

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

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

B.D. and B.M. (Minor Children) and
L.R. (Mother),
Appellant-Respondent

v.

Indiana Department of Child Services,
Appellee-Petitioner

and

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

B.M. (Minor Child) and
A.M. (Father),
Appellant-Respondent

v.

Indiana Department of Child Services,
Appellee-Petitioner

February 28, 2024

Court of Appeals Case No.
23A-JT-2341

Appeal from the Lawrence Circuit Court

The Honorable Nathan G. Nikirk, Judge
The Honorable Anah H. Gouty, Juvenile Referee

Trial Court Cause No.
47C01-2302-JT-66
47C01-2302-JT-67

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

[1] A.M. (“Father”) appeals the termination of his parental rights to his child, B.M.,¹ and L.R. (“Mother”) appeals the termination of her parental rights to her children, B.D. and B.M. (collectively, “Children”). Mother presents two issues for our review, which we restate as:

1. Whether the trial court’s findings support its conclusions that the conditions under which Children were removed from Mother’s care would not be remedied or the continuation of the

¹ B.M. is sometimes referred to as B.R. in the record.

Mother-Children relationship was a threat to Children's well being; and

2. Whether the trial court's findings support its conclusion that termination of Mother's parental rights was in Children's best interest.

Father presents an issue that we restate as:

3. Whether the trial court drew more than the permitted inference from Mother's invocation of her Fifth Amendment right to be silent

We affirm.

Facts and Procedural History

[2] Mother is the biological mother of B.D., born September 6, 2011, and B.M., born October 15, 2018. Father is the biological father of B.M.² Mother and Father were not married at the time of B.M.'s birth, but Father established paternity of B.M. sometime thereafter.

[3] On August 12, 2021, the Department of Child Services ("DCS") received a report that Children were "victims of neglect due to substance abuse, domestic violence and lack of supervision and medical and mental health care." (Ex. Vol. III at 234.) On August 16, 2021, Mother agreed to a safety plan but refused to submit to a drug screen. On September 2, 2021, Father "was found

² B.D.'s father is D.D. D.D. executed consent for B.D.'s adoption and does not participate in this appeal.

hiding in [Mother's home] in violation of the protective order [between Mother and Father] that is in place.” (*Id.*) Additionally, DCS noted Mother had not been giving B.D. his mental health medications properly and, as a result, B.D. was “struggling in school with focus issues and anger outbursts.” (*Id.*)

[4] On September 13, 2021, DCS filed a petition³ alleging Children were Children in Need of Services (“CHINS”) based on domestic violence and substance abuse in the home, as well as neglect of B.D. B.D. was placed in relative care and B.M. was placed in foster care. Neither child has been returned to the custody of Mother or Father.

[5] On December 6, 2021, the trial court adjudicated Children as CHINS. On December 20, 2021, the trial court issued its dispositional order. It ordered Mother to, among other things: maintain contact with their Family Case Manager (“FCM”); submit to random drug screens; obey the law; refrain from taking illegal substances; maintain mental and physical health treatment; participate in home-based services; complete any other service recommended by the FCM; obtain and maintain employment and financial stability; refrain from engaging in domestic violence; complete substance abuse and parenting intake assessments and follow all recommendations stemming therefrom; and attend

³ Though the trial court assigned a case number for each child, DCS filed only one petition alleging Children were Children in Need of Services (“CHINS”). Similarly, the trial court issued one order for each subsequent decision, such as its adjudication of Children as CHINS and the dispositional order.

supervised visitation with Children. The trial court ordered Father to complete the same services, though they were related only to B.M.

[6] From December 2021 and April 2022, Mother and Father were active in services and were scheduled for a trial home visit with Children. However, shortly before the visit was to begin, Mother and Father “had an incident of domestic violence and [Father] was exhibiting aggression toward others.” (App. Vol. II at 112.) Additionally, around the same time, Father tested positive for methamphetamine and Mother admitted using marijuana. Children were not returned to Mother and Father for a trial home visit.

