MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: H.B., Au.B., And.B, T.B., E.B., L.B., Cl.B, Ann.B, R.B. N.B., and S.B. (Father) and Ch.B. (Mother),

Appellants-Defendants,

v.

Indiana Department of Child Services,

Appellee-Plaintiff.

June 19, 2023

Court of Appeals Case No. 22A-JT-2138

Appeal from the Lawrence Circuit Court

The Honorable Nathan G. Nikirk, Judge

The Honorable Anah Hewetson Gouty, Juvenile Referee

Trial Court Cause Nos.
47C01-2112-JT-460
47C01-2112-JT-461
47C01-2112-JT-462
47C01-2112-JT-463
47C01-2112-JT-464
47C01-2112-JT-465
47C01-2112-JT-466

47C01-2112-JT-467
47C01-2112-JT-468
47C01-2112-JT-469

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] Ch.B. ("Mother") and S.B. ("Father" and together with Mother, "Parents") appeal the involuntary termination of their parental rights with respect to their children, H.B., Au.B., And.B., T.B., E.B., L.B., Cl.B., Ann.B., R.B., and N.B. Parents raise five issues which we consolidate and restate as:

I. Whether the trial court abused its discretion in denying Parents' motion for change of judge;

II. Whether the court violated their Fifth Amendment rights; and

III. Whether the court erred in terminating their parental rights.

We affirm.

Facts and Procedural History

[2] Parents are the parents of H.B., who was born in 2004, Au.B., who was born in 2005, And.B., who was born in 2007, T.B., who was born in 2009, E.B., who

was born in 2010, L.B., who was born in 2012, Cl.B., who was born in 2013, Ann.B., who was born in 2015, R.B., who was born in 2018, and N.B., who was born in November 2019.

[3] On November 1, 2019, the Department of Child Services ("DCS") filed a verified petition alleging that H.B., Au.B., And.B., T.B., E.B., L.B., Cl.B., Ann.B., and R.B. were children in need of services ("CHINS"). DCS alleged that it received a report on October 29, 2019, that the children were victims of physical abuse perpetrated by Parents and that the children provided DCS and law enforcement with a video showing Father beating Au.B. with a belt in which he struck her twenty-seven times, threw her on the floor, and struck her with his hands while younger children walked around the room and Mother entered the room and made no attempt to stop the beating. It alleged E.B. and T.B. disclosed physical abuse by Parents. It further alleged that Mother was aware of the actions of Father and admitted the discipline was excessive, she admitted Father struck And.B. with a belt within the prior month, she reported she and Father had used hot glue gun sticks to whip the children, and she admitted there had been domestic violence in the marriage in the past. It alleged that the children were being home-schooled but there were few books in the home and no internet access. It further asserted that H.B. reported that Father punches and kicks her, and Mother disciplines the children by hitting and punching them. On November 22, 2019, DCS filed a verified petition alleging N.B., who was born on November 20, 2019, to be a CHINS.

[4] On February 12, 2020, the court entered an Order on Admission in Form of Agreed Entry finding that Parents indicated their desire to stipulate to the allegations contained in the petitions, accepting their stipulations, adjudicating the children as CHINS, and scheduling a dispositional hearing for March 9, 2020.

[5] On May 1, 2020, the court entered a dispositional order which ordered Parents to complete a parenting assessment and psychological evaluation and any recommendations. On March 16, 2021, the court entered an order providing that the permanency plan was "reunification/adoption." Exhibits Volume I at 91 (capitalization omitted). The order also stated:

> 8. Mother has complied with the case plan and has engaged in services. Father has complied with the case plan and has engaged in services. The Court does note that criminal charges are pending against Mother and Father related to the issues in this matter. As a result, Mother and Father have both refused to discuss with their respective therapist the reasons related to the removal of the minor children and their involvement in this matter. The Court notes that Mother and Father have both stated that counsel has advised them not to discuss the same due to the pending criminal matter.

Id. at 93.

[6] On December 14, 2021, DCS filed a Verified Petition for Involuntary Termination of Parent-Child Relationship between Parents and the children. On January 13, 2022, Parents filed a Motion for Change of Venue from the Judge in which they alleged that Paragraph 8 of the March 16, 2021 order

"specifically makes a finding against [Parents] that they have refused to discuss with their respective therapists the reasons related to the removal of the minor children and their involvement in this matter." Appellants' Appendix Volume II at 164. They asserted that, "[n]otwithstanding [their] reliance on federal and state constitutional rights and state law, the Court has continuously incorporated the requests of the Department that [they] have not been fully cooperative in the reunification efforts." *Id.* They alleged that, "[f]ollowing the issuance of the March 16, 2021 Order by the Lawrence Circuit Court, [they] sought leave to file an interlocutory appeal to take up the matters related to their federal and state constitutional and statutory rights" and the court refused to certify the question "despite the change to the permanency plan." *Id.* They argued they had a right to a change of venue pursuant to Ind. Trial Rule 76(C)(1)[1] and, "pursuant to [Ind. Code §] 31-32-8-1,[2] because of the Court's pretrial rulings wholly in favor of [DCS], [they] believe that good cause exists for a change of judge." *Id.* On January 18, 2022, DCS filed an objection. On

