

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of K.B., Mother, T.L., Father,
and C.L., Minor Child,

K.B. and T.L.,

Appellants-Respondents,

v.

Indiana Department of Child
Services,

May 2, 2022

Court of Appeals Case No.
21A-JT-1973

Appeal from the
Madison Circuit Court

The Honorable
Stephen J. Koester, Judge

Trial Court Cause No.
48C02-1910-JT-261

Appellee-Petitioner,

and

D.D.,

Appellee-Intervenor.

Molter, Judge.

- [1] C.L. (“Child”) was born on January 29, 2016, to K.B. (“Mother”) and T.L. (“Father”) (collectively “Parents”). When Child was roughly five months old, he was removed from the home because he sustained serious injuries consistent with abuse or neglect. The Indiana Department of Child Services (“DCS”) subsequently petitioned to have Child adjudicated as a child in need of services. After those services failed to yield improvement, DCS petitioned to terminate Parents’ parental rights to Child, and two DCS family case managers and Child’s court appointed special advocate all testified that termination was in Child’s best interests. The juvenile court agreed and terminated the parental rights. Parents now appeal, contending the juvenile court erred in terminating their parental rights because DCS failed to prove by clear and convincing evidence the required elements for termination. Because we disagree, we affirm.

Facts and Procedural History

- [2] Child is six years old. When he was five months old, DCS received a report about him, and their investigation revealed that he suffered severe head trauma while in

Mother's care at home. Particularly, Child suffered from: three separate brain bleeds—or hematomas—that were in different stages of healing; a skull fracture; soft tissue swelling on his scalp; bruises on his forehead and body; and multiple rib fractures. Because of his injuries, Child had to have a shunt placed to relieve any additional pressure in his brain. His injuries also caused him to experience cognitive and developmental delays, and he will likely suffer from long-term medical issues.

- [3] When asked about the cause of Child's many injuries, Parents provided different explanations. First, Mother claimed that Child hit himself in the head with his rattle, causing one of his hematomas. Then, Mother changed her story, arguing that one of Child's siblings hit him in the head with a toy. To explain one of his other hematomas, Mother asserted that Child's injuries were from his vacuum delivery at birth. And last, Mother claimed that Child's third hematoma and skull fracture were from Child tangling his foot in Father's gym bag and falling off the bed. When Child's physicians reported that his injuries were consistent with abuse or neglect, Mother accused them of lying.
- [4] Soon after it received the report about Child, DCS removed him from Parents' care and initiated a child in need of services ("CHINS") case. Also, the State charged Mother with neglect of a dependent resulting in bodily injury as a Level 3 felony. She ultimately pleaded guilty to a Level 5 felony and was sentenced to five years in the Indiana Department of Correction ("DOC") with three years executed and two years suspended. Further, as part of her plea agreement, Mother agreed to have a

no contact order placed between her and Child for five years. A few months later, the juvenile court adjudicated Child to be a CHINS.

- [5] On April 18, 2017, the juvenile court entered its dispositional order, with a plan of reunification. The order, among other things, required Parents to: allow DCS and service providers to make announced or unannounced visits to the home; enroll in programs recommended by DCS within a reasonable time; keep all appointments with any service provider; attend all scheduled visitations with Child; cooperate with home-based case services; and successfully complete parenting classes. Although Mother participated in services before her prison sentence, she did not successfully complete any programs while in the DOC. And even after the DOC released her early, Mother did not attend Child's medical or therapy appointments as recommended by DCS. Nor had she visited with Child since he was five months old due to the no contact order.
- [6] Father similarly violated the juvenile court's dispositional order. After Mother was incarcerated, Father refused to cooperate with or participate in services with DCS. In particular, Father did not return service providers' phone calls, and he failed to complete home-based case services or attend any of Child's medical appointments. As a result, DCS suspended Father's services and visits with Child. He has not seen Child since 2019. He also stated that his anger at DCS was greater than his desire to visit with Child and that he wanted no involvement with DCS.
- [7] Consequently, in 2019, the juvenile court entered a permanency order, suspending all services and visits with Child due to Mother's incarceration and Father's

noncompliance during various portions of the underlying CHINS case. The juvenile court also approved adoption as Child's permanency plan. Then, in October 2019, DCS filed a petition to terminate Parents' parental rights.

