MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of R.O. and R.D. (Minor Children) and C.D. (Mother) and E.O. (Father)

C.D. (Mother) and E.O. (Father),

Appellants-Respondents,

v.

June 28, 2022

Court of Appeals Case No. 21A-JT-1608

Appeal from the Hancock Superior Court

The Honorable R. Scott Sirk, Special Judge

Trial Court Cause Nos. 30D01-2007-JT-230 30D01-2007-JT-231

Indiana Department of Child Services,
Appellee-Petitioner

Vaidik, Judge.

Case Summary

[1] E.O. ("Father") and C.D. ("Mother") (collectively, "Parents") separately appeal the termination of their parental rights to their two children. We affirm.

Facts and Procedural History

[2] Father and Mother are the biological parents of R.O., born in 2018, and R.D., born in 2019. In July 2018, the Department of Child Services (DCS) in Hancock County removed three-month-old R.O. from Parents after they were arrested "due to a domestic altercation." Mother's App. Vol. II p. 20. R.O. was placed with his maternal grandparents, where he has since remained. A few days later, DCS filed a petition alleging R.O. was a child in need of services (CHINS) due to domestic violence in the home. The next month, R.O. was adjudicated a CHINS by Parents' admissions. Parents were ordered to maintain contact with DCS, obtain safe housing and steady employment, complete a parenting assessment and attend any recommended treatment, and participate in domestic-violence courses.

[3] For the next year, Parents' participation in DCS services was "mixed." *Id.* at 26. Father was incarcerated from October 2018 to June 2019 and could not participate in services. Mother would attend services and even make some progress, but she would then be discharged for varying reasons and "would have to start the process all over again." Tr. Vol. II p. 47. Once released from incarceration, Father similarly would "actively engage in some services" but ultimately would be unsuccessfully discharged. *Id.* at 48. Both Parents completed a domestic-violence course.

[4] In June 2019, R.D. was born. In August, DCS received a report that Mother and R.D. were being evicted from a homeless shelter and that Mother was leaving R.D. unsupervised at the shelter for large periods of time. DCS investigated and found Mother had been kicked out of the shelter and had no place for her and R.D. to go. Father's whereabouts were unknown. DCS removed R.D. and placed him in foster care, where he has since remained. That month, DCS filed a petition alleging R.D. was a CHINS due to Parents' inability to care for him. The court adjudicated R.D. a CHINS in October. Again, Parents were ordered to maintain contact with DCS, participate in DCS-recommended services, and obtain housing and employment.

[5] In July 2020, Parents relocated to Florida for "[b]etter opportunities," despite warnings from DCS that it would be unable to provide services to Parents while they were out of state. *Id.* at 159. Although they could not participate in services while out of state, Parents continued to participate in virtual supervised

visitation with the children. Later that month, DCS petitioned to terminate Parents' rights to both children.

[6] The termination hearing was held over two days in May and June 2021, with Parents attending remotely from Florida. At the hearing, DCS admitted, over Father's objection, the certified court records of both children's CHINS cases. FCM Connor McCarty, who worked with the family from the children's respective removals until January 2021, testified about Parents' "unwillingness to engage in services." *Id.* at 66. He explained Parents would initially engage and be compliant, but then they would be unsuccessfully discharged and have to start the process over again, causing them to make little progress. He also testified he had to replace Parents' service providers at least six times because Parents "refuse[d] to work with certain providers because of their ethnicity [or] their gender." *Id.* at 51-52.

[7] FCM Michele Harrison, who worked with the family from January 2021 up to the termination hearing, testified Parents had not maintained regular contact with her and did not provide her with updated information on their housing or employment situations. She also testified Parents had been discharged by two visit providers in the last six months.

