

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
L.I., J.I., H.I., and S.I. (Minor
Children);

B.I. (Mother) and A.B. (Father
of L.I., J.I., and H.I.),

Appellants-Defendants,

v.

The Indiana Department of
Child Services,

Appellee-Plaintiff.

August 18, 2021

Court of Appeals Case No.
21A-JT-491

Appeal from the Greene Circuit
Court

The Honorable Erik C. Allen,
Judge

Trial Court Cause Nos.

28C01-2008-JT-21

28C01-2008-JT-22

28C01-2008-JT-23

28C01-2008-JT-24

Pyle, Judge.

Statement of the Case

[1] B.I. (“Mother”) and A.B. (“Father”) (collectively (“Parents”)) each appeal the termination of the parent-child relationship with their children, H.I. (“H.I.”), J.I. (“J.I.”), and L.I. (“L.I.”). Mother also appeals the termination of the parent-child relationship with her son, S.I., (“S.I.”).¹ Mother argues that she was denied due process because the Department of Child Services (“DCS”) failed to make reasonable efforts to preserve the parent-child relationships. Father argues that he was denied due process because the trial court drew an adverse inference from his refusal to testify based upon his Fifth Amendment privilege against self-incrimination and that there is insufficient evidence to support the terminations. Concluding that: (1) Mother was not denied due process; (2) Father was not denied due process; and (3) there is sufficient evidence to support the terminations, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether Mother was denied due process.
2. Whether Father was denied due process.

¹ S.I.’s father, M.L., voluntarily relinquished his parental rights and is not a party to this appeal.

3. Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

- [3] The facts most favorable to the terminations reveal that Mother and Father are the parents of H.I., who was born in October 2016; J.I., who was born in November 2018; and L.I., who was born in October 2019. Mother is also the parent of S.I., who was born in May 2014.
- [4] In early June 2019, DCS received a report that Parents were not supervising five-year-old S.I., two-year-old H.I., and seven-month-old J.I. DCS Family Case Manager Christie Burton (“FCM Burton”) went to the home to check on the children and observed them playing outside without supervision. When she entered the home, FCM Burton observed Mother sleeping on the floor. FCM Burton also noticed that Parents did not have formula or baby food for J.I. Parents told the family case manager that J.I. ate adult food. FCM Burton also noticed that Parents did not have a safe sleeping area for J.I. At FCM Burton’s request, both Mother, who was pregnant with L.I., and Father submitted to drug screens.
- [5] After learning that Parents’ drug screens were positive for methamphetamine and amphetamine, FCM Burton returned to Parents’ home a few days later. At that time, FCM Burton noticed that the children were dirty and there was no running water in the home. FCM Burton further noticed that the children were playing with a bottle of hydrogen peroxide. Mother appeared to be under the influence of drugs, and a second drug screen taken that day was positive for

methamphetamine. Father also submitted a drug screen. However, because the testing protocol was not followed for Father's second test, DCS was not able to rely on the results. Father refused to submit to a third drug screen. DCS removed the children from Parents because of Parents' drug use and the conditions in the home. DCS further placed the three children together with a family member.

[6] That same week, DCS filed petitions alleging that S.I., H.I., and J.I. were children in need of services ("CHINS"). The petitions alleged that Parents used methamphetamine, the home was in "an unclean and deplorable condition[,]" and the children were "unclean and in need of bathing." (Ex. Vol. 3 at 17, 36, 55).

[7] DCS Supervisor Jennifer Rehmel-Smith ("Supervisor Rehmel-Smith") began supervising the three CHINS cases in June 2019. At that time, DCS referred Parents to Ireland Home Based Services ("Ireland") in Greene County for home-based therapy. Parents declined this service because the trial court had not ordered it.

[8] Following a CHINS factfinding hearing in August 2019, the trial court adjudicated S.I., H.I., and J.I. to be CHINS. The trial court held a dispositional hearing in September 2019. Also in September 2019, DCS referred Parents to Ireland for home-based case work, which included assistance with parenting skills and with finding housing and employment. Parents failed to successfully complete this service, and Ireland closed the referral. DCS

further referred Parents to Ireland for supervised visitation. However, the record does not reveal any information about Parents' initial participation in supervised visitation with the children.

[9] In October 2019, Mother gave birth to L.I., who tested positive for controlled substances, including opiates and amphetamine. DCS immediately removed L.I. from Parents and placed her in foster care with her siblings. Three days later, DCS filed a petition alleging that L.I. was a CHINS. In December 2019, the trial court adjudicated L.I. to be a CHINS.