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[1] Ind. Trial Rule 76(C)(1) provides:

> In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or change of venue) shall be filed not later than ten [10] days after the issues are first closed on the merits. Except:
>
> (1) in those cases where no pleading or answer may be required to be filed by the defending party to close issues (or no responsive pleading is required under a statute), each party shall have thirty [30] days from the date the case is placed and entered on the chronological case summary of the court as having been filed . . . .

[2] Ind. Code § 31-32-8-1 provides: "Except as provided in section 2 of this chapter, a change of judge may be granted only for good cause shown by affidavit filed at least twenty-four (24) hours before the fact-finding hearing."

January 20, 2022, the court entered an order citing Ind. Trial Rule 76(C)(5),[3] observing that Parents failed to file a written objection to the trial setting and a written motion for change of judge or county within three days of the oral setting, and denying Parents' motion for change of venue.

[7] On February 25, 2022, the court held a factfinding hearing. At the beginning of the hearing, Parents' counsel asserted that the court's January 20, 2022 order addressed "the issues with regard to the Trial Rule 76 matter but" did not address "the issues regarding cause." Transcript Volume II at 35. He cited Canon 2 of the Code of Judicial Conduct and Judicial Conduct Rule 2.11, renewed Parents' objection, and argued the court's "prior rulings for more than a year at this point would be such that there would be an appearance that it would be difficult to be impartial . . . ." *Id.* at 36. The trial court judge denied the motion.

[8] DCS presented Mother's testimony. When asked to explain her understanding of why the Children were removed from her home, Parents' counsel objected

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[3] Ind. Trial Rule 76(C)(5) provides:

> In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or change of venue) shall be filed not later than ten [10] days after the issues are first closed on the merits. Except:
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> * * * * *
>
> (5) where a party has appeared at or received advance notice of a hearing prior to the expiration of the date within which a party may ask for a change of judge or county, and also where at said hearing a trial date is set which setting is promptly entered on the Chronological Case Summary, a party shall be deemed to have waived a request for change of judge or county unless within three days of the oral setting the party files a written objection to the trial setting and a written motion for change of judge or county . . . .

"to the extent that it calls for commentary on matters subject to criminal litigation." *Id.* at 40. Mother indicated she was claiming her Fifth Amendment right. When later asked if she believed the incident that led DCS to remove the children was abusive, Parents' counsel objected based on "the fact that that's a subject of determination in the criminal court." *Id.* at 43. DCS's counsel asked Mother if she was asserting her Fifth Amendment privilege, and Mother answered affirmatively. The court stated:

> And ma'am, I don't – I haven't given you an advisement on your Fifth Amendment right because your counsel's sitting right there objecting, and I'm sure you've talked to him about your rights. You have that right, so at any point in time if you're asked a question, you can invoke your Fifth Amendment right. Okay?

Id. at 44. Mother replied: "Thank you. Yes." *Id.*

[9] Mother testified that she had considered Father's discipline of the children inappropriate in the past and had intervened and discussed it with him. DCS's counsel moved the court to take a negative inference based on Mother's reliance on the right against self-incrimination. The court took the motion under advisement. Father testified that he had ten pending charges including aggravated battery, neglect of a dependent, and domestic battery.

[10] The court continued the hearing to March 18, 2022, April 26, 2022, and June 3, 2022. At the beginning of the March 18, 2022 hearing, Parents' counsel renewed the motion for a change of venue and the court denied the motion.

[11] Counsel for DCS presented the testimony of multiple witnesses including Sarah Ames, a therapist, Jennifer Rutan, an assessment caseworker, Family Case Manager Amy Grafton ("FCM Grafton"), Amanda Coven, a home-based caseworker, Cali O'Connor, a clinical therapist, Jared Comfort, a therapist, Court Appointed Special Advocate Melissa Kelley ("CASA Kelley"), and Court Appointed Special Advocate Cassie England ("CASA England"). DCS introduced and the court admitted a video recording which Rutan, the assessment caseworker, described as showing Au.B. being hit with a belt multiple times, being bent over the back of the couch, Father's "elbow into her back," Au.B. being "hit with a closed fist, stood back up, then back over the couch again . . . with the elbow to the back, and at one point in time she ended up on the floor with him on top of her." Transcript Volume III at 41.

