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IN THE
COURT OF APPEALS OF INDIANA

In Re: the Adoption of K.T.;

J.J. and C.T.,

Appellants-Respondents,

v.

G.C. and C.B.,

Appellees-Petitioners.

June 1, 2021

Court of Appeals Case No.
20A-AD-2102

Appeal from the Fulton Circuit
Court

The Honorable A. Christopher
Lee, Judge

Trial Court Cause No.
25C01-1912-AD-16

Najam, Judge.

Statement of the Case

[1] C.T. (“Mother”) and J.J. (“Father”) bring this interlocutory appeal from the trial court’s order that their consents to a pending adoption over their minor child, K.T. (“Child”), are not necessary. On appeal, Mother asserts that the trial court lacked authority to enter its order due to a pending Child in Need of Services (“CHINS”) petition involving Child. Father separately asserts on appeal that the trial court erred when it concluded that his consent to the adoption is not required.

[2] We affirm.

Facts and Procedural History

[3] Sometime in 2017, after having known Father for a “[c]ouple of weeks,” Mother became pregnant with Child. Tr. Vol. 2 at 94. Mother gave birth to Child in early 2018. Child was born addicted to heroin. G.C. and C.B. (“the Foster Parents”) became Child’s foster parents the day after Child’s birth, and Child has lived with them since being released from the hospital. Following Child’s birth, the Indiana Department of Child Services (“DCS”) filed a CHINS petition with respect to Child. Thereafter, the State established Father’s paternity in a separate paternity proceeding. In May of 2019, the CHINS court

approved a primary permanency plan of reunification and a secondary permanency plan of adoption. *See* Appellants' App. Vol. II at 96.¹

- [4] In September of 2019, the Foster Parents filed a petition to adopt Child in the Hamilton Superior Court. DCS moved to intervene in the adoption² and also moved to have that action transferred to the Fulton Circuit Court, which had jurisdiction over the ongoing CHINS matter. The Hamilton Superior Court granted both motions.
- [5] In July of 2020, the Fulton Circuit Court, sitting in the CHINS proceeding, received a progress report from DCS. In that report, DCS informed the court that Mother was not in compliance with services but that Father was in compliance with all services, except that he had missed three drug tests while testing negative on three other tests. *See* Appellants' CHINS App. Vol. III at 35-37. At that time, DCS's primary permanency plan continued to be reunification with a secondary plan of adoption. As summarized by the Court Appointed Special Advocate for Child:

[Child] was placed in the home of [the Foster Parents] immediately after leaving the hospital, where she still resides. [Child] is now 2.5 years old. She is developing right on track and has grown into a very active toddler. In the care of [the Foster

¹ The trial court took judicial notice of its own records in the concurrent CHINS proceeding, and Mother and Father jointly filed an appendix of materials from the adoption proceeding and a separate appendix of materials from the CHINS proceeding. Unless otherwise indicated, our citations to the Appellants' Appendix are to the materials from the adoption proceeding.

² DCS does not participate in this appeal.

Parents,] she is provided a safe and loving environment and is doing very well. On every occasion that I have visited her in the placement it is apparent that she is very loved and very happy. [The Foster Parents] are pursuing adoption For the last two years [M]other . . . has been mostly non-compliant or incarcerated. She has had only a handful of visits with [Child] over the course of her life. When not incarcerated she's been in and out of rehabilitation centers or DCS has been unable to reach her. She is currently incarcerated for possession of methamphetamine. [F]ather . . . was incarcerated for almost all of [Child's] first two years of life. He was released from jail in January of 2020 and due to Covid-19 wasn't able to have visitation until recently. As of my reporting, he has had two therapeutic visits with [Child]. This is the first time he has interacted with [Child] since her birth. [Father] has been mostly compliant with services put into place[;] however[,] he was recently arrested for domestic battery in front of a minor and driving under the influence. He has not been able to secure safe and stable housing. These things are very concerning to me.

Id. at 50. After receiving that report, the court again approved the primary and secondary permanency plans. *Id.* at 55.

