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 J.P., Father, B.P., Mother, and L.P., Minor Child,

J.P. and B.P.

Appellants-Respondents,

v.

August 22, 2022

Court of Appeals Case No. 21A-JT-2776

Appeal from the Marion Superior Court

The Honorable Scott B. Stowers, Magistrate

Trial Court Cause No. 49D09-2101-JT-42

Indiana Department of Child Services,
Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian Ad Litem.

Molter, Judge.

[1] J.P. ("Father") and B.P. ("Mother") (collectively, "Parents") appeal the juvenile court's order terminating their parental rights to their daughter, L.P. ("Child"), raising two issues. First, they argue the juvenile court erred by admitting two drug testing compliance reports, which they contend were inadmissible hearsay. Second, they argue there is insufficient evidence to support the juvenile court's termination order. Finding no error, we affirm.

Facts and Procedural History

[2] Child was born to Parents on December 5, 2012 and is nine years old. When Child was about seven years old, the Indiana Department of Child Services ("DCS") removed Child from Parents' care and initiated a child in need of services ("CHINS") case. This was because Mother was on home detention for carrying a handgun without a license and was arrested for removing her ankle monitor. Also, around the same time, Father was arrested for allegedly abusing

his ex-girlfriend. He was subsequently incarcerated but was released a few months later in May 2019.

[3] Soon after, in June 2019, the juvenile court adjudicated Child to be a CHINS. The court based its determination on Father's admission to the allegations in the CHINS petition and Mother's waiver of a fact-finding hearing. Then, the following month, the juvenile court entered its dispositional order, with a plan of reunification. As to Father, the court required that he, among other things, participate in a Father Engagement program, domestic violence services, and substance abuse assessment. As to Mother, the court required that she participate in home-based case management, including transportation assistance, random drug screens, and substance abuse evaluation if she were to test positive for illicit substances.

[4] Parents failed to comply with the juvenile court's dispositional order. Neither parent consistently engaged in services, and Mother's in-person visits with Child were suspended due to Mother's gang activity. Particularly, Mother's life was threatened, and all parties agreed that Mother's in-person visits with Child posed a threat to Child's safety.

[5] The juvenile court subsequently entered a permanency order in 2021, approving adoption as Child's permanency plan. The court found that, although the CHINS matter had been open for roughly two years, neither parent made meaningful progress with the services offered by DCS or toward reunification. Thus, the court concluded that neither parent could meet Child's needs,

including her basic care and necessities. A few days later, on January 12, 2021, DCS filed a petition to terminate Parents' parental rights. The juvenile court then held an evidentiary hearing on the termination petition in October 2021.

[6] At the hearing, DCS presented evidence regarding Parents' histories of criminal offenses. Father's criminal history includes multiple arrests and at least two felony convictions—domestic battery committed in the presence of a child less than sixteen years old (Level 6 felony) and intimidation (Level 6 felony). Also, between 2018 and 2021, Father was charged with roughly ten felonies and two misdemeanors, nearly all of which were violent or drug-related offenses. Father was also incarcerated multiple times during this period, and he violated his probation under his Level 6 felony intimidation conviction. Further, he has a history of substance abuse and homelessness, and during the hearing, he admitted to using methamphetamine and marijuana.

[7] Mother's criminal history is also extensive. It includes multiple arrests, two felony convictions (auto theft as a Level 6 felony and carrying a handgun without a license as a Level 5 felony), and one misdemeanor conviction (carrying a handgun without a license as a Class A misdemeanor). Mother's first arrest occurred in 2019 when she removed her home-detention ankle monitor while serving her sentence for Class A misdemeanor carrying a handgun without a license. Then, in 2020, Mother was again arrested. She pleaded guilty to auto theft as a Level 6 felony and carrying a handgun without a license as a Level 5 felony. In January 2021, Mother was arrested for auto theft as a Level 6 felony, driving while suspended as a Class A misdemeanor,

and possession of marijuana as a Class B misdemeanor. She was arrested again the following month and charged with possession of methamphetamine as a Level 6 felony. Like Father, Mother has a history of substance abuse, and during the hearing, she admitted to using methamphetamine and marijuana.

