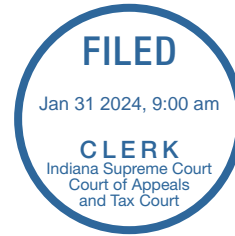


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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 Matter of the Termination
of the Parent-Child Relationship
of M.S. (Minor Child);

J.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

January 31, 2024

Court of Appeals Case No.
23A-JT-1434

Appeal from the Vigo Circuit
Court

The Honorable Daniel W. Kelly,
Magistrate

Trial Court Cause No.
84C01-2107-JT-793

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

- [1] J.S. (“Mother”) appeals the order of the trial court terminating her parental rights to her minor child, M.S. (“Son”). Mother contends that the trial court’s order should be reversed because: (1) procedural errors in the underlying child-in-need-of-services (“CHINS”) action created an unreasonable risk of error, thereby violating Mother’s procedural due process rights in the termination proceedings; and (2) the trial court’s decision to terminate Mother’s parental rights is clearly erroneous. Because we disagree with both of Mother’s contentions, we affirm.

Issues

- [2] Mother presents two issues for our review, which we restate as:
- I. Whether procedural errors in the underlying CHINS action created an unreasonable risk of error, thereby violating Mother’s procedural due process rights in the termination proceedings.
 - II. Whether the trial court’s decision to terminate Mother’s parental rights was clearly erroneous.

Facts

- [3] Mother was the subject of a CHINS case when she was a teenager, and she tested positive for drug use during the pendency of that CHINS case. Mother participated in drug treatment as a part of that case, but she tested positive for

drug use shortly before her eighteenth birthday in December 2018, at which time the CHINS case was closed.

[4] Mother gave birth to Son in October 2019. D.H. (“Father”) is Son’s biological father.¹ Son was born at thirty-eight weeks and was of low birth weight (4 lbs. 10.78 oz.); he was placed in the neonatal intensive care unit for nine days following his birth due to hypoglycemia. Son was discharged from the hospital to Mother’s care on October 26, 2019.

[5] On November 23, 2019, Mother took Son to the emergency room due to his vomiting, but he was discharged that same day. The following day, Mother again took Son to the emergency room. From there, Son was transferred to Riley Children’s Hospital and admitted for septic shock, respiratory failure, and hypoglycemia. Son was in critical condition at this time, and there were concerns that he might not live through the night.

[6] On November 25, 2019, the Department of Child Services (“DCS”) received a report stating that Son had been born premature and that Mother had little prenatal care before Son’s birth. The report also alleged that Son was currently hospitalized, had been in the hospital several times since birth, and that Mother was sleeping excessively and not following medical recommendations. DCS investigated the report and spoke with Mother. Mother refused DCS’s initial request to take a drug test. DCS personnel spoke with a social worker at the

¹ During the pendency of the CHINS case, Father died as the result of a methamphetamine overdose.

hospital, who expressed concern that Mother was unable to use Son's nasogastric tube to feed Son and give him medications. Hospital staff later reported to DCS that Mother was not at the hospital and that they were often unable to reach her by phone.

[7] In January 2020, Son was still at Riley Hospital. Due to his nasogastric tube, the hospital required Mother to participate in parental care training before Son could be discharged to Mother's care. On January 3, 2020, Mother failed the training because the nurses had to repeatedly awaken Mother. One of the nurses attending to Son reported that Mother slept most of the day and did not wake up to interact with Son or to feed him. DCS received another report from the hospital on January 3, stating that Mother could not properly care for Son if he were released to her care. A DCS family case manager ("FCM") investigated and again asked Mother to submit to a drug test, which Mother again refused. Mother admitted to having used drugs in the past but denied that she was using at the time. Father's family also expressed concern that Mother was unable to properly care for Son.

[8] By January 5, 2020, Mother appeared to be making progress, and nurses reported that she had made significant improvements in her ability to care for Son. The following day, however, Mother was twenty minutes late for a scheduled feeding and did not ask for Son's medication until prompted to do so by a nurse. Mother also failed to wake up when Son was crying. Based on Mother's continued inability to properly care for Son, DCS removed Son from

her care on that day—January 6, 2020. That day, Mother submitted to a drug test, which was negative for drug use.