[8] During FCM Harrison's testimony, DCS presented a six-page "summary" or "timeline" of the CHINS and termination proceedings, the first three pages of which were prepared by FCM McCarty, and the last three pages of which were prepared by FCM Harrison. *Id.* at 87. Father objected to the first three pages of

the exhibit, arguing FCM Harrison could not authenticate it as she did not prepare it, and objected to the last three pages based on hearsay. Mother joined in the objection. *See id.* at 96. The trial court allowed Father's counsel to ask preliminary questions about the exhibit. Father's counsel went through some of the information on the last three pages of the exhibit, pausing to ask FCM Harrison whether that part came from her personal knowledge or from a third party. FCM Harrison testified that while some of the information, such as her communications with Parents, was based on her personal knowledge, other information, mainly statements about Parents' behavior during visits, was provided to her by third parties. Father then objected to those parts of the last three pages that came from a third party as hearsay. Ultimately, the trial court admitted the exhibit "just to what [FCM Harrison] has personal knowledge of," and the parties agreed to redact "those portions that [Father] has objected to." *Id.* at 97, 98. Despite this agreement, the exhibit appears in the record in its entirety.

[9] Father testified that he and Mother had been living in Florida for about a year and were homeless for most of that time. Father testified he would sometimes have housing but had to live in "seven different places" over the past year trying to "get stable." *Id.* at 175. At the time of the hearing, Father was staying with a friend "temporarily as a visitor." *Id.* at 172. During Father's testimony, DCS played an aggressive and profanity-laced voicemail Father left a visit supervisor "a couple days before the last court date." *Id.* at 183. In the voicemail, Father states he hopes the visit supervisor's child dies and says he doesn't "give a f*ck

about DCS." *Id.* at 182. Father also testified he threatened to take a protective order out against FCM McCarty.

[10] Mother testified that after she moved to Florida she was often homeless and did not have employment until about "a month" before the termination hearing. *Id.* at 204. Like Father, she was currently staying in "temporary" housing. *Id.* at 210. Mother also admitted that she did not complete DCS services while in Indiana.

[11] After the hearing, the trial court issued an order terminating Parents' rights to both children.

[12] Parents appeal separately.

Discussion and Decision

I. Admission of Evidence

[13] Both Mother and Father first argue the trial court erred in admitting certain evidence. "The admission of evidence is entrusted to the sound discretion of the trial court." *In re A.J.*, 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), *trans. denied*. An abuse of discretion only occurs where the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.* "The fact that evidence was erroneously admitted does not automatically require reversal, and we will reverse only if we conclude the admission affected a party's substantial rights." *Id.* "In general, the admission of evidence that is merely cumulative of other evidence amounts to harmless error as such admission does not affect a

party's substantial rights." *In re Paternity of H.R.M.*, 864 N.E.2d 442, 450-51 (Ind. Ct. App. 2007).

[14] As an initial matter, Mother argues the trial court erred in admitting Exhibit 1, which consists of the chronological case summaries and orders from each child's CHINS case. However, Mother did not object to the admission of this evidence at trial, nor does she now argue fundamental error.[1] As such, she has waived this argument for our review. *See In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014) (stating the failure to object to the admission of evidence at trial normally results in waiver and precludes appellate review).

[15] Both Father and Mother argue the trial court erred in admitting Exhibit 2, which consists of a timeline and summary of Parents' actions during the CHINS and termination proceedings created by the FCMs.[2] It is unclear how much of this exhibit was actually "admitted." The trial court stated it would admit only portions of the exhibit that came from FCM Harrison's personal knowledge but did not identify which portions of the exhibit those were. Nor did the parties follow through on the proposed redactions, as the exhibit appears in the record in its entirety. As such, it is difficult for us to determine whether an error occurred, as it is unclear what evidence was admitted.

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[1] Father did object to the admission of Exhibit 1. He does not renew that challenge on appeal, and Mother did not join his objection. *See In re Estate of Blair*, 177 N.E.3d 84, 94 (Ind. Ct. App. 2021).

