MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

M.H. (Minor Child,

and

T.C. (Father) & A.H. (Mother)

*Appellant*s-*Respondents,*

v.

Indiana Department of Child Services, et al.
Appellees-Petitioners.

December 21, 2023

Court of Appeals Case No. 23A-JT-1478

Appeal from the Vanderburgh Superior Court

The Honorable Brett J. Niemeier, Judge

The Honorable Beverly K. Corn, Referee

Trial Court Cause No. 82D04-2211-JT-1767

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

[1] In this consolidated appeal, A.H. ("Mother") and T.C. ("Father") (collectively, "Parents") appeal the termination of their parental rights to M.H. ("Child") upon the petition of the Vanderburgh County Department of Child Services ("DCS"). We affirm.

Issues

[2] Parents present two consolidated and restated issues for review:[1]

I. Whether due process was denied to Mother by omission of reunification services and denied to Father by a lack of timely advisements and statutory notice, an untimely commencement of the termination hearing, and denial of a motion for continuation pending resolution of Father's criminal charges.

II. Whether sufficient evidence supports the termination decision, specifically with regard to remediation of conditions and best interests of Child.

Facts and Procedural History

[3] Child was born on March 2, 2018. Twenty-five days later, Child suffered a "devastating neurological injury" attributed to unsafe sleep practices while his caregiver, Mother, was under the influence of methamphetamine. (Tr. Vol. II, pg. 28.) Child was found in a bed unresponsive, suffering both respiratory and cardiac arrest; his skull had been fractured. After his transport to the hospital, Child's urine was tested and found positive for methamphetamine. Although he survived cardiac arrest, Child is now a quadriplegic and has cerebral palsy. He is non-verbal, requires a tracheotomy, and cannot ingest food or medication

[1] Mother articulates a third, conditional, issue. That is, she argues that her parental rights should be restored if Father's parental rights are restored because Father needs an additional source of support for Child. As we do not reverse the termination of Father's parental rights, we need not address Mother's conditional argument.

without a feeding tube. Child also has epileptic seizures, difficulty breathing, and osteopenia (weak bones).

[4] Based upon Child's condition, Mother was arrested and charged with Neglect of a Dependent Causing Serious Bodily Injury.[2] On November 5, 2018, she pled guilty to a lesser charge. She was sentenced to five years imprisonment, with two and one-half years suspended to probation. When she was released from prison in March of 2020, Mother initially lived with her father. Four months later, she tested positive for methamphetamine and was placed in a facility called Safe House. Mother absconded from Safe House and eventually pled guilty to Failure to Return to Lawful Detention.[3] She was given a one-year consecutive sentence to be served in the Department of Correction. Mother has been incarcerated for the majority of Child's life.

[5] After Child's catastrophic brain injury, the State alleged that Child was a Child in Need of Services ("CHINS"). Child was placed in foster care after his hospitalization, but in October of 2018, he was placed with Father on a trial basis. Father then obtained an order for custody of Child, resulting in the closure of the CHINS case in January of 2020. Initially, Father was assisted in caregiving for Child by Child's paternal grandmother; however, in March of 2020, police responded to a report of a domestic altercation at Father's

[2] Ind. Code § 35-46-1-4.

[3] I.C. § 35-44.1-3-4.

residence, and the paternal grandmother vacated the residence. She reported to DCS that Father was at times frustrated with Child and would become verbally abusive.

[6] On March 9, 2020, DCS again alleged Child to be a CHINS. Included in the petition were allegations that Child had suffered bruising and scratches; Father was not properly providing medication to Child; and Father was interfering with home services providers in their care of Child. Child was placed in foster care.

[7] In May of 2020, Child was adjudicated a CHINS, with Mother appearing in person and waiving her right to factfinding. Mother was ordered to participate in reunification services, to include working with a parent aide, obtaining parental education, and attending supervised visits with Child. Mother was ordered to abstain from alcohol and illicit drugs. On July 13, a fact-finding hearing was conducted, and Child was adjudicated a CHINS as to Father. Father denied causing injury to Child but stipulated that he lacked sufficient caregivers to adequately provide for Child's extensive medical needs. In a dispositional order, Father was ordered to engage in visitation, complete anger management classes through Fatherhood Engagement, complete caregiver training, attend medical appointments for Child, and adhere to Covid-19 precautions.