[9] On January 8, 2020, DCS filed a petition alleging that Son was a CHINS based on Mother’s inability to care for Son and her history of drug use. The trial court held a detention hearing that day and authorized Son’s removal from the parents’ care due to their “inability, refusal or neglect to provide shelter, care, and/or supervision at the present time.” Ex. Vol. 25, p. 35. The trial court also found that “Mother and [F]ather refused access to the home, refused to screen for the FCM and were not consistent with the child’s medical needs due to mother missing several feeds, medications, and sleeping when the child was crying.” *Id.*

[10] Before the trial court held the fact-finding hearing on the CHINS petition, Mother twice tested positive for illicit drug use; on July 8, 2020, Mother tested positive for both methamphetamine and marijuana, and on August 27, 2020, Mother tested positive for methamphetamine. Mother also refused to submit to several other requested drug tests. Mother also missed numerous scheduled visits with Son.

[11] On December 21, 2020, Mother, now represented by court-appointed counsel, admitted that Son was a CHINS. Following a dispositional hearing on January 18, 2021, the trial court ordered Mother *inter alia* to: (1) notify the FCM of any criminal charges or arrests; (2) enroll in and participate in any program recommended by the FCM; (3) keep all appointment with the FCM or other

DCS employees, service providers, and the Court Appointed Special Advocate (“CASA”) or Guardian ad Litem (“GAL”); (4) “[m]aintain suitable, safe and stable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities[,] [k]eep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter and safe for the child;” (5) obtain and maintain a legal and stable source of income, including employment or public assistance; (6) assist in the formulation and implementation of a safety plan for Son; (7) ensure that Son was properly clothed, fed, and supervised; (8) refrain from consuming, manufacturing, or distributing illegal drugs; (9) complete a parenting assessment and follow all recommended services; (10) complete a substance abuse assessment and follow any recommended treatment; (11) submit to random drug testing; (12) complete a psychological evaluation and follow all recommendations; (13) attend all scheduled visitation with Son; and (14) participate in home-based case management. Appellant’s App. Vol. 26 p. 75.

[12] Mother’s compliance with the dispositional order was less than stellar. Mother failed to attend three scheduled substance abuse assessments. Mother was then placed on walk-in status for the assessment, yet still failed to attend. In 2021, over a period of three months, Mother attended only one of the scheduled home-based case management appointments. Mother then failed to attend any of the case management appointments scheduled for that summer. As a result, Mother was dismissed from the home-based case management services.

[13] Between February and May of 2021, Mother refused to submit to drug testing a total of twelve times. Mother did voluntarily enter into a drug treatment facility in June of that year but left after two days because she was not allowed to smoke cigarettes. Thereafter, Mother continued to refuse to submit to drug testing. When Mother gave birth to another child in November 2021, the child tested positive for methamphetamine and was removed from Mother's care.² After this, Mother initially refused to submit to drug testing, and when she did submit to a test in December 2021, she tested positive for methamphetamine. She was asked to submit to a drug test five times between December 2021 and March 2022 and refused every time she was asked. Mother stated that she would only take a test when she knew she could pass it. The FCM drove Mother to a drug rehabilitation center in Indianapolis, but Mother refused to enter the facility. Mother's aunt, with whom she was residing at the time, kicked her out of the house because Mother refused to go to drug treatment.

