

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In Re the Termination of the  
Parent-Child Relationship of:  
B.B. & K.B. (*Minor Children*),  
and  
J.B. (*Mother*)  
*Appellant-Respondent*,

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*,

May 24, 2021

Court of Appeals Case No.  
20A-JT-2087

Appeal from the Vanderburgh  
Superior Court

The Honorable Brett J.  
Niemeier, Judge

The Honorable Beverly Corn,  
Referee

Trial Court Cause Nos.  
82D04-2005-JT-766  
82D04-2005-JT-767

**Robb, Judge.**

## Case Summary and Issues

- [1] J.B. (“Mother”) appeals the termination of her parental rights to two of her children.<sup>1</sup> Mother raises multiple issues, which we restate as: (1) whether the juvenile court denied Mother due process; and (2) whether the juvenile court erred in terminating Mother’s parental rights. Concluding that the juvenile court did not deny Mother due process or err in terminating Mother’s parental rights, we affirm.

## Facts and Procedural History

- [2] Mother has three biological children, two of whom are the subject of this appeal: K.B., born August 15, 2012; and B.B., born April 6, 2015 (collectively the “Children”).<sup>2</sup> On January 25, 2019, the Indiana Department of Child Services (“DCS”) filed a petition alleging the Children were children in need of services (“CHINS”) due to educational neglect<sup>3</sup> and Mother’s drug use. *See* The Exhibits, Volume I at 65. The Children were removed from Mother’s care and placed outside of the home in foster care.

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<sup>1</sup> The Children have separate fathers, neither of whom join this appeal.

<sup>2</sup> Mother’s parental rights to her third child have already been terminated.

<sup>3</sup> K.B. was withdrawn from Loge Elementary just prior to this CHINS proceeding but prior to being withdrawn, she had twelve unexcused absences and school staff expressed concerns about her home life. *See* The Exhibits, Volume I at 148.

[3] An initial hearing was held on January 29 during which Mother denied the allegations in the petition and agreed to submit to drug screens. A fact-finding hearing was held in March at which time Mother had failed to submit to a single drug screen. Subsequent drug screen results showed that Mother tested positive for methamphetamine on March 18 and 25, and April 3, 2019. On May 6, 2019, the juvenile court adjudicated the Children CHINS. Following a hearing on May 28, the juvenile court entered a dispositional order including a Parental Participation Plan requiring Mother to (among other things): complete a substance abuse assessment and all recommended treatment; refrain from drug and alcohol use; submit to random drug screens; obtain and maintain stable housing and income; timely enroll in and complete any programs recommended by service providers; attend all scheduled visitations with the Children; and participate in CHINS drug court. *See id.* at 146-48.

[4] In July, after the juvenile court's dispositional order, Mother was held in contempt for testing positive for methamphetamine and failing to appear for her drug court support group and substance abuse treatment. *See id.* at 139-40. Mother was sentenced to ninety days in Vanderburgh County Jail. However, the juvenile court also ordered that Mother be transported to Stepping Stone, a substance abuse treatment facility, and suspended her sentence while she was there. On July 8, 2019, Mother was discharged from Stepping Stone for inappropriate behavior and fraternization. Mother was ordered to serve the remaining balance of her contempt sentence in jail but was released in August. *See Appellant's Appendix, Volume II at 26; Ex., Vol. I at 142.*

- [5] Mother was briefly part of the Vanderburgh County CHINS Drug Court program. However, Mother was discharged from the program in August 2019 for continued positive drug tests and failure to participate in the program. Mother tried several different services including Counseling for a Change, Stepping Stone, and NOW Counseling throughout the CHINS case.<sup>4</sup>
- [6] On November 19, 2019, the juvenile court held a permanency hearing and found that Mother had not complied with the Children’s case plan. During October 2019, Mother missed three of six scheduled substance abuse therapy sessions with NOW Counseling and missed her first session in November. After the juvenile court’s dispositional order, Mother tested positive for methamphetamine four more times. Further, Mother tested positive for alcohol fifteen times between August and November 12, 2019, including once on the same day as a scheduled visitation. The juvenile court then added adoption as a concurrent permanency plan for the Children along with reunification. *See Ex., Vol. I at 210.*
- [7] A day prior to the permanency hearing, DCS had filed a Rule to Show Cause claiming Mother had again failed to comply with the May dispositional order by testing positive for alcohol and/or methamphetamine multiple times. On January 15, 2020, the juvenile court found Mother in contempt and sentenced