[8] By January of 2021, Father had completed anger management classes and Child was returned to Father's in-home care on a trial basis. Upon the

recommendation of the Court Appointed Special Advocate ("CASA"), the CHINS case remained open. CASA expressed concerns about Father missing Child's medical appointments and displaying anger toward caregivers.

[9] While Mother was at Safe House, she participated in Facetime visitations with Child. Ultimately, she discontinued the visits, deeming them inappropriate for a small child. Because Mother refused training in tracheotomy suctioning and did not participate in DCS drug screening, she was not approved for in-person visits. But she would occasionally show up at Father's house unannounced and demand to see Child, thereby circumventing DCS prerequisites for visits. She last visited Child in February of 2021.

[10] On March 27, 2021, Child was taken to an Evansville hospital with a fractured right femur. He was subsequently transferred to Peyton Manning Children's Hospital in Indianapolis, where he was examined by pediatric child abuse specialist Dr. Cortney Demetris. Dr. Demetris was unable to determine whether the fracture resulted from a bathtub fall involving a child with weak bones, as reported, or whether it stemmed from physical abuse. Nonetheless, Dr. Demetris documented medical neglect. That is, Father was unable to articulate what medications Child took; he didn't know when medical appointments were scheduled; he was lacking necessary supplies; and he did not know how to adjust the chest harness of Child's wheelchair. Father denied needing greater assistance and refused additional training. He reported that he was "freewheeling" Child's medical care and asserted that the hospital should know what to do without asking Father for specific details. (*Id*. at 31.) Dr.

Demetris compiled a report indicating that she found Child "at risk for death due to this degree of medical neglect." (DCS Ex. Vol. II, pg. 21.) She initiated hospital reporting to DCS of suspected child abuse or neglect.

[11] When Child was released from the hospital, he was again placed in foster care. In July, Child was returned to Father's care on a trial basis. DCS obtained in-home nursing care for Child for approximately thirty-two to forty hours per week.[4] CASA continued to express concerns that Father was agitated with health care professionals and that additional supervision was needed. At an October 12 review hearing, the court approved a concurrent plan for Child to include adoption.

[12] In November of 2021, Child's primary care provider found multiple bruises on Child and contacted Dr. Demetris. After ruling out a bleeding disorder, Dr. Demetris categorized the bruises as inflicted injuries. DCS assessed the report, did not enter a finding of substantiated abuse, and requested case closure based upon Father's progress.

[13] On February 5, 2022, DCS received a report that Child had been taken to an emergency room with shoulder pain and a right humerus (arm) fracture. Father's explanation was that he had grabbed Child's arm to keep Child from

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[4] A DCS service referral was in place for up to sixteen hours of in-home nursing care for Child daily. However, the positions could never be fully staffed due to a variety of factors. At least one nursing agency was reportedly short-staffed. Some caregivers reportedly declined to provide services in Father's home because he had a felony criminal history. Some caregivers reported reluctance to provide services in light of Father's antagonistic attitude toward them.

falling two days earlier. However, the radiologist classified the fracture as a healing fracture that had occurred more than two days earlier. Child was again examined by Dr. Demetris, who could not determine whether the injury was due to a fall or intentional injury.

[14] In March, Dr. Demetris was asked to consult after bruises were discovered on Child's upper body and chest. Father asserted that hospital staff had inflicted those bruises during a medical procedure. Dr. Demetris opined that the bruises were an inflicted injury, and she noted that Child's medical records did not include documentation of bruising having occurred during a medical procedure. Later that month, Child's primary care provider contacted Dr. Demetris regarding Child's arm pain and tenderness. An in-home caregiver had reportedly observed Father handling Child "roughly and with frustration, kind of jerking that arm." (Tr. Vol. II, pg. 37.) At a March 29, 2022, progress and permanency hearing, CASA requested that the court remove Child from Father's care; the request was taken under advisement.