[14] Mother also failed to regularly attend the scheduled visits with Son; she missed all three of the visits scheduled in February 2021, one of the four visits scheduled in March, three of the four visits scheduled for April, and all three visits scheduled for May. Mother attended only one of the five scheduled visits in June, one of four visits in July, two of four visits in August, one of five visits

² That child is not the subject of this appeal but was placed in the same foster home as Son.

in September, and one of four visits in October. In total, Mother attended only ten of thirty-six scheduled visits.³

[15] On July 22, 2021, DCS filed a petition to terminate Mother's parental rights to Son. The trial court held a hearing on the petition on April 1, 2022. Although Mother's court-appointed counsel appeared, Mother failed to appear even though she had received notice of the hearing date. The FCM did not know Mother's location. The trial court heard evidence that Son was doing well in a pre-adoptive foster home. Son was participating in services through First Steps to help with his developmental delays and was still under the care of doctors at Riley Children's Hospital. The FCM recommended that Mother's parental rights to Son be terminated. The FCM noted that Son had, at that time, been removed from Mother's care for over two years, yet Mother still had not secured stable housing, had not demonstrated an ability to care for Son when she did attend visits, and had repeatedly failed or refused drug tests. The CASA opined that termination of Mother's rights was in Son's best interests. On May 26, 2022, the trial court entered an order terminating Mother's parental rights, and Mother now appeals.

³ Mother's behavior during visitations was summarized in a DCS progress report as:

[Mother] struggles to respond appropriately to [Son]'s cues, e.g. raising her voice even when he covers his ears, using flash while taking pictures despite him wincing, and largely ignoring him when his brother is present. [Mother] has also been observed to appear impaired during visits, including interrupting and talking over FCM, being unable to sit still even when her infant is trying to nap, failing to follow guidance on not using profanity and maintaining an indoor voice, and becoming agitated and defensive when requested to screen.

Appellant's App. Vol. 25 p. 178.

Discussion and Decision

I. Procedural Due Process

[16] Mother first argues that procedural errors in the CHINS action created an unreasonable risk of error, thereby violating her procedural due process rights in the termination proceedings. As correctly noted by DCS, Mother did not present any due process argument to the trial court. Generally, an appellant may not present an argument for the first time on appeal. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015). Accordingly, we have held that, when a parent makes a due process claim based on CHINS irregularities for the first time on appeal, we may consider the claim waived. *In re M.M.E.*, 146 N.E.3d 922, 924 (Ind. Ct. App. 2020); *see also 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.”). “However, as the word ‘may’ implies, ‘we have discretion to address such claims.’” *M.M.E.*, 146 N.E.3d at 924 (citing *In re D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019), *aff’d on reh’g*, 122 N.E.3d 832, *trans. denied*). Here, waiver notwithstanding, we exercise our discretion to address Mother’s arguments on their merits.

[17] Over twenty years ago, in *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*, this Court noted that “[t]he nature of the process due in parental rights termination proceedings turns on a balancing of the ‘three distinct factors’ specified in *Matthews v. Eldridge*, 424 U.S. 319, 335 [96 S. Ct. 893, 903] (1976).” These three factors are: (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. *Id.* (citing *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903). The Court held that, because of the interlocking CHINS statutes and termination of parental rights statutes, "procedural irregularities in a CHINS proceeding[] 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." *Id.* at 1112-13. The Court further explained:

In balancing the three-prong *Mathews* test, we first note that the private interest affected by the proceeding is substantial—a parent's interest in the care, custody, and control of her child. We also note the countervailing *Mathews* factor, that the State's *parens patriae* interest in protecting the welfare of a child is also substantial. Both the State and the parent have substantial interests affected by the proceeding. So, we turn to the third *Mathews* factor, the risk of error created by DCS's actions and the trial court's actions.

In re C.G., 954 N.E.2d 910, 917-18 (Ind. 2011). Here, we conclude that none of the errors Mother alleges created a risk of error in the termination proceedings, which we address below.

A. Deficiencies in Preliminary Inquiry Report

[18] Mother first attacks the allegations made in the preliminary inquiry report. Mother contends that there was no evidence, as stated in the report, that she had no prenatal care, that she neglected Son after he came home from the hospital after birth but before she took him to the emergency room, that she

refused to submit to drug tests, that DCS was unable to contact Mother, or that Mother refused to allow DCS to enter her home. As noted by the State, DCS did not need to present the CHINS allegations because Mother admitted that Son was a CHINS, and, accordingly, the trial court did not hold an evidentiary hearing regarding the allegations in the preliminary report.

