Mother drove up to the scene and admitted she and J.T. had been in a "physical altercation." *Id.* at 69. Officers conducted a field-sobriety test, which Mother failed. She was arrested and later pled guilty to misdemeanor operating while intoxicated. After her arrest, Mother began "mental health" and "addictions" treatment but missed approximately half the scheduled classes. *Id.* at 70.

[9] The termination hearing occurred in January 2021. Due to the COVID-19 pandemic, the hearing was conducted by remote video conference using the Zoom Communications, Inc. application pursuant to the Indiana Supreme Court's May 13, 2020 Emergency Order Permitting Expanded Remote Proceedings. That order states courts "may use audiovisual communication to conduct proceedings whenever possible to ensure all matters proceed expeditiously and fairly under the circumstances." 144 N.E.3d 197, 197 (Ind. 2020).[2] The order provides that "[a]ny party not in agreement to the manner of the remote proceeding must object at the outset of the proceeding, on the record, and the court must make findings of good cause to conduct the remote proceeding." *Id.* at 198. The order also states that "[a]ll proceedings must be consistent with a party's Constitutional rights." *Id.*

[10] Before the hearing, Mother objected "to this hearing being conducted remotely." Tr. Vol. II p. 6. She argued "something as significant as a termination of parental rights" should not be handled by remote hearing because it would not "fully allow[] the parents to exercise their constitutional rights" to see and hear witnesses and communicate with their attorneys. *Id.* at 5, 6. Mother also noted other issues with remote hearings, including "confidentiality issues," an inability to monitor whether witnesses are reviewing notes or in the presence of third parties, and the difficulty in lodging objections

[2] Our Supreme Court extended this order on November 10, 2020, and again on May 13, 2021, and it now remains in effect "until further order of the Court." Order Extending Authority for Expanded Remote Hearings, 167 N.E.3d 289 (Ind. 2021).

remotely. *Id.* at 5. The trial court overruled the objection and found good cause to hold the hearing remotely, citing the severity of the COVID-19 pandemic, that the courtroom would not allow for proper social distancing, and that the "litigants can receive a full and fair hearing without the dangers of face to face confrontation." Appellant's App. Vol. IV p. 44.

[11] At the hearing, Ashley Hilkey, who provided therapy to O.L. and I.L. shortly after their 2019 removal from Mother, testified both children initially had issues regulating emotion and managing anger and showed "symptoms of trauma." Tr. Vol. II p. 25. She testified the children have since "made some progress" and she believes a "permanency decision" is needed for them to make "long term improvement." *Id.* at 26, 28, 29. Family Case Manager (FCM) Heidi Flynn testified that giving Mother more time to comply with DCS services is not in the children's best interests because the children need permanency and Mother has "had ample time to provide that permanency to alleviate the reasons for removal and [she has] failed to do so." Tr. Vol. III p. 118. Stephen Figert, the children's Court Appointed Special Advocate (CASA), also testified termination is in the children's best interests, citing Mother's failure to make "significant progress" addressing her substance-abuse and domestic-violence issues. *Id.* at 242.

[12] During the testimony of Brian Walkup, Mother's counselor at Abuse Awareness and Accountability, the trial court realized Walkup was testifying from a car with another person in it. At that point, Walkup had answered three questions, all pertaining to his employment history. The trial court stopped his

testimony and allowed him to testify the next day when he could be alone. Similarly, Vanda Hash, the children's foster mother, initially appeared on camera for her testimony with another person in the room, but she confirmed that person left before she started her testimony.

[13] Other witnesses admitted to referencing personal notes during their testimony. Thomas Phelps, Mother's therapist, was asked early in his testimony when he first saw Mother, and he replied, "Let's see, my first note with her is dated April 2017." Tr. Vol. II p. 53. Mother's attorney objected, stating Phelps appeared to be reading off something, and Phelps confirmed he was referencing his notes. The trial court then admonished him to testify only from memory. Later, Kendra Fiorucci, who supervised some of Mother's visits with the children, testified and was asked how often Mother was late to a visit. Before Fiorucci could answer, Mother's counsel objected and stated it appeared Fiorucci was looking through notes, and Fiorucci confirmed she was. Again, the trial court admonished the witness to testify from memory. During the testimony of FCM Leah Baumgard, she was asked about the dispositional order, and Mother's counsel objected, stating it appeared as though Baumgard was referencing notes. Baumgard admitted she had "notes with dates on them," and the trial court instructed her to testify only from memory.[3] *Id.* at 222.