[15] On April 1, a supervisor from the agency providing in-home nursing services to Child sent an email to DCS. The supervisor relayed reports from caregivers that Father had slapped Child's hand and was overly forceful with him. Reportedly, Father had been so hostile to caregivers that they were hesitant to work in the home. A safety plan was put in place, to include electronic monitoring. DCS family case manager Loussa Numa ("FCM Numa") supervised the attempted installation of a "nanny cam" but the installation was unsuccessful due to internet issues. (*Id.* at 136.)

[16] On April 13, a nurse arrived at Father's home to provide care for Child and observed swelling, redness, and bruising on Child's head as well as bruising on his chest and right leg. There was some blood on Child's pillow. The nurse summoned an ambulance and Child was transported to a hospital, where he was found to have bruises, a newly identified fracture of the right distal humerus, and a newly identified fracture of the distal radius. Dr. Demetris examined the medical reports with the background report from Father that he had been carrying Child and tripped. Dr. Demetris opined that the injuries to Child were not typical of a household fall.

[17] On April 19, DCS filed a motion to remove Child from Father's care and the motion was granted, together with CASA's pending motion for removal. On May 10, Father was charged with two felonies, including Neglect of a Dependent. The State also alleged Father to be a habitual offender. Father was arrested and remained incarcerated during the remainder of the CHINS and termination proceedings.

[18] On November 4, 2022, DCS filed a petition to terminate Mother's and Father's parental rights. A fact-finding hearing was conducted on February 27, 2023. At that hearing, Dr. Demetris opined that Child had been a victim of recurrent and escalating physical abuse, placing him at high risk for a fatal or near-fatal event if he remained in Father's care. DCS called Father to testify, and he invoked his Fifth Amendment right against self-incrimination.

[19] Mother, who had been released from the Department of Correction a few weeks earlier, testified that she was sober. She had been employed for one week and was living in temporary housing provided by Volunteers of America. She had not obtained training regarding Child's medical care. Although Mother was admittedly unable to take custody of Child, she expressed a desire that Child be placed in the care of paternal relatives as opposed to his pre-adoptive foster placement.

[20] On June 7, the court entered its findings of fact, conclusions thereon, and order granting the DCS petition. Mother and Father now pursue this consolidated appeal.

Discussion and Decision

Due Process

[21] Mother's Substantive Due Process Claim – Services in CHINS Proceedings. Mother claims that "no services or referrals were provided to [her] during most of the CHINS case" and that such amounted to a deprivation of her due process right to reasonable reunification services as contemplated by Indiana Code Section 31-34-21-5.5(b). Mother's Brief at 37. According to Mother, she had a "serious drug problem that resulted in debilitating injuries to [Child]," but DCS "did not take any steps to refer Mother to appropriate treatment." *Id.* at 38. And she characterizes the Facetime visitation offered to her as "not appropriate" for a young child. *Id.*

[22] When the State seeks to terminate parental rights, it must do so in a manner that meets the requirements of due process. *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015). "[F]or a parent's due process rights to be protected in the context of termination proceedings, DCS must have made reasonable efforts to preserve and/or reunify the family unit in the CHINS case[.]" *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*; *see also* Ind. Code § 31-34-21-5.5 (stating DCS is generally required to make reasonable efforts to preserve and reunify family during CHINS proceedings). But what constitutes "reasonable efforts" varies by case and the requirement that DCS make reasonable efforts to reunite a family "does not necessarily always mean that services must be provided to the parents." *In re T.W.*, 135 N.E.3d at 615. Moreover, the general requirement to make reasonable efforts to reunify families during CHINS proceedings is not an element of the termination statute, "and a failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law." *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). We recognize, however, that CHINS and termination proceedings are "deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter[.]" *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014).

[23] Within a few weeks of Child's birth, Mother was arrested in connection with events surrounding Child's catastrophic brain injury. She pled guilty to Neglect of a Dependent and received a five-year sentence. Because she absconded from a therapeutic placement, she faced another felony charge, and this charge was

resolved with a consecutive one-year sentence. She was released from incarceration five weeks before the fact-finding hearing upon the termination petition. In short, Mother has spent most of Child's life unavailable for full participation in DCS services.

[24] To the extent that she has been offered services, Mother has been largely uncooperative. She met with a parent aide on one occasion. She did not complete a mental evaluation or submit to DCS drug screens. According to Mother's testimony at the fact-finding hearing, she "wasn't going to jump through hoops" when she was not being afforded visits. (Tr. Vol. II, pg. 86.)