[12] Parents testified on their own behalf and presented the testimony of multiple other witnesses including Hussain Alqahtani, a therapist, who testified that he received a referral from DCS to work with Father who benefitted and changed over the course of the time he provided therapy. On cross-examination he characterized the video as "physical discipline." Transcript Volume IV at 167. Parents' counsel moved to admit the deposition of Ruth Reeves, PhD, taken on June 1, 2022, and the court admitted it without objection. Parents' counsel also asked the court to take judicial notice of the criminal case against Father under cause number 47D01-1911-F3-2104 and the criminal case against Mother under cause number 47D01-1911-F5-2105, and the court did so.

[13] On August 18, 2022, the trial court entered a forty-one-page order terminating Parents' parental rights to the children. On September 7, 2022, Parents filed a notice of appeal. On January 13, 2023, Parents and DCS filed an Agreed Verified Motion Under Indiana Appellate Rule 66(C) and Trial Rule 52(B) for Proper Findings: Or in the Alternative, a New Briefing Schedule. The motion alleged the trial court's findings of fact were not adequate and some merely summarized witness testimony. On January 24, 2023, this Court entered an order granting the motion in part, directing the trial court to "enter a new termination order containing revised specific findings of fact and conclusions thereon in accordance with Indiana Code § 31-35-2-8(c)." January 24, 2023 Order at 1.

[14] On February 9, 2023, the trial court entered an eighteen-page Amended Order on Termination of Parental Rights. The court concluded there was a reasonable probability that the conditions which resulted in the children's removal and continued placement outside the home would not be remedied, continuation of the parent-child relationships posed a threat to the children's well-being, termination of parental rights was in the children's best interests, and there was a satisfactory plan for the care and treatment of the children.

Discussion

I.

[15] The first issue is whether the trial court abused its discretion in denying Parents' motion for change of judge. Parents argue the court erred by using Ind. Trial

Rule 76(C)(5) to deny their motion and Ind. Trial Rule 76(C)(5) conflicts with Ind. Code § 31-32-8-1. They assert the trial court improperly used this Court's remand order as an opportunity to expand upon its rulings on their motion. Parents argue the court erred by "treating the question of change of judge solely in terms of Trial Rule 76 and ignoring [Ind. Code §] 31-32-8-1" and "by employing Trial Rule 76(C)(5) to limit the broad substantive right conferred by the General Assembly to the three days following the initial hearing." Appellants' Amended Brief at 27. DCS argues "the central question is whether Parents presented good cause for a change of venue from the judge" and "whether the court abused its discretion in denying Parents' written and verbal motions." Appellee's Brief at 17. In their reply brief, Parents argue that "the presiding judge of the trial court heard evidence and argument touching upon one of [their] core defenses, both to the change of permanency plan and the termination case: the Fifth Amendment issue." Appellants' Reply Brief at 13.

[16] A judge's decision about whether to recuse is reviewed for an abuse of discretion. *L.G. v. S.L.*, 88 N.E.3d 1069, 1071 (Ind. 2018). An abuse of discretion occurs when the judge's decision is against the logic and effect of the facts and circumstances before it. *Id.* "Adverse rulings and findings by a trial judge are not sufficient reason to believe the judge has a personal bias or prejudice." *Id.* at 1073. "Further, Indiana courts credit judges with the ability to remain objective notwithstanding their having been exposed to information which might tend to prejudice lay persons." *Id.* "The law presumes that a judge is unbiased and unprejudiced." *Id.* "To overcome this presumption, the

moving party must establish that the judge has personal prejudice for or against a party." *Id.* "Such bias or prejudice exists only where there is an undisputed claim or the judge has expressed an opinion on the merits of the controversy before him." *Id.* "[T]he mere appearance of bias and partiality may require recusal if an objective person, knowledgeable of all the circumstances, would have a rational basis for doubting the judge's impartiality." *Bloomington Mag., Inc. v. Kiang*, 961 N.E.2d 61, 64 (Ind. Ct. App. 2012).

[17] Ind. Trial Rule 79(C) provides: "A judge shall disqualify and recuse whenever the judge . . . (4) is associated with the pending litigation in such fashion as to require disqualification under the Code of Judicial Conduct or otherwise." Canon 1 of the Ind. Code of Judicial Conduct commands: "A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety." Ind. Code of Judicial Conduct Rule 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." (Asterisks omitted). Canon 2 of the Ind. Code of Judicial Conduct commands: "A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently." Ind. Code of Judicial Conduct Rule 2.11 governs disqualification of judges and provides in part that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . ." (Asterisk omitted).