[19] Mother also attacks the allegations in the preliminary report regarding the reports DCS received before it began its investigation in the CHINS case. Mother argues that the DCS reports were rife with factual inaccuracies. For example, the preliminary report states that DCS was informed that Son was born premature at thirty-four weeks' gestation. Son was actually born at thirty-eight weeks' gestation, which Mother claims is early full-term, not premature. Mother also claims that Son was not "in and out" of the hospital as reported to DCS but that the evidence shows that she took Son to the hospital only twice after he was born.

[20] The inaccurate information reported to DCS may have been the impetus for DCS's investigation, but not the basis of the CHINS allegations. Indeed, at the conclusion of the preliminary report, DCS argued that the trial court should permit DCS to file the CHINS petition based not upon the information reported to DCS by third parties but based upon DCS's own investigation and Mother's response to the investigation. The allegations include the parents refusing to allow DCS to access the home, Mother refusing to submit to drug tests, Mother missing feedings, Mother sleeping while Son was crying, Son's medical issues,

and Mother's inability to properly care for Son. *See* Ex. Vol. 25 p. 29. And again, Mother admitted that Son was a CHINS.⁴

B. Probable Cause to Support filing of CHINS Petition

[21] We also disagree with Mother's claims that there was insufficient probable cause to file the CHINS petition and remove Son from her care. *See* Ind. Code § 31-34-9-2(2) (providing that a trial court shall authorize the filing of a CHINS petition if it finds "probable cause to believe that the child is a child in need of services"); Ind. Code § 31-34-5-3(a) (providing that a trial court may authorize continued DCS custody of a child if there is probable cause to believe the child is in need of services and that detention is necessary to protect the child). Yet again, Mother overlooks the fact that she, while represented by counsel, admitted that Son was a CHINS. Mother chose not to challenge the CHINS petition. She cannot do so now after having admitted that Son was a CHINS.

⁴ Moreover, several of the alleged inaccuracies in the preliminary report were, contrary to Mother's claims, supported by the evidence that was admitted at the termination hearing. For example, Son's medical records contain multiple references to Mother not being at Son's bedside and being difficult to reach on the phone. Ex. Vol. 29 pp. 66, 69, 72. A nurse's note in the medical records states:

[T]his RN feels it is important to note that the patient's mother slept almost the entire day and did not participate in the patient's care. The patient's mother only woke up once this morning when I told her that I would need her to finish the 0900 feed because I was needed in another room. This RN did not see the mother hold the patient once today. She did not wake up for any other feeds, to interact with the patient, change diapers or bathe him. When I entered the room and turned on the lights, she covered her head with blankets and continued to sleep.

Id. at 226. The medical records further indicated that, as of January 3, 2021, "Mother did not pass parent care, having had multiple missed feeding and medication times. Bedside nursing also reporting mother not awakening when baby is crying, for diaper changes, etc." *Id.* at 53.

C. Procedural Irregularities in Dispositional Decree

- [22] Mother argues that several irregularities in the trial court’s CHINS dispositional decree violated her due process rights. Mother claims that the dispositional decree ordered her to participate in services to address issues of substance abuse, physical abuse, and neglect despite there being no evidence of such substance abuse, physical abuse, or neglect. Regarding substance abuse, Mother is simply incorrect. By the time of the dispositional hearing on January 18, 2021, Mother had twice tested positive for methamphetamine and had refused to submit to several other requested drug tests.
- [23] The dispositional decree required that Mother “[a]ssist in the formulation and implementation of a protection plan which protects [Son] from abuse or neglect from any person,” “[a]llow the [FCM] or other service providers to make announced or unannounced visits to the home of [Son], permitting entrance into the home to ensure the safety of the child,” and “provide [Son] with a safe, secure and nurturing environment that is free from abuse and neglect” Ex. Vol. 25 p. 75-77. Mother claims that there was no evidence of physical abuse. She admits, however, that there was “some evidence of arguable neglect” before the CHINS petition was filed, and she acknowledges that she admitted Son was a CHINS due to his special needs. Appellant’s Br. p. 51. The court-ordered services were geared toward addressing Mother’s instability, substance abuse, and inability to care for Son. We discern no error in the dispositional decree requiring Mother to participate in services to address these issues.