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<sup>4</sup> These programs are for drug rehabilitation; however, Mother testified that she also participated in a “Moms Group” through NOW Counseling focused on parenting. Transcript, Volume II at 59.

Mother to ninety days, to be served on three consecutive weekends with the remainder taken under advisement. *See id.* at 205.

[8] Every month after the November review hearing, Mother had a positive and/or diluted screen. *See id.*, Vol. III at 4. On April 16, 2020, Mother tested positive for methamphetamine and she tested positive for THC two weeks later. *See id.*; *see also* Appellant's App., Vol. II at 26. Both days were scheduled visitation days. In May, DCS recommended that Mother attend a minimum of three NA/AA meetings per week, obtain a sponsor, and reestablish her treatment through NOW Counseling. Ex., Vol. II at 244. Because Mother was unable to maintain sobriety, she was never able to start parenting classes through DCS. *See* Appellant's App., Vol. II at 26.

[9] On May 7, 2020, DCS filed a petition to terminate Mother's parental rights and subsequently held a fact-finding hearing. On July 7, 2020, the juvenile court ordered Mother to complete a hair follicle test, and she tested positive for methamphetamine.<sup>5</sup> At the fact-finding hearing, Family Case Manager ("FCM") Serena Gravit testified that it was in the Children's best interests for Mother's parental rights to be terminated and the Children to be adopted. *See* Transcript of Evidence, Volume II at 126. Further, Court Appointed Special

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<sup>5</sup> FCM Gravit also testified that between the hair follicle test on July 7 and the termination hearing on August 3, Mother had multiple positive tests for THC and alcohol. *See* Tr., Vol. II at 122-23.

Advocate (“CASA”) Judith Moore testified that the continuation of the parent-child relationship posed a threat to the Children’s wellbeing. *Id.* at 150.

[10] On November 10, 2020, the juvenile court entered an order terminating Mother’s parental rights to the Children and found, in pertinent part and including the findings that Mother challenges:

6. Mother went to trial during an earlier case and lost parental rights to a different child. Unfortunately, losing this child did not make enough of impression on the mother, so we are back on two other children.

\* \* \*

16. The Mother was removed from her group and therapy sessions at the Samaritan Center for non-compliance and then referred to Raintree Consulting. She missed five out of eight sessions in August 2018 and she missed all appointments in September 2018. The Mother received a list of meetings and did not attend them when asked in 2018.

\* \* \*

24. Mother claims to have changed because she joined a union and makes more money than she used to. However, her behavior shows that she has not learned from the past.

25. When the Court ordered a hair follicle screen in order to see her actual history of drug usage over the last 90 days, it was discovered that the mother had used methamphetamine again.

\* \* \*

28. When questioned about the lab results, the State's expert said that it would be very unlikely for the methamphetamine to show up on the screen if the mother had only used it one time.

29. Upon questioning, Mother admitted that she had no idea how many times she had actually used methamphetamine during that time period.

\* \* \*

**A. Facts Relating to [the Children's] Continued Removal From Parents' Home and Care: Reasonable Probability of Parent Not Remediating Reasons for Removal, Threat to [the Children's] Wellbeing**

\* \* \*

2. Throughout the duration of the underlying CHINS cause, Mother has also shown a pattern of refusing to cooperate.

3. Mother has been ordered to participate with drug treatment, after being offered service at several facilities. She claims to have completed one service, but to have continued to use methamphetamine afterwards without using a relapse plan or any other kind of support. The DCS filed this termination cause on [May 7, 2020] after another positive meth screen.