[18] To the extent Parents argue the court erred by using Ind. Trial Rule 76(C)(5), we note that, at the beginning of the February 25, 2022 hearing, the court denied the motion for a change of venue and stated that "[t]here is no reasonable basis to question that this judicial officer will remain impartial." Transcript Volume II at 37. The record reveals that the court conducted a factfinding hearing over four days, heard and considered testimony from numerous witnesses, and ultimately entered an eighteen-page Amended Order on Termination of Parental Rights. As mentioned above, adverse rulings and findings by a trial judge are not sufficient reason to believe the judge has a personal bias or prejudice and we presume that a judge is unbiased and unprejudiced. *L.G.*, 88 N.E.3d at 1073. Under the circumstances, we cannot say that an objective person, knowledgeable of all the circumstances, would have a rational basis for doubting the judge's impartiality. We find no abuse of discretion. *See Carter v. Knox Cnty. Office of Family & Children*, 761 N.E.2d 431, 434-436 (Ind. Ct. App. 2001) (addressing the denial of a mother's request for a change of judge where the presiding trial court judge had previously approved a permanency plan that had recommended termination of her parental rights and holding that the court's approval of the permanency plan did not indicate that the trial judge was prejudiced against mother's parental abilities to the extent that he would necessarily terminate mother's parental rights at a subsequent

termination hearing, and concluding the trial court did not abuse its discretion when it denied mother's motion for change of judge).[4]

II.

[19] The next issue is whether the trial court violated Parents' Fifth Amendment rights. Parents argue that DCS and the trial court violated their Fifth Amendment rights. They assert DCS and the trial court forced them to make a choice between their privilege against self-incrimination and their children. They cite the testimony of FCM Grafton in which she stated the issues which led to the removal of the children had not been remedied because Parents had refused to address the reasons for their involvement.

[20] To the extent our analysis depends on whether Parents' Fifth Amendment privilege against self-incrimination was violated, "we review that purely legal question de novo." *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019), *cert. denied*, 140 S. Ct. 2835 (2020), *reh'g denied*. "[T]rial 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.* at 46. "Generally, in any proceeding—civil or criminal—the Fifth Amendment

[4] Parents argue that to analogize the present case to *Carter* ignores "the extent to which the Fifth Amendment issue was litigated in the CHINS case." Appellants' Reply Brief at 11. As explained below, we conclude the trial court did not violate Parents' Fifth Amendment rights. We also cannot say that *Carter* is not instructive on this basis.

protects an individual from being compelled to answer questions when the answers might be used in a future criminal proceeding." *Id.* "[I]n 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. "Yet, in civil proceedings, a court can draw a negative inference from a claim of the Fifth Amendment privilege against self-incrimination." *Id.* at 47. Generally, "claims of privilege must be made and sustained on a question-by-question or document-by-document basis." *In re Kefalidis*, 714 N.E.2d 243, 248 (Ind. Ct. App. 1999) (citing *Hayworth v. Schilli Leasing, Inc.*, 669 N.E.2d 165, 169 (Ind. 1996)).

[21] In *Matter of Ma.H.*, the Court observed that the trial court noted that the father could choose not to answer questions during sex-offender treatment, but the court could then "infer what his answer[s] might have been." 134 N.E.3d at 47. The Court examined "whether any court action forced [father] to choose between losing his parental rights and waiving his right against self-incrimination" and held:

> "[T]here is a distinction between a court-ordered case plan that mandates admission of culpability for family reunification and one that requires meaningful therapy for family reunification." [*In re*] *A.D.L.*, [133 Nev. 561, 402 P.3d 1280, 1286 (2017)]. While the former constitutes a Fifth Amendment violation, the latter does not. *Id.* Here, the trial court ordered [father] to "select" and "complete a course of sex offender treatment" from options that DCS would provide, within sixty miles of his home. [The father] began a sex-offender treatment program that

ultimately required him to admit wrongdoing after a voluntary polygraph showed deceptive denials of misconduct. Refusing to admit to sexual abuse, [the father] stopped attending.

We recognize that [father] attended a program that eventually required an admission of guilt. But the trial court's order did not compel [father] to admit to a crime; the order simply required [father] to select and complete a course of sex-offender treatment. *See* [*Matter of*] *Ma.H.*, 119 N.E.3d [1076, 1091 n.8 (Ind. Ct. App. 2019)] (Robb, J., dissenting). Other states have made a similar distinction. *See In re A.W.*, 231 Ill.2d 92, 324 Ill. Dec. 530, 896 N.E.2d 316, 326 (2008) ("[A] trial court may order a service plan that requires a parent to engage in effective counseling or therapy, but may not compel counseling or therapy requiring the parent to admit to committing a crime."); *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002) ("The State may require parents to otherwise undergo treatment, but it may not specifically require an admission of guilt as part of the treatment.").

[The father], nonetheless, asserts that the trial court's order "created a requirement for [him] to testify against himself and make an admission of a specific crime." In other words, [father] seemingly argues that, even if the court order didn't explicitly mandate him to participate in a program that would require an admission, this was the order's practical effect. Yet, [father] points to no evidence that he sought out a different program; that he requested DCS to provide him with other options; or that there were no treatment programs available, within sixty miles of his home, that did not require an admission of sexual abuse. *See A.W.*, 324 Ill. Dec. 530, 896 N.E.2d at 326 (noting that the court did not order the parent "to complete a specific program requiring him to admit abuse" and pointing out that the parent had "presented no evidence that there are no other treatment programs available offering sex offender counseling without requiring an admission of sexual abuse"); *C.H.*, 652 N.W.2d at 150 (finding no evidence that the State required the father "to complete any particular sexual offender treatment program" or

> "disapproved of [the father's] participation in a treatment program that would not require an admission of guilt").
>
> In sum, the trial court did not violate [father's] Fifth Amendment privilege against self-incrimination. And so the trial court could properly consider evidence of [parents'] failure to respond to services addressing the CHINS court's finding that [father] sexually abused R.W.

