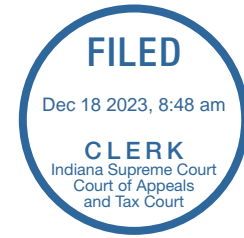


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of:

A.S. and O.S. (Minor Children),

and

M.S. (Father) and M.A.
(Mother),

Appellant-Respondents,

v.

Indiana Department of Child
Services,

December 18, 2023

Court of Appeals Case No.
23A-JT-1432

Appeal from the Shelby Superior
Court

The Honorable R. Kent Apsley,
Judge

Trial Court Cause No.
73D01-2208-JT-19
73D01-2208-JT-20

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] M.S. (“Father”) appeals the involuntary termination of his parental rights to his children, A.S. and O.S. (collectively, “Children”). M.A. (“Mother”) appeals the involuntary termination of her parental rights to her child with Father, O.S. Mother and Father (collectively, “Parents”) filed a joint brief on appeal in which they raise three arguments, which we restate as:

1. Whether the Department of Child Services (“DCS”) violated their right to due process when it did not provide services following a bonding and attachment assessment performed after the termination petition was filed;
2. Whether the trial court’s findings support its conclusion that the conditions under which Children were removed from Parents’ care would not be remedied; and
3. Whether termination of Parents’ parental rights was in Children’s best interests.

We affirm.

Facts and Procedural History

[2] Father is the father of A.S., born March 4, 2015.¹ Parents are the parents of O.S., born September 2, 2018. On August 28, 2020, DCS received a report of neglect as to A.S., who lived with Parents and O.S. On August 31, 2020, DCS investigators found the family’s home “extremely cluttered, with very little space to walk through.” (Ex. Vol. II at 67.) They observed “flies and roaches . . . crawling on every surface and flying around” as well as “dog feces on the floor” of a bedroom. (*Id.*) The family had engaged with services regarding their mental health, parenting, and cleanliness of the home in the past and they were rereferred for those services again following the investigation.

[3] On September 21, 2020, police responded to a report of battery² and neglect at the family’s home. Upon their arrival, they discovered “two deceased cats in the freezer, roaches crawling in the food source, a dead rat in a cage, animal feces in the bath tub, and cockroaches . . . crawling all over the floor and walls.” (*Id.*) The police called the Health Department, which declared the home “unsuitable for [Children] to be living in.” (*Id.*) On that date, Parents also acknowledged their home was not suitable for Children. At that time, DCS removed Children from Parents’ care and placed them with their paternal grandmother.

¹ The trial court also terminated the parental rights of A.S.’s mother, C.B., who does not participate in this appeal.

² The record before us does not clarify what happened or whether any charges arose therefrom.

- [4] On September 23, 2020, DCS filed a petition alleging Children were Children in Need of Services (“CHINS”) based on the family’s unsanitary and unsafe living conditions. On November 29, 2020, Parents admitted Children were CHINS and Children were adjudicated as such. On December 21, 2020, the trial court held its dispositional hearing. On December 23, 2020, the trial court entered a dispositional decree that ordered Parents to, among other things, contact the Family Case Manager (“FCM”) once a week; maintain safe, suitable, and stable housing; secure and maintain a legal source of income; obey the law, specifically refrain from drug-based crimes and domestic battery; submit to random drug screens; complete a parenting assessment and follow all recommendations; meet with medical or psychiatric providers and follow all recommendations; participate in home-based therapy; and visit with Children.
- [5] Initially, Parents complied with services. They moved into an apartment near Children’s placement with paternal grandmother, engaged in homebased services, and visited with Children. On March 19, 2021, the trial court held a review hearing. In its order issued the same day, the trial court changed Children’s placement from paternal grandmother to paternal aunt because paternal grandmother was no longer an appropriate caregiver. Additionally, the trial court stated Parents “appear to be in need of additional long term services. DCS shall arrange a thorough psychological evaluation for both to determine their mental health needs.” (*Id.* at 128.) After Children’s placement with paternal aunt, the aunt began helping Parents manage their finances.