4. Mother has a significant history of substance abuse problems. Failure to cooperate with services ordered by the Court demonstrates the persistence of her struggles with illegal substances and her failure to alleviate this concern.

5. Mother has failed to complete multiple drug treatment programs and has continued to have multiple positive and diluted

screens. When the [FCM] tried to surprise her with a random screen, she failed to meet with her, while the termination case was proceeding.

6. DCS has offered services to alleviate the concerns that necessitated the removal of the [Children] and caused the [Children's] continued placement outside of the home, but the Mother has not taken advantage of those services and has failed to alleviate those concerns. The evidence presented by DCS demonstrates that the mother has been given several opportunities to benefit from services and ha[s] failed to do so.

7. The evidence clearly shows that Mother had one Family Case Manager, FCM Gravit, who held monthly Child and Family Team Meetings where she explained to [Mother] what she would have to do to get her children back.

\* \* \*

9. Because of her many diluted screens, the Court ordered a hair follicle [test] on Mother, which was positive for methamphetamine. The screen was taken on July 7, 2020. Due to the screen not being segmented, the DCS requested another screen, but the mother did not show for her appointment.

10. The Court finds from the evidence presented that the Mother will not remedy the conditions that brought about the removal of the [Children] or that led to [the Children's] continued placement outside [Mother's] home. Mother's actions, both before and during the course of the underlying CHINS causes, indicate significant problems with illegal substances, and when combined with the serious incidences of housing and employment instability, evidence a clear pattern of conduct detrimental not only to themselves but to those closest to them.



11. The Mother also admitted that her continued drug use put her important new job in jeopardy, even though this new job is supposed to make all of the difference in the world on her lifestyle and drug usage. The Court believes she is fooling herself.

## **B. [The Children's] Best Interest & DCS Plan For Care and Treatment**

\* \* \*

3. DCS and CASA believe that termination of parental rights and adoption are in the children's best interest. During the termination hearing, the testimony of CASA and the FCM emphasized the children's need for stability and safety. Mother has not demonstrated the ability to meet the children's needs.

4. It is in the best interests of the children to stay in the foster placement due to the instability of the Mother to provide appropriate care and supervision for the children. It is not in the children's best interest to provide the Mother with additional time to comply with services.

5. DCS considered alternatives before deciding that staying with current placement providers was the plan best-suited for the children, but those plans were determined to be inappropriate. Even though placement has changed a few times, the children clearly feel safe and comfortable with their placement. CASA described the joy and childishness the children now express.

\* \* \*

9. Trial courts have discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination and may find that parents' past behavior is the best predictor of

their future behavior. *D.B.M. v. [Ind. Dep't. of Child Servs.]*, 20 N.E.3d 174 (Ind. Ct. App. 2014)[,] *trans. denied*[.]

10. The time for parents to rehabilitate is “during the pendency of the CHINS action, and not after the filing of the petition for termination of parental rights.” *Prince v. Allen [Cnty.] DCS*, 861 N.E.3d 1223, 1230 (Ind. Ct. App. 2007). Accordingly, [the] Court weighs more heavily the parents’ habitual patterns of conduct than the eleventh-hour efforts. The Court notes that Mother’s compliance with finding a job is not enough to outweigh [her] prior period of instability.

11. The same evidence may be used to prove more than one element of the parental rights termination statute. *In re. A.K.*, 924 N.E.2d 212, 221 [(Ind. Ct. App. 2010)]. Thus, the Court finds that evidence regarding the Mother’s habitual pattern of conduct, along with [her] failure to benefit from services provided in the underlying CHINS cause also supports the DCS argument that continuation of the parent-child relationship poses a threat to the children’s well-being.