[10] Also in December 2019, the cases were transferred to DCS Family Case Manager Carrie Goodwin ("FCM Goodwin"). At that time, Parents were not participating in services. In December 2019, the trial court also issued dispositional orders in the cases of S.I., J.I., and H.I. The orders required Parents to: (1) abstain from the use of illegal controlled substances; (2) obey the law; (3) complete parenting assessments and follow all recommendations; (4) complete substance abuse assessments and follow all recommendations; (5) submit to random drug screens; and (6) attend scheduled visitation with children. The trial court also ordered Father to establish paternity of the children and to follow all terms of his probation.²

² At the time that the trial court issued the CHINS dispositional order, Father was on probation for a 2015 conviction for Level 4 felony burglary, which involved theft of medication.

- [11] In January 2020, the trial court held a dispositional hearing in L.I.'s case and entered a dispositional order. The trial court specifically ordered Parents to complete the same services that it had ordered in the CHINS dispositional orders for the other three children.
- [12] Also in January 2020, DCS placed the four children together in foster care in Bartholomew County because the family member with whom they had been placed was no longer able to care for them. FCM Goodwin arranged for DCS to provide Parents with transportation to and from Bartholomew County for their supervised visits.
- [13] In addition, in January 2020, Parents attended a family and team meeting with FCM Goodwin. Parents asked FCM Goodwin for referrals for substance abuse assessments. FCM Goodwin referred Parents to Legacy Associates for the assessments. Parents, however, did not follow up with the referral.
- [14] In February 2020, Parents relocated to Daviess County, and FCM Goodwin referred parents for services at Maglinger Home Based Services ("Maglinger") in Daviess County. Specifically, FCM Goodwin referred Parents to Maglinger for: (1) substance abuse assessments; (2) home-based casework services to assist Parents with housing, employment, and parenting skills; and (3) home-based therapy. Mother did not engage in the substance abuse assessment or any of the other Maglinger services. Father obtained a substance abuse assessment but apparently did not follow any of the assessor's recommendations. He also failed to participate in the other Maglinger services.

- [15] In addition, because Parents had complained about submitting drug screens to the laboratory to which they had initially been referred, FCM Goodwin referred Parents to submit to drug screens at the Daviess County DCS office, which was within walking distance of Parents' home. Parents, however, never submitted to any drug screens at the Daviess County DCS office. In addition, Parents did not participate in any supervised visitation in February or March 2020.
- [16] In April 2020, FCM Goodwin travelled to Parents' home in Daviess County to talk to Parents about participating in services. However, when Father answered the door, he was angry. He cursed at FCM Goodwin, demanded that she leave Parents' residence, and "flipped [her] off." (Tr. Vo. 2 at 128). FCM Goodwin continued to attempt to contact Parents in May 2020, but she had no success.
- [17] In June 2020, DCS placed Parents' supervised visits with their children on hold because Parents had not been attending any visits. In addition, Maglinger closed the Parents' cases in June 2020 because Parents had failed to participate in the services at Maglinger. At that time, DCS referred Parents to Good Samaritan Center, which was located near Parent's home. However, Parents also failed to follow up on this referral.
- [18] Also in June 2020, the State charged Father with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. The State also filed a petition to revoke Father's probation for the 2015 Level 4 felony burglary conviction.

[19] Parents failed to attend a July 2020 case review hearing, but they were represented by counsel. Following the hearing, the trial court issued an order wherein it concluded that Parents “had not enhanced their ability to fulfill their parental obligations” because they had not consistently visited the children or participated in services. (Ex. Vol. 3 at 30). The trial court further concluded that the issues that had led to the children’s removal had not “been addressed or remedied.” (Ex. Vol. 3 at 33). The trial court’s order also noted that the permanency plan had been changed from reunification to adoption.

[20] In August 2020, DCS filed a petition to terminate Mother’s parental relationships with S.I., H.I., J.I., and L.I. and Father’s parental relationships with H.I., J.I., and L.I. Later that month, the trial court held the initial hearing for the termination petitions. Mother did not attend the hearing despite having had personal service and notice of the proceedings. During the hearing, Father told the trial court that “this whole time [he had] been presumed as the alleged father” and had accepted financial responsibility for the children, “all 4 of them.” (Tr. Vol. 2 at 10). Father further explained that he had not been “on the birth certificate or anything for the whole time[.]” (Tr. Vol. 2 at 10). Father also explained that he had recently received DNA test results and learned that he is the biological father of H.I., J.I., and L.I. Given the recent DNA test results, Father asked the trial court if his case started at that moment. The trial court responded that it did not.