[8] Family Case Manager ("FCM") Amyra Thomas also testified at the hearing. She explained that she believed Child deserved immediate permanency, rather than waiting for Parents to begin participating in services, because the case had been ongoing for two years and neither parent made any progress toward reunification. FCM Thomas also described how neither parent was compliant with services, communicative with DCS, or could provide Child with a stable home. Particularly, neither parent demonstrated sobriety or had stable housing, Father did not understand why he was required to participate in domestic violence services, and Mother did not participate in substance abuse evaluation.

[9] FCM Thomas also testified that Child was comfortable in her pre-adoptive placement with her maternal aunt. Child developed a bond with her aunt and her other siblings in the home. Further, FCM Thomas described how Child needed stability for her physical and emotional well-being and how Child's current placement provides her with a comfortable environment and everyday needs. FCM Thomas ultimately concluded that Parents' parental rights should be terminated and that adoption was a satisfactory plan for Child's care and treatment. Jan Townsend, Child's guardian ad litem ("GAL"), testified that she believed termination and adoption were in Child's best interests.

[10] Similarly, Vera Taylor, a Father Engagement case manager, testified that Father did not complete his Father Engagement program, as ordered by the juvenile court. She described how she was sometimes unable to contact Father and how he did not have stable housing. Jazzmine Anderson, a service provider with Family and Community Partners, testified at the hearing and explained that Mother was noncompliant with services. Mother did not meet any of her goals, which were to find employment, housing, and achieve stability.

[11] Further, Tanika Phinisee, a supervised visitation facilitator, testified at the hearing. She explained that she had never been able to recommend unsupervised visits between Parents and Child because they did not consistently participate in their services, have a safe and stable home environment, or have clean drug screens. Also, Phinisee explained that Mother's visits with Child initially occurred virtually due to safety concerns related to Mother's prior gang activity. And, while Mother was eventually permitted to have in-person visits with Child, Mother never contacted Phinisee to arrange those visits.

[12] On November 19, 2021, the juvenile court entered its decree terminating Parents' parental rights. The juvenile court concluded, among other things, that: 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, individually, now appeal.

Discussion and Decision

I. Standard of Review

[13] 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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial 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.

[14] Where, as here, the juvenile court entered specific findings 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, 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 drawn therefrom that support it. *Id.* If the evidence and inferences support the trial 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*.

[15] 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).

[16] 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 of 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 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. Admission of Evidence

[17] Parents first assert that the juvenile court erred in admitting DCS's Exhibits 35 and 36 into evidence during the termination hearing over their hearsay objections. Those exhibits were reports from a toxicology lab summarizing parents' participation in random drug screens. They reflected that between July 8, 2021 and September 29, 2021, Mother was required to call the drug screening

lab sixty times, and she failed to call fifty-one times. Of the nine times she did call, a random test was required three times, and she only submitted to one test. As for Father, they reflected that he was required to call in thirteen times between September 12, 2021 and September 29, 2021, and he failed to do so all thirteen times.

[18] We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *A.B. v. Ind. Dep't of Child Servs. (In re K.R.)*, 154 N.E.3d 818, 820 (Ind. 2020). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* A claim of error in the admission or exclusion of evidence will not prevail on appeal unless a substantial right of the party is affected. Ind. Evid. Rule 103(a). "Errors in the admission . . . of evidence are to be disregarded as harmless error unless they affect the substantial rights of [a] party." *Lewis v. State*, 34 N.E.3d 240, 248 (Ind. 2015) (quotation marks omitted). To determine whether the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence upon the finder of fact. *Id.*

[19] Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted. Ind. Evid. Rule 801(c). Although hearsay evidence is generally inadmissible, *see* Ind. Evid. Rule 802, DCS sought the admission of the challenged compliance reports pursuant to Indiana Evidence Rule 803(6). That rule provides the following records are not excluded as hearsay regardless of whether the declarant is available as a witness:

> **Records of Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:
>
> (A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;
>
> (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
>
> (C) making the record was a regular practice of that activity;
>
> (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
>
> (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Ind. Evid. Rule 803(6). "In essence, the basis for the business records exception is that reliability is assured because the maker of the record relies on the record in the ordinary course of business activities." *In re Termination of Parent-Child Relationship of E.T.*, 808 N.E.2d 639, 643 (Ind. 2004).