[24] Mother also complains that the CHINS dispositional decree ordered her to participate in a psychological evaluation and address her medical and mental health needs; she claims no evidence exists that she has psychological issues. We agree with DCS that Mother fails to explain how this deprived Mother of due process. Indeed, given Mother's history of substance abuse—which is often associated with underlying mental health issues—we cannot fault the trial court for ordering Mother to undergo a mental health assessment. Had the trial court based its termination decision solely, or even substantially, on Mother's failure to undergo a mental health assessment, Mother's argument would be persuasive. But Mother failed to successfully complete any of the services ordered in the dispositional decree. Under these circumstances, we cannot say that the type of services ordered in the CHINS dispositional decree denied Mother of due process.

D. Collateral Attack on CHINS Finding

[25] We agree with DCS that Mother, in essence, wants to relitigate the trial court's CHINS determination. As already noted, Mother admitted that Son was in need of services. She then failed to participate in most services and failed to attend the termination hearing. Mother's claims that procedural irregularities in the CHINS proceedings denied her due process in the present termination case are, for all the reasons discussed above, unavailing. If Mother wished to challenge the CHINS determination, she could have requested an evidentiary hearing on the CHINS petition. Instead, Mother admitted that Son was a CHINS.

- [26] Mother claims that she is not precluded from challenging the CHINS adjudication in the present termination proceedings, citing *In re C.M.*, 675 N.E.2d 1134 (Ind. Ct. App. 1997), *In re A.P.*, 734 N.E.2d 1107, and *In re D.H.*, 119 N.E.3d 578 (Ind. Ct. App. 2019), *modified on reh'g* 122 N.E.3d 832. In *C.M.*, we held that a parent was not collaterally estopped from presenting evidence in the termination hearing to refute her prior admissions in the CHINS proceedings. 675 N.E.2d at 1137-38. Here, however, Mother failed to appear at the termination hearing to challenge her admissions in the CHINS case; thus, *C.M.* is readily distinguishable.
- [27] In *A.P.*, we held that “procedural irregularities in a CHINS proceeding[] 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.” 734 N.E.2d at 1112-13. In *A.P.* the record was “replete with procedural irregularities throughout the CHINS and termination proceedings that [were] plain, numerous, and substantial.” 734 N.E.2d at 1118. Specifically, we identified seven substantial procedural irregularities,⁵ none of which, standing alone, would have required reversal but, when taken together, required reversal of the trial court’s

⁵ The Court in *A.P.* identified the following procedural problems: (1) the Office of Family and Children failed to provide either parent with copies of some, if not all, of their child’s case plans; (2) the termination petition did not conform to the requirements of the statute governing such petitions; (3) the underlying CHINS petition was unsigned and unverified, contrary to statute; (4) no permanency hearing was ever held; (5) the original dispositional order and the modification of that order contained no findings of fact or conclusions of law; (6) the trial court entered a no-contact order against the father without following the statutory prerequisites for entering such an order; and (7) the father was twice deprived of his right to be present at review hearings. 734 N.E.2d at 1117; *accord Vanderburgh Cnty. Office of Family & Children*, 845 N.E.2d 175, 183 (Ind. Ct. App. 2006).

termination decision as a violation of due process. *Id.*; see also *Hite v. Vanderburgh Cnty. Office of Family & Children*, 845 N.E.2d 175, 183 (Ind. Ct. App. 2006) (summarizing *A.P.*). Here, there is no similar litany of procedural irregularities; instead, Mother simply attacks the substance of the evidence supporting the CHINS finding.

[28] The same is true for Mother's citation to *D.H.* There, we reversed the trial court's termination decision because DCS failed to provide the necessary family services during the pendency of the CHINS case and failed to provide a visitation plan pursuant to its own procedures. 119 N.E.3d at 586-91. Here, however, DCS offered multiple services to Mother, yet she completed none of them. And DCS offered visitation to Mother, yet she repeatedly missed the scheduled visits.