Id. at 47-48.

[22] The record reveals that in the instances where Parents' counsel objected and referred to the Fifth Amendment, the court did not compel them to answer the questions. Rather, the court advised Mother that she could invoke her Fifth Amendment right at any time and later reiterated her option to invoke her Fifth Amendment right to be free from self-incrimination and to remain silent. Further, in its amended order, the trial court stated: "57: The Court Denies DCS'[s] request for the Court to deduct [sic] an adverse inference from [Parents'] refusal to testify when asked certain questions they assert relate to the pending criminal charges." Appellee's Appendix Volume II at 10. It also noted:

> Mother and Father have the right to remain silent and any information revealed during testimony (and their counseling) could directly affect their pending criminal matters. Their liberty interest at stake is significant and they have the "right to remain free of incarceration without the State proving [their] guilt beyond a reasonable doubt based on [their] coerced admission(s)." *Ma.H. v. Ind. Dep't of Child Servs.*, 119 N.E.3d 1076, 1087 (Ind. Ct. App. 2019) (citing *Bleeke v. Lemmon*, 6 N.E.3d 907, 938 (Ind. 2014)).

Id. at 10 n.3.[5] We cannot say Parents were denied their rights under the Fifth Amendment.

III.

[23] The next issue is whether the trial court erred in terminating Parents' parental rights. Parents argue that the trial court's findings are contradictory. They assert that Findings 76, 77, 79, 81, 82, 83, 97, and 101, which found that they had not made sufficient progress in services by failing to visit with the children and failing to demonstrate appropriate behaviors resulting from the services they received, are contradicted by Findings 57, 58, 59, and 93, which detail no-contact orders in the criminal cases and the decision of the Child and Family Team not to recommend family therapy. They also contend that Finding 78 found that they regularly attended supervised visitation without incident and were always prepared and Findings 69, 71, 72, 73, 74, and 75 indicate that they participated in services and developed parenting plans using the strategies they learned in those services.

[24] In order to terminate a parent-child relationship, DCS is required to allege and prove, among other things:

> (B) that one (1) of the following is true:

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[5] The trial court made similar statements in its initial August 18, 2022 order. *See* Appellants' Appendix Volume II at 97.

(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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[25] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our

judgment for the trial court when reviewing the sufficiency of the evidence." *Id.* at 640.

[26] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We 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. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's prior criminal history, drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court

might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[27] To the extent Parents do not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[28] In its amended order, the court detailed the physical abuse and video. Specifically, it found:

> 8. On or about October 29, 2019 the Lawrence County DCS began an investigation after receiving a report of allegations of physical abuse inflicted on the Minor Children in the [Parents'] home.
>
> 9. Family Case Manager, Jennifer Rutan ("FCM Rutan"), responded within a day or two of the report and went to Mother, Father, and the Minor Children's home to investigate.
>
> 10. [H.B.] and [Au.B.] showed FCM Rutan a video they took on their handheld camera. FCM Rutan recorded the video with her cellphone and the video is admitted as DCS'[s] Exhibit E.
>
> 11. The video depicts Father using his leather belt to whip [Au.B.]. He whips [Au.B.] approximately twenty-four times, swinging the belt up and administering lashes to her side. [Au.B.] wriggles from Father, Father looks to have hit [Au.B.] with a closed fist and she bends over. Father next puts his elbow into [Au.B.'s] back in an effort to hold her down. [Au.B.] again gets away from Father and he gets her down to the ground.
>
> 12. During the video in Exhibit E, Father is heard saying "bend over" multiple times and Mother is seen corralling the younger

two children who are in the room, just steps away from Father and [Au.B.].

13. On the day of the video [Au.B.] did something to a sibling while Father was at work, Mother called Father, and Father came home to discipline [Au.B.].

14. [H.B.] shared the video with DCS because she wanted the physical abuse to stop and she was worried for the safety of her siblings. She knew the discipline was excessive and unsafe because she read her Mother's parenting books and the "discipline" in her home was not taught even in the strictest methods of discipline in the books.

15. On October 31, 2019 [T.B.] did not feel safe in the home because sometimes Father punched him, used a belt, and bruises were left. Additionally, two of his sisters were recently "beaten" because one did not do her work and the other took a video of the incident.

16. There were bruises on several of the Minor Children who were examined in the emergency room of Riley Hospital on October 31, 2019.