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[3] After FCM Baumgard's testimony, the trial court told witnesses before their testimony that they could not reference notes.

[14] At one point, while a witness was testifying, the State attempted to object but was muted and could not be heard. However, before the witness could answer the challenged question, the trial court noticed the State's attempt and interrupted, allowing the State time to lodge the objection. Similarly, during Mother's testimony, as she was answering a question regarding her transition to different service providers, the trial court interrupted her and stated,

> THE COURT: You've frozen folks. [Mother's counsel], and I note for the record [we are] going to stop here for a moment. [Mother's counsel], you are frozen. [Mother's counsel], we did not get the last of that, and that's because your feed froze. So, if we could step back, the Court, uh, we did get [Mother] stating that the last therapist she saw at Centerstone was Sonja, she was upset about having to tell her story all over again, and then we lost the feed. So, if you would.

Tr. Vol. III p. 194. Mother then picked up from that point and continued testifying.

[15] A month later, the trial court issued an order terminating the parents' rights to all four children.

[16] Mother now appeals.

Discussion and Decision

I. Due Process

[17] Mother first argues the remote termination hearing violated her due-process rights. Her argument focuses largely on the technological and logistical issues

that occurred during the hearing. To the extent she is attempting to make a broader argument regarding the constitutionality of remote hearings, she has failed to develop it beyond vague generalities, nor does she cite to any relevant authority. As such, she has waived that argument for our review. Ind. Appellate Rule 46(A)(8)(a); *see also Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding appellant had waived argument due to his failure to develop the argument and support it with citations to authority and the record), *reh'g denied*, *trans. denied*. We therefore limit our due-process analysis to the specific issues that arose in Mother's hearing.

[18] Parents do not have a constitutional right to be physically present at a final termination hearing. *In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011). However, under Indiana Code section 31-35-2-6.5(e), which governs hearings for petitions to terminate a parent-child relationship, the court shall provide a parent "an opportunity to be heard and make recommendations to the court at the hearing." Furthermore, Indiana Code section 31-32-2-3(b) provides that in proceedings to terminate the parent-child relationship, "[a] parent, guardian, or custodian is entitled: (1) to cross-examine witnesses; (2) to obtain witnesses or tangible evidence by compulsory process; and (3) to introduce evidence on behalf of the parent, guardian, or custodian."

[19] In addition to these statutory provisions, the Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. When the State

seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* "Due process requires 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The Indiana Supreme Court has held that "the process due in a termination of parental rights action turns on balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure." *Id.* (citing *In re C.G.*, 954 N.E.2d at 917). Balancing these factors recognizes that although due process is not dependent on the underlying facts of the particular case, it is nevertheless "flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334.

[20] "In balancing the three-prong *Mathews* test, we first note that the private interest affected by the proceeding is substantial—a parent's interest in the care, custody, and control of her child." *In re C.G.*, 954 N.E.2d at 917. "We also note the countervailing *Mathews* factor, that the State's parens patriae interest in protecting the welfare of a child is also substantial." *Id.* This includes an interest in prompt adjudication, as delays have "an intangible cost to the life of the child involved." *In re C.C.*, 788 N.E.2d at 852. And at the time of the termination hearing, the continuing COVID-19 pandemic created serious safety concerns regarding in-person hearings. These important interests are entitled to significant weight.

[21] We then turn to the risk of error created by the challenged procedure. Mother cites to specific limitations caused by the Zoom hearing and contends these issues deprived her of her constitutional right to due process. These issues include that: (1) some of Mother's testimony was cut off due to a technical issue, (2) witnesses referenced personal notes, (3) witnesses had third parties present during testimony, and (4) counsel could not properly object to testimony. However, in this circumstance, we do not believe these issues rise to the level of a due-process violation.