[2] Summaries and timelines such as this one are often introduced and admitted as demonstrative evidence. But here, the exhibit was treated by the court and parties as substantive evidence.

[16] Nonetheless, even if the entire exhibit were admitted, we are confident any error in its admission was harmless. Exhibit 2 consists of information relating to Parents' interactions with DCS—their attendance and participation at meetings and visitation and their communication and interactions with service providers and DCS. Ultimately, Exhibit 2 shows that Mother and Father have poor and sometimes hostile communications with DCS and inconsistent participation in services. But this information was also testified to by the FCMs and Parents themselves. Parents testified they did not complete DCS services and were aware they could not receive services in Florida but chose to move anyway. FCM McCarty testified Parents were unwilling to engage in services, and FCM Harrison testified Parents had completed no services beyond domestic-violence classes. Both FCMs also testified Parents could not maintain service providers and often were not in contact with DCS. And Father admitted to sending an aggressive and profanity-laced voicemail to a DCS provider and threatening to seek a protective order against FCM McCarty.

[17] Thus, Exhibit 2's information about Parents' interactions with DCS and participation in services was cumulative of the hearing testimony. Again, "the admission of evidence that is merely cumulative of other evidence amounts to harmless error as such admission does not affect a party's substantial rights." *In re H.R.M.*, 864 N.E.2d at 450-51. Any error in the admission of Exhibit 2 was harmless.

II. Sufficiency of the Evidence

[18] Both Mother and Father also argue the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[19] A petition to terminate parental rights must allege, among other things:

> (B) that one (1) of the following is true:
>
> > (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
> >
> > (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a 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 prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

[20] Parents challenge the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[21] R.O. was removed from Parents due to domestic violence, while R.D. was removed due to Parents' inability to care for him. Both Mother and Father point to their completion of domestic-violence courses and apparent lack of further domestic violence between them as evidence that they have remedied this reason for removal. But even if this is true, the children continued to be

placed outside the home due to Parents' inability to care for them, and Parents have shown no improvement in this regard. Parents' participation in DCS services for the first year of the CHINS proceedings was "mixed." Parents then chose to move to Florida, despite knowing DCS could not provide them services if they moved out of state. Parents claim they moved for better opportunities, but they were generally homeless and unemployed while there. In the year leading up to the termination hearing, Father had moved seven times and neither he nor Mother held steady employment. At the time of the hearing, both were staying in "temporary" residences. Parents have shown no improvement in their ability to provide a safe and stable environment for the children.

[22] The trial court did not err in determining there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied.

III. Due Process

[23] Mother also argues she was denied due process because DCS failed to make reasonable efforts to provide services to help reunify her with the children. "Due process protections bar state action that deprives a person of life, liberty, or property without a fair proceeding." *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (citations omitted). It is unequivocal that the termination of a parent-child relationship by the State constitutes the deprivation of an important interest warranting deference and protection, and therefore when the State seeks to

terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* Here, Mother argues DCS denied her due process by failing to provide her services after she moved out of state.

[24] We have previously rejected such arguments. Our Supreme Court has long recognized that, in "seeking termination of parental rights," DCS has no obligation "to plead and prove that services have been offered to the parent to assist in fulfilling parental obligations." *S.E.S. v. Grant Cnty. Dep't of Welfare*, 594 N.E.2d 447, 448 (Ind. 1992). And although DCS "is generally required to make reasonable efforts to preserve and reunify family during the CHINS proceedings," that requirement under our CHINS statutes "is not a requisite element of our parental rights termination statute, and a 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). In fact, this Court has held "even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000).

[25] Moreover, this is far from a case where DCS provided no services. DCS offered Mother services for a year and a half before she moved to Florida, during which her participation was inconsistent. Mother then chose to move to Florida, despite being warned that she would be unable to participate in services while out of state. Given these circumstances, we do not see a due-process violation.

[26] Affirmed.

Crone, J., and Altice, J., concur.