17. The Minor Children were disciplined with belts and industrial glue sticks because the glue sticks inflict a lot of pain and leave very few marks.

18. On occasion the Minor Children were grabbed by the neck in a choking manner and thrown down to discipline them.

19. The physical discipline took place "almost daily even for minor things."

Appellee's Appendix Volume II at 5-7.

[29] The court further entered findings indicating the impact of the abuse on the children, which Parents do not challenge. Specifically, the court found:

30. All of the Minor Children aside from [R.B.] and [N.B.] had assessments after removal and each child identifies as a child of abuse/neglect.

31. [H.B.] is meek and quiet having endured physical, mental and emotional abuse in the home. She was name-called, made to feel worthless, and struggles to feel worthy of love or affection.

32. [H.B.] is afraid of the physical abuse in the home.

33. [Au.B.] is diagnosed with Post Traumatic Stress Disorder (PTSD) and got the worst of the physical discipline.

34. [Au.B.'s] trauma symptoms include nightmares with parental retaliation, psychological and physical distress, sadness, negativity, anxiety, and avoidance of processing.

35. After removal [Au.B.] was convinced she was a horrible person and she exhibited irritability, persistent negative beliefs of self and others, and a strong assumption others would judge her harshly.

36. [T.B.] and [And.B.] submitted to psychological evaluations and some of their behaviors were identified and therapy approaches recommended.

37. [And.B.] is diagnosed with Other Specified Trauma and Stressor-Related Disorder. He has a tendency to have negative thoughts about himself and others, can become withdrawn, use avoidance, has trouble expressing emotions, and can experience symptoms of depression.

38. [And.B.] also has a diagnosis of Other Specified Disruptive, Impulse Control, and Conduct Disorder and his behavioral difficulties are a result of the traumatic and stressful experiences that have occurred in his life.

39. [And.B.] has been a victim of physical abuse and has witnessed domestic violence between two adults.

40. [T.B.] is diagnosed with Other Specified Trauma and Stressor-Related Disorder.

41. [T.B.] uses avoidance and has strong physical reactions to past trauma including getting physically ill, stomach pain, nausea and crying when asked about events in the home.

42. [T.B.] is diagnosed with Other Specified Disruptive, Impulse Control, and Conduct Disorder and he displays a lack of empathy, aggression, and bullying likely attributable to the trauma and stressful experiences in his past.

43. [And.B.] and [T.B.] show cruelty to animals and attribute this to Father who told them chickens do not feel pain.

44. [E.B.], [L.B.], and [Cl.B.] are diagnosed with Post Traumatic Stress Disorder (PTSD) [] meeting four of the five criteria for PTSD.

45. [E.B.] shows evidence of exposure to threat of repeated injury, avoidance in talking about negative events, negative views of herself and others, excessive blame, difficulty interacting with others, and she has little concept of affection.

46. [E.B.] has distorted views about traumatic events, a criteria of PTSD working. [E.B.] shared [Au.B.] "wouldn't have gotten bruised if she would have taken her spanking" and identified a broken arm as a fair consequence for a girl riding her bicycle without permission.

47. [L.B.] has low self-esteem and worries of not measuring up to her siblings.

48. When beginning therapy [Ann.B.'s] behaviors included grunting, screaming, kicking, hitting, or scratching others and she could not communicate well about these behaviors.

49. [Ann.B.] saw Mother and her siblings get hurt and even though she is six years old (at the time of the Termination

hearings) she has only one happy memory with Father of making sausage together.

50. [Ann.B.] has normalized the excessive discipline. In playing a card game in therapy wherein [Ann.B.] was told to fill in the blank, [Ann.B.] was given "When I grow up I am going to _____." [Ann.B.] responded when she grows up she is going to "beatings" and she clarified the babies do not get beatings, but older kids do.

51. [R.B.] is familiar with domestic violence and "almost comfortable" with it. In therapy [R.B.] often chooses the book, "The Day My Daddy Lost His Temper," and she does not react when the book discusses father losing his temper and hitting mother. [R.B.] is desensitized to the domestic violence.

Id. at 8-9.

[30] With respect to the Parents' criminal charges, the court found:

54. Mother is charged with Count I: Neglect of a Dependent Resulting in Bodily Injury, a Level 5 Felony and Count II: Domestic Battery, a Class A Misdemeanor in Cause 47D01-1911-F5-002105.