[29] In summary, we discern no series of procedural irregularities during the CHINS case that deprived Mother of due process. See *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 93 (Ind. Ct. App. 2014) (holding that mother's due process rights were not violated where the only procedural irregularity was that mother did not receive or sign a case plan and where the record revealed that "it was not [m]other's lack of knowledge or direction as to what she needed to do to get her children back, but rather her lack of participation."). Cf. *In re C.M.S.T.*, 111 N.E.3d 207, 213-14 (Ind. Ct. App. 2018) (concluding that procedural irregularities in the CHINS case, which included multiple FCMs, inappropriate behavior by FCMs, and apparent bias of FCMs, contributed to parents' non-

compliance such that termination of their parental rights amounted to a denial of due process).

II. Termination of Parental Rights

[30] Mother also claims that the trial court clearly erred in terminating her parental rights to Son. We disagree.

A. Standard of Review

[31] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[32] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights. Here, the

trial court entered findings of fact and conclusions thereon in granting DCS's petition to terminate Mother's parental rights. We affirm a trial court's termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment.⁶ *Id.*

[33] Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

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

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

⁶ To the extent that Mother argues that the trial court's Finding of Fact A(4) is clearly erroneous, we disagree. This finding notes that DCS became involved when it investigated a report that Son was a victim of neglect. The finding then summarizes the allegations made in the report made to DCS. As noted above, Mother attacks many of these allegations as being factually inaccurate. But the trial court did not find that the contents of this report were accurate. It merely summarized the allegations in the report in noting how DCS became involved with Mother and Son.

- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[34] Mother claims that there is insufficient evidence to support a finding that (1) there is a reasonable probability that the conditions that resulted in Son's removal from Mother's care will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship poses a threat to Son's well-being; and (3) termination of Mother's parental rights is in Son's best interests.⁷

B. Remedy of Conditions that Resulted in Child's Removal

[35] In determining whether the conditions that resulted in a child's removal will not be remedied, courts engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). Courts must (1) identify the conditions that led to removal, and (2) determine whether there is a reasonable probability that those

⁷ Mother makes no claim that there is not a satisfactory plan for the care and treatment of the child.

conditions will not be remedied. *Id.* In the second step of this analysis, the trial court must assess a parent's fitness "as of the time of the termination proceeding, taking into consideration evidence of changed conditions." *Id.* (quoting *Bester*, 839 N.E.2d at 152). "Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

[36] The trial court may 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." *A.D.S. v. Indiana Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013). The trial court may also consider services offered to the parent by DCS and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* DCS is not required to provide evidence ruling out all possibilities of change. *Id.* Instead, DCS need only establish that there is a reasonable probability that the parent's behavior will not change. *Id.* (citing *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)).

[37] Here, Son was removed from Mother's care on January 6, 2020, based on Mother's continued inability to properly care for Son. *See* Ex. Vol. 25 p. 35. Son's continued placement outside of Mother's home was due in large part to her repeated failure to submit to drug screens and her positive test results for drug usage. At the termination hearing, DCS presented evidence sufficient to show that there was a reasonable probability that these conditions would not be remedied. As detailed above, Mother failed to complete any of the offered

services, including those offered to help address her substance abuse issues. Mother only sporadically attended scheduled visits with Son. She also had another child who tested positive for methamphetamine at birth. Given Mother's unabated substance abuse⁸ and her failure to complete any of the offered services, we cannot say that the trial court clearly erred by concluding that there was a reasonable probability that the conditions that resulted in Son's removal, or his continued placement outside of Mother's home, would not be remedied. *See In re S.S.*, 120 N.E.3d 605, 611 (Ind. Ct. App. 2019) (noting that we have long held that "evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services demonstrates the requisite probability that the conditions will not change") (citing *Lang v. Starke Cty. Off. of Fam. and Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007)).