[8] Several months later, the juvenile court held evidentiary hearings on the termination petition. Family Case Manager ("FCM") Marlena Bertram, who worked with the family for roughly two years, testified that there was no reasonable probability that the conditions that resulted in Child's removal from the home will be remedied by Parents because they failed to participate in services and Mother's no contact order prevents her from reunifying with Child. Also, FCM Bertram stated that she had safety concerns for Child due to the no contact order and Parents' inconsistent statements about Child's injuries. She further testified that termination and adoption were in Child's best interests, especially since he has been living with his foster mother for over four years.

[9] Similarly, FCM Shelbie Hathaway testified that there was no reasonable probability that the conditions that resulted in Child's removal from the home will be remedied because Parents failed to participate in services and did not maintain contact with her while she worked on the case. She also described how Mother was incarcerated for the entire time she worked with the family and never provided FCM Hathaway with certificates of completion for services she allegedly completed while incarcerated. Relatedly, Child's court appointed special advocate ("CASA"), Elizabeth Camperelli, testified that termination and adoption were in Child's best interests. She explained that, without an explanation for Child's

injuries, there was no way to prevent them from happening again and that Child has gone without contact with Parents for two years.

[10] In August 2021, the juvenile court entered its order terminating Parents' parental rights. It concluded, among other things: there was a reasonable probability that the conditions which resulted in Child's placement outside the home will not be remedied; there was a reasonable probability that the continuation of the parent-child relationship between Parents and Child threatens Child's well-being; termination of parental rights was in Child's best interests; and Child's adoption was the satisfactory plan that DCS had for the care and treatment of Child. Parents now appeal.

Discussion and Decision

I. Standard of Review

[11] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of witnesses. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside the juvenile court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 148–49.

[12] Where, as here, the juvenile court entered specific findings of fact and conclusions, we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports

the findings,¹ and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences that support it. *Id.* If the evidence and inferences support the juvenile court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied.*

[13]As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise their child, the law allows for the termination of those rights when a parent is unable or unwilling to meet their responsibility as a parent. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013).

[14]Parental rights are not absolute and must be subordinated to the child’s interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the

¹ Parents do not challenge the juvenile court’s findings of fact. So, they have waived any argument relating to the unchallenged findings. See *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

II. Sufficiency of the Evidence

[15] Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

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

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of child.

(iii) The child has, on two (2) separate occasions, been adjudicated a [CHINS];

(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). The State's burden of proof for establishing these allegations in termination cases is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d at 149. Moreover, "if the court finds that the allegations in a

petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship.” Ind. Code § 31-35-2-(8)(a) (emphasis added).

On appeal, Parents challenge only the juvenile court’s conclusions with respect to subparts (B) and (C).

A. Subpart (B)

[16]The juvenile court found that DCS proved, by clear and convincing evidence, that there was a reasonable probability that: (1) the conditions that resulted in Child’s removal or the reasons for placement outside the home of the parents will not be remedied and (2) the continuation of the parent-child relationship poses a threat to the well-being of Child. *See* Ind. Code § 31-35-2-4(b)(2)(B).

[17]On appeal, Parents allege error from the juvenile court’s conclusions regarding subsections (i) and (ii) of Indiana Code section 31-35-2-4(b)(2)(B). But because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the juvenile court to find only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence, we will not address Parents’ argument, under subsection (ii), that DCS failed to present clear and convincing evidence that the continuation of the parent-child relationship poses a threat to Child’s well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii).