[25] Mother considered telephonic visits to be "not fair to a two-year-old" and voluntarily discontinued those visits. (*Id.*) She elected instead to "pop in" at Father's house, and she would then refuse to leave when he told her to do so. (*Id.* at 87.) Although Mother requested visits with Child after her release from prison, she did not maintain contact with DCS and did not participate in the training in tracheotomy suctioning that would be necessary for her to have an in-person visit with Child. Indeed, she admitted during her testimony that she did not know how to provide for Child's day-to-day care.

[26] Apparently, Mother desired different or more extensive services; at one hearing, her counsel advised the CHINS court that a written request for specific services would be filed. But no such written request was filed. Ignoring her own conduct and unavailability, Mother simply asserts that more and better services

were available. But this does not establish a lack of reasonable efforts on the part of DCS amounting to a deprivation of due process.

[27] Father's Procedural Due Process Claim – Termination Proceedings. Father claims he was denied due process because (1) he was not advised of his rights in the termination proceeding; (2) he did not receive notice at least ten days before the initial hearing pursuant to Indiana Code Section 31-35-2-6.5; (3) the fact-finding hearing was not commenced within ninety days as contemplated by Indiana Code Section 31-35-2-6; and (4) he was denied a requested continuance of the termination hearing until resolution of his pending criminal charges.

> Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). We have previously written 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. *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011).

In re K.D., 962 N.E.2d 1249, 1257 (Ind. 2012). Both the parental interest in maintaining parental rights and the State's countervailing interest in protecting the welfare of children are substantial. *Lang v. Starke Cnty. Office of Fam. & Child.*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007). Thus, we frequently focus upon the risk of error factor. *See id*.

[28] *Advisement of Rights*. Indiana Code Section 31-32-2-5 provides: "A parent is entitled to representation by counsel in proceedings to terminate the parent-child relationship." Indiana Code Section 31-32-2-3(b) provides that a parent in a termination proceeding is entitled to (1) cross-examine witnesses; (2) obtain witnesses or tangible evidence by compulsory process; and (3) introduce evidence.

[29] At the December 20, 2022, hearing Father appeared remotely from jail; Father's court-appointed counsel appeared in-person. The court was experiencing audio-visual difficulties, and apparently Father did not receive a specific advisement from the court regarding those rights. Yet, based upon the record before us, it is clear that Father was not deprived of the opportunity to be heard. Pursuant to a transport order, Father appeared in person for the fact-finding hearing. He was represented by counsel, who conducted cross-examination of DCS's witnesses. Father's counsel declined to call any witnesses. Father was called to testify as a DCS witness and chose to assert his Fifth Amendment right against self-incrimination. Father has shown no more than harmless procedural error that did not affect his substantial rights.

[30] *Notice*. Father was entitled to ten days' notice of the fact-finding hearing, pursuant to Indiana Code Section 31-35-2-6.5. He now claims that he did not receive such notice. But failure to comply with the statutory notice is a defense that must be asserted; once the parent has raised the issue in the termination proceedings, DCS bears the burden of proving statutory compliance. *Matter of*

C.C., 170 N.E.3d 669, 675 (Ind. Ct. App. 2021). Here, Father asserted no defense of lack of notice and has waived the issue. *See id* at 676.

[31] *Timeliness of Commencement of Fact-finding Hearing*. Indiana Code Section 31-35-2-6 requires that a fact-finding hearing be commenced within ninety days after the filing of the petition for termination of parental rights and concluded within 180 days. Here, DCS filed its petition on November 4, 2022, and the fact-finding hearing commenced on February 27, 2023, twenty-five days late.

[32] Indiana Code Section 31-35-2-6(b) provides:

> If a hearing is not held within the time set forth in subsection (a):
>
> (1) upon filing of a motion with the court by a party; and
>
> (2) absent good cause shown for the failure to hold the hearing within the time set forth in subsection (a);
>
> the court shall dismiss the petition to terminate the parent-child relationship without prejudice.

Father filed no motion for dismissal. Indeed, he asked for a hearing setting several months further into the future to correspond to a trial setting in his criminal case. Father cannot prevail upon a claim of a deprivation of due process in these circumstances. *See Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020) ("the invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct").

