MEMORANDUM DECISION

ATTORNEY FOR APPELLANT D.M.

Harold E. Amstutz
Lafayette, Indiana

ATTORNEY FOR APPELLANT T.B.

Steven Knecht
Tippecanoe County Public Defender's Office
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Director, Child Services Appeals Unit
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of D.M., Father, and T.B., Mother, and J.H., Mi.M. and Me.M., Children,

D.M. and T.B.,

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

September 28, 2023

Court of Appeals Case No. 23A-JT-435

Appeal from the Tippecanoe Superior Court

The Honorable Faith A. Graham, Judge

Trial Court Cause Nos.
79D03-2207-JT-46
79D03-2207-JT-47
79D03-2207-JT-48

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] In this consolidated appeal, D.M. ("Father") and T.B. ("Mother") challenge the termination of their parental rights to Mi.M. and Me.M. (collectively, "the Girls"). Mother also challenges the termination of her parental rights to J.H., a child from a different relationship.[1] Father and Mother present the following restated issues:

I. Whether the trial court abused its discretion in admitting evidence about (a) Father's criminal history and (b) prior cases involving Father's parental rights; and

II. Whether sufficient evidence supported the trial court's orders terminating Mother's and Father's parental rights.

[2] We affirm.

Facts and Procedural History

[3] In early 2021, J.H. (born February 15, 2014), Mi.M. (born November 9, 2017), and Me.M (born March 1, 2019) (collectively, "the Children") were living with Mother and Father. On March 18, 2021, the Indiana Department of Child Services ("DCS") received a report that the Children were neglected due to

[1] J.H.'s legal father consented to the termination of his parental rights. He does not actively participate on appeal.

caregiver impairment and exposure to illegal activity. Law enforcement searched the residence, finding methamphetamine, drug paraphernalia, prescription pills, and a suspected Molotov cocktail. These items were accessible to the Girls, who were present during the search. There was animal waste throughout the home and no sanitary area to prepare food. Around this time, Me.M tested positive for amphetamine. Mother and Father were arrested, and the Children were placed in foster care. As to Father, the associated criminal matter led to a no-contact order, such that Father was initially prohibited from communicating with Mi.M. and J.H.[2]

[4] On June 21, 2021, the Children were adjudicated Children in Need of Services ("CHINS"). In the CHINS order, the trial court found that—among other things—Mother and Father each had pending charges for Level 5 felony possession of methamphetamine, Level 6 felony neglect of a dependent, Level 6 felony unlawful possession of a syringe, Level 6 felony maintaining a common nuisance, and Class C misdemeanor possession of paraphernalia.

[5] On June 28, 2021, the trial court issued a dispositional order and a parental participation decree. The trial court ordered Mother and Father to participate in supervised visitation. Mother and Father were required to complete diagnostic evaluations, including a clinical interview and assessment, and follow all recommendations. They were also required to submit to drug

[2] Me.M was not addressed in the no-contact order. *See* Ex. Vol. 3 p. 201.

screens, and refrain from using or possessing controlled substances without a prescription. Mother and Father were ordered to, among other things, stay in touch with DCS, attend appointments, and participate in home-based case management as recommended. Father was specifically ordered to complete a substance abuse assessment and participate in counseling as recommended.

[6] Mother completed a clinical interview and assessment in July 2021, at which point she was thirty years old. During the assessment, Mother said she "would like to be enrolled into Substance Use/Abuse Courses in order to prove she is dedicated to completing services necessary to close her case." Ex. Vol. 3 p. 105. Mother completed a substance abuse assessment in October 2021. Mother admitted that she had a "dirty screen" on June 18, 2021. *Id.* at 128. Mother denied ever using methamphetamine, reporting that she only tested positive "due to the people she had been around[.]" *Id.* at 105. As to the paraphernalia found in Mother's home, Mother said she "was just in the wrong place at the wrong time," reporting that the items were in a box she retrieved from a friend's house. *Id.* at 128. Mother said that she tried cocaine when she was younger, and last used marijuana in 2020. She denied currently using any illegal substance. As to her relationship with Father, Mother reported that she and Father at one point had "problems involving physical abuse," with Father "physically attacking her." *Id.* at 98. Mother also reported that she suffers from depression and anxiety. She communicated that she had concerns about "the increase in her depression and anxiety with the start of [the CHINS] case[.]" *Id.* at 105. Mother expressed interest in both individual and family therapy. *Id.*