[20] Along with the two exhibits, DCS offered a records custodian affidavit swearing that the records were kept in the regular course of business and created by a person with knowledge at or near the time of the events. Ind. Evid. Rule

803(6).[1] Our Supreme Court recently resolved a split of authority in this court, holding that reports from a drug testing laboratory were sufficiently reliable to be admitted under the hearsay exception for records of a regularly conducted activity. *Matter of K.R.*, 154 N.E.3d at 822. The Court explained that "it is clear that drug test reports are required for a laboratory that provides drug testing services to operate, both to keep necessary certifications and as a practical matter." *Id.*

[21] The records here are compliance reports rather than the drug testing results at issue in *Matter of K.R.*, but those records are similar enough that we cannot say the trial court abused its discretion in admitting the exhibits. Parents do not dispute their accuracy, and their only basis for suggesting the records may be unreliable is that they were prepared for DCS. But the Supreme Court's rejection of that argument in *Matter of K.R.* applies squarely here:

> Further, we find the argument that the laboratory only creates the drug test reports for DCS and not for its own operations is not consistent with the practicalities of using a laboratory that provides drug testing. That is, if any client, not just DCS submits a sample for drug testing to the laboratory, it is expected that results will follow or else it is not clear why someone would utilize the laboratory in the first place. It also seems to follow that such results would be provided in writing instead of, for example, via a phone call. Thus, it is clear that drug test reports

[1] Parents also seem to briefly argue that the exhibits were inadmissible because the affidavit from the records custodian did not reference the records by document title and did not state the number of pages for the documents. But Parents do not make any argument that these documents are in fact not authentic, nor do they provide any legal support for the proposition that a trial court abuses its discretion by admitting exhibits as authentic in these circumstances.

> are required for a laboratory that provides drug testing services to operate, both to keep necessary certifications and as a practical matter.

Id. at 821. The nature of the lab's business is such that it must maintain accurate, reliable records regarding its drug testing services regardless of who its client is.

[22] Even if the exhibits were inadmissible hearsay, Parents have not demonstrated that they suffered prejudice. It is well settled that the improper admission of evidence is harmless error when the judgment is supported by substantial independent evidence to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the judgment. *E.T.*, 808 N.E.2d at 646. As explained below, there is ample independent evidence provided by witness testimony to support the juvenile court's order. Accordingly, any error in the admission of the reports was, at most, harmless.

III. Sufficiency of the Evidence

[23] 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 the 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 three of the juvenile court's findings,[2] as well as the court's conclusions with respect to subparts (B) and (C).[3]

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[2] Parents do not challenge any of the juvenile court's other findings of fact, so they have waived any arguments 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).

[3] To the extent that Parents challenge subpart (D), *see* Appellant Father's Br. at 27; *see also* Appellant Mother's Br. at 29, they fail to fully develop their argument and have waived this claim for our review. *See Shepherd v. Truex*, 819 N.E.2d 457, 483 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present cogent argument); Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in an appellant's brief be supported by developed reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal).

A. Findings of Fact

[24] First, Father individually challenges Finding 41, in which the juvenile court found that FCM Thomas initially contacted Mother on June 28, 2021, and advised her to contact a toxicology lab to complete drug screens. According to Father, this finding of fact was based on DCS's Exhibit 36, which included Mother's drug testing compliance reports. As explained above, there was nothing improper about the juvenile court relying on Exhibit 36. Regardless, FCM Thomas testified that she first made contact with Mother on June 28 and informed Mother that her drug screens would take place at the toxicology lab. She also testified that she explained the drug screening process to Mother. Thus, the evidence supports the juvenile court's finding of fact that FCM Thomas contacted Mother at the end of June 2021 to discuss her participation in drug screens.

[25] Next, Parents jointly challenge Findings 42 and 43, which state:

> 42. Between July 8, 2021 and September 29, 2021, [Mother] was required to call [the toxicology lab] 60 times. [Mother] failed to call 51 times. Of the nine times she did call, a random test was required 3 times, and she only submitted to one test.
>
> 43. Between September 13, 2021 and September 29, 2021, [Father] was required to call [the toxicology lab] 13 times to submit to random drug screens. He failed to call all 13 times.

Appellant's App. Vol. 2 at 19.

[26] Parents contend that Findings 42 and 43 are erroneous because they were based on DCS's Exhibits 35 and 36. Again, as explained above, there was no error in admitting these exhibits.

B. Subpart (B)

[27] 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).

[28] 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).