C. Threat to Well-Being of Son

[38] Mother also argues that the trial court clearly erred in concluding that there is a reasonable probability that the continuation of the parent-child relationship

⁸ Regarding her drug use, Mother cites *In re Ad.M.*, 103 N.E.3d 709, 713-14 (Ind. Ct. App. 2018), in which we held that evidence of the mother's use of marijuana was, on its own, insufficient to show that the child was endangered. Here, however, Mother repeatedly tested positive for methamphetamine, and she failed to complete any of the services offered to her. Thus, *Ad.M.* is distinguishable. *See In re D.P.*, 213 N.E.3d 552, 560-61 (Ind. Ct. App. 2023) (distinguishing *Ad.M.* by noting the difference between marijuana and methamphetamine and by noting that DCS presented evidence of the specific dangers posed to the child by the parent's use of methamphetamine), *trans. denied*. Mother also cites *In re S.K.*, 57 N.E.3d 878, 882-83 (Ind. Ct. App. 2016), for the proposition that drug use by a parent, by itself, is insufficient to show endangerment of a child). In that case, however, the trial court's findings indicated nothing more than an isolated use. *Id.* at 883. Here, in contrast, Mother repeatedly tested positive for methamphetamine and missed many more scheduled drug tests.

poses a threat to the well-being of the child. We have long noted that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999) (citing *In re V.A.*, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994)). DCS is, therefore, required to prove by clear and convincing evidence that a reasonable probability exists that **either**: (1) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied, **or** (2) the continuation of the parent-child relationship poses a threat to the child's well-being. *See In re Ma.H.*, 134 N.E.3d 41, 46 n.2 (Ind. 2019). Because we affirm the trial court's conclusion regarding the remedy of conditions that resulted in Son's removal or continued placement outside of Mother's home, we need not address Mother's claims that the trial court also clearly erred by concluding that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to Son's well-being.⁹

⁹ We nevertheless note that DCS provided evidence that supported the trial court's conclusion regarding the threat to Son's well-being by the continuation of the parent-child relationship. Again, Mother repeatedly refused to submit to drug tests and tested positive for drugs when she did submit to testing. She admitted that she refused to submit to testing until she could test clean. Mother failed to complete any of the services offered to help her improve her parenting ability, and she repeatedly missed scheduled visits. At the visitations she did attend, Mother often displayed inappropriate behavior and sometimes appeared to be under the influence of drugs. At the termination hearing, DCS presented evidence that Mother still had no housing and did not demonstrate an ability to care for Son during the visitations she attended. Mother also failed to appear for the termination hearing. Thus, the trial court did not clearly err by determining that there was a reasonable probability that continuation of the parent-child relationship posed a harm to Son's well-being.

D. Best Interests of the Child

[39] Mother also attacks the trial court’s conclusion that termination of her parental rights was in Son’s best interests. When determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.* Testimony by the case manager or child advocate recommending termination of 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. *In re J.S.*, 133 N.E.3d 707, 716 (Ind. Ct. App. 2019) (citing *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013)); *see also In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016).

[40] At the time of the termination hearing, Son had been outside of Mother’s care for two years; he was doing well in pre-adoptive foster care. At the start of the CHINS case, Mother admitted that she was unable to adequately care for Son. She has done nothing to address these shortcomings in the time since. Instead,

she has continually tested positive for methamphetamine or refused testing because she knew she would test positive. She missed numerous scheduled visits and acted inappropriately during visits. She failed to complete any of the services offered to address her parental shortcomings. The FCM recommended that Mother's parental rights be terminated, and the CASA testified that termination of Mother's parental rights was in Son's best interests.

Accordingly, we cannot say that the trial court clearly erred in concluding that termination of Mother's parental rights was in Son's best interest.

Conclusion

[41] The procedural irregularities that Mother claims occurred during the CHINS proceedings did not deny Mother due process, and the trial court's decision to terminate Mother's parental rights was not clearly erroneous. Accordingly, we affirm the judgment of the trial court.

[42] Affirmed.

Pyle, J., and Foley, J., concur.