[6] About one week later, the Foster Parents in the adoption proceeding moved to bifurcate that proceeding such that the court would first consider whether Mother's and Father's consents to the adoption was required before proceeding with their petition. The court granted that motion and held a fact-finding hearing on Mother's and Father's consents one month later. Following that hearing, the court found in relevant part as follows with respect to Father:

25. Father was released from [j]ail on March 2, 2018, and shortly after that, was returned to jail when he was charged with

Burglary and Theft During Father’s release from [j]ail, Father failed to contact DCS regarding his parentage of [Child], or about [Child’s] whereabouts, visiting her, or her well-being.

26. Father testified that he dated Mother “for a few weeks or a month or two,” he couldn’t remember. After such time as [Child] was conceived, Father knew that Mother was pregnant as Mother told him, but he didn’t “want much to do with” Mother as he was high and Mother was high.

27. After the birth of [Child], Father was aware she was born, was aware that she could be his biological daughter, but he continued to be high every day on drugs.

* * *

30. Father was incarcerated . . . and released from prison on January 24, 2020, onto probation.

31. Father does not believe adoption is in [Child’s] best interests because “she’s my daughter,” because he believes that [Child] has the right to know her family.

* * *

37. [Child] had never met Father until June 15, 2020[,] when therapeutic visitation began between [him] and [Child], in the underlying CHINS action, and [Child] does not know who Father is.

38. At the time of hearing, [Child] had seen Father a total of 7 supervised visits/hours of her life.

* * *

47. Father has had an unstable history of maintaining a residence prior to and since the birth of [Child], and for most of [Child's] life has been incarcerated.

a. Father had no specific recollection of his prior residences, but remembers moving to Michigan at some point in 2015;

b. He believes he resided in an apartment in Rochester for two years after returning from Michigan in late 2015, but couldn't remember the address;

c. Prior to [Child's] birth, Father resided in Michigan from approximately May of 2017 to November of 2017 and testified that he came home in November for a visit and "life got in the way" and he couldn't make it back to Michigan; Father later testified that when he came home for the visit in November, he "got high, fucked up and was stuck in Indiana";

d. [From] November of 2017 to March of 2018, Father claims he resided in Rochester but was unclear where;

e. Father resided at the Department of Correction[] and local jails during various periods from January 2018 (the month [Child] was born) to January 2020;

f. Since Father's release from prison [on] January 24, 2020, he has resided with his brother, Billy Jewell [in Rochester] until he had to move June 21, 2020 due to an altercation with Billy Jewell and a no contact order against Father[] as a bail condition in [another cause number];

g. Since June 21, 2020, Father has resided with his brother, Floro Jewell [in Rochester]. Father claims he has a lease for said residence with Floro Jewell, but failed to provide any evidence of the same to the Court.

48. Billy Jewell, Father's brother and with whom Father resided in 2020, has been convicted of a variety of criminal acts, was recently charged with Battery in the presence of a minor in June of 2020, and has pending probation violations.

49. Floro Jewell, Father's brother and with whom Father is currently residing, has a 2019 conviction for Contributing to the Delinquency of a Minor by providing alcohol, whereunder Floro is currently on probation.

50. Father is aware of the criminal history of both his brothers, but is unaware if DCS would allow the minor child to reside with Father in Floro Jewell's home.

51. Lisa Jewell, Father's mother and someone Father has identified residing with at various times in his adult life, has been convicted of a variety of criminal acts, including Possession of Cocaine. Father knew she had served time in prison.

* * *

58. Father has failed to put [Child's] needs and priorities above his own and has not performed any of the necessary tasks of a parent since [Child's] birth; however, he wants to be able to have the title of father now after [Child] has lived and bonded with her [Foster] Parents since birth.

59. Father has been convicted of [seven listed] criminal acts, and judicial notice was taken of each Cause Number

60. Father has been charged with the [three listed] criminal acts [and a violation of probation] since being released from prison [on] January 24, 2020, and judicial notice was taken of each Cause Number

61. Prior to his current ongoing criminal matters, Father has had his probation revoked and has been returned to jail on prior criminal charges.

62. Father is unsure if he is still subject to a no contact order from his brother, Billy Jewell, which is a condition of bail for [one of the pending criminal matters].

63. Father also has a juvenile delinquency record and, when asked about the same, testified that he couldn't remember what all delinquency acts he committed "there was so much."