12. [The] Court agrees with DCS and CASA that continuation of the parent-child relationship poses a threat to the children’s well-being. [Mother’s] habitual patterns of behavior, especially [her] recurring involvement in criminal acts, demonstrate that [she] unable to make decisions in [her] own best interests, let alone make decisions in the best interest of the [children]. *See Castro vs. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind Ct. App. [19]96) [*trans.*] *denied*.

13. The children have stability in their current home. [The] Court agrees with CASA that [Mother’s] inconsistency poses a threat to the children’s current stability. [Mother’s] inability to comply with services, even making all visits on time, is traumatic for the children.

Appealed Order at 1, 3-8. Based on these findings, the juvenile court concluded:

2. [T]here is a reasonable probability that:

a. the conditions that resulted in the children's removal or the reasons for placements outside the home of the parents will not be remedied, in part, because the mother has not shown the ability to stop using dangerous drugs.

b. the continuation of the parent-child relationship poses a threat to the well-being of the children, in part, because [of] the mother's instability and drug usage.

3. [T]ermination is in the best interests of the children, in part, because children need a safe, secure, stable, loving parent and home for their mental and physical well-being.

4. [T]here is a satisfactory plan for the care and treatment of the children that being adoption, which will be easy to obtain.

*Id.* at 8-9. Mother now appeals.

## Discussion and Decision

### I. Due Process

[11] When the State seeks to terminate parental rights, "it must do so in a manner that meets the requirements of due process." *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015) (citation omitted). The nature of the process due in proceedings to terminate parental rights is governed by a balancing of "three distinct factors[:] the private interests affected by the proceeding; the risk of error

created by the State’s chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure.” *A.P. v. Porter Cnty. Off. of Fam. & Child.*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000) (internal quotations and citations omitted), *trans. denied*.

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.

*S.L. v. Ind. Dep’t of Child Serv.*, 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013) (internal citations omitted).

- [12] Mother maintains that the juvenile court’s order terminating her parental rights violated her due process rights. The State contends, as a threshold issue, that Mother has waived her due process argument by failing to raise it in the juvenile court. Generally, a party waives on appeal an issue that was not raised before the court. *See, e.g., Plank v. Cmty. Hosp. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). However, we have discretion to address such claims, especially when they involve constitutional rights, the violation of which would be fundamental error. *Id.* at 53-54; *see also S.B. v. Morgan Cnty. Dep’t of Public Welfare (In re L.B.)*, 616 N.E.2d 406, 407 (Ind. Ct. App. 1993) (citations omitted) (“The constitutionally protected right of parents to establish a home and raise their children . . . mandates that the failure of a trial court to require compliance

with any condition precedent to the termination of this right constitutes fundamental error which this court must address sua sponte.”), *trans. denied*.

[13] Here, Mother’s substantive due process right to raise her children and her procedural due process right to fair proceedings are at issue; therefore, we exercise our discretion to review Mother’s due process claim even though it was not raised below. *Plank*, 981 N.E.2d at 53-54; *see also Novatny v. Novatny*, 872 N.E.2d 673, 677 (Ind. Ct. App. 2007) (“[W]e prefer to resolve cases on the merits.”).

[14] Mother argues that she “was denied due process when DCS failed to make reasonable efforts to preserve the parent-child relationship and failed to dismiss the termination petition in compliance with statutory law.” Appellant’s Brief at 12. If a child has been removed from a parent and has been under the supervision of DCS for not less than fifteen of the most recent twenty-two months since being removed as a result of being alleged to be a CHINS, a petition to terminate the parent-child relationship must be filed. Ind. Code § 31-35-2-4.5.

[15] However, when DCS believes that termination of the parent-child relationship would be inappropriate, it may move to dismiss the termination petition.<sup>6</sup> *See*

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<sup>6</sup> “If the 15 out of 22 [months] is met but dismissal is appropriate, the TPR must still be filed and the information justifying dismissal must be submitted to the DCS Local Office Attorney with the request to file the TPR.” Indiana Department of Child Services Child Welfare Manual Chapter 6, Section 12, p. 3 (page 357 in the .pdf document) (May 10, 2021), [https://www.in.gov/dcs/files/Combined\\_Policy\\_Manual.pdf](https://www.in.gov/dcs/files/Combined_Policy_Manual.pdf) [<https://perma.cc/V9HG-6AHU>].