55. Mother is currently charged with Invasion of Privacy in a separate criminal case.

56. Father's current pending charges in Cause 47D01-1911-F3-002104 include: Count I: Aggravated Battery, a Level 3 Felony, Count II: Strangulation, a Level 5 Felony, Count III: Domestic Battery Resulting in Moderate Bodily Injury, a Level 6 Felony, Count IV: Domestic Battery Resulting in Moderate Bodily Injury, a Level 6 Felony, Count V: Domestic Battery Resulting in Moderate Bodily Injury, a Level 6 Felony, Count VI: Domestic Battery Resulting in Bodily Injury to a Person Less than 14 Years of Age, a Level 5 Felony, Count VII: Domestic Battery Resulting

> in Bodily Injury to a Person Less than 14 Years of Age, a Level 5 Felony, Count VIII: Domestic Battery Resulting in Bodily Injury to a Person Less than 14 Years of Age, a Level 5 Felony, Count IX: Domestic Battery Resulting in Bodily Injury to a Person Less than 14 Years of Age, a Level 5 Felony, and Count X: Domestic Battery Resulting in Bodily Injury to a Person Less than 14 Years of Age, a Level 5 Felony.

Id. at 10.

[31] The trial court found:

> 69. [Parents] have participated in services and have been compliant in attendance.
>
> * * * * *
>
> 75. [Parents] have made progress in learning about parenting methods and options for disciplining and communicating with the Minor Children; notwithstanding, [Parents] have talked only generally about physical discipline in therapeutic services and not how it relates to stressful events in their home.
>
> 76. While [Parents] practice forms of discipline with some of the Minor Children, [Parents] have made no progress forward with the entire family including Mother, Father and the ten Minor Children, in executing proper discipline.
>
> 77. Mother and Father's therapists participate in CFTMs, but other than one visit observed by Cali O'Connor, the parents' therapists do not observe Mother and Father interact with the Minor Children.
>
> 78. [Parents] regularly attend supervised visitation without incident and they are always prepared.

79. [Parents] have parented consistently, "basically the same . . . the entire time," and have made minimal changes in their parenting since the CHINS proceedings have begun.

80. Father displayed lack of empathy toward the two youngest children, [R.B.] and [N.B.], in visits on April 30, 2021 and September 17, 2021. Father has an inability to differentiate when to discipline and show affection based upon the severity of safety risk and the needs of the Minor Children.

81. Father has not visited with five (5) of the Minor Children since removal.

82. Mother has not visited with [H.B.] and [Au.B.] since removal.

* * * * *

87. On at least one supervised visit during the CHINS proceedings Father had a curt and trivializing demeanor towards Mother.

88. Father has gotten angry and insistent in CFTMs that his views are correct.

89. Father has yet to identify the proper limit for physical discipline of the Minor Children even after the CHINS proceedings have been pending for years and he has actively participated in services. While Father could have explained leaving bruises, or marks, or frightening his children into submission is inappropriate, he only identified "I am one hundred percent (100%) confident that I cannot kill my children" and "I accept police might be called."

90. [Parents] do not believe the removal of the Minor Children in October 2019 was justified and this indicates their dismissal of the Minor Children's accountings of excessive discipline, a rejection of the Minor Children's diagnoses developed by

providers, and a likelihood of not addressing the Minor Children's mental and emotional health needs in the future.

91. Similarly, Mother's labeling the Minor Children's experiences as "stress" rather than "trauma" shows a lack of understanding and inability to correct the prior harm done to the Minor Children.

92. If Mother and/or Father are not willing to accept responsibility for any past wrongs in the home, family therapy could harm the Minor Children.

93. The Child Family Team determined family therapy was not appropriate.

94. Mother indicates a willingness to intervene if Father's discipline is too excessive; nonetheless, she has not done this in the past, and she has not demonstrated she can in the future.

95. DCS'[s] child abuse and/or neglect assessment conducted in December 2021 indicates the Minor Children are at high risk for future abuse and/or neglect.

96. Given the restrictions in discussing physical discipline, the pending No Contact Orders, and inability for the parents to demonstrate effective, safe discipline (without using excessive physical discipline) with all Minor Children, there is a reasonable probability the reasons for removal and placement outside of the home, have not been remedied.

97. While [Parents] have pending criminal matters that have inhibited their free discussion of the events near the date of removal, the criminal matters have also inhibited [Parents] from visiting with all Minor Children, and truly making amends for past wrongdoing to ensure the Minor Children can heal emotionally and feel safe in [Parents'] home.

98. It is not in the Minor Children's best interests to wait until [Parents'] criminal matters are concluded to achieve permanency.

99. The Minor Children are in desperate need of permanency.

100. [H.B.], [Au.B.], [And.B.], and [T.B.] reveal there is a history of excessive discipline in the form of physical abuse in the [Parents'] home including but not limited to being punched in the face, having bruises inflicted, and withstanding "beatings." Their younger siblings such as [E.B.], [Ann.B.], and [R.B.] normalize past excessive discipline in the home when they discuss, or interact with therapists.

101. The oldest children, [Au.B.] and [H.B.], are of an age when reunifying with their parents is not in their best interests given their ages and the lack of contact (none) they have had with their [Parents] due to the No Contact Orders in the criminal cases. Moreover, [H.B.] has no positive memories of her home with [Parents] and continues to feel unworthy of love she receives at Placement.