[6] On August 11, 2021, Mother completed her psychological evaluation with Dr. Pfeffer.³ Dr. Pfeffer diagnosed Mother with “Major Depressive Disorder Recurrent Mild, Specific Learning Disorder Reading, Cannabis Use Disorder Moderate, Generalized Anxiety Disorder, and Relationship Distress with Partner.” (*Id.* at 13.) On August 13, 2021, Father completed his psychological evaluation with Dr. Pfeffer. Dr. Pfeffer diagnosed Father with “Borderline Intellectual Functioning, Specific Learning Disorder Reading, Cannabis Use Disorder Moderate, Generalized Anxiety Disorder, and Relationship Distress with Partner.” (*Id.*) Dr. Pfeffer also noted Father had “reduced cognitive ability . . . with a noticeable weakness in working memory.” (*Id.*)

[7] On September 26, 2021, the State charged Father with Class A misdemeanor possession of a Schedule I, II, III, or IV controlled substance and Class C misdemeanor operating a motor vehicle without a license (“2021 Case”). On the same date, the State charged Mother with Class A misdemeanor possession of a Schedule I, II, III, or IV controlled substance. Father reported to the criminal trial court that he was homeless. In late September or early October 2021, paternal aunt was unable to care for Children and Children were placed in foster care.

[8] On November 1, 2021, the trial court held a hearing regarding Children’s permanency plan. On November 4, 2021, in its order approving a continued

³ The record does not indicate Dr. Pfeffer’s first name.

permanency plan of reunification, the trial court noted Parents were participating in services, though Father had several positive drug screens. On November 10, 2021, Mother and Father each pled guilty to Class A misdemeanor drug possession. The criminal court sentenced each parent to 365 days incarceration with the execution of each parent's sentence suspended to probation.

[9] On January 31, 2022, the trial court held a periodic case review hearing. On February 7, 2022, in its order on periodic case review, the trial court noted Parents had partially complied with Children's case plan, specifically that they were keeping all appointments with service providers and attending supervised visitation with Children. Despite participation in these services, the trial court noted Parents "have not enhanced their ability to fulfill their parental obligations." (*Id.* at 134.) The trial court stated Parents did not have suitable, safe, and stable housing in part because the "condition of the home continues to be a problem and has been exterminated twice in the last 6 months for bed bugs, roaches, and mice." (*Id.* at 134.) In addition, the trial court found the gas at Parents' residence had been shut off due to non-payment despite Parents' sufficient income and Father continued to use marijuana. The trial court approved a continued permanency plan of reunification with a concurrent permanency plan of adoption by foster parents.

[10] On June 14, 2022, Children were placed with another foster care family, with whom they have remained during the remainder of the proceedings. At that time, paternal aunt ceased helping Parents with their finances and Parents

stopped paying their rent. On July 20, 2022, A.S. completed a psychological evaluation with Dr. Ross⁴ as ordered by the trial court. Dr. Ross diagnosed A.S. with “PTSD, ADHD, Other Specified Disruptive [Disorder], Impulse Control, or Conduct Disorder, and Specific Learning Disorder (Reading and Writing.)” (*Id.* at 13.) Dr. Ross also noted A.S.’s academic achievement scores in reading and writing “were lower than anticipated by his capability.” (*Id.*)

[11] On July 25, 2022, the trial court held a hearing regarding Children’s permanency plan. In its order on August 3, 2022, the court approved a plan of reunification should Parents remain compliant with services and adoption if they did not. The trial court found Parents were compliant with services but were not benefitting from them. The trial court stated, “there continue to be many concerns with the home conditions” and Parents had “a pending case for eviction from their home.” (*Id.* at 139.) Additionally, despite Parents’ participation in therapy, “there have been several set backs” including Mother’s hygiene. (*Id.*) Further, the trial court noted it had concerns regarding Parents’ ability to properly parent Children based on service providers’ observations during supervised visitation. Sometime after that order, Parents were evicted from their apartment and lived in their car and then in a friend’s garage “along with three dogs and two rabbits.” (App. Vol. II at 60.)

⁴ The record does not include Dr. Ross’s first name.