[7] During the assessment process, Mother was diagnosed with "[a]djustment disorder with mixed anxiety and depressed mood." *Id.* at 108. It was recommended that Mother attend parenting classes and individual therapy. It was also recommended that Mother complete an intensive outpatient program ("IOP"), submit random drug screens, participate in recovery coaching as necessary, and attend support programming to help maintain her sobriety.

[8] Father participated in a clinical interview and assessment in July 2021, at which point he was thirty-four years old. Father spoke about his history of substance use, using nicotine at age nine, alcohol at age fifteen, cocaine at age twenty, and methamphetamine at age thirty. Father said that he engaged in IOP services in 2018. He had also participated in an inpatient program in 2020 for "depression, PTSD, and [a] manic state," with suicidal behaviors. *Id.* at 119. He reported experiencing auditory hallucinations "quite frequently," and said he had been diagnosed with "PTSD, Anxiety, Major Depressive Disorder, Dissociative Identity Disorder[,] and Bipolar Disorder." *Id.* Father "state[d] that he believes most of his mental health concerns originated from his service in the [M]arine [C]orps." *Id.* Father also reported anger issues, noting that "if he is provoked, he has a hard time not letting his anger take complete control." *Id.* at 121. He also acknowledged "a history of becoming physically combative with others when he becomes defensive or feels that he or someone he loves is in danger[.]" *Id at 123.*

[9] As a result of the assessment, Father was diagnosed with major depressive disorder with recurring episodes of moderate anxious distress, PTSD, and

methamphetamine abuse "in early remission." *Id.* at 125. It was recommended that Father participate in individual therapy for anxiety and depression. It was also recommended that he engage in psychological testing and participate in an assessment for substance use disorder. Shortly after the assessment, Father was incarcerated, and he remained incarcerated for the duration of the CHINS case.

[10] When the Children were removed from Mother's and Father's care in March 2021, they were placed in foster care. Initially, Mother was permitted to visit with the Children. However, visitation was suspended in June 2021 when Mother went to jail after submitting a positive drug screen. Visits resumed in September 2021 after Mother submitted a negative drug screen, with the court conditioning visitation on Mother submitting to all requested screens and not testing positive for methamphetamine or fentanyl. When visits resumed, the visits eventually progressed to in-home visitation with some unsupervised parenting time. However, on January 3, 2022, the trial court ordered Mother's visitation "reverted to fully supervised" in part because Mother had violated "Court orders related to the [C]hildren's contact with [Father]." Ex. Vol. 2 p. 181. The trial court held a review hearing on January 28, 2022, finding that Mother had "substantially complied with dispositional orders," specifically noting that Mother was "participating in and engaged in her services" and "maintain[ing] contact with DCS[.]" *Id.* The trial court also found that Mother was "maintain[ing] sobriety," *id.*, and had submitted "negative drug screens for approximately seven (7) months," *id.* at 182. The trial court ordered Mother to "address relapse prevention through individual therapy," specifying that,

"[s]hould Mother relapse, she is to immediately report it to DCS and engage in IOP services." *Id.* The trial court directed Mother and DCS to form a plan that would lead to overnight visitation with the Children. In the interim, the trial court ordered that 25% of Mother's visitation time would be unsupervised.

[11] In March 2022, the trial court allowed a trial home visit to commence with Mother. Less than one month later, Mother submitted a positive drug screen for methamphetamine. Mother denied using methamphetamine. The Children were screened, and each child tested positive for methamphetamine. Upon DCS's motion, the trial court terminated the trial home visit, which had lasted twenty-eight days—from March 18, 2022, to April 20, 2022. On May 5, 2022, Mother again tested positive for methamphetamine. As of late May 2022, there was an active warrant for Mother's arrest.