[21] One month later, in September 2020, Mother was charged in Daviess County with Level 4 felony possession of methamphetamine. The charging

information alleged that Mother had possessed at least ten grams but less than twenty-eight grams of methamphetamine.

[22] Also in September 2020, while incarcerated at the Greene County jail, Father began therapy via telephone with Hamilton Center Therapist Carl McCarty (“Therapist McCarty”). Therapist McCarty worked with Father on Father’s anxiety and anger issues. Father had previously reported that he suffered from schizophrenia, but he refused to discuss this condition with Therapist McCarty. Father also did not address his substance abuse issues with Therapist McCarty.

[23] Following several Covid19-related delays, the trial court held the termination factfinding hearing in February 2021. Both parents were incarcerated on their possession of methamphetamine charges at the time of the termination hearing. When DCS called Father to testify, Father’s counsel told the trial court that Father “would like to invoke his 5th amendment right against self-incrimination and not testify[.]” (Tr. Vol. 2 at 30). The trial court told Father that it could draw an adverse inference if Father invoked his Fifth Amendment privilege against self-incrimination because a termination proceeding is a civil case. Father responded that he understood that the trial court could draw an adverse inference from his refusal to testify. Thereafter, DCS made an offer of proof and stated that it “had intended to ask [Father] about his drug use and admissions that he [had] made to a substance abuse assessor about his drug use as well as the type of questions . . . related to his employment, his transportation, his housing and his plan for raising these 4 children.” (Tr. Vol. 2 at 31).

[24] Also at the hearing, FCM Goodwin testified that the reasons for the children's removal had not been effectively addressed. FCM Goodwin further explained as follows:

[Parents] are severely addicted to methamphetamine, have not taken the steps to overcome that addiction, they do not have the means to provide basic care for these children, [Parents] are not employed, they do not have stable housing, transportation is iffy to provide [for] the kids['] needs if the kids need anything.

(Tr. Vol. 2 at 134). According to FCM Goodwin, Parents had never been “in a position where they didn't know their responsibilities of compliance with services.” (Tr. Vol. 2 at 149).

[25] FCM Goodwin further testified that when she had most recently visited Father in jail, Father had appeared to be very angry. FCM Goodwin further testified regarding her visit with Father as follows:

[Father] made comments that the jail ha[d] put him in maximum security because they as meaning the jail felt that he was pretty violent offender, [Father] made several comments about the termination being everybody's else fault, no fault of his own, he had made comments about wanting to, he [would] rather not see people involved in this case out on the street or they w[ould] be sorry, [Father] . . . made comments that if he goes to prison for incarceration he was going to earn patch, join gang, earn a patch and murder somebody, his life goal was to tattoo his whole face[.]

(Tr. Vol. 2 at 142).

[26] In addition, CASA Amber Spicer (“CASA Spicer”), who had been appointed to the children’s cases in September 2019, testified that, although DCS had referred Parents to several service providers, Parents had failed to participate in the services. According to CASA Spicer, DCS had not given up on Parents, Parents had given up on themselves. CASA Spicer further testified that Parents were unlikely to remedy the conditions that had led to the children’s removal and that termination was in the children’s best interests because the children needed stability in a home that was free from substance abuse. CASA Spicer also testified that the children were “thriving” with their foster parents, who planned to adopt all four children. (Tr. Vol. 2 at 102).

[27] At the end of February 2021, the trial court issued a detailed order terminating Mother’s parental relationships with S.I., H.I., J.I., and L.I. and Father’s parental relationships with H.I., J.I., and L.I. In its order, the trial court specifically stated that it had drawn “an adverse inference [regarding Father’s criminal charges] as a result of [Father] asserting his 5th Amendment privilege[.]” (App. Vol. 2 at 60).

[28] Mother and Father each appeal the trial court’s order.

Decision

[29] As a preliminary matter, we note that neither parent challenges the trial court’s findings. As a result, they have waived any argument relating to whether these unchallenged findings are clearly erroneous. *See McMaster v. McMaster*, 681

N.E.2d 744, 747 (Ind. Ct. App. 1997) (explaining that unchallenged trial court findings are accepted as true). We now turn to the issues in this case.

[30] Mother and Father each argue, for different reasons, that they were denied due process. Father also argues that there is insufficient evidence to support the terminations. We address each of these contentions in turn.

1. **Mother's Due Process Argument**

[31] Mother's sole argument is that she was denied due process because DCS failed to make reasonable efforts to preserve the parent-child relationships. When DCS 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) (cleaned up). 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 (1976). Whether due process has been afforded in termination proceedings is determined by balancing the following "three distinct factors" specified in *Mathews*: (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. *A.P. v. Porter Cnty. Office of Family and Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*.