- [12] On August 22, 2022, DCS filed a petition to terminate Parents' parental rights to Children based on Parents' noncompliance with services. On October 13, 2022, the State charged Father with Class C misdemeanor possession of paraphernalia, Class A misdemeanor driving without a license, and Level 6 felony possession of methamphetamine ("2022 Case"). On October 25, 2022, probation filed a petition to revoke Father's probation in the 2021 Case.
- [13] After several hearings and continuances, the trial court held a hearing regarding Children's permanency plan on January 9, 2023. At that hearing the Court Appointed Special Advocate Lisa McPherson ("CASA") asked the trial court to order a "Bonding and Attachment Referral" with Dr. Linda McIntire because A.S. told CASA he did not want to be adopted. (Tr. Vol. II at 38.) DCS agreed to the referral but noted that the likelihood the referral would result in reunification was "slim to none" based on other evidence of Parents' noncompliance with services. (*Id.* at 39.) The trial court ordered the bonding and attachment assessment and continued the termination fact-finding hearing. Dr. McIntire met with Parents on March 14, 2023; foster parents on March 22, 2023; and Children on April 4, 2023.
- [14] On May 18, 2023, the trial court held a fact-finding hearing. The parties presented evidence from the FCM, Parents, foster parents, and several service providers. During that hearing, the trial court admitted into evidence Dr. McIntire's report of her bonding and attachment assessment with Parents and Children, and Dr. McIntire testified regarding the report.

[15] Dr. McIntire testified Parents were “[v]ery friendly [and] cooperative” but their “deficits were apparent.” (Tr. Vol. II at 50.) She explained the deficits were not “necessarily just cognitive . . . [but] some other issues going on as well.” (*Id.*) She noted Father was “predominantly the person who spoke” and Mother “would kind of interject when she wanted to correct him” but Mother “kind of fell asleep and he had to nudge her to wake up.” (*Id.* at 50-1.) She told the trial court Parents had “borderline intellectual functioning” (“BIF”) which was not a diagnosis, but instead should drive the plan for treatment during a case involving DCS. (*Id.* at 53.) She said BIF

means that they have difficulty understanding abstraction. They can’t probably do their own taxes, things like that. But they do have intact ability to interact with people, and if there’s not drugs and personality problems, it just takes ’em a little bit longer to get there, but they’re not disabled. When I’m looking at the records for visits, I was impressed actually, because they had a training model in the visits where the supervisor was demonstrating how to praise a child, redirect the child, or interact, and had the parents copy it. So they’ve had a level of services that are appropriate for people with even less cognitive ability than them, and they still didn’t make the gains that they needed, or at least enough.

(*Id.* at 53-4.)

[16] Regarding the bond between Children and Parents, Dr. McIntire testified Children “have no attachment with [Mother]” and have “no father-child attachment with [Father], enjoying him as a friendly visitor.” (Ex. Vol. II at 24.) Additionally, Dr. McIntire testified regarding her assessment of Dr.

Pfeffer's diagnoses. Dr. McIntire stated she thought Dr. Pfeffer "missed some of the more compelling and problematic features" because she did not see where Dr. Pfeffer tested Parents for "characterological" disorders. (Tr. Vol II at 64.) Dr. McIntire explained a characterological disorder is defined as a "[p]ersonality disorder." *Id.* However, Dr. McIntire noted she did not test for characterological or personality disorders in her assessment.

[17] Additionally, James Polly, Father's homebased therapist testified he had been working with Father since 2020 to help Father address managing his moods, depression and anxiety, and stability in finances and housing. Despite his work with Father, Polly told the trial court Father was not able to properly parent Children at the time of the fact-finding hearing. Additionally, Shirley Huntsman – who not only supervised Parents' visitation with Children, but also worked with them to develop parenting skills, obtain stable housing, and access community resources – testified she was concerned about Parents' ability to provide for their own basic needs and their failure to apply the skills learned in their sessions.