[7] Mother tested positive for illegal substances multiple times throughout the CHINS case – methamphetamine once, THC twice, buprenorphine once, and fentanyl once. During the pendency of this case, Mother also missed eighty-five random drug screens. Father also tested positive for illegal substances throughout the CHINS case – THC twelve times, buprenorphine four times, fentanyl once, and methamphetamine five times. During the pendency of these proceedings, he also missed one hundred random drug screens. Father did not attend services for substance abuse or medication management.

[8] Mother completed a psychological intake assessment with Jessee Lewis, a licensed therapist. Lewis diagnosed Mother with “posttraumatic stress disorder (PTSD) and Other or Unspecified Stimulant Use Disorder, Moderate, in early remission.” (*Id.* at 114.) Mother participated in individual counseling for a period of time during the CHINS proceedings but stopped attending because

“she [did] not think she [needed] it.” (*Id.* at 115.) In addition, DCS recommended Mother attend domestic abuse treatment because of past domestic abuse incidents with Father, but Mother did not complete that program.

[9] Father completed an intake assessment with Emily Brault, a licensed clinical social worker. Brault diagnosed Father with “schizo affective disorder bipolar type, cannabis [use disorder] severe in early remission, and amphetamine/methamphetamine type use disorder severe in early remission.” (*Id.* at 116.) Brault also noted Father had a history of suicide attempts. After Father’s psychological intake assessment, he tried to kill himself. He attended individual therapy, but his therapist indicated Father did not make progress because Father would go long periods of time between appointments. Father attended eight of the seventeen scheduled appointments. Father relapsed into drug use on August 8, 2022.

[10] Throughout the proceedings, Mother and Father did not have stable housing or income. Mother described their housing situation as “couch surfing” and they lived in multiple homes, trailers, and hotels. (*Id.* at 117.) Mother and Father have one eviction judgment against them. Mother has indicated she does not intend to pay the eviction-related judgment against her.

[11] In late 2022, Mother and Father lived with Jamisha Pantoja. Father did not like Mother spending time with Pantoja because “[h]e knew what [Pantoja] was doing . . . [and they were] [t]hings she shouldn’t be doing.” (Tr. Vol. IV at 44.)

On January 27, 2023, Mother was arrested while riding in a car with Pantoja. Mother was subsequently charged with two counts of Level 2 felony dealing in cocaine, Level 3 felony possession of cocaine, Level 5 felony possession of methamphetamine, and Level 6 felony possession or use of a legend drug. Mother was incarcerated for two weeks following her arrest and was released to participate in substance abuse treatment. At her intake appointment for substance abuse treatment, Mother indicated she was using a gram of cocaine a day. Mother completed substance abuse treatment but did not attend regular Narcotics Anonymous (“NA”) meetings thereafter as recommended.

[12] In May 2022, Mother and Father studied to be Certified Nursing Assistants. During that training, Mother and Father were involved in a “physical dispute in class and then in the parking lot” and were “kicked out” of the training. (Tr. Vol. II at 10.) Father received disability payments each month and was unemployed. Mother has worked four jobs since the beginning of the CHINS case.

[13] Mother attended 85% of the visits with Children and Father attended 60% of the visits. During a supervised visit, Father “exhibited hostility toward [the visitation supervisor] and got so angry [the visitation supervisor] called law enforcement because she felt unsafe. [Children] were present [and] overheard the profanities [Father] said[.]” (App. Vol. II at 122.) During another supervised visit at a bowling alley, the visitation supervisor noted Mother paid more attention to her friend’s children than Children. When she brought Mother’s behavior to Mother’s attention, Mother’s friend became

argumentative, and the visitation supervisor had to end the visit. Mother and Father have not seen Children since January 3, 2023.