[12] The trial court held a permanency hearing on May 26, 2022. Mother did not personally attend the hearing, reporting that she was attempting to enter treatment at Sycamore Springs. Around this time, "Mother's emotional and mental health [was] declining[.]" *Id.* at 206. Mother relapsed, and she admitted herself to Sycamore Springs for an acute mental health stay. She was discharged on May 31, 2022, with recommendations to enroll in substance abuse programming. In June 2022, Mother was arrested on the active warrant, and incarcerated until July 7, 2022. She began treatment for substance abuse on July 25, 2022, and was participating in therapy and home-based services.

[13] On July 28, 2022, DCS petitioned to terminate Mother's and Father's parental rights. Around this time, Mother began receiving fully supervised visits. On September 2, 2022, the Children's therapist recommended suspending the visits because of "the emotional distress and behaviors of the children that have presented since visits have resumed." Ex. Vol. I p. 5. The therapist noted that "[t]he behaviors emerged once visits resumed and have increased in frequency and intensity over the last few weeks." *Id.* The trial court suspended the visits.

[14] A fact-finding hearing commenced on October 19, 2022, and concluded on November 9, 2022. At the hearing, Father objected to admitting evidence of his prior involvement in proceedings with DCS, claiming the evidence was not relevant. He also claimed the evidence was unduly prejudicial because the matters arose before the Girls were born. Father also objected to admitting evidence about his criminal history, presenting similar arguments. The trial court admitted the evidence, noting that the evidence was relevant as to whether Father would remedy the conditions that led to the Children's removal from his care. Regarding potential prejudice, the trial court said that it would "give due weight to any records that are remote in time." Tr. Vol. II p. 92.

[15] The challenged evidence indicated that Father's parental rights had been terminated in more than one prior case. In one matter, DCS became involved in 2015, with Father's parental rights terminated in 2018. There had been a report of drug use around children, with Father's child testing positive for amphetamine and cocaine. The case involved instability in the child's life, in part because of Father's mental health struggles, which included suicidal

ideation and thoughts of harming others. There was evidence of domestic violence, with the child's mother reporting that Father "battered her while he was residing with her and the child[] in July of 2015." Ex. Vol. 3 p. 153.

[16] As to Father's criminal history, the challenged evidence indicates that Father was convicted of Class C felony battery with a deadly weapon in 2013. He was convicted of Level 6 felony leaving the scene of an accident with serious bodily injury in 2018. In December 2020—a few months before the underlying CHINS case was opened in March 2021—Father was convicted of Level 6 felony domestic battery and Class B misdemeanor criminal mischief, where Mother was the victim of the offenses. Amid the CHINS proceedings, Father pleaded guilty to Level 5 felony possession of methamphetamine and Level 6 felony neglect of a dependent, and he admitted to having the status of a habitual offender. For the recent convictions, Father received an aggregate sentence of eight years. He testified that he anticipated being released on parole in 2024, with placement on work release. Father planned to seek VA housing. While incarcerated, Father completed the Recovery While Incarcerated Program. He also participated in seven supervised telephonic visits with the Girls. Father had not spent time in-person with the Girls since their removal in March 2021.

[17] Mother tested positive for methamphetamine on October 13, 2022. Around this time, Mother was on the verge of being discharged from recovery programming because of too many absences. Mother presented evidence that she completed IOP on October 20, 2022. However, she did not submit to all requested drug screens and had not submitted to screening since October 2022.

[18] The Children's CASA testified in favor of terminating parental rights, as did the DCS Family Case Manager.

[19] On February 13, 2023, the trial court terminated Mother's and Father's parental rights, entering written findings and conclusions. In terminating parental rights, the trial court identified a reasonable probability that the conditions resulting in the Children's removal and ongoing placement outside the home would not be remedied. The trial court also determined that the continuation of the parent-child relationship posed a threat to the well-being of the Children. The court further determined that adoption was a satisfactory plan for the Children, and that termination was in their best interests. Mother and Father now appeal.