64. Father has demonstrated a continuous pattern of criminal activity throughout his juvenile and adult life.

65. Father had just been released from jail on August 20, 2020, the day before the final adoption hearing, after being arrested on or about August 14, 2020.

66. Father's future freedom is questionable as he has pending criminal matters that could end with Father returning to incarceration.

67. Father has demonstrated an unstable living environment and a transient lifestyle.

68. Father has demonstrated a lack of financial stability.

69. Father's family unit has a pattern of criminal activity.

70. The Court finds by clear and convincing evidence that Father is too unfit to parent [Child] and it would be in the best interests of [Child] if the Court dispensed with Father's consent to the pending adoption.

Appellants' App. Vol. II at 64-72.

[7] With respect to Mother, the court found as follows:

71. Mother was initially served with the notice of adoption proceedings by publication . . . as Mother's whereabouts were unknown. . . . Mother's location was not known until she was subsequently arrested for criminal charges.

72. Mother appeared for the . . . adoption hearing while incarcerated

73. Mother has [n]ever provided any financial or in-kind support for [Child] since [Child's] birth

* * *

79. Mother has never exercised regular and consistent contact with [Child] or with DCS, and Mother has gone months at a time with no contact with [Child] or DCS. . . .

80. Mother has failed and refused to comply with the terms of DCS in order for her to have visitation with [Child].

* * *

86. Mother has had an unstable history of maintaining a residence prior to and since the birth of [Child]

87. When Mother is no longer incarcerated, she intends to move back with her Grandfather in Kokomo, Indiana, who is a registered sex offender.

88. Mother has failed to put [Child's] needs and priorities above her own and has not performed any of the necessary tasks of a parent since [Child's] birth; however, she wants to be able to have the title of mother now after [Child] has lived and bonded with her [Foster] Parents since birth.

89. Mother has failed without justifiable cause to communicate significantly with [Child] when able to do so.

* * *

91. Mother has been convicted of [five listed] criminal acts [and a revocation of probation], and judicial notice was taken of each Cause Number

92. Mother has been charged with the [additional listed] criminal acts [and an additional petition to revoke probation, which] are pending and judicial notice was taken of each Cause Number

* * *

94. Mother has demonstrated a continuous pattern of criminal activity throughout her adult life.

95. Mother’s future freedom is questionable as she has pending criminal matters that could end with Mother remaining incarcerated.

96. Mother’s reasoning for believing that it is not in [Child’s] best interest to be adopted is because she “wants a chance to have her daughter.”

97. Mother has demonstrated an unstable living environment and a transient lifestyle.

98. Mother has demonstrated a lack of financial stability.

99. Mother has failed to take responsibility for her other biological children in not having their care and custody and is not providing them financial support.

100. The Court finds by clear and convincing evidence that Mother is too unfit to parent [Child] and it would be in the best interests of [Child] if the Court dispensed with Mother’s consent to the pending adoption.

Id. at 72-76.

[8] Thus, in its order, the court found and concluded that the Foster Parents had met their burden to show that Mother and Father were “too unfit” to parent Child and that dispensing with their consents to the adoption was in Child’s best interests. *Id.* at 81. The court further concluded as follows:

27. Probate Courts have exclusive jurisdiction over all adoption proceedings. I.C. § 31-19-1-2. “That there is a simultaneous CHINS . . . proceeding does not in any way divest the probate

court of its exclusive jurisdiction.[” *R.K.H. v. Morgan Cnty. Off. of Fam. & Child. (In re Infant Girl W.)*, 845 N.E.2d 229, 240 (Ind. Ct. App. 2006)]. . . . Importantly, this case upholds an adoption that was granted while a CHINS case was pending.

* * *

29. *H.L.W. v. L.M.D. (In re H.L.W.)*[, 931 N.E.2d 400, 407-08 (Ind. Ct. App. 2010),] provides an analysis that, “Here the goal of the CHINS action was reunification . . . while the goal of the adoption proceeding was adoption Thus, the goals of the proceedings were not the same. However, . . . we are persuaded that the consent statutes . . . enabled the trial court to consider the adoption proceeding despite the pending CHINS action.” The analysis in [*In re H.L.W.*] demonstrates that even when the goals are inconsistent, the adoption can still be granted. With regard to [Child], the goals of the CHINS case and the [a]doption matter . . . are not entirely inconsistent[] due to the permanency plan being concurrent of reunification AND adoption.