- [14] At some point during the CHINS proceedings, Father pled guilty to Class A misdemeanor domestic battery and Class A misdemeanor possession of methamphetamine. On February 10, 2023, Father was terminated from probation on both of those matters because he violated his probation.
- [15] On February 17, 2023, DCS filed a petition⁴ to terminate the parental rights of Mother and Father to their respective children. The trial court held fact-finding hearings on the matter on April 6, May 9, July 27, July 28, and August 9, 2023. In June 2023, during the time of the termination fact-finding hearings, Mother and Father lived in French Lick and Mother had a job at a nearby hotel.
- [16] During the August 9, 2023, fact finding hearing, Mother was asked about her January 2023 arrest, specifically whether she was “dealing or using drugs.” (Tr. Vol. IV at 62.) Mother invoked her Fifth Amendment right against self-incrimination. DCS asked the trial court to “[draw] a negative inference because she’s refusing to answer the question[.]” (*Id.*) The trial court stated, “DCS is asking me to [draw] a negative inference because she’s invoking her Fifth Amendment right . . . , and I’m going to do that.” (*Id.* at 62-3.) On

⁴ Like in the CHINS matter, the trial court issued a separate case number for each child in the termination case but DCS filed one petition requesting termination of parental rights and the trial court issued one termination order that addressed both children.

September 5, 2023, the trial court entered its order terminating Mother's parental rights to Children and Father's parental rights to B.M.

Discussion and Decision

[17] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re A.L.*, 223 N.E.3d 1126, 1137 (Ind. Ct. App. 2023). However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* The termination of parental rights is appropriate when parents are “unable or unwilling to meet their parental responsibilities[.]” *Id.* (quoting *Bester v. Lake Cnty. Ofc. of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). The termination of the parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Ofc. of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[18] 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 T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. 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. *In re Q.M.*, 974 N.E.2d 1021, 1024 (Ind. Ct. App. 2012) (quoting *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994)).

[19] When reviewing a trial court's termination of parental rights,

“we do not reweigh the evidence or judge witness credibility.”
We consider only the evidence and reasonable inferences that are most favorable to the judgment and give “due regard” to the trial court's unique opportunity to judge the credibility of the witnesses. “We will set aside the trial court's judgment only if it is clearly erroneous.”

In re V.A., 51 N.E.3d 1140, 1143 (Ind. 2016) (internal citations omitted).

1. Whether Conditions Would Be Remedied as to Mother

[20] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). First, we must determine whether the evidence supports the findings and then whether the findings support the trial court's judgment. *Id.* A finding is clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support it. *Steele-Giri v. Steele*, 51 N.E.3d 119, 125 (Ind. 2016). “We accept unchallenged findings as true.” *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019).

[21] Mother argues the trial court's findings do not support its conclusion that there existed a reasonable probability that the conditions under which Children were removed from her care would not be remedied. When considering whether the conditions under which a child is removed from a parent's care would be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-3 (Ind. 2014). First, we identify the reasons for the child's removal and then we

determine whether there is a reasonable probability those conditions will be remedied. *Id.* at 643. As we recently stated in *In re A.L.*:

It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. The trial court may also consider a parent’s failure to respond to services. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.”

223 N.E.3d 1126, 1138-9 (Ind. Ct. App. 2023) (internal citations omitted).

Mother does not challenge the trial court’s findings, and we accept such findings as true. *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019) (“We accept unchallenged findings as true.”).

[22] Children were removed from Mother’s care based on substance abuse in the home, Mother’s inability to properly administer prescription medication to B.D., and domestic violence. At the time of Children’s removal, Mother tested positive for methamphetamine and Lortab without a prescription. The trial court made several unchallenged findings to support its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied:

19. There was a time when Mother and [Father] were in compliance with the Dispositional Decree. During this time, approximately April 2022, visits were in Mother and [Father's] home, and there was discussion of beginning a Trial Home Visit.