[18]We find no error in the juvenile court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of Child were unlikely to be remedied. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home

will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must ascertain what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[19] In the second step, the juvenile court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). This allows juvenile courts to consider "evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011). In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *E.M.*, 4 N.E.3d at 643. When determining whether the conditions for the removal would be remedied, the juvenile court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[20] Here, Child was removed from the home because he sustained serious injuries—including multiple hematomas and a skull fracture—that were consistent with abuse or neglect. Soon after removal, Mother pleaded guilty to neglect of a dependent resulting in bodily injury and was incarcerated. A no contact order was also placed between her and Child. Further, Parents refused to comply with the juvenile court’s dispositional order, failing to consistently attend appointments and complete services or recommended tasks.

[21] As the juvenile court acknowledged, Mother repeatedly denied that Child’s injuries were due to abuse or neglect, even though she pleaded guilty to neglect of a dependent resulting in bodily injury and was subsequently incarcerated. She also provided inconsistent explanations for Child’s injuries throughout the underlying CHINS case and termination proceedings. Our court has consistently held that the trial court may consider “habitual pattern[s] of conduct” when evaluating a parent’s fitness at the time of the termination proceeding “to determine whether there is a substantial probability of future neglect or deprivation.” *E.M.*, 4 N.E.3d at 643 (quotation marks omitted). We have also held that the law allows for the termination of parental rights when a parent is unable or unwilling to meet their responsibility as a parent. *Bester*, 839 N.E.2d at 145; *In re D.P.*, 994 N.E.2d at 1231.

[22] Parents have never consistently or sufficiently explained Child’s injuries so as to prevent them from happening again, including Mother’s vacillation between denying Child’s injuries were the result of abuse or neglect and accepting responsibility for Child’s injuries by pleading guilty to a Level 5 felony and

agreeing that a no contact order be issued. Moreover, while Parents argue that Mother participated in services before her prison sentence, the record reveals she failed to successfully complete any programs while in the DOC or thereafter. In particular, FCM Hathaway testified that Mother never provided her with certificates of completion for services she allegedly completed while incarcerated. And even after the DOC released her, Mother did not attend Child's medical or therapy appointments as recommended by DCS.

[23]The record also reveals that Father refused to cooperate with or participate in services with DCS. Particularly, Father did not return service providers' phone calls, and he failed to complete home-based case services or attend any of Child's medical appointments. He also stated that his anger at DCS was greater than his desire to visit with Child and that he wanted no involvement with DCS. And Parents concede that, in the few instances he participated in services, Father did so due to Mother's prompting. Appellant's App. Vol. 2 at 98.

[24]As a result, Parents have had minimal contact with Child for most of his life. Mother has not visited with Child since he was five months old due to her incarceration and the no contact order, which also prevents her from reunifying with Child for at least two more years. And Father has not seen Child since 2019 because he refuses to participate in services or visit with Child. Concerning Mother's parenting skills and the fact that Father has successfully cared for their other four children, Parents invite us to conclude that they can meet their parental responsibilities. Appellant's Br. at 14, 21. But this is simply a request that we reweigh the evidence, which we cannot do. *In re H.L.*, 915 N.E.2d at 149.

[25] We also find Parents' reliance on the decisions in *In re K.E.*, 39 N.E.3d 641, 648 (Ind. 2015), *In re J.M.*, 908 N.E.2d 191 (Ind. 2008), *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009), and *In re K.T.*, 137 N.E.3d 317 (Ind. Ct. App. 2019), misplaced, as they are all easily distinguished. In *K.E.*, our Supreme Court reversed the termination of the incarcerated father's parental rights because the court believed that the trial court wrongfully relied only upon the father's release date—which was less than a year away—and the child's general need for permanency in determining both that the father posed a threat to the child's well-being and that there was no reasonable probability that the father would remedy the conditions that led to the child's removal and continued placement outside his care. 39 N.E.3d at 648. The Court noted that “the potential release date is only one consideration of many that may be relevant in a given case” and emphasized that the record clearly demonstrated that the incarcerated father had pursued every avenue possible to better prepare himself for parenthood after being released, had a plan to provide care and support for his child upon release, and had developed a strong and healthy bond with his child during his incarceration. *Id.* The record further demonstrated that the child would not be harmed if left in foster care for just a bit longer until the father would be released. *Id.*