Discussion and Decision

I. Admission of Evidence

[20] Father argues that the trial court erred in admitting evidence of his criminal history and prior involvement with DCS because the evidence was either (1) irrelevant or (2) unduly prejudicial. In general, Indiana trial courts have "wide discretion in ruling on the admissibility of evidence." *Shinnock v. State*, 76 N.E.3d 841, 842 (Ind. 2017). We review a ruling on the admissibility of evidence for an abuse of that discretion, reversing "only when the decision is clearly against the logic and effect of the facts and circumstances." *Id.* at 843.

[21] Under Indiana Evidence Rule 402, "[i]rrelevant evidence is not admissible." Evidence Rule 401 addresses relevance, stating: "Evidence is relevant if: (a) it

has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."

[22] Every termination case involves the best interests of the child. *See* Ind. Code §§ 31-35-2-4(b)(2)(C) & -8 (providing that termination is proper only if DCS alleged and proved that termination serves the child's best interests). And myriad evidence bears on the best interests of the child, *see In re M.I.*, 127 N.E.3d 1168, 1171 (Ind. 2019), including evidence about a parent's habitual patterns of conduct, *see generally, e.g.*, *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1235 (Ind. 2013). This type of evidence relates to a person's fitness to parent, in that the evidence indicates whether there is a likelihood of future neglect. *See id.* at 1234; *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015). Of course, in addition to bearing on the child's best interests, evidence about a parent's habitual patterns of conduct speaks to whether the parent is likely to remedy the conditions that led to the child's placement outside the home. *See K.E.*, 39 N.E.3d at 647 ("Changed conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect."). Moreover, the likelihood of remedied conditions is directly at issue where—as here—DCS has alleged that the conditions were not likely to be remedied. *See* I.C. § 31-35-2-4(b)(2) (setting forth required and alternative statutory elements). Evidence bearing on a parent's habitual patterns of conduct includes evidence about the parent's "criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment[.]" *K.E.*, 39 N.E.3d at

647 (quoting *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*). Pertinent evidence also includes evidence about "the services offered to the parent and the parent's response to those services[.]" *Id.*

[23] Here, we readily conclude that evidence about Father's criminal history and prior DCS involvement was relevant because the evidence bore on several matters of consequence in the termination matter, including Father's habitual patterns of conduct, the prospect of future neglect, and the Girls' best interests.

[24] As to Father's contention that the evidence was unduly prejudicial, Evidence Rule 403 provides as follows: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." On appeal, Father baldly asserts that the challenged evidence "unfairly prejudiced the court against [him]." Appellant's Br. p. 23. As best we discern Father's argument, he contends that the evidence about prior DCS involvement is unduly prejudicial because the evidence "involv[es] other (older) children" and is remote in time, stemming from 2015 and 2017. *Id.* at 22. Regarding the passage of time, he asserts that his criminal history "predat[ed] the birth of the children involved in this case." *Id.* He further asserts that he "has no pending criminal cases." *Id.*

[25] As earlier discussed, Father's habitual patterns of conduct were at issue, and the challenged evidence was highly probative of whether he was capable of being a stable, available caregiver who would provide a safe environment for the Girls.

In light of the probative value of the evidence, we are not persuaded the trial court abused its discretion by declining to exclude the evidence under Rule 403.

II. Sufficiency of the Evidence

[26] Mother and Father allege that there is insufficient evidence to terminate their parental rights. We address their appellate arguments by first acknowledging that the parent-child relationship is "one of the most valued relationships in our culture." *In re Termination of Parent-Child Relationship of R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005)). The importance of this relationship is embodied in the United States Constitution, which "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Although "parental rights are not absolute—yielding as they must to a child's best interests—they do occupy a 'preferred position' among our freedoms." *In re Bi.B.*, 69 N.E.3d 464, 467 (Ind. 2017) (quoting *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011)). Our legislature has therefore "established a 'high bar' for the termination of parental rights." *Id.* (quoting *In re R.S.*, 56 N.E.3d at 628).