20. Shortly after the discussion of a trial home visit Mother and [Father] had an incident of domestic violence and [Father] was exhibiting aggression toward others. . . . Mother admitted to using marijuana. The trial home visit did not occur and [Children] have remained removed from [Mother and Father].

21. Mother's positive drug screen results during the CHINS proceeding include the following (excluding missed screens):

- a. Methamphetamine at commencement of the CHINS proceeding on September 13, 2021;
- b. THC on January 12, 2022;
- c. Burprenorphine on September 2, 2022;
- d. Fentanyl on October 24, 2022; and
- e. THC on December 12, 2022.

22. Three of Mother's positive screens have occurred since April 21, 2022 the date on which Mother claims she began her sobriety.

23. Mother denies using Fentanyl and has two different theories as to why she might have had a false positive screen for Fentanyl.

24. From July 12, 2022 through July 12, 2023, Mother has missed eighty-five calls for random screens, and has missed random screens, with a total of forty-three indicated as unforgiven, through Cordant Health Services during the CHINS proceeding.

25. In the weeks leading up to the final Termination hearing Mother missed calling Cordant on June 28, 2023, July 6, 2023, July 12, 2023, July 14, 2023, July 17, 2023, July 21, 2023, and July 24, 2023. Mother missed her screens on July 6, 2023, and July 25, 2023.

26. Mother's Cordant call logs indicate Mother was "not available to test today" or made arrangements with the collector to be available to test, but did not test on at least seven occasions in May 2023 through July 12, 2023.

27. Despite Mother's testimony there were screens canceled by the collector in June 2023 and July 2023 because the collector could not come to screen Mother and [Father], according to the Cordant Client Compliance Report there were only three instances screens did not occur due to the collector and they occurred on September 22, 2022 due to an incorrect phone number, April 5, 2023 caused by severe weather, and May 12, 2023 due to no available collector.

28. Mother had opportunities to engage in substance use treatment during the CHINS proceeding.

29. Jessee Lewis ("Lewis"), a licensed therapist providing therapy, conducting intakes, and facilitating group therapy sessions at Bloomington Centerstone, completed an intake for Mother on May 11, 2022.

30. Mother reported her drug use history to Lewis indicating her last use of Methamphetamine was September 2021 when she was snorting an “8 ball every two days.”

31. Mother’s last use of pain pills had “been over a year.”

32. At the time of the intake her most recent overdose was in September 2021.

33. Mother described her anxiety as 10/10 during the intake with Lewis.

34. Lewis diagnosed Mother with posttraumatic stress disorder (PTSD) and Other or Unspecified Stimulant Use Disorder, Moderate, in early remission.

35. Mother made goals with Lewis to process her anxiety and depression, manager [sic] her anger, and get [Children] back.

36. Lewis made a recommendation for Mother to engage in individual therapy, a life coach, medication management, and a “seeking safety” type curriculum for domestic violence.

37. Lee Ellen Snyder (“Snyder”), employed at Centerstone, facilitates substance abuse treatment, and is familiar with Mother because Mother attended three of the seventeen sessions of Helping Women in Recovery in August 2022.

38. Mother did not complete the Helping Women in Recovery program.

39. [Mother] last attended the life skills course at Centerstone in July 2022.

40. Mother was arrested on January 27, 2023 and charged with two counts of Dealing Cocaine, a Level 2 Felony, Possession of Cocaine between 10 and 28 grams, a Level 3 Felony, Possession of Methamphetamine, a Level 5 Felony, and Unlawful Possession or Use of a Legend Drug knowingly possess or use X, a Level 6 Felony, in Cause 47D01-2301-F2-000195.

41. When Mother was arrested[,], the vehicle in which Mother was riding contained illegal substances including Methamphetamine. Mother was riding with Mother's friend Jamisha Pantoja ("Pantoja") and Pantoja's two Minor Children. Pantoja was also charged with Dealing illegal substances.