[26] Here, Parents liken the circumstances surrounding Mother's no contact order to a parent serving a prison sentence. Appellant's Br. at 16. But they are much different. A prison sentence typically results from crimes unrelated to the inmate's child. The no contact order here results from the danger Mother poses to Child. Regardless, in contrast to the father's situation in *K.E.*, Mother's no contact order

will be in place for at least another two years, and she has had no contact with Child since he was five months old—Child is currently six years old. Further, unlike in *K.E.*, there is no evidence that Mother and Child have bonded.

[27] Regarding *J.M.*, the juvenile court denied DCS’s petition to terminate parental rights based, in part, upon evidence that the parents were being released from prison early and had completed programs during their incarcerations. That meant the child’s permanency was not severely prejudiced by waiting upon the parents’ release to further judge their fitness. 908 N.E.2d at 194–96. After this court reversed the juvenile court’s denial of the petition, the parents sought transfer. *Id.*

[28] The Court granted transfer and found that the record supported the juvenile court’s decision that the parents’ “ability to establish a stable and appropriate life upon release can be observed and determined within a relatively quick period of time. Thus, the child’s need of permanency is not severely prejudiced.” *Id.* at 194. The Court held that the juvenile court’s order was not clearly erroneous and affirmed the juvenile court. *Id.* *J.M.* focused on the standard of appellate review in these cases, which is very deferential, and by which “[a]n appellate court may not substitute its own judgment for that of the trial court if any evidence or legitimate inferences support the trial court’s judgment.” *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). Because *J.M.* addressed how the juvenile court’s findings should not be disturbed if supported by the evidence, *J.M.* does not support Parents’ arguments.

[29]Parents also contend that their case is analogous to *G. Y.* In *G. Y.*, the mother committed a crime before her child was born. 904 N.E.2d at 1258. Several years later, after her child’s birth, she was arrested and sentenced. *Id.* at 1258–59. Upon the mother’s arrest, she tried to arrange for childcare. *Id.* at 1259. When her efforts failed, DCS took custody of the child. *Id.* On transfer, our Supreme Court held that there was insufficient evidence to establish that termination was in the child’s best interests. *Id.* at 1264. The Court noted that the mother had taken steps to better herself while incarcerated—including completing college courses, making housing and employment arrangements upon her release, completing a drug rehabilitation program, and completing a parenting class. *Id.* at 1262. The mother also maintained a consistent and positive relationship with the child, and there was no evidence that a pattern of criminal activity was likely to continue upon her release from prison. *Id.* at 1262–63 (describing how mother visited with her child once a month for a couple of hours and sent the child cards, pictures, and letters to connect with him). The Court additionally noted that the mother was to be released soon after the hearing. *Id.*

[30]The facts here contrast with those in *G. Y.* As previously noted, Mother has not seen Child for most of his life. The no contact order has prevented her from establishing a relationship with him and will continue to do so for at least another two years. Further, unlike the mother in *G. Y.*, Mother failed to participate in services while incarcerated. And, even after her release, she has failed to attend Child’s medical and therapy appointments as recommended by DCS. Thus, the facts of this case are clearly different from those in *G. Y.*

[31] Last, Parents assert that Father's alleged non-compliance with services is akin to that of the father in *K.T.* There, the child was removed from the home because the mother neglected the child. *In re K.T.*, 137 N.E.3d at 327. As to the father,

[t]here [was] no evidence that [he] was ever convicted of a crime or that he ever committed any criminal act in Child's presence. There [was] also no evidence that Father was ever diagnosed with any sort of anger-related mental health issue or that he ever expressed anger in Child's presence. And there [was] no evidence that Father abused alcohol or that he ever consumed alcohol in Child's presence. Thus, there [was] no evidence in the record showing reasons for Child's initial or continued placement away from Father.