[27] By statute, DCS must allege and prove four elements. *See* I.C. §§ 31-35-2-4(b) & -8(a). In the case at hand, DCS alleged in pertinent part:

> (A) that . . . [t]he child has been removed from the parent for at least six (6) months under a dispositional decree.

(B) that . . . [t]here 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.

(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.

I.C. § 31-35-2-4(b)(2); *see* Mother's App. Vol. II pp. 24, 28, 32. Under Indiana Code Section 31-35-2-8(a), if the trial court "finds that the allegations . . . are true, the court shall terminate the parent-child relationship." In ruling on a petition to terminate parental rights, the trial court must include special findings pursuant to Trial Rule 52(A), *see* I.C. § 31-35-2-8(c), and those findings "must be based upon clear and convincing evidence," I.C. § 31-34-12-2.

[28] In family law matters, "we generally give considerable deference to the trial court's decision because we recognize that the trial judge is in the best position to judge the facts, determine witness credibility, 'get a feel for the family dynamics,' and 'get a sense of the parents and their relationship with their children.'" *E.B.F. v. D.F.*, 93 N.E.3d 759, 762 (Ind. 2018) (quoting *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005)). Thus, in reviewing the sufficiency of the evidence supporting a termination order, we apply a deferential standard of review. *See Bester*, 839 N.E.2d at 147. We neither reweigh evidence nor judge witness credibility, *see id.*, and we "shall not set aside the findings or judgment unless clearly erroneous," Trial Rule 52(A). All

in all, our limited appellate role is to examine "whether the evidence clearly and convincingly supported the findings and whether the findings clearly and convincingly supported termination." *In re Bi.B.*, 69 N.E.3d at 466.

[29] Here, Mother and Father do not challenge the sufficiency of the evidence supporting determinations that (1) the Children have been removed from the home for the required period and (2) DCS has a satisfactory plan, which is adoption. Rather, this appeal is limited to whether DCS presented sufficient evidence as to subsections (b)(2)(B) and (b)(2)(C) of the termination statute.

A. Likelihood of Remedied Conditions

[30] Under subsection (b)(2)(B)(i) of the termination statute, the trial court determined: "There is a reasonable probability the conditions that resulted in removal of [the Children] from the home of the parent(s) or reasons for placement of [the Children] outside the home of the parent(s) will not be remedied."[3] Mother's App. Vol. II p. 44. Although Father challenges the sufficiency of the evidence supporting this determination, Mother does not.

[31] In challenging the sufficiency of the evidence, Father does not address evidence that Mother was unlikely to remedy the pertinent conditions. Rather, Father addresses only the likelihood of him remedying the conditions that led to the Girls' removal from the home and their ongoing placement outside his care. As

[3] We cite throughout to the termination order associated with the Girls, which in all material respects is substantially the same as the termination order associated with J.H. *Compare* Mother's App. Vol. II pp. 44–52 *with id.* at 35–43.

to those conditions, Father acknowledges that his ongoing incarceration was the impediment to reunification with the Girls. Indeed, Father notes that he was incarcerated "for all of the CHINS case except May-July 2021 when he was out on bond[.]" Father's Br. p. 13. While acknowledging that he remained incarcerated as of the fact-finding hearing, Father focuses on favorable evidence that he "earned time cuts," *id.*, and anticipated an "outdate" at some point in 2024, *id.* at 14. At one point, Father directs us to cases involving the incarceration of a parent, asserting that these "court decisions indicate an important factor is whether the parent took positive steps while incarcerated." *Id.* at 15. Father contends that he made positive strides while incarcerated by completing the Recovery While Incarcerated program, asserting that he now serves as a mentor. According to Father, the efforts he made while incarcerated "significantly mov[ed] up his outdate" such that, under the circumstances, "a further opportunity to prove himself after his release is warranted." *Id.*