42. [Father] tried to prevent Mother from spending time with Pantoja in January 2023 because [Father] knew Pantoja was doing "things she shouldn't be doing."

43. On approximately February 13, 2023 Mother was released from incarceration and directly admitted to Hickory Treatment Center in Lawrence, Indiana for substance abuse treatment.

44. Heather Wolfe ("Wolfe") is employed at Hickory Treatment Center and she completed Mother's intake assessment when Mother was admitted to Hickory.

45. Mother indicated to Wolfe she was using Cocaine daily and one gram each day which resulted in a diagnosis of severe Cocaine disorder; Wolfe recommended Mother be admitted for treatment and follow the program.

46. The program at Hickory Treatment Center included individual counseling, daily group therapy, behavioral health, and peer recovery coaching.

47. Mother had the options of attending parenting, anger management, or a meeting for preventing relapse.
48. Every evening at 7:00 p.m. patients must attend either NA, or an AA meeting.
49. Mother successfully completed the Hickory Treatment Center 28-day inpatient program.
50. Mother learned coping skills and alternatives to group meetings like NA/AA such as attending bible study.
51. Mother was prescribed ninety days' [sic] worth of medications for her anxiety as part of her discharge from Hickory Treatment Center; discharge occurred on March 14, 2023.
52. Mother is no longer taking the medications as prescribed because she does not have enough of the medication.
53. Since release from Hickory Mother has met with a primary care physician, but she has not met with a psychiatrist who can prescribe the medications.
54. Mother attended ten (10) NA meetings total in her life.
55. Mother is not currently enrolled in counseling and she does not think she needs it.
56. Mother has met with providers at Safe Haven on four occasions.
57. Jessie Allen at Safe Haven has been assigned to be Mother's recovery coach. They have not begun working on recovery yet.

* * * * *

80. Mother and [Father] have had housing instability throughout the CHINS proceeding, described as “couch surfing” by Mother.

81. From May 31, 2023 through the date of the final Termination hearing Mother and [Father] have been living in a trailer in French Lick, Indiana. Prior to living in the trailer Mother and [Father] lived in multiple houses.

82. Since September 2021, Mother resided in a house in Mitchell, [Father’s] sister’s home, a house on “N” Street in Bedford, in a couple of hotels, Jamisha Pantoja’s home, incarceration in the Lawrence County Jail, Hickory Treatment Center, Ethan Sipes’ home, and now the trailer in French Lick.

* * * * *

84. In November 2022 Family Case Manager Debra Kerr (“FCM Kerr”) discussed the idea of Mother and [B.D.] moving into Becky’s Place, a woman’s shelter in Bedford, Indiana; however, Mother declined and stayed with [Father].

85. Lacie and Melvin Lillard lived with Mother and [Father] in the “N” Street home [in] approximately October 2022. Mother believes her positive screen for Fentanyl on October 24, 2022 could have been positive because she borrowed a toothbrush, or shared a cigarette while the Lillards lived with Mother and [Father]. The Lillards were using Fentanyl during this time.

* * * * *

87. Mother and [Father] were evicted from the home on “N” street in Bedford, Indiana.

88. On December 28, 2022 Mother and [Father] were Ordered to pay damages in the sum of \$7,583.90 plus court costs in Cause Number 47D02-2210-EV-339. Despite a Court Order, Mother has no intention to pay the damages owed in this eviction case.

* * * * *

92. Mother has worked four jobs since September 2021. She worked at Westview Nursing Home and was put on leave and eventually terminated, when she accrued the criminal charges in January 2023. After this, Mother worked at Burger King for a short time before beginning work at Dairy Queen.

93. Mother quit her employment at Dairy Queen because the manager was disrespectful to her. Two weeks later Mother began working at Comfort Suites, a hotel in French Lick, Indiana, where she is currently employed.