102. Since [H.B.'s] removal from the [Parents'] home, new placement . . . , and engagement in therapy, [H.B.] has less anxiety and self-doubt, more confidence, and is able to identify positives in life.

103. There is a reasonable probability continuation of the parent-child relationship poses a threat to [H.B.] and [Au.B.'s] well-being.

104. [And.B.], [T.B.], [E.B.], [L.B.], [Cl.B.], [Ann.B.], [R.B.] and [N.B.], have been removed from their [Parents] since approximately November 2019, are still processing trauma, learning to express emotions, and building self-confidence due to the use of excessive physical discipline and emotional abuse in [Parents'] home prior to removal.

* * * * *

106. It is in the best interest of the Minor Children to remain together with their siblings with whom they find stability, security, and a sense of family.

> 107. Since [T.B.'s] removal from the home and placement in the [foster] home he has more confidence and more easily expresses his emotions.
>
> 108. [And.B.] no longer feels secluded, and is more confident and comfortable expressing his emotions.
>
> 109. There is a reasonable probability that the continuation of the parent-child relationship between Mother, Father, and the Minor Children, [And.B.], [T.B.], [E.B.], [L.B.], [Cl.B.], [Ann.B.], [R.B.], and [N.B.], poses a threat to the well-being of the Minor Children.
>
> 110. It is in the best interests of the Minor Children to remain in a home environment wherein they are cared for by trauma-informed caregivers, openly share affection and emotions, engage in individual therapy, and are encouraged to participate in extra-curriculars. The Minor Children receive all of these things in their Placements who are pre-adoptive.
>
> 111. Termination of parental rights is in the Minor Children's best interests.

Id. at 11-15.

[32] When asked if she believed that the issues which led to the removal of the children had been remedied, FCM Grafton answered in the negative. When asked why, she stated: "Again, the parents have . . . refused to address their reasons for their involvement. The parents have not identified that anything needs to change." Transcript Volume III at 59. When asked what ongoing services Mother should receive, O'Connor, Mother's therapist, stated: "[A]s far as this . . . case goes and working towards reunification, not much progress is going to be made." *Id.* at 190. On cross-examination by Parents' counsel,

CASA England testified that Parents believe it is "their right to the physical abuse" and there had been "no indication that that is necessarily going to change." Transcript Volume IV at 7.

[33] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the Children's removal and the reasons for placement outside Parents' care will not be remedied.

[34] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the children's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[35] FCM Grafton recommended that Parents' parental rights be terminated. When asked why she recommended termination of their parental rights and adoption was in the best interest of the children, FCM Grafton answered:

> [Parents] have not demonstrated meaningful and lasting changes.
> They have not addressed the reasons for the involvement.
> They've not identified that anything would need to change.

> There is no evidence that it would be safe for the children to be returned to the care of their parents based on those things. The most recent safety and risk assessments that we did in December concluded that the risk of future abuse and neglect remains high. [T]he safety decision has – lists the children as unsafe, and so based on all of these reasons, that we're, you know, more than two years into the case, the children need permanency, and those are the reasons for the recommendation.

Transcript Volume III at 60. She also testified that the length of the case had been "really challenging for the older children." *Id.* at 61.

[36] Comfort, the therapist who worked with And.B. and T.B. since August 2020, testified with respect to And.B. that "current placement and adoption TPR would be the best option going forward." *Id.* at 206. With respect to T.B., Comfort testified that he believed termination of parental rights was appropriate and "the best course of action would be for him to be adopted by [the] current placement." *Id.* at 211.

[37] CASA Kelley, who was assigned to And.B., T.B., Ann.B., R.B., and N.B., testified that she believed termination of parental rights was in the children's best interest. When asked to explain, she answered:

> I believe that the parents have both stated or indicated that they believe it's their – their God-given right to discipline their children physically, and I believe if we were to return the children back home that we would be putting them at great risk of being physically abused, and I don't feel that that is in their best interest at all.

Id. at 231. When asked if the children needed permanency, she answered: "I believe these children need permanency in the worst way." *Id.* at 232.

[38] CASA England, who was assigned to H.B., Au.B., E.B., L.B., and Cl.B., testified that termination of the parental rights was in the children's best interests and stated:

> [Parents] feel as if it's their right to physically abuse the children . . . . Neither one of them have indicated that they feel that the children have been through any traumas or that . . . anything that they have done has led to this point. And the children are now currently with families that they feel safe enough to . . . ask questions, be themselves, make decisions, make mistakes. I don't feel that if they're returned that any of the physical abuse would stop.

Transcript Volume IV at 2.

[39] Based on the totality of the evidence, we conclude the trial court's determination that termination is in the children's best interests is supported by clear and convincing evidence.

[40] For the foregoing reasons, we affirm the trial court.

[41] Affirmed.

Crone, J., and Robb, Sr.J., concur.