[32] In reviewing the likelihood of changed conditions, the trial court must assess "[t]he parent's fitness at the time of the termination hearing, 'taking into consideration evidence of changed conditions.'" *K.E.*, 39 N.E.3d at 647 (quoting *Bester*, 839 N.E.2d at 152). In doing so, the court must balance "[c]hanged conditions . . . against habitual patterns of conduct to determine whether there is a substantial probability of future neglect." *Id.* (quoting *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014)). We ultimately "entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *In re E.M.*, 4

N.E.3d at 643. As our Supreme Court has explained: "Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

[33] Although Father directs us to favorable evidence that he made progress while incarcerated and anticipated being released as early as August 2024—more than eighteen months after the fact-finding hearing—the evidence indicates that this was not Father's first period of incarceration. Indeed, the trial court found, and Father does not dispute, that before Father was charged and convicted of his most recent criminal conduct, Father committed multiple felonies resulting in periods of incarceration and his habitual offender status. As to Father's criminal history—which was used as an aggravating circumstance supporting the imposition of Father's recent sentence—the trial court noted that there were "failed attempts [at] rehabilitation," including petitions to revoke where allegations in four petitions were "found true[.]" Mother's App. Vol. II p. 49. The court further found that Father's "insight into his behavior . . . is poor." *Id.*

[34] In ultimately determining that Father was unlikely to remedy the conditions resulting in the Girls' removal and ongoing placement outside Father's care, the trial court gave more weight to Father's habitual patterns of conduct. The trial court noted that, although Father may have completed a substance abuse assessment and "received the benefit of a sentence reduction" for completing recovery programming, that recent progress was "not sufficient to overcome his historical pattern of behavior" that "resulted in harm" to his children. *Id.* at 51.

[35] Father's arguments regarding the likelihood of remedied conditions amount to requests to reweigh the evidence. Declining these requests, as we must, we conclude that clear and convincing evidence supported the trial court's determination that Father was unlikely to remedy the conditions that resulted in the Girls' removal from the home and ongoing placement outside his care.[4]

B. Best Interests

[36] Father and Mother allege that insufficient evidence supports the decision that terminating parental rights is in the Children's best interests. To decide whether termination is in the best interests of a child, "trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). A child's "need for permanency" is "[c]entral among these interests[.]" *Id.* "Indeed, 'children cannot wait indefinitely for their parents to work toward preservation or reunification.'" *Id.* (quoting *E.M.*, 4 N.E.3d at 648).

[37] In support of its decision regarding the best interests of the Children, the trial court found that "[f]urther efforts to reunify would have continued negative effects on [the Children,] who need stability in life." Mother's App. Vol. II p. 51. The trial court also found that the Children "need a permanent and lasting bond with parents who can provide for their emotional and psychological as

---

[4] Having identified sufficient evidence supporting the trial court's determination under Section 31-35-2-4(b)(2)(B), we need not address the sufficiency of evidence supporting the court's alternative determination under this subsection that continuation of the parent-child relationship posed a threat to the Girls.

well as physical well-being." *Id.* On appeal, Mother and Father do not challenge the evidentiary support for these findings. Likewise, Mother and Father do not challenge the trial court's findings related to the Children's need for ongoing therapy, including findings about their progress—and setbacks—during the pendency of these proceedings. As for J.H., his therapeutic goals related to "emotional identification and regulation, communication skills, and coping skills[.]" *Id.* at 50. Although J.H. was generally progressing in therapy, "[d]uring the trial home visit and parenting time, [he] demonstrate[d] agitation." *Id.* Mi.M had similar therapeutic goals regarding emotional identification and regulation, but she was also working on "communication skills . . . and processing trauma." *Id.* The court found that, although Mi.M was "generally engaged during therapy," she seemed to regress "at sessions surrounding resumption of parenting time" in the summer of 2022, in that she "lacked focus and was easily distracted and hypervigilant[.]" *Id.* As for the youngest child, Me.M., she was the last of the Children to start therapy, first engaging in therapy in May 2022, when she was a little over three years old. Me.M. "demonstrated sadness" when visitation resumed, but was generally observed to be "calm and happy" during "periods outside parenting time[.]" *Id.*