94. Mother works between thirty-two and forty hours per week earning \$10.50 per hour.

95. Mother has a good relationship with her boss at Comfort Suites and plans to attend his church. He is also a pastor.

* * * * *

99. Mother is obligated to pay child support for [B.M.] in the amount of \$25.00 per week pursuant to a Court Order issued in Cause 47C01-2212-JP-457. Mother is unsure if she is behind in child support.

100. Mother regularly attended the Child Family Team Meetings (CFTMs) in the CHINS proceeding[.]

101. Lori Branam (“Branam”) was assigned to provide home-based case management to Mother and [Father] on March 3, 2022 . . .

102. Branam’s goals for Mother and [Father] were to obtain employment, diminish the amount of domestic violence in their relationship, and develop parenting skills.

103. Branam took Mother and [Father] to Certified Nursing Assistant course and they were asked to leave the course as well as the property where the training took place on May 10, 2022. Branam helped Mother and [Father] complete de-escalation training during the domestic violence incident on this date.

104. After this incident Mother participated in the evaluation previously mentioned that was completed by Jessee Lewis at Bloomington Centerstone.

105. Branam observed Mother and [Father] regress in progress on their goals because they were having more domestic violence when she quit working with them.

* * * * *

115. Tina Burress (“Burress”) is employed by Ireland Home Based Services and acts as a Family Preservation specialist.

116. Burress worked with Mother as a home-based caseworker on housing, employment, and parenting education. Burress was also Mother’s recovery coach and developed a relapse prevention plan with Mother.

117. Burress began working with Mother in October 2022.

118. In October 2022 when Burress began working with the family Mother and [Father] lived in a home with a couple who was involved with DCS.

* * * * *

124. Burress and Mother are currently focusing on parent education because that is where Mother's interest is; yet, Burress has not observed Mother implement the education with the Minor Children in the recent months because visitation was suspended in the CHINS proceeding.

125. Mother has learned conscious discipline which has helped her understand you do not just yell "no," but instead stop, with a calm voice explain to [Children] why you should not do something.

126. Burress observes progress in Mother's goals because Mother has obtained housing and employment; however, Mother has not shown an ability to maintain housing and employment.

127. [Father] and Mother lack transportation. They are accessing Safe Haven for transportation services.

* * * * *

132. Charlene Loudermilk ("Loudermilk") is employed by Ireland Home Based Services and provided visitation for Mother, [Father], and [Children] in 2022 and the early months of 2023.

133. Loudermilk observed visits in various locations - public setting, the Ireland office, as well as in the home of Mother and [Father]. Visits were moved outside of the home due to poor

home conditions including messiness, dog feces, and a cluttered environment.

* * * * *

135. Mother, [Father] and [Children] did many things together such as Santa visits, birthday parties, and parks. These visits went much better than the visits in the home.

136. DCS indicated a willingness to provide a gas card and provided Mother and [Father] with a gas card to help with transportation to supervised visitation.

137. Mother attended the supervised visitation approximately eighty-five percent (85%) of the time[.]

* * * * *

139. During a supervised visit [Father] exhibited hostility to Loudermilk and got so angry Loudermilk called law enforcement because she felt unsafe. [Children] were present, overheard the profanities [Father] said, and Mother refused to put [B.M.] down to leave with Loudermilk. This incident occurred before Mother was arrested in January 2023. While [Children] were present law enforcement came to the home.

140. Loudermilk observed a supervised visit at the Sycamore Bowl, a bowling alley in Terre Haute, Indiana and this visit was cut short. Loudermilk redirected Mother because Mother was focusing her attention on her friend's child more than [Children]. Mother's friend became argumentative with Loudermilk. This visit occurred after the incident with law enforcement.

141. Mother reported to the DCS Loudermilk could no longer supervise their visitation because of the instances that occurred and Mother's disapproval of Loudermilk's interactions with [Children]. DCS continued to offer the supervised visitation by Loudermilk and indicated to Mother there might be a lapse in visitation if Mother wanted a new supervisor because it takes time to locate visit supervisors who are available on the weekends (when the visits were scheduled).