Id. at 82-83.

[9] The court then ordered that the adoption be set for a final hearing, stating:

if [DCS], after review of this Court’s Order . . . , chooses to continue to “not consent” to the adoption of [Child] by [the Foster] Parents, . . . then [DCS] shall immediately file for a hearing. . . . Otherwise, should DCS’[s] position have changed, DCS shall file a Notice with this Court . . . indicating . . . that [it] will no longer be withholding [its consent] so that [the Foster] Parents may continue to move forward to the final resolution of this adoption. . . .

Id. at 83-84. Thereafter, DCS timely notified the court that, should the court’s order on Mother’s and Father’s consents “survive appeal,” DCS did not intend to withhold its consent to the adoption. *Id.* at 96. Likewise, in the CHINS proceeding the court modified the primary permanency plan from reunification to adoption. Appellants’ CHINS App. Vol. III at 90-91. Mother and Father requested the trial court to certify its order dispensing with their consents in the adoption proceeding for interlocutory appeal, which the court did.³ We then accepted the appeal.

Discussion and Decision

Issue One: Whether the Ongoing CHINS Proceeding Prohibited the Trial Court from Dispensing with Mother’s and Father’s Consents in the Adoption Proceeding

[10] We first address Mother’s only argument on appeal, namely, that the trial court erred as a matter of law when, despite there being an ongoing CHINS matter involving Child, the court concluded that Mother’s and Father’s consents were not required to proceed on the adoption petition.⁴ We review this issue *de novo*. See, e.g., *B.B. v. B.C. (In re Adoption of I.B.)*, 32 N.E.3d 1164, 1169 (Ind. 2015).

³ The trial court did not formally stay the adoption proceeding during the pendency of this appeal. However, neither has the court set a date for the final hearing. See Appellants’ App. Vol. II at 8-10. In the CHINS proceeding, the court set a hearing date on the new permanency plan for July 15, 2021.

⁴ We disagree with the Foster Parents’ argument that this issue is not available for our review. See *Showalter v. Town of Thorntown*, 902 N.E.2d 338, 342 (Ind. Ct. App. 2009), *trans. denied*; see also Appellants’ App. Vol. II at 81-83.

[11] Mother's argument that the trial court in the adoption proceeding was prohibited from dispensing with Mother's and Father's consents to the adoption due to the ongoing CHINS proceeding misunderstands our case law. There are two essential opinions bearing on this issue. First is our Supreme Court's opinion in *Lake County Division of Family and Children Services v. T.B. (In re Adoption of T.B.)*, 622 N.E.2d 921 (Ind. 1993). In that case, the natural parents had their parental rights over the child terminated by a local juvenile court. Thereafter, the local probate court granted the adoptive parent's petition to adopt the child. However, several years later, the child ran away from the adoptive parent's home, and the adoptive parent sought the intervention of the juvenile court, which declared the child to be a CHINS. The adoptive parent also filed a petition to revoke her adoption of the child in the probate court. The probate court denied a motion to consolidate the petition to revoke the adoption with the CHINS matter in the juvenile court, and the probate court then revoked the adoption.

[12] The Indiana Supreme Court held that the probate court had the authority to hear the petition to revoke the adoption and that the pending CHINS matter in the juvenile court did not divest the probate court of that authority. *Id.* at 923-24. As the Court explained:

An action for adoption and a CHINS proceeding . . . are separate actions which affect different rights. The CHINS proceeding is directed at helping the child directly by assuring that the child receives necessary assistance. Adoption, on the other hand, establishes a family unit. An adoption severs the child entirely from its own family tree and engrafts it upon that of another. As

a result of the adoption, the adopted child becomes the legal child of the adoptive parent.

The legislature established the jurisdiction of juvenile courts and probate courts. The juvenile court was expressly given jurisdiction over CHINS proceedings and, similarly, a court with probate jurisdiction was expressly given jurisdiction over adoption matters. The power to adjudicate either matter does not divest the other court of its respective jurisdiction. Consequently, a court with probate jurisdiction may adjudicate an adoption matter simultaneously with the juvenile court's adjudication of a CHINS proceeding.