[38] On appeal, Mother's challenge to the best interests determination focuses on evidence that Mother regularly participated in services. While acknowledging that she "has experienced ongoing issues with substance abuse," Mother contends that she "has not given up on trying to deal with her problems" and "has continued to actively engage in services, even after setbacks." Mother's

Br. p. 12. Mother also directs us to evidence of the bond between Mother and J.H., including evidence that he was not in a pre-adoptive home and said he missed Mother. Regarding J.H., Mother at one point refers to the trial court's statement that the Children "needed 'a permanent and lasting bond' with parents who could provide for their well-being." *Id.* at 20 (quoting Mother's App. Vol. II p. 51). She asserts that termination does not promote J.H.'s need for permanency because it "will only deprive him of the presence of the parent he loves and wants to be with, and who loves and wants him." *Id.* Mother also asserts that termination would "damage his relationship with his sisters," who were placed together in a pre-adoptive home without J.H. *Id.* Mother ultimately contends that termination in this case "allow[s] DCS to give up on her children's chance to have a relationship with their mother." *Id.* at 19. She asserts that she "is willing to keep working to remedy the conditions that stand in the way of reunification," and "has never stopped trying to do so." *Id.* at 21.

[39] As for Father, he attempts to minimize evidence that the Children's CASA and the DCS Family Case Manager testified in favor of terminating parental rights. He asserts that this sort of testimony "occurs in almost all TPR cases" and that "[s]ignificant weight should not be given to either recommendation in this case." Father's Br. p. 18. According to Father, the Girls "were going to remain in the same placement either way," so "delaying the termination creates no risk to [them], because they will be at the same place for the foreseeable future, termination or no termination." *Id.* at 19. In general, Father focuses on

evidence favorable to his position, including evidence that Mother described him "as 'a great parent' who was involved" with the Girls and J.H. *Id.* at 18.

[40] Regarding the Children's best interests, there is evidence that Father was not presently available to care for the Girls because he was incarcerated, and that, even if released in 2024, Father would not remain available to care for the Girls because he would not maintain a law-abiding lifestyle. And although there is evidence indicating that Mother was willing to regularly participate in certain court-ordered services—and even seek out help on her own—there is also evidence that Mother submitted positive drug screens and eventually declined to participate in drug screening in October 2022. Although Mother made progress at times, she was unable to maintain her sobriety over more than eighteen months of DCS involvement in this matter. Furthermore, a trial home visit with Mother was terminated, and Mother's visitation was suspended altogether after the Children's therapist expressed concerns that visitation with Mother was detrimental to the Children. At the fact-finding hearing, the therapist testified: "I believe that visits cause a lot of distress in the kids that is not good for their mental health, as evidenced by the behaviors that we've seen[.]" Tr. Vol. II p. 30. The Children's CASA opined that termination was in their best interests, recommending adoption. Moreover, the DCS Family Case Manager opined that termination was in the Children's best interests, noting: "[W]e're coming up on nineteen months out of [the] home . . . and the [C]hildren deserve permanency." *Id.* at 154. The Family Case Manager also recommended adoption, stating—as the CASA did—that J.H. was adoptable.

[41] Our Supreme Court has acknowledged that "[d]eciding whether termination is in children's best interests is '[p]erhaps the most difficult determination' the trial court must make." *In re Ma.H.*, 134 N.E.3d at 49 (second alteration in original) (quoting *In re E.M.*, 4 N.E.3d at 647). Critically, this decision is entrusted to the trial court—not this court on appeal. *See id.* Therefore, we must reject Mother's and Father's explicit and implicit requests to reweigh the evidence. Construing the evidence consistently with our standard of review, we ultimately conclude that the evidence clearly and convincingly supports the trial court's decision that terminating parental rights was in the Children's best interests.

Conclusion

[42] The trial court did not err in admitting evidence about Father's criminal history and prior DCS involvement. The record discloses sufficient evidence supporting the orders terminating Mother's and Father's parental rights.

[43] Affirmed.

Altice, C.J., and May, J., concur.