[22] Although Mother contends portions of her testimony were not heard by the court, the record reflects only one instance in which she apparently could not be heard.[4] At that point, the trial court noted the technical issue for the record, stated the last part of the testimony it heard, and had Mother continue from that point once the technical issue was resolved. This brief interruption in her testimony did not deny Mother an opportunity to be heard. Mother also argues some witnesses were referencing notes during their testimony. However, the

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[4] Mother also claims that during her testimony, due to a microphone issue, the trial court could not hear her and her "testimony was unable to be taken into consideration" nor was she "given the opportunity to repeat her statement." Appellant's Br. p. 13. However, our review of the record indicates this issue happened to Mother's counsel, not to Mother. Mother appears to have fully answered the previous question, at which point the following occurred:

> [Mother's Counsel]: Um.
>
> THE COURT: I'm sorry, [Mother's counsel], I want to note, you do need to face the mic, we didn't get any of that, ok.

Tr. Vol. III p. 205. Mother's counsel then apologized and seemingly repeated the question. Based on this exchange, it appears Mother's counsel's question, rather than Mother's testimony, was unheard, and counsel was able to repeat the question.

record indicates the witnesses used notes to confirm dates and other benign details early in their testimony, and that this was quickly brought to the trial court's attention and the witnesses were instructed to testify only from memory. And while two witnesses did initially appear on Zoom in the presence of another person, both were instructed to have that person leave and did not testify until they confirmed they were alone. Finally, Mother points to an instance during a witness's testimony where the State attempted to object but could not be heard due to the Zoom software only picking up one voice at a time. First, we note this issue was experienced by an attorney for the State, and Mother does not contend her counsel experienced a similar issue. Additionally, the State's attempt to object—while inaudible—was noticed by the trial court, who stopped the witness from answering the challenged question so the State had an opportunity to state their objection. Ultimately, while there were errors in the proceedings, they were minor and quickly remedied, so the risk of an inaccurate result was low.

[23] We do not see how these errors, standing alone or together, deprived Mother of an opportunity to be heard in a meaningful time and manner. We do not doubt that conducting a termination hearing by remote technology could—in some situations—violate a parent's due-process rights. *See In re C.G.*, 933 N.E.2d 494, 506 (Ind. Ct. App. 2010) ("We can foresee circumstances under which an incarcerated parent's in-person participation in a termination proceeding would be necessary" and depriving them of in-person participation "could deprive parents of their right to due process in those circumstances."), *aff'd*, 954 N.E.2d

910 (Ind. 2011). Here, however, Mother was afforded substantially similar procedures as would have been available to her at an in-person hearing. She was fully and diligently represented by counsel, who entered exhibits, cross-examined witnesses, and presented witness testimony including live testimony from Mother. Mother also communicated privately with counsel during the hearing. Under these circumstances, the risk of error decreases significantly. *See id.* (holding denial of the mother's request to continue termination hearing until she could appear in person did not violate her due-process rights where she was able to be present telephonically and her counsel could cross-examine witnesses and introduce evidence).

[24] Mother compares her case to *Thompson v. Clark County Division of Family and Children*, 791 N.E.2d 792, 794 (Ind. Ct. App. 2003), *trans. denied*. In *Thompson*, after the mother did not show up to the termination hearing due to "inexcusable neglect," the trial court conducted a "summary proceeding" without any witness testimony or properly admitted evidence and thereafter terminated the mother's parental rights. *Id.* at 794. We reversed, noting the mother was not given the right to be heard in a meaningful manner because there was essentially "no hearing at all." *Id.* at 796.

[25] That is not the case here. Mother had the opportunity to give witness testimony, cross-examine witnesses, and introduce evidence. And she made great use of this opportunity—her counsel vigorously cross-examined the State's witnesses, Mother presented witnesses of her own and gave her own lengthy testimony, and she introduced numerous exhibits. While there may have been

some errors due to the nature of the proceeding, as outlined above these were minor and did not rise to the level of a due-process violation.

[26] The remote termination hearing did not violate Mother's due-process rights.

II. Sufficiency of Evidence

[27] Mother next argues the evidence presented at the termination hearing was not sufficient to prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[28] A petition to terminate parental rights must allege, among other things:

> (B) that one (1) of the following is true:
>
> > (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

A. Conditions Remedied

[29] Mother challenges the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. We note that although Mother states she is challenging this conclusion, she makes no argument and does not cite the record or any legal authority. Therefore, she has waived this argument for our review. Ind. Appellate Rule 46(A)(8)(a); *see also In re A.D.S.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (holding the mother waived her argument that the trial court's conclusion was erroneous because she did not support it with "cogent argument"). Nonetheless, we prefer to resolve cases on the merits,

especially when there is an "important parental interest at stake." *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017). As such, we will review Mother's claim that DCS did not provide sufficient evidence there is a reasonable probability the conditions that resulted in the children's removal will not be remedied.