Id. at 328. Instead, "in its order terminating Father's parental rights, the trial court relied solely upon evidence of Father's failure to fully participate in and complete services." *Id.*

[32] We held that the father's lack of full compliance with services, alone, did not support termination of his parental rights, reasoning that "[a] termination of parental rights must be based on some showing of parental unfitness." *Id.* We also noted that, after missing some visits during the underlying CHINS case, the father "subsequently attended eighty percent of the visitations even though his full-time job required him to travel around the state." *Id.* Therefore, the father's failure to attend all scheduled visitations was not clear and convincing evidence that he was uninterested or unwilling to parent his child, "especially given his undisputed and consistent requests for custody and visitation and his consistent efforts during visitations to establish a bond with Child." *Id.*

[33] Here, by contrast, Father has failed to return service providers' phone calls, complete home-based case services, or attend any of Child's medical appointments. Further, he has not visited with Child since 2019 and stated that his anger at DCS was greater than his desire to visit with Child and that he wanted no involvement with DCS. FCM Bertram, FCM Hathaway, and CASA Camperelli also all testified that they had minimal to no contact with Father regarding Child. And there is no evidence that Father and Child have bonded. Consequently, the facts of this case are clearly distinguishable from those of *K.T.*

[34] In short, DCS satisfied subpart (B) because clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that led to Child's removal and continued placement outside Parents' care will not be remedied.

B. Subpart (C)

[35] Parents also challenge the juvenile court's conclusion that termination of the parent-child relationship is in the best interests of Child. We note that in determining the best interests of a child, the trial court is required to look beyond the factors identified by DCS and to the totality of the evidence. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. The court must subordinate the interests of the parent to those of the child. *Id.* And the recommendations of both the case manager and the 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 child's best interests. *A.D.S.*, 987 N.E.2d at 1158–59.

[36] A juvenile court “need not wait until the child is irreversibly harmed such that [their] physical, mental, and social development is permanently impaired before terminating the parent-child relationship.” *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child. *Id.*

[37] At the time of the termination hearing, Child had been living with his foster family for several years, and Parents failed to make the changes in their life necessary to provide Child with a safe and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Parents would not remedy the reasons for Child’s removal from their care. And FCM Bertram, FCM Hathaway, and CASA Camperelli all testified that they believed termination of Parents’ parental rights was in the best interests of Child. Appellant’s App. Vol. 2 at 98, 102, 105.

[38] In arguing that there is insufficient evidence that termination is in Child’s best interests, Parents rely on *In re A.B.*, 888 N.E.2d 231 (Ind. Ct. App. 2008), *trans. denied*. In *A.B.*, we reversed a termination of parental rights which was based solely on the recommendation of the guardian ad litem and DCS case worker that it was in the child’s best interests to be adopted by her foster mother. *Id.* at 239. We observed that “[a] parent’s right to his or her children may not be terminated solely because a better place to live exists elsewhere.” *Id.* In that case, the child was removed from the parents based on one incident of possible medical neglect, but the parents then complied with all court orders and DCS services, always had

negative drugs screens and regular non-problematic visitation, and the parents were improving their economic and residential circumstances. *Id.* at 238.

[39] Instead, here, Child was removed from the home because he sustained at least three separate injuries to his brain that were consistent with abuse or neglect. Also, Parents refused to participate in services or visit with Child for several years. Due to her no contact order, Mother has not seen Child since he was five months old, and she will be unable to see him for at least another two years. Father also stopped visiting with Child in 2019, and his services and visits with Child were subsequently suspended. Therefore, this case bears little similarity to *A.B.*

[40] In sum, the juvenile court made findings sufficient to terminate Parents' parental rights, and those findings are supported by the evidence. Parents have thus failed to establish reversible error. Accordingly, we affirm the juvenile court's order terminating Parents' parental rights.

[41] Affirmed.

Riley, J., and Robb, J., concur.