Id. at 924 (quotation marks and citations omitted).

- [13] However, following our Supreme Court's opinion, our Court decided *Bond v. Bracey (In re Adoption of E.B.)*, 733 N.E.2d 4 (Ind. Ct. App. 2000), *trans. denied*. In that case, a local Office of Family and Children ("OFC") had filed a CHINS action in the juvenile court with a permanency plan for "reunification" of the child and the natural father. *Id.* at 5. The father "followed all of the plan's requirements," and the OFC "recommended reunification" to the juvenile court. *Id.* Meanwhile, however, the child's foster parents petitioned to adopt the child in the probate court, which denied the petition on the ground that it did not have the authority to grant it.
- [14] We affirmed the probate court's judgment. In particular, we rejected the foster parents' reliance on *In re Adoption of T.B.*, stating that the facts in that opinion were "distinguishable" as the adoption proceeding there "was directed at severing the parental relationship" between the child and the adoptive parent,

while the simultaneous CHINS proceeding was then “directed at helping [the child] by assuring that she received necessary assistance” *Id.* at 6 (discussing *In re Adoption of T.B.*, 622 N.E.2d at 923-24). In *In re Adoption of E.B.*, on the other hand, “the CHINS proceeding . . . was directed at reunifying the father and [child],” while, conversely, “the adoption proceeding involved a third party attempting to adopt [the] child when her father’s parental rights had never been terminated.” *Id.* In those circumstances, we concluded, “the initiation of the CHINS proceeding” places the issue of “child custody exclusively with[] the juvenile court[,]” and “the probate court did not have” the authority to grant the foster parents’ petition to adopt the child.⁵ *Id.* at 5.

[15] On several occasions since our opinion in *In re Adoption of E.B.*, we have made clear that that opinion along with our Supreme Court’s opinion in *In re Adoption of T.B.* stand for the rule that “CHINS proceedings and adoption proceedings may be considered simultaneously if the goals of the proceedings are the same.” *In re Adoption of H.L.W.*, 931 N.E.2d at 406-07 (discussing *In re Adoption of H.N.P.G.*, 878 N.E.2d 900, 905 (Ind. Ct. App. 2008), *trans. denied*; and *Lucas v. C.F.K. (In re Adoption of J.D.B.)*, 867 N.E.2d 252, 256-57 (Ind. Ct. App. 2007), *trans. denied*).⁶ Obviously, that means that, “where [DCS] does not pursue

⁵ Our opinion in *In re Adoption of E.B.* frames the issue on appeal around each trial court’s “jurisdiction,” but we have since clarified that that language is “more accurately described as a ‘legal error’ rather than a jurisdictional error.” *In re Adoption of H.L.W.*, 931 N.E.2d at 404 (discussing *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006)).

⁶ In another opinion, we concluded that adoption proceedings and CHINS proceedings may always be considered simultaneously, regardless of the respective goals of those proceedings, because DCS has the opportunity to consent or withhold consent to the adoption. *R.K.H. v. Morgan Cnty. Off. of Fam. & Child. (In re*

reunification, . . . our holding in [*In re Adoption of E.B.*] does not control.” *In re Adoption of H.N.P.G.*, 878 N.E.2d at 904. In *In re Adoption of H.N.P.G.* and *In re Adoption of J.D.B.*, we affirmed the entry of final decrees of adoption where DCS had opposed reunification in concurrent, and still pending, CHINS proceedings. *In re Adoption of H.N.P.G.*, 878 N.E.2d at 905; *In re Adoption of J.D.B.*, 867 N.E.2d at 256-57.