[29] We find no error in the trial court's conclusion that there was a reasonable probability that the conditions resulting in the removal of Child and continued placement outside the home 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.*

[30] In the second step, the trial 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). Pursuant to this rule, trial "courts have properly considered 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.

[31] Here, Child was removed from the home due to Parents being arrested and incarcerated on felony charges, and Child continued in foster care because of Parents' repeated criminal conduct, failure to participate in rehabilitative services, and inability to provide Child with safe and stable permanency. At the time of the termination hearing, the record reveals that virtually nothing had changed. Both Mother and Father had been arrested or incarcerated multiple times during the underlying proceedings, and both parents had criminal charges pending against them. Appellant's App. Vol. 2 at 18.

[32] As the juvenile court acknowledged, Parents' criminal histories are extensive. Father's criminal history includes at least two felony convictions—domestic battery committed in the presence of a child less than sixteen years old and intimidation. Also, between 2018 and 2021, Father was charged with roughly ten felonies and two misdemeanors, nearly all of which were violent or drug-related offenses. Further, he violated his probation under his intimidation conviction, and he admitted to being incarcerated "for several stretches of the last three years" and "unable to personally care for [Child]" during that time. Tr. at 180–81. Father also admitted to recently using methamphetamine and marijuana and to having a history of substance abuse and homelessness.

[33] As to Mother, her criminal history includes two felony convictions (auto theft and carrying a handgun without a license) and one misdemeanor conviction (carrying a handgun without a license). Between 2019 and 2021, she was arrested at least four times. She was charged with several felonies and misdemeanors, many of which were drug-related and included another auto

theft offense. Like Father, Mother admitted to having a history of substance abuse and recently using methamphetamine and marijuana. She also admitted to having been affiliated with a gang and that her in-person visits with Child, at one point, threatened Child's safety. *Id.* at 40–41.

[34] The record further reveals that the underlying CHINS matter had been ongoing for two years and that Parents refused to cooperate with or participate in services with DCS. For example, while Father argues that he was anxious to engage in services to reunify with Child, the record indicates that he failed to complete his Father Engagement program and that he did not understand why he was required to participate in domestic violence services. Likewise, Mother did not participate in substance abuse evaluation, as ordered by the juvenile court, and she ultimately did not meet any of her goals, which were to find employment and housing and to achieve stability.[4] Further, service providers described how neither parent was communicative with DCS, demonstrated sobriety, or could provide Child with a stable home. Parents were also unable to engage in unsupervised visits with Child for these reasons.

[35] We also conclude Father has misplaced his reliance on the decision in *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641 (Ind. 2015), which held, among other

[4] We note that Mother also briefly argues: (1) DCS failed to arrange in-person visits between her and Child; (2) Mother had appropriate housing; (3) Father was employed and arranging for appropriate housing; and (4) DCS refused to assist Mother in finding substance abuse treatment. Appellant Mother's Br. at 24. However, her assertions are invitations to reweigh the evidence, which we are not permitted to do. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

things, that incarceration, standing alone, is an insufficient basis for terminating parental rights. *Id.* at 643. The father in *K.E.* was incarcerated when the CHINS case began, and, because of the father's incarceration, DCS provided services only to the mother. *Id.* In finding there was a reasonable probability that the reasons for removal would not be remedied, the juvenile court found, in part: (1) the father was unable to receive services from DCS because he was incarcerated; (2) the father had a long criminal history; (3) the father's release date was more than two years after the date of the fact-finding hearing; and (4) the father had a history of drug and alcohol use. *Id.* at 647. Our Supreme Court, however, reversed the termination of parental rights, stating, in part:

> Although at the time of the termination hearing [the father's] possible release was still over two years away[,] that alone is insufficient to demonstrate that the conditions for removal will not be remedied. Indiana courts have upheld parental rights of incarcerated parents who still had a year or more to serve before possible release, and we have not established a bright-line rule for when release must occur to maintain parental rights.

Id. at 648.