Ind. Code § 31-35-2-4.5(d). And if DCS intends to file a motion to dismiss under Indiana Code section 31-35-2-4.5(d), “the petition must indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(4) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.” Ind. Code 31-35-2-4(b)(3). As relevant here, the factors listed in Indiana Code section 31-35-2-4.5(d)(3) include:

(B) the department has not provided family services to the child, parent, or family of the child in accordance with applicable provisions of a currently effective case plan . . . or a permanency plan or dispositional decree[;] and

(C) the services that the department has not provided are substantial and material in relation to implementation of a plan to permit safe return of the child to the child’s home.

[16] Here, the termination petition states:

DCS asserts that none of the factors listed in [Indiana Code section] 31-35-2-4.5(d)(1) through 4.5(d)(3) applies to this case and that DCS *does not* intend to file a motion dismiss this petition.

Appellant’s App., Vol. II at 109. Mother contends that a “basis for a procedural due process claim may exist if DCS’s [sic] fails to comply with state law requiring it to move to dismiss a termination petition for failure to provide necessary services.” Appellant’s Br., at 15. However, Mother presents no case law stating when DCS is *required* to dismiss a termination petition. Indiana Code section 31-35-2-4.5(d) states DCS “*may* file a motion to dismiss” when

services have not been provided, not that DCS is required to do so. (Emphasis added.) Further, the record is clear that multiple drug treatment services were provided to Mother, many of which she failed to complete. Mother contends that she was not offered parenting services; however, DCS highlighted Mother's drug and alcohol use as her major issues. *See* Tr., Vol. II at 145. Therefore, DCS's failure to provide parenting classes was not "substantial and material in relation to implementation" of the original plan to return the Children to Mother. Ind. Code § 31-35-2-4.5(d)(3)(C). Further, the record shows that she was only precluded from starting parenting classes because of her inability to maintain sobriety. *See* Appellant's App., Vol. II at 26. We conclude that DCS did not violate Mother's due process rights when it did not file a motion to dismiss the termination petition.<sup>7</sup>

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[1] <sup>7</sup> Mother also seemingly argues that Indiana Code section 31-35-2-4.5(d) *requires* DCS to state in its petition for involuntary termination of parental rights whether at least one factor would apply as a basis for filing a motion to dismiss the petition. *See* Appellant's Br. at 15-16. Mother relies on *Matter of D.H.*, 119 N.E.3d 578, 586-87 (Ind. Ct. App. 2019), wherein this court stated that "DCS is also required to state in the [termination] petition whether at least one factor would apply as the basis for filing a motion to dismiss the termination petition" and "[s]uch a statement in the termination petition is required" if any of the circumstances in Indiana Code section 31-35-2-4.5(d) apply. However, on rehearing, we acknowledged a change in the statute such that "DCS is no longer required to, but rather permitted to, state whether there is a basis for filing a motion to dismiss the termination petition and, if there is such a basis, to file a motion to dismiss." *D.H. v. Ind. Dep't of Child Serv.*, 122 N.E.3d 832, 833-34 (Ind. Ct. App. 2019). Further, DCS did state in the termination petition that no factors applied and it did not intend to file a motion to dismiss.

## II. Termination of Parental Rights

### A. Standard of Review

- [17] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*
- [18] When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*. Instead, we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S.



1161 (2002). Thus, if the evidence and inferences support the decision, we must affirm. *Id.*

[19] The juvenile court entered findings of fact and conclusions thereon as required by Indiana Code section 31-35-2-8(c), and we therefore apply a two-tiered standard of review. *Bester*, 839 N.E.2d at 147. We first determine whether the evidence supports the findings, then determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous only if the findings do not support the court’s conclusions or the conclusions do not support the judgment. *Id.*

## **B. Statutory Framework for Termination**

[20] Our supreme court has described the involuntary termination of parental rights as “an extreme measure that is designed to be used as a last resort when all other reasonable efforts have failed.” *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011). To terminate parental rights, Indiana Code section 31-35-2-4(b)(2) requires DCS to prove, in relevant part:

(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.