[16] Here, Mother contends that, because the primary permanency plan in the CHINS proceeding was reunification, our holding in *In re Adoption of E.B.* directs that the adoption proceeding be dismissed.⁷ We cannot agree. First, unlike in *In re Adoption of E.B.*, here we do not have a final judgment on the adoption petition. Rather, we only have an interlocutory order on Mother’s and Father’s consents to the adoption. Further, at the time of the hearing on Mother’s and Father’s consents in the adoption proceeding, the *primary* permanency plan in the CHINS proceeding was reunification, but the *secondary* permanency plan was adoption. That is, DCS was moving on two tracks in the CHINS proceeding: on one, DCS was engaging Mother and Father with services in an effort to reunify them with Child. On the other, and in the event

Infant Girl W.), 845 N.E.2d 229, 240-41 (Ind. Ct. App. 2006), *trans. denied*; see also *In re Adoption of H.L.W.*, 931 N.E.2d at 406-07 (relying on *In re Infant Girl W.*). We need not consider that broader analysis, however, as we hold that the adoption proceeding here, at least at the time of the entry of the order on appeal, was consistent with the secondary permanency plan in the CHINS proceeding.

⁷ Unlike in *In re Adoption of T.B.* and *In re Adoption of E.B.*, here there were not two different trial courts considering the concurrent adoption and CHINS proceedings, and there is no dispute in this appeal that the Fulton Circuit Court has the authority to hear both the Foster Parents’ adoption petition and DCS’s CHINS petition.

that the reunification efforts eventually failed, DCS was laying the groundwork to have an adoption lined up for Child to be entered without delay.

[17] The Foster Parents' adoption petition was in furtherance of that secondary permanency plan. The trial court's bifurcation of the adoption proceeding such that the court initially considered whether Mother's and Father's consents to the adoption were required, and then set the final hearing on the adoption petition for a to-be-determined date,⁸ was also in furtherance of that secondary permanency plan. We conclude that the goals of the two proceedings at this point are in alignment and, thus, that the trial court did not err as a matter of law when it considered whether Mother's and Father's consents to the adoption were required.⁹

⁸ Indeed, the trial court has since set a date in the CHINS proceeding on the updated primary permanency plan of adoption, which suggests that the trial court is prioritizing the resolution of that proceeding before advancing to a final hearing in the adoption proceeding. That approach would be consistent with our Supreme Court's guidance in *S.C. ex rel. M.B. v. S.B. (In re Custody of M.B.)*, namely, that

having jurisdiction does not automatically mean that it would be appropriate for the circuit court to exercise that jurisdiction. . . .

In the present case, a CHINS proceeding and a custody action are distinct in form, but we acknowledge that both involve the same subject matter, which is the care and custody of [the child]. Due to this, it would have been appropriate for the circuit court to have allowed the parties to file their independent custody action, but stay the action until the conclusion of the CHINS proceeding [A]bstention is not the same as relinquishing or being divested of jurisdiction, but is only the postponement of its exercise. Again, it would have been appropriate in the present case for the circuit court to simply postpone its exercise of jurisdiction over the independent custody action until the conclusion of the CHINS proceeding. . . .

51 N.E.3d 230, 235-36 (Ind. 2016) (citations and quotation marks omitted).

⁹ Mother also makes a broader attack on the adoption proceeding, asserting that there can never be a valid adoption proceeding while there is an ongoing CHINS proceeding. That argument is of course contrary to our Supreme Court's analysis in *In re Adoption of T.B.*, and we do not consider it further. See 622 N.E.2d at 924.

***Issue Two: Whether the Trial Court Erred when it Concluded that Father’s
Consent to the Adoption was not Required***

[18] We next turn to Father’s arguments on appeal, which challenge the trial court’s findings in support of its judgment that his consent to the adoption is not required. We review Father’s arguments under our clearly erroneous standard. Findings are clearly erroneous when there is no support in the record for them, and a judgment is clearly erroneous when it is not supported by the findings. *See, e.g., In re Adoption of I.B.*, 32 N.E.3d at 1169. We consider only the probative evidence and reasonable inferences that support the judgment, and we neither reweigh the evidence nor determine the credibility of witnesses. *Hitch v. State*, 51 N.E.3d 216, 226 (Ind. 2016).