[18] CASA Lisa McPherson echoed Huntsman's concerns that Parents were unable to maintain a safe and stable environment for Children. She noted she had not observed improvement in the skills Huntsman was working on with Parents. McPherson also informed the trial court that Parents were not able to manage their own finances and this failure resulted in Parents being unable to obtain and maintain suitable housing. Yet, Parents refused long term help to address the issue. McPherson stated she believed it was in Children's best interests to

allow foster parents to adopt Children because “at this point [Children] really deserve permanency.” (*Id.* at 128.)

[19] Parents also testified during the fact-finding hearing and acknowledged some of their shortcomings regarding services, including consistently positive drug screens or missed drug screens. They asked the trial court to give them more time to meet DCS’s requirements. Based on the testimony and evidence before it, the trial court issued its order terminating Parents’ parental rights to Children on May 30, 2023.

Discussion and Decision

[20] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court’s unique position to assess the evidence, we will set aside a 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).

[21] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court

must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[22] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (A) that one (1) of the following is true:
 - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
 - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
 - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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.

Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re G. Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

1. Due Process

Parents argue DCS violated their right to due process when it did not provide services based on Dr. McIntire’s observation that Parents may have personality-related disorders.

When a State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982). Although due process has never been precisely defined, the phrase embodies a requirement of “fundamental fairness.” *E.P. v. Marion County Office of Family & Children*, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995) (quoting *Lassiter v. Dep’t of Social Servs.*, 452 U.S. 18, 26, 101 S. Ct. 2153, 68 L.Ed.2d 640 (1981)). Citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976), this court has recently

acknowledged that the nature of the process due in parental rights termination proceedings turns on a balancing of three factors: (1) the private interests affected by the proceeding, (2) the risk of error created by the State's chosen procedure, and (3) the countervailing governmental interest supporting use of the challenged procedure. *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107 (Ind. Ct. App. 2000)[, *reh'g denied*].

J.T. v. Marion Cty. Office of Family & Children, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *reh'g denied, trans. denied*, abrogated on other grounds by *Baker v. Marion Cty. Office of Family & Children*, 810 N.E.2d 1035, 1041 (Ind. 2004) (abrogation based on ineffective counsel during a termination hearing). In addition, "procedural irregularities in a CHINS proceedings [sic] may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights." *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000), *reh'g denied*.

[23] Parents argue DCS should have offered them services based on Dr. McIntire's observation and the failure to do so violated DCS's obligation to make efforts toward reunification prior to termination of Parents' parental rights to Children. Ind. Code § 31-34-21-5.5(b) provides:

(b) Except as provided in section 5.6⁵ of this chapter, the department shall make reasonable efforts to preserve and reunify families as follows:

* * * * *

(2) If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home as soon as possible.

[24] As an initial matter, we note Parents did not raise this argument before the trial court, and thus the issue is waived. *See McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (parties cannot raise an issue for the first time before the appellate court, including some constitutional issues). Further, as we consider whether a parent is denied due process when DCS does not provide certain services, “failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). To that point, Parents may not “sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting.” *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Based thereon, Parents’ argument fails because they cannot attack DCS’s alleged failure to provide services on appeal.

⁵ Indiana Code section 31-34-21-5.6 states DCS is not required to offer services for reunification if certain circumstances exist. The parties agree that section does not apply in this case.

2. Conditions Under Which Children Were Removed From Parents' Care Would Not Be Remedied

[25] Parents argue the trial court's findings do not support its conclusion that the conditions under which Children were removed from their care would not be remedied.⁶ The trial court must judge a parent's fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). 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 conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Even when parents participate in services as ordered, "simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change, or only result in temporary change." *In re J.S.*, 906 N.E.2d 226, 234 (Ind. Ct. App. 2009).

[26] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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,

⁶ We note Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive and, as such, the trial court is required to conclude DCS proved one of the three elements therein. Here, the trial court only found the conditions under which Children were removed from Parents' care would not be remedied.

102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). Parents do not challenge any of the trial court's findings.

[27] The trial court made several findings to support its conclusion that the conditions under which Children were removed from Parents' care would not be remedied:

3. A Verified Petition Alleged that [Children were] Child[ren] in Need of Services was filed by the Department of Child Services local office . . . on September 23, 2020.