[21] DCS must prove the foregoing elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). However, because subsection (b)(2)(B) is written in the disjunctive, DCS need only prove one of those three elements by clear and convincing evidence. *See, e.g., In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). If a juvenile court determines the allegations of the petition are true, then the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

### **C. Findings of Fact**

[22] As required by Indiana Code section 31-35-2-8(c), the juvenile court's judgment contains specific findings of fact and conclusions thereon. Therefore, we must first determine whether the record contains evidence supporting the findings either directly or by inference. *In re A.S.*, 17 N.E.3d 994, 1002 (Ind. Ct. App. 2014), *trans. denied*. Mother argues that the juvenile court's findings are clearly

erroneous; specifically, she challenges findings 28, 29, A.2, A.3, A.5, A.6, A.10, A.11, and B.3.<sup>8</sup>

[23] Findings 28 and 29 concern Mother’s use of methamphetamine during the termination period and the State’s expert’s testimony that it would be very unlikely for methamphetamine to show up on a hair follicle screen if Mother “had only used it one time.” Appealed Order at 4. Mother argues that the meaning of “used it one time” in finding 28 is unclear and that although she admitted that she relapsed once, she “was not specifically asked how many doses or uses occurred.” Appellant’s Br. at 22. The State’s expert testified that “a single dose of a drug is not going to record as a positive” at the cutoff level of the test used. Tr., Vol. II at 140. Further, he clarified, “a single dose of a drug is typically not going to be high enough levels to show up as a positive. But if somebody used at a one night party, partied all night, well that could.” *Id.* at 141. Based on the State’s expert’s explanation, we disagree that the phrase “used it one time” is unclear and conclude that finding 28 is supported by the evidence. Finding 29 is also supported by the evidence. Mother testified that during her relapse in April she was unsure how many times she used

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<sup>8</sup> Mother also challenges findings 6, 16, A.10, B.4, and B.11-13. DCS concedes that the facts do not support finding 16 but because it has no effect on the outcome, we do not address it. Findings A.10 and B.4 are conclusions of law which will be addressed below. Further, we do not address B.11, B.12 or B.13 as they pertain to whether the continuation of the parent-child relationship poses a threat to the Children’s well-being which, as we discuss below, we need not consider. Lastly, we do not address Mother’s objection to finding 6. The evidence supports the juvenile court’s finding that she had previously lost parental rights to another child. However, the juvenile court’s editorial comment in finding 6 that the earlier termination had not made “enough of an impression on [Mother]” is irrelevant and superfluous. We ask the juvenile court to refrain from including unnecessarily snide comments in its findings of fact in the future.

methamphetamine and did not know over how many days the drug use occurred. *See id.* at 173.

[24] With respect to findings A.2, A.3, and A.4, the juvenile court found that Mother has a history of substance abuse and has failed to cooperate in drug service programs. Mother contends that she completed NOW Counseling's Mom's Group and Catholic Charities' Neighbor to Neighbor program. However, Mother acknowledges that she did not complete or was kicked out of the CHINS Drug Court program and Stepping Stones. Further, Mother was held in contempt and jailed twice for drug usage. Although Mother may have completed two programs, there is evidence in the record that she failed to complete or cooperate in other programs. Thus, A.2-4 are supported by the evidence.