[36] Here, *K.E.* is distinguishable. Unlike the incarcerated father in *K.E.* who was unable to participate in services due to his incarceration, Parents have had numerous opportunities to participate in a variety of services but have failed to

engage in the services provided to them by DCS.[5] Further, the present case is not a situation in which parental rights were terminated solely due to a parent's incarceration. Rather, unlike the father in *K.E.*, neither parent has been incarcerated for the entire length of the two-year CHINS matter. Also, neither parent has self-improved nor made any progress toward reunification. *Cf. id.* at 649 (describing the father's "substantial efforts . . . to improve his life by learning to become a better parent, establishing a relationship with [his children], and attending substance abuse classes"). Instead, DCS provided Parents with numerous opportunities to participate in services over the course of this case, but they did not do so successfully or consistently. Moreover, Parents continued to engage in drug use and have been unable to maintain suitable housing for Child, with Mother living with her sister-in-law and Father living in a "community house" at some point. Tr. at 26, 184.

[37] Thus, although Parents point to evidence that demonstrates that they love Child and have tried to maintain their parental relationship despite their many arrests

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[5] Father also appears to argue that DCS did not provide him with services or additional time to complete his court-ordered services. Appellant Father's Br. at 30–31. As discussed above, the record reveals otherwise. Moreover, Father's argument is an invitation to reweigh the evidence, which we will not do. *K.D.*, 962 N.E.2d at 1253.

Further, to the extent that Father argues his due process rights were violated, Appellant Father's Br. at 29–30, he has waived this claim for our review. *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) ("[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal."). Father also does not attempt to save his due process claim from the effects of waiver by arguing that the juvenile court's action was fundamental error. *In re Eq.W*, 124 N.E.3d 1201, 1214–15 (Ind. 2019) ("[Fundamental error] review is extremely narrow and available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible." (quotation marks omitted)). Thus, we need not address it further.

and incarcerations, Parents' choices to repeatedly engage in criminal activity demonstrates that they cannot regulate their behavior enough to provide for Child's needs. Our courts have long recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *K.T.K.*, 989 N.E.2d at 1235–36. Accordingly, 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.

C. Subpart (C)

[38] 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.

[39] 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.* At the time of the termination hearing, Child had been living with her maternal aunt for roughly two years, and Parents failed to make the changes in their lives 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.

[40] FCM Thomas also opined that termination of Parents' parental rights was in the best interests of Child. She testified that she believed Child deserved immediate permanency, rather than waiting for Parents to begin participating in services, because the case had been ongoing for two years and neither parent made any progress toward reunification. FCM Thomas also explained how neither parent was compliant with services, communicative with DCS, could provide Child with a stable home, or demonstrated sobriety. Similarly, Child's GAL testified that she believed termination of Parents' parental rights was in the best interests of Child.[6]

[6] We note that Parents argue Child's GAL had only been assigned to their case for a few months and had not met with Child. Thus, they contend that the GAL could not have known what was in Child's best interests. At most, Parents' claim is just another invitation to reweigh the evidence, which we cannot do. *K.D.*, 962 N.E.2d at 1253. Although the GAL had worked with the family for only a few months, she testified that she thoroughly reviewed the family's case, spoke to Mother, assessed Child's relative placement, and believed termination of Parents' parental rights was in the best interests of Child. Tr. at 150–55.

[41] As the juvenile court's extensive findings indicate, Parents have not shown that they are capable of parenting Child. Child is bonded and thriving in her pre-adoptive home with her maternal aunt. As discussed above, both FCM Thomas and Child's GAL testified that termination of Parents' parental rights is in Child's best interests. Thus, given the totality of the evidence, Parents cannot show that the juvenile court erred when it concluded that termination of their rights is in Child's best interests.[7]

[42] Accordingly, we affirm the juvenile court's order terminating Parents' parental rights.

[43] Affirmed.

Mathias, J., and Brown, J., concur.

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[7] While Parents contend that the evidence shows Parents and Child enjoyed a loving relationship, they again invite us to reweigh the evidence. *K.D.*, 962 N.E.2d at 1253. Also, as previously mentioned, 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, Father claims that the juvenile court terminated Parents' parental rights because it essentially determined that there is a better home for Child. Appellant Father's Br. at 31 ("The Juvenile Court erred by relying on the potential for stability and permanency at the relative placement . . . to terminate the parent-child relationship."). While Father is correct that the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *In re K.S.*, 750 N.E.2d 832, 836–37 (Ind. Ct. App. 2001). As discussed in detail above, DCS provided Parents with several opportunities to participate in services, but they did not do so. Also, Parents continued to engage in criminal activity, drug use, and could not provide suitable housing for Child.