[30] In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[31] Here, the children were removed from Mother's care due to her substance-abuse and domestic-violence issues, both of which persisted throughout the CHINS case, as well as her unwillingness to consistently engage in services. The children were first removed from Mother in 2017, after she was caring for I.L. while intoxicated. Although the children were soon returned to her care, Mother either tested positive for alcohol, THC, and amphetamine or refused to submit to screens. Furthermore, Mother and M.N. continued to engage in incidents of domestic violence, some in front of the children. Eventually, the children were again removed from her care due to her substance abuse and ongoing domestic violence in the home. Thereafter, Mother continued to refuse drug screens, test positive for THC when she did comply, and engage in

domestic violence with M.N. After separating from M.N. in late 2019, Mother made some progress on these issues. However, she tested positive for alcohol three times in early 2020. Later that year, she again stopped complying with drug and alcohol screens. In September 2020, just four months before the termination hearing, she was arrested for—and later pled guilty to—operating a vehicle while intoxicated. That night she also engaged in a physical altercation with one of her teenage sons.

[32] While Mother showed "periods of growth" on some issues throughout the case, these were followed by "periods of regression." Appellant's App. Vol. II p. 75. And despite being involved in DCS services since 2017, Mother never completed any of the services recommended to address substance abuse and domestic violence due to her lack of regular participation. All of this supports the trial court's conclusion that the conditions leading to the children's removal will not be remedied.

[33] The trial court did not err when it concluded there is a reasonable probability the conditions leading to the children's removal will not be remedied.

B. Best Interests

[34] Mother next challenges the trial court's conclusion termination is in the best interests of the children. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child

relationship is proper where the child's emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[35] Mother argues termination is not in the children's best interests, citing *In re O.G.*, 65 N.E.3d 1080 (Ind. Ct. App. 2016), *trans. denied*. There, the child was removed from his parents due to their history of domestic violence and marijuana use. But while the mother initially struggled to comply with DCS's case plan, in the year or so leading up to termination she made significant progress on the issues that led to her child's removal, namely removing herself from a relationship fraught with domestic violence, not testing positive for substances, and participating in DCS services. Nonetheless, the trial court terminated her parental rights. We reversed, noting that while the mother "struggled during the outset of [the] case," her "arc over the course of the CHINS case, in all areas, show[ed] self-awareness, improvement, and determination to do what needed to be done."[5] *Id.* at 1093.

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[5] We also note that although Mother contends *In re O.G.* supports her contention that termination is not in the children's best interest, reversal in *In re O.G.* was based on DCS's failure to prove two other statutory elements—that continuation of the parent-child relationship posed a threat to the child's well-being and that there was a reasonable probability that the conditions leading to the child's removal and placement outside the home will not be remedied—not best interests.

[36] The same cannot be said of Mother here. Although Mother occasionally showed periods of growth and improvement, these were followed by periods of regression. Throughout the four-year CHINS case, she repeatedly tested positive for drugs and alcohol or refused to participate in screens. She also engaged in domestic violence with M.N. until their separation in late 2019. Despite starting DCS-recommended services to address her substance abuse and domestic violence—and making some progress—she failed to complete any of these services. This pattern of inconsistency persisted for years, during which time Mother never showed consistent improvement. As recently as four months before the termination hearing, Mother was arrested for an alcohol-related offense and admitted to a domestic-violence incident with her older child.

[37] Furthermore, the children have been in foster care for two years. After being removed from Mother's care for the second time, the older children displayed issues with anger and emotional regulation, but both children have since showed improvement. Their therapist testified stability and permanency are needed for the children's continued progress, and Mother has not shown an ability to provide this. Both the CASA and the FCM also believed termination to be in the best interests of the children due to Mother's failure to remedy the issues mentioned above and the children's need for stability.

[38] For these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in the children's best interests.

[39] Affirmed.

May, J., and Kirsch, Sr.J., concur.