[19] Indiana law generally requires natural parents to consent to adoptions. Ind. Code § 31-19-9-1 (2020). However, a natural parent’s consent to an adoption is not required if the trial court finds by clear and convincing evidence that “the parent is unfit to be a parent” and “the best interests of the child . . . would be served if the court dispensed with the parent’s consent.” I.C. § 31-19-9-8(a)(11). As we have explained:

While the term “unfit” as used in Ind. Code § 31-19-9-8(a)(11) is not statutorily defined, this court has defined “unfit” as “[u]nsuitable; not adapted or qualified for a particular use or service” or “[m]orally unqualified; incompetent.” *In re Adoption of M.L.*, 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012) (quoting Black’s Law Dictionary 1564 (8th ed. 2004)). We have also noted that statutes concerning the termination of parental rights and adoption “strike a similar balance between the parent’s rights and the child’s best interests” and thus termination cases provide

useful guidance in determining whether a parent is unfit. *Id.* Termination cases have considered factors such as a parent’s substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child’s special needs. *Id.* Also, this Court has consistently held in the termination context that it need not wait until children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *See In re A.P.*, 981 N.E.2d 75, 83 (Ind. Ct. App. 2012). It is well-settled that individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children. *In re Adoption of H.N.P.G.*, 878 N.E.2d 900, 907 (Ind. Ct. App. 2008), *trans. denied*[.] Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ind. Evidence Rule 401. A parent’s criminal history is relevant to whether the parent is unfit to be a parent under Ind. Code § 31-19-9-8(a)(11). *See In re T.W.*, 859 N.E.2d 1215, 1218-1219 (Ind. Ct. App. 2006) (discussing evidence of the father’s criminal history in reviewing the trial court's finding of parental unfitness).

Mendez v. Weaver (In re Adoption of D.M.), 82 N.E.3d 354, 358-59 (Ind. Ct. App. 2017).

[20] Father contends that the trial court’s conclusion that his consent to the adoption is not required is erroneous for three reasons. First, he asserts that the trial court’s “examination of [Father’s] fitness relied too much upon his past record[] and insufficiently viewed his fitness at the time of the hearing.” Father’s Br. at 13. In particular, Father argues that the trial court overemphasized Father’s

criminal record and Father's lack of stable housing some months prior to the hearing rather than his circumstances at the time of the hearing.

[21] Father's first argument is misplaced. Father was arrested for domestic battery in the presence of a minor one week before the hearing on his consent to the adoption, and he was released from jail on that arrest the day before the hearing. That arrest followed another arrest, for operating while intoxicated, a few weeks prior. Father also had a notice of probation violation pending at the time of the hearing on his consent. And the trial court expressly relied on each of those facts in its order dispensing with Father's consent. Therefore, this record does not support Father's argument that the trial court failed to consider his circumstances at the time of the hearing.

[22] Father next asserts that the trial court erroneously considered the criminal history of Father's family members in determining Father's fitness to be a parent. But the trial court's findings, in context, show that Father had been relying on various family members for housing, and those family members were not likely to provide Father with stable housing. Indeed, each of the court's specific findings regarding the criminal history of Father's family members immediately follows the court's finding that "Father has had an unstable history of maintaining a residence prior to and since the birth of [Child]." Appellants' App. Vol. II at 68. Thus, Father's second argument misunderstands the trial court's findings.

[23] Last, Father asserts that, because, at the time of the hearing on consent, DCS was opposed to adoption as the primary permanency plan, the evidence is insufficient to support the trial court's finding that dispensing with Father's consent is in Child's best interest. This argument is not persuasive. Father's argument is, in effect, that DCS's position on an adoption is the end of the matter. But that is not consistent with the Indiana Code, which squarely places with our trial courts the task of finding whether dispensing with parental consent is in a child's best interests. I.C. § 31-19-9-8(a)(11). Further, the court here did not ignore DCS's position. Rather, the court made clear that it was aware that DCS opposed the adoption, and the court set for a later date a hearing on the independent question of DCS's consent to the adoption. *See* Appellant's App. Vol. II at 83-84. There is no error on this issue.

Conclusion

[24] In sum, the trial court did not err as a matter of law when it considered whether Mother's and Father's consents to the adoption were required despite an ongoing CHINS proceeding with Child. Further, the record supports the trial court's findings that Father's consent to the adoption is not required, and the court's findings support its judgment dispensing with Father's consent. Accordingly, we affirm the trial court's judgment.

[25] Affirmed.

Pyle, J., and Tavitas, J., concur.