[32] In *S.L. v. Ind. Dep't of Child Servs.*, 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013) (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)), this Court further explained the *Mathews* factors as follows:

The private interest affected by the proceeding is substantial – a parent’s interest in the care, custody, and control of his or her child. And the State’s interest in protecting the welfare of a child is also substantial. Because the State and the parent have substantial interests affected by the proceeding, we focus on the risk of error created by DCS’s actions and the trial court’s actions.

[33] DCS must “make reasonable efforts to preserve and reunify families.” IND. CODE § 31-34-21-5.5(b). In addition, “due process protections at all stages of CHINS proceedings are vital because every CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.” *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (cleaned up). “[T]hese two proceedings - CHINS and TPR - are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter[.]” *Id.*

[34] However, the “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); *see also In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (“[T]he provision of family services is not a requisite element of our parental rights termination statute, and thus, even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal.”). Further, a parent may not sit idly by without asserting a need or desire for services and then successfully argue that he or she was denied services to assist him with her parenting. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000).

[35] As a preliminary matter, we note that the law is well-established that a party on appeal may waive a constitutional claim. *McBride v. Monroe Cnty. Office of Family and Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003). For example, in *In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001), this Court determined that a mother had waived her claim that the trial court had violated her due process rights because she raised the constitutional claim for the first time on appeal. Here, Mother did not object to any alleged deficiencies in the CHINS process during the CHINS proceedings, nor did she argue during the termination proceedings that those alleged deficiencies constituted a due process violation. Rather, Mother raises her due process claim for the first time on appeal. She has, therefore, waived appellate review of this issue. *See id.*

[36] Waiver notwithstanding, although Mother argues that her right to due process was violated because DCS failed to make reasonable efforts to preserve the parent-child relationships, our review of the record reveals otherwise. Specifically, when Mother lived in Greene County, DCS referred her to a substance abuse assessment, home-based therapy, home-based casework, and supervised visitation with the children. When the children were placed in foster care in Bartholomew County, DCS offered Mother transportation to and from the supervised visits. When Mother relocated to Daviess County, DCS referred her to a substance abuse assessment, home-based therapy, and home-based case work to assist her with parenting skills and with finding suitable employment and housing. DCS also referred Mother to drug screens at the Daviess County DCS office. When Mother failed to follow up with these referrals, DCS

referred her to services at Good Samaritan Center, which was located near Mother's home. Despite these referrals in two different counties, Mother failed to successfully complete any services. Mother has not established that DCS violated her due process rights because it failed to make reasonable efforts to preserve her parent-child relationships with S.I., H.I., J.I., and L.I.

[37] Regarding Mother's other allegations of due process violations, we note Mother has not established that DCS engaged in conduct that affected her ability to participate in and complete services aimed at reunifying her with her children. *Cf. In re T.W.*, 135 N.E.3d 607, 618 (Ind. Ct. App. 2019) (concluding that the "insufficient process employed in the CHINS case created a risk of the erroneous filing of a petition to terminate Father's parental rights to [his child], in violation of Father's due process rights."), *trans. denied*; *Matter of C.M.S.T.*, 111 N.E.3d 207, 213 (Ind. Ct. App. 2018) (concluding that "the chaotic and unprofessional handling" of a CHINS case violated the parents' due process rights, requiring reversal of the termination order); *A.P.*, 734 N.E.2d at 1117 (finding parents' due process rights were violated in a termination proceeding where DCS made multiple procedural errors, such as failing to provide parents with copies of case plans and filing CHINS and termination petitions that did not meet statutory requirements); *In re A.I.*, 825 N.E.2d 798, 816 (Ind. Ct. App. 2005) (noting that one procedural deficiency alone may not result in a due process violation), *trans. denied*).

B. Father's Due Process Argument

[38] Like Mother, Father did not object to any alleged deficiencies in the CHINS process during the CHINS proceedings, nor did he argue during the termination proceedings that those alleged deficiencies constituted a due process violation. Rather, Father raises his due process claim for the first time on appeal. He has, therefore, waived appellate review of this issue. *See In re K.S.*, 750 N.E.2d at 834 n.1.