[33] *Motion for a Continuance*. Father requested a continuance of the fact-finding hearing until after his trial on his pending criminal charges was held. DCS and CASA opposed the motion, arguing that Dr. Demetris was ready to testify, Child needed permanency, and standards of proof were different in termination and criminal proceedings. Advised of the date of Father's criminal trial, August 14, 2023, the termination court responded that it "can't go six months out" and denied Father's motion. (Tr. Vol. II, pg. 20.)

> The decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. *Riggin v. Rea Riggin & Sons, Inc.*, 738 N.E.2d 292, 311 (Ind. Ct. App. 2000). We will reverse the trial court only for an abuse of that discretion. *Id*. 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. *Id*. However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. *Id*.

Rowlett v. Vanderburgh Cnty. Office of Fam. & Child., 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied.*

[34] By the time that Father's motion for a continuance was made, Child had been a subject of CHINS proceedings for the majority of his life. His need for permanency was readily apparent. Father requested an additional six-month delay, and even if Father were acquitted in a criminal trial requiring proof of guilt beyond a reasonable doubt, this is not dispositive of a termination petition. *See* I.C. § 31-35-2-4. We find no abuse of discretion in the trial court's denial of

Father's motion for a six-month continuance and therefore no denial of due process on this basis.

Sufficiency of the Evidence

[35] In its order terminating Parents' rights, the trial court credited the testimony of Dr. Demetris, who opined that Child was a victim of recurrent child abuse in Father's home and had sustained no additional injuries while in foster care. The court also focused upon Parents' inability as a practical matter to take custody of Child. In Father's case, this was due to his incarceration. In Mother's case, this was due to her lack of medical training, independent housing, and drug screens through DCS.[5] Parents contend that the termination order is clearly erroneous.

[36] We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution. *See, e.g., In re C.G.*, 954 at 923. However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). 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

[5] Mother has maintained that she provided drug screens as part of her probationary requirements.

a parent is unable or unwilling to meet his or her parental responsibilities. *Id*. at 836.

[37] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, 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) [and] that termination is in the best interests of the child ....

I.C. § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights.[6] *Id*. DCS's "burden of proof in termination of parental rights cases is one of 'clear

[6] In this case, although Child has been adjudicated a CHINS on two separate occasions, DCS did not include this allegation in its petition for termination of parental rights.

and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[38] 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 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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[39] Here, in terminating Parents' parental rights, the trial court entered specific 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.

[40] Alleged Defective Findings. Mother challenges the trial court's finding that she abruptly ended DCS-arranged visitation with Child, pointing out that she found

alternative means of visiting Child, by going to one foster family's home and by appearing at Father's house. She also insists that she accepted responsibility for Child's catastrophic injuries and acknowledged in open court that she was not a good placement for Child, but the trial court failed to credit her testimony. As for Father, he challenges numerous factual findings. Father points to testimony from FCM Numa regarding Father's efforts and progress and the circumstances that made providing adequate care for Child difficult if not impossible. He strenuously argues that the trial court failed to consider alternative sources for Child's injuries. Finally, he challenges the findings regarding proper notice.

[41] In reviewing a court's factual findings, we bear in mind that the "factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe, ... and is not required to believe a witness' testimony even when it is uncontradicted." *Wood v. State*, 999 N.E.2d 1954, 1064 (Ind. Ct. App. 2013) (citations omitted), *trans. denied*. Moreover, even erroneous findings are not reversible error if they are harmless. *See, e.g., In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) ("We may reverse a trial court's judgment ... only if its findings constitute prejudicial error. ... A finding of fact is not prejudicial to a party unless it directly supports a conclusion."), *trans. denied*. An erroneous finding is "merely harmless surplusage" when the unchallenged findings "provide ample support for the trial court's ultimate conclusion." *Id*.

[42] The majority of Parents' challenges to the factual findings are requests to reweigh the evidence. Rather than showing a lack of evidence for the factual

findings regarding her visitation, Mother instead points to her own testimony, which she characterizes as uncontested. Father also does not show a lack of evidence regarding his responses to services and the origin of injuries to Child but, in the face of conflicting evidence, points to evidence more favorable to him. However, this is merely a request that we reweigh the evidence and/or judge witness credibility, which we cannot do. *See, e.g., In re D.D.*, 804 N.E.2d at 265.