4. A detention/initial hearing was held on September 23, 2020. Father and Mother of each child appeared in person. [Children] were detained by the Court based upon the evidence and preliminary inquiry. The home was extremely cluttered with flies and roaches on every surface.

* * * * *

8. A hearing to review the case was held on March 19, 2021. The Court issued an order on March 24, 2021. [Parents] were receiving services. The Court noted that [Parents] appeared to need additional long-term services and ordered a psychological evaluation for each.

9. On September 20, 2021, a Permanency Hearing was begun but continued by agreement of the parties due to the psychological evaluations not being available. The balance of the Permanency Hearing was held on November 1, 2021, with an Order Approving Permanency Plan issued November 4, 2021. . .

. [Parents] were participating in services. A Permanency Plan of reunification of [Children] with [Parents] was approved by the court.

10. On January 31, 2022, a Periodic Review was held. While [Parents] were participating in services, they both had recently been sentenced for Possession of a Controlled Substance. Despite sufficient income the gas utility had been turned off for lack of payment. Their home had been exterminated twice in the past six (6) months, but still had bed bugs, roaches, and mice. Shirley Huntsman, their homebased provider[,] tried to work with them on their budget, however they would not be truthful with her and did not want a payee to control their money.

11. On July 25, 2022, a Permanency Hearing was held with an order issued on August 3, 2022. [Parents] continued to comply with services. However, there were several setbacks. [Mother's] therapist noted concerns with hygiene and the conditions of the home. [Parents] were in the process of being evicted from their home. Shirley Huntsman, their home-based service provider, testified at the termination hearing that [Parents] would not accept a payee to budget their money and that after eviction they lived in a car and then a friend's garage along with three dogs and two rabbits.

12. An additional Permanency Hearing was held on January 9, 2023, with an order issued on January 17, 2023. The court found [Children] to be happy and doing well in their foster placement. [Parents] were not complying with the case plan. [Parents] were not taking advantage of the services to address underlying needs for mental health, daily living skills and parenting education. [Father] was required to call the drug screen line and missed all fifteen (15) calls.

13. The Termination hearing was continued by agreement of the parties including CASA for a psychologist to see [Children] for a bonding study. Dr. Linda McIntire reviewed the history of the case, met with [Children] and [Parents], and conducted such a study.

14. Dr. McIntire testified that [Parents'] deficits were apparent to her upon first meeting with them. [Father] did most of the talking. However, after reviewing their psychological evaluations she found Dr. Pfeffer's report to be accurate regarding cognition. Neither [Father] nor [Mother] is intellectually disabled, though both are identified as having Borderline Intellectual Functioning.

15. After reviewing extensive information concerning the services provided by DCS to [Parents], Dr. McIntire concluded that the services were appropriate for their level of functioning. Dr. McIntire further testified that the services provided [to Parents] should have been sufficient if their problems in parenting stemmed from their low intellectual functioning. Dr. McIntire believes that their failure to be able to parent is due to characterological problems or substance abuse.

16. [Parents] both have criminal convictions related to illegal substances and [Father] is currently on probation stemming from a Methamphetamine conviction.

17. Dr. McIntire found there to be no attachment between [Mother] and her child, [O.S.].

18. When Dr. McIntire was observing [Mother] interact with [O.S.], Dr. McIntire noted that [Mother] missed all the cues that [O.S.] wanted to interact with her. At one point in the evaluation, [Mother] yelled at [O.S.] to get away from mommy when [Mother] was playing with the child's blocks. Dr. McIntire described [Mother's] "startling" behavior toward her child as

pathological. At one point during the assessment process [Mother] “kind of fell asleep”.

19. Dr. McIntire testified that [Children] view [Father] as a friendly playmate. Dr. McIntire does not see any harm to [Children] if the court were to terminate the parental rights and allow [Children] to be adopted. Should the adoptive parents wish, allowing one or two visits per year may be beneficial, but there is no harm in termination.

20. Home based caseworker, Shirley Huntsman, has spent approximately 400 hours with [Parents] and [Children]. She has been working with the family for over two and a half years. [Children] are both doing incredibly well in their foster home. [A.S.] is gaining self-esteem and confidence and [O.S.’s] speech and her ability to communicate is improving.