[39] Waiver notwithstanding, Father's argument that he was denied due process because the trial court drew an adverse inference from his refusal to testify based upon his Fifth Amendment privilege against self-incrimination fails. The Indiana Supreme Court has recognized that "CHINS proceedings and proceedings to terminate parental rights (TPR), though non-criminal, can implicate a parent in criminal activity." *Matter of Ma.H.*, 134 N.E.3d 41, 46 (Ind. 2019). For example, as here, a CHINS or termination petition may include allegations of illegal drug activity, which is a criminal offense carrying serious penalties. *See id.* "As a result, trial courts presiding over CHINS and TPR proceedings must remain conscientious of possible criminal implications and safeguard a parent's constitutional rights – such as those guaranteed by the Fifth Amendment, including the privilege against self-incrimination." *Id.*

[40] "Generally, in any proceeding – civil or criminal – the Fifth Amendment protects an individual from being compelled to answer questions when the answers might be used in a future criminal proceeding." *Id.* Accordingly, "in

CHINS and TPR proceedings, a court may not compel a parent's admission to a crime – if the admission could be used against him or her in a subsequent criminal proceeding – under the threat of losing parental rights.” *Id.* at 46-47. “[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment.” *Id.* at 47 (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)).

[41] However, “in civil proceedings, a court can draw a negative inference from a claim of the Fifth Amendment privilege against self-incrimination.” *Ma.H.*, 134 N.E.3d at 47. Thus, because a termination proceeding is a civil case, the trial court properly drew an adverse inference regarding Father’s criminal charges when Father invoked his Fifth Amendment privilege against self-incrimination. Accordingly, Father was not denied due process, and we decline Father’s invitation to change the law.³

³ Father also argues that his due process rights were violated when the trial court refused to start his case at the moment that he received the DNA test results establishing that he is the biological father of H.I., J.I., and L.I. Father has waived appellate review of this issue because he raises it for the first time on appeal. *See In re K.S.*, 750 N.E.2d at 834 n.1. Waiver notwithstanding, we note that this Court has previously held that the adjudication of paternity is not a prerequisite to the termination of parental rights. *Matter of A.C.B.*, 598 N.E.2d 570, 572 (Ind. Ct. App. 1992). We further note that, throughout the CHINS proceedings, Father received the benefits of a parent whose paternity status has been adjudicated. That is, he received notice when the CHINS petition was filed, the trial court appointed counsel for him, he attended the CHINS initial and factfinding hearings, DCS offered him services, he received notice when the termination petitions were filed, and he attended the initial hearing following the filing of the termination petitions. We find no due process violation here.

3. Sufficiency of the Evidence

[42] Father also argues that there is insufficient evidence to support the termination of the parent-child relationships. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* at 1188. Termination of the parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

[43] Before an involuntary termination of parental rights may occur, 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) 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. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[44] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[45] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). "This deference recognizes a trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record." *Id.*

[46] Here, Father argues that there is insufficient evidence to support the termination of his parental rights. Specifically, he appears to contend that the evidence is insufficient to show both that there is a reasonable probability that the conditions that resulted in his children's removal or the reasons for

placement outside the parent's home will not be remedied and a continuation of the parent-child relationships poses a threat to the children's well-being.

[47] However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.3d 212, 220 (Ind. Ct. App. 2010). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside Father's home will not be remedied.

[48] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* DCS need not rule out all possibilities of change. *In re Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). Rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *Id.*

[49] Here, our review of the evidence that supports the judgment reveals that DCS removed H.I., J.I., and L.I. from Father because of Father's methamphetamine use. DCS referred Father for three substance abuse assessments. Father attended only one of the assessments and then apparently failed to follow the assessor's recommendations. Father also continued to use methamphetamine throughout the pendency of the CHINS proceedings. At the time of the termination hearing, one year and one-half after the children had been removed from Father's home, Father was in jail with pending charges for felony possession of methamphetamine and misdemeanor possession of paraphernalia. There was also a pending petition to revoke Father's probation for a 2015 felony. During FCM Goodwin's most recent visit to Father at the jail, Father had not discussed his children. Rather, he had threatened those involved in the termination case and told FCM Goodwin that, if he went to prison, he wanted to join a gang, earn a patch, and commit murder. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied.

[50] We have previously recognized that this Court is ever mindful of the fact that the trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding the termination of the parent-child relationship. *Matter of D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998) (citing *Stone v. Daviess Cnty Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*). Recognizing that the trial court listened to the testimony of all the witnesses at the termination hearing,

observed their demeanor, and judged their credibility, as a reviewing court, we must give proper deference to the trial court. Accordingly, we hold that the trial court was justified in concluding that the DCS proved by clear and convincing evidence that Parents' parental rights should be terminated.

[51] **Affirmed.**

Bailey, J., and Crone, J., concur.