[43] Apart from these requests for reassessment of credibility or reweighing of evidence, Parents have pointed to some factual findings that are unsupported or partially unsupported. First, it is not established that Father was advised of his rights during the hearing at which he appeared remotely. But this amounts at most to harmless error. Second, the trial court entered an ambiguous finding with respect to the absence or unwillingness of Father's relatives coming forward to offer to care for Child. The testimony indicates that Paternal Grandmother apparently was willing to assist in Child's care but simply could not lift him. As for a paternal aunt, she received tracheotomy training and may have been willing to assist in Child's care but for her responsibility to provide full-time care to her own disabled parent. Also, the court found that Child was not enrolled in school while in Father's care. But FCM Numa testified that Father had enrolled Child in school, but Child had not yet attended due to health issues and impending surgery. These findings amount to, at most, harmless error.

[44] Finally, Finding of Fact 66 is overly inclusive. The court found that both FCM Numa and CASA testified that continuation of the parental relationships would pose a threat to Child. Only CASA did so. As for FCM Numa, she testified that Father "would not hurt Child on purpose," but opined that neither parent could provide "appropriate care." (Tr. Vol. II, pg. 124.) She did not definitively testify that continuation of the parental relationships would pose a threat to Child. Disregarding surplusage, we turn to consider whether the adequately supported findings support the judgment.

[45] Remediation of Conditions. Parents challenge the trial court's ultimate findings that there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside the home likely will not be remedied. When addressing that issue, we must determine whether the evidence most favorable to the judgment supports the trial court's determination. *In re D.D.*, 804 N.E.2d at 265; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). "First, we identify the conditions that led to removal; and second, we determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quotations and citations omitted).

[46] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4

N.E.3d at 643. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the "trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship"). In evaluating the parent's habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent's prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). 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. *Moore*, 894 N.E.2d at 226.

[47] Child was initially removed from Mother's care due to a catastrophic injury suffered while she was high on methamphetamine. Child, thereafter medically fragile, was removed from Father's care due to medical neglect and his suffering of repeated injuries. Mother has been incarcerated for the majority of Child's life. At the time of the termination hearing, she had been employed for one week and had short-term housing as part of her participation in a Volunteers of America program. Mother had received no training in how to care for Child's multiple medical conditions. As for Father, he was incarcerated and facing trial for his alleged conduct involving Child, as well as adjudication of a habitual offender allegation. Child has twice been adjudicated a CHINS and, as of the

date of the termination hearing, neither parent could assume custody of the Child. DCS presented clear and convincing evidence that the conditions leading to Child's removal and continued placement outside the parental home would not likely be remedied.[7]

[48] Best Interests of Child. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*. "Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child's best interests." *In re A.K.*, 924 N.E.2d at 224. Such evidence, "in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests." *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[7] Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not address whether continuation of the parental relationship poses a threat to Child.

[49] The evidence most favorable to the judgment is that Child suffered a catastrophic injury while in Mother's care. He then suffered various injuries while in Father's care, some of undetermined origin and some consistent with inflicted injury. Dr. Demetris, a pediatrician and specialist in child abuse employed at Peyton Manning Childrens Hospital and Indiana University-Riley Hospital, opined that Child had been a victim of escalating child abuse. Father is incarcerated awaiting trial, with the charges and habitual offender allegation against him exposing him to a possible forty-year sentence. Mother, incarcerated for most of Child's life and untrained to address Child's medical needs, is admittedly unable to take custody of Child. Rather, she simply expressed her desire that Child be cared for by some of Father's relatives so that he could maintain a relationship with his half-siblings. Moreover, the FCM and CASA testified that termination of parental rights and adoption is in Child's best interests. DCS presented sufficient evidence of Child's best interests.

Conclusion

[50] Parents were not denied due process in the CHINS or termination proceedings. Any error in the findings of fact amounts to harmless error. DCS presented sufficient evidence to establish the requisite elements for termination of parental rights by clear and convincing evidence. Because no clear error was established, we affirm the termination order.

[51] Affirmed.

May, J., and Felix, J., concur.