21. Shirley Huntsman testified that there has been inconsistency with [Parents] throughout the case. She describes [Mother] as always inappropriately yelling at [Children]. There has been no improvement since year one. [Parents] continued to struggle with stability, managing money and even with providing for their own basic needs. While [Parents] have shown they can learn some nurturing skills, those skills do not carry over from one visit to the next. She does not believe giving [Parents] more time will result in sufficient improvement in their parenting for reunification.

22. [Father’s] therapist, Jim Polly, has been working with [Father] for three years. Mr. Polly is working with [Father] on managing moods, depression, anxiety, and past trauma. [Father] continues working on stability and housing. Even after three years, Mr. Polly could not say how much longer it will take to achieve lasting improvement.

* * * * *

24. Prior to [Parents] being evicted from their apartment, longer visits were tried. [Parents] were responsible for bathing [Children], but [Children] returned smelling like dog urine and the foster parents would have to re-bathe [Children]. CASA believes it is in the best interest of [Children] to be adopted.

25. [Parents'] deficits are apparent and have been obvious to the Court from direct observation during hearings including the termination hearing. The Court has taken into consideration those deficits and has allowed [Parents] many additional months to improve their situation. [Parents] are no closer to being able to provide necessary care and supervision for [Children] than on the day [Children] were detained over thirty (30) months ago.

(App. Vol. II at 59-62.)

[28] Summarily, while Parents mostly participated in services throughout the CHINS matter, they did not benefit from them, were unable to parent Children properly, and did not have stable housing or the ability to maintain stable housing through the management of their finances. In addition, Parents were both convicted of crimes during the proceedings. Further, the trial court found Father did not complete fifteen requested drug screens. Based thereon, we hold these findings support the trial court's conclusion that the conditions under which Children were removed from Parents' care would not be remedied.⁷ *See*

⁷ Parents contend their lack of progress is due to DCS's failure to offer services based on Dr. McIntire's statement they may have personality disorders. However, as stated in the prior section, Parents did not

In re J.C., 994 N.E.2d 278, 289 (Ind. Ct. App. 2013) (termination of parental rights supported by the mother’s continued noncompliance with services and inability to benefit from services provided), *reh’g denied*.

3. Children’s Best Interests

- [29] In determining what is in a child’s best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent’s historical inability to provide a suitable environment, along with the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child’s best interests. *In re J.S.*, 906 N.E.2d at 236.

- [30] As noted in the previous section, the trial court’s findings support its conclusion that the conditions under which Children were removed from Parents would not be remedied. Parents received and attended services but did not benefit from them. Parents did not have a parental bond with their respective children,

request services based on Dr. McIntire’s statement and Parents cannot directly attack a termination order based on a failure to provide services.

except that Children saw Father as a “friendly playmate.” (App. Vol. II at 61.) Parents were unable to maintain suitable housing and refused continued help with their finances when offered by their home-based service provider. The Parents’ therapists did not believe they were making progress to address their mental health issues despite many months of therapy. During the pendency of the case, Parents were both arrested and convicted of a misdemeanor drug-related offense and Father was convicted of an additional drug-related offense. Throughout the course of the proceedings, Parents both tested positive for illegal substances. In addition, the CASA stated she believed termination of Parents’ parental rights to Children was in Children’s best interests. Based thereon, we conclude the trial court’s findings support its conclusion that it is in Children’s best interests to terminate Parents’ parental rights to Children. *See Matter of G.M.*, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017) (termination in the child’s best interests because the mother had not progressed in services and continued to be unable to care for the child).

Conclusion

[31] Parents’ due process argument fails because they cannot challenge DCS’s alleged failure to provide services on appeal. In addition, the trial court’s findings supported its conclusions that the conditions under which Children were removed from Parents’ care would not be remedied and that termination of Parents’ parental rights to Children was in Children’s best interests. Accordingly, we affirm.

[32] **Affirmed.**

Bailey, J., and Felix, J., concur.