142. Mother and [Father] have not seen [Children] since approximately January 3, 2023.

* * * * *

207. Only recently have Mother and [Father] obtained housing. Mother and [Father] have no reliable transportation, no proven ability to support themselves financially long term, Mother has a pending criminal matter with possible incarceration, Mother and [Father] are not consistently providing negative drug screens to prove sobriety, and neither parent is engaging in ongoing mental health care for himself or herself.

208. . . . [Additionally Children] have endured trauma, require stability and consistency in routine, and Mother and [Father] have not shown an ability to provide for [Children's] mental and physical needs.

(App. Vol. II at 112-27) (footnotes omitted).

[23] While Mother was employed and had housing at the time of the termination fact-finding hearing, she had not progressed to a point where the conditions under which Children were removed from her care would be remedied. Mother claimed she had been sober since April 2022, however, during her intake at the

substance abuse treatment center in January 2023, she indicated she used about a gram of cocaine a day. Throughout the CHINS and termination proceedings, Mother missed eighty-five drug screens, including nine times after the termination fact-finding hearings began.

[24] Additionally, during the proceedings Mother was charged with multiple drug-related crimes which could, if convicted, result in a lengthy sentence. Mother did not progress in any services outside of the completion of the substance abuse treatment, and she had not followed the recommendation of the treatment center to attend NA meetings after treatment. Despite having been given medication for anxiety during her time at the substance abuse treatment center, Mother had not refilled her prescription and was not managing her anxiety with medication. Finally, Mother had not visited with Children since January 2023. Based thereon, we conclude the trial court's findings support its conclusion that the conditions under which Children were removed from Mother's care would not be remedied.⁵ *See, e.g., In re C.S.*, 190 N.E.3d 434, 439 (Ind. Ct. App. 2022) (mother's continued drug use, pending criminal charges, and inability to demonstrate she could care for her child supported the trial

⁵ Mother also argues the trial court's findings do not support its conclusion that the continuation of the Mother-Children relationship poses a threat to Children's well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code Section 31-35-2-4(b)(2)(B). *See, e.g., In re J.S.*, 183 N.e.3d 362, 369 (Ind. Ct. App. 2022) (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need prove only one of the enumerated elements therein), *trans. denied*. Accordingly, we need not address this argument to affirm the trial court's judgment.

court's conclusion that the conditions under which child was removed from her care would not be remedied), *trans. denied*.

2. Children's Best Interests as to Mother

[25] When considering whether termination of a parent's rights is in a child's best interests, the trial court is "required to look at 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*. When it does so, the trial court "must subordinate the interests of the parents to those of the children involved." *Id.* The trial court "need not wait until a child is irreversibly harmed" before terminating the parent-child relationship. *Id.* Testimony from service providers may support a finding that termination is in a child's best interests. *Id.*

[26] As noted above, the trial court made several findings regarding Mother's inability to achieve sufficient progress toward reunification with Children. Mother had not maintained consistent sobriety, had missed many drug screens, had not completed most services, was not taking prescribed medication, and had not seen Children for over six months. The trial court found Children were doing well in their placements, specifically that B.D. was progressing in mental health treatment and was "doing well identifying his emotions, [was] having far fewer outbursts, [and was] developing coping skills[.]" (App. Vol. II at 124.) Additionally, the trial court found B.D. was "thriving in his current placement and he does not ask about Mother." (*Id.*)

[27] Regarding B.M., the trial court found he had made tremendous progress in therapy and could “identify when he is upset rather than blowing up” and his placement “helps him deescalate when he has an outburst.” (*Id.* at 125.) Finally, the trial court found Children were “bonded with their placements, feel comfortable, and their needs are being met.” (*Id.* at 126.) Further, the Court Appointed Special Advocate (“CASA”) Amber Green testified she believed termination of Mother’s parental rights to Children was in Children’s best interests because “there is not a history of proven sobriety, no sustained housing, no sustained ability to provide for [Children] financially, and [Children] have high needs that make stability important for their wellbeing.” (*Id.* at 126.) Based thereon, we conclude the trial court’s findings support its conclusion that termination of Mother’s parental rights to Children was in Children’s best interests. *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).