[25] Similarly, in finding A.5, the juvenile court found that Mother failed to complete multiple drug service programs and continued to have multiple positive or diluted screens. The juvenile court also found in A.5 that when her FCM tried to conduct random screens, Mother failed to meet with her. Mother argues that FCM Gravit testified that during the random drug screens there were times Mother was not home and that FCM Gravit was aware that Mother took water pills for a medical condition that could potentially impact Mother's screen results. *See Appellant's Br.* at 24-25. As stated above, Mother did fail to complete multiple drug service programs. Further, FCM Gravit testified that she would randomly meet Mother at her home for screens and frequently Mother's "vehicle would be there but she would not answer the door." *Tr.*, Vol.

II at 112. In addition, finding A.5 provides no explanation as to the cause of Mother's diluted screens and therefore, any knowledge FCM Gravit had on this issue is irrelevant and does not render the juvenile court's finding clearly erroneous. The findings are supported by the evidence.

[26] Findings A.6 and A.11 state that Mother has not taken advantage of services offered by DCS and that Mother's continued drug use put her new job in jeopardy. Mother contends these findings are clearly erroneous because, at the time of the termination hearing, she was employed, had housing, had a vehicle, and had completed Mom's Group with NOW Counseling and the Neighbor to Neighbor program through Catholic Charities. *See* Appellant's Br. at 26. Mother's argument does not address the actual findings. As stated earlier, the record shows that Mother failed to complete multiple drug services. Further, Mother testified that her job would "[a]bsolutely" fire her if they found out about her most recent positive methamphetamine test. Tr., Vol. II at 40. Thus, the findings are supported by the evidence.

[27] Mother challenges finding B.3, which states that DCS and CASA believe termination of Mother's parental rights is in the best interests of the Children. Mother argues that she is able to provide a stable environment where the Children's needs can be met. However, both FCM Gravit and CASA Moore testified that it is in the best interests of the Children for Mother's parental rights be terminated; therefore, B.3 is supported by the evidence.

## D. Conclusions of Law

### 1. *Remedy of Conditions that Resulted in Removal*

[28] Mother argues that DCS failed to prove by clear and convincing evidence that the conditions leading to the Children's removal and continued placement outside of her care will not be remedied. We engage in a two-step analysis to determine whether such conditions will be remedied: "First, we must ascertain what conditions led to [Children's] placement and retention in foster care. Second, we determine whether there is a reasonable probability that those conditions will not be remedied." *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013) (internal quotation omitted). Here, the Children were initially removed from Mother due to Mother's drug use and the Children's unexcused absences from school. *See Ex.*, Vol. I at 65.

[29] A juvenile court assesses whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside his or her parent's care will not be remedied by judging the parent's fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). In making these decisions the juvenile court must "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. Habitual conduct may include criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment, but the services offered to the parent and the parent's

response to those services can also be evidence demonstrating that conditions will be remedied. *A.D.S v. Ind. Dep't of Child Serv.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*.

[30] The record reveals that Mother has an extensive history of methamphetamine and alcohol abuse. Most of Mother's positive tests for methamphetamine occurred in 2019; however, she tested positive for methamphetamine in April 2020 and again on July 7, 2020 from a hair follicle test, which reflect drug use in the ninety days prior to the termination hearing. Mother concedes that she relapsed in April 2020 but was unsure how many times she used methamphetamine during her relapse. FCM Gravit also testified that between the date of the hair follicle test and the termination hearing, Mother had multiple tests return positive for THC. Throughout this case, Mother was uncooperative with drug services and was twice found in contempt for substance abuse and non-compliance with services and, as a result, jailed.

[31] Mother argues that at the time of the termination hearing, she was employed, had stable housing, a vehicle, and a bank account. *See Appellant's Br.* at 26. FCM Gravit testified that Mother has been unable to maintain employment, having held seven different jobs during this case, and since starting her new job, Mother has continued to test positive for marijuana and alcohol. *Tr.*, Vol. II at 125-29. This demonstrates that Mother has a pattern of instability. Further, Mother also conceded that if her most recent positive methamphetamine drug test was discovered by her employer, she would be terminated.