3. Father’s Argument Regarding Mother’s Invocation of her Fifth Amendment Right

[28] In its order, the trial court stated in a footnote:

During the Termination hearing the Court Granted DCS[’s] request for the Court to [draw] a negative inference from Mother’s invocation of her fifth amendment right to the question regarding Mother’s involvement with Jamisha Pantoja and if “Father . . . knew what she was doing, [either] dealing, or using drugs?” when Mother was arrested. *See Gash v. Kohm*, 476 N.E.2d 910, 913 (Ind. Ct. App. 1985) (explaining although the

refusal to testify in a civil case cannot be used against the one asserting the privilege in a subsequent criminal proceeding, the privilege against self-incrimination does not prohibit the trier of fact in a civil case from drawing adverse inference from a witness' refusal to testify; it is a "circumstance in his matter of testifying which, like any other physical or mental circumstances, such as delay, pallor, evasion, etc., may with other circumstances be considered by [the jury] in weighing the witness' testimony.") The Indiana Supreme Court has affirmed the trial court's ability to [draw] a negative, or adverse inference to a parent's invocation of his or her Fifth Amendment right in a child in needs of services, or termination of parental rights matter. *In re Ma.H.*, 134 N.E.3d 41, 47 (2019).

(App. Vol. II at 114-15) (brackets in original). Father acknowledges the trial court could draw a negative inference from Mother's invocation of her Fifth Amendment right against self-incrimination, *see, e.g., Matter of Ma.H.*, 134 N.E.3d 41, 47 (Ind. 2019), but he argues "the trial court went far beyond the bounds of the negative inference a factfinder is permitted to take from a witness's invocation of their constitutional rights." (Father's Br. at 12.) He contends he "sustained a direct injury as a result of the trial court's misunderstanding of the negative inference it may draw from a witness's silence, because the trial court relied on this mis-weighed [sic] evidence in its decision to termination Father's parental rights." (Father's Reply Br. at 6.)

[29] Father does not cite case law to support his contention that the trial court went "far beyond the bounds" of a "permitted" negative inference regarding Mother's invocation of her Fifth Amendment right. He further does not indicate what the proper negative inference should have been or how the trial

court's inference was disproportionate. Additionally, he has not argued a nexus between Mother's invocation of her Fifth Amendment right and any prejudice he allegedly suffered based on Mother's silence, or how that prejudice affected the trial court's decision to terminate his parental rights. Therefore, Father's argument is waived for noncompliance with Indiana Rule of Appellate Procedure 46(A)(8)(a), which requires an appellant's brief to "contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and citations to authority.⁶ *See, e.g., N.C. v. Indiana Dep't of Child Servs.*, 56 N.E.3d 65, 69 (Ind. Ct. App. 2016) (holding father's issue "waived for failure to develop an argument supported by cogent reasoning")), *trans. denied*.

Conclusion

[30] The trial court's findings supported its conclusions that the conditions under which Children were removed from Mother's care would not be remedied and that termination of Mother's parental rights was in Children's best interests. Additionally, Father's argument regarding the trial court's footnote about Mother's invocation of her Fifth Amendment right is waived for failure to make a cogent argument. Accordingly, we affirm the termination of Father's parental rights to B.M. and Mother's parental rights to Children.

⁶ Even if the trial court considered the negative inference associated with Mother's invocation of her Fifth Amendment right against self-incrimination, there was overwhelming evidence to support the termination of Father's parental rights to B.M. including Father's noncompliance with services, Father's drug use, and Father's lack of visitation with B.M.

[31] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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