[32] Mother also contends that she had completed Mom's Group with NOW Counseling and the Neighbor to Neighbor program through Catholic Charities and had progressed to in-home visits twice weekly before COVID-19 protocols made her visits virtual.<sup>9</sup> Appellant's Br. at 26. Mother highlights her recent progress including obtaining housing, a vehicle, and employment; however, the juvenile court was well within its rights to "disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother's history of conduct prior to these efforts." *In re K.T.K.*, 989 N.E.2d at 1234. We have often noted that evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services demonstrates the requisite reasonable probability that the conditions will not change. *Lang*, 861 N.E.2d at 872. Such is the case here. The juvenile court found that "Mother's actions, both before and during the course of the underlying CHINS causes, indicate significant problems with illegal substances," and based on the evidence in the record the juvenile court concluded, and we agree, that there is a reasonable probability that Mother will not remedy the conditions that led to the Children's removal. Appealed Order at 6.

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<sup>9</sup> FCM Gravit contradicted Mother's contention that she successfully completed NOW Counseling when she testified that on two separate occasions NOW Counseling had to re-engage Mother and that she missed nine appointments. *See* Tr., Vol. II at 108. Mother also concedes that she did not inform NOW Counseling about her most recent methamphetamine positive test. *Id.* at 99. However, even accepting that Mother completed NOW Counseling, the outcome remains the same.



[33] For these reasons, we conclude the juvenile court's findings support its conclusion. *See, e.g., In re E.M.*, 4 N.E.3d at 644 (findings regarding a parent's continued non-compliance with services supported juvenile court's conclusion that the conditions under which children were removed from the parent's care would not be remedied).<sup>10</sup>

## ***2. Best Interests***

[34] Mother contends DCS failed to prove by clear and convincing evidence that termination was in the Children's best interests. She believes "it is in the Children's best interest [for the juvenile court] to provide her with additional time to comply with services." Appellant's Br. at 30. In determining the best interests of the Child, the juvenile court must "look beyond the factors identified by the DCS and look to the totality of the evidence." *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). And the juvenile court "need not wait until the child is irreversibly harmed such that the child's physical, mental and social development is permanently impaired before terminating the parent-child relationship." *In re K.T.K.*, 989 N.E.2d at 1235 (citation omitted). "A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same supports a finding that termination of parental

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<sup>10</sup> Mother also argues the juvenile court erred in finding that the continuation of the parent-child relationship poses a threat to the Children's well-being. However, as noted above, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires only one element be proven to terminate Mother's parental rights. *See In re L.S.*, 717 N.E.2d at 209. Having concluded the evidence is sufficient to show a reasonable probability the conditions resulting in the Children's removal will not be remedied, we need not also consider whether the parent-child relationship poses a threat to the Children's well-being.

rights is in the best interests of the children.” *Lang*, 861 N.E.2d at 373. And children should not be compelled to suffer emotional injury, psychological adjustments, and instability to preserve parental rights. *In re L.S.*, 717 N.E.2d at 210.

[35] We conclude that the juvenile court’s findings support its conclusion. As discussed above, DCS produced sufficient evidence that the conditions resulting in removal will not be remedied. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (holding recommendations of the case manager and CASA, plus evidence tending to show that the conditions resulting in removal will not be remedied is sufficient to show by clear and convincing evidence that termination is in a child’s best interests), *trans. denied*. Further, both FCM Gravit and CASA Moore testified that it is in the Children’s best interests that Mother’s parental rights be terminated. Tr., Vol. II at 126, 151. And this testimony may support a finding that termination is in a child’s best interests. *In re S.K.*, 124 N.E.3d 1225, 1234 (Ind. Ct. App. 2019), *trans. denied*. Given this evidence, the juvenile court’s conclusion that termination is in the Children’s best interests is not clearly erroneous.

## Conclusion

[36] We conclude that the juvenile court did not deny Mother due process in the termination proceedings and did not err in terminating Mother’s parental rights to the Children. Accordingly, we affirm.

[37] Affirmed.

Bailey, J., and May, J., concur.