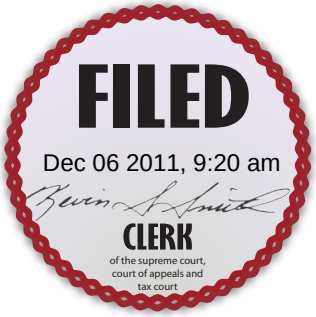

ATTORNEYS FOR APPELLANTS:

DUSTIN T. WHITE
White Law Practice
Jeffersonville, Indiana
for Father

AMY SEMONES
Amy Semones Law Office
Jeffersonville, Indiana
for Mother

ATTORNEYS FOR APPELLEES:

JENNIFER L. HARMEYER
Indiana Department of Child Services
Jeffersonville, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of S.S., C.T., K.G.T., K.M.T., minor children, and L.S., their mother, and A.T., their father,	)	
L.S. and A.T.,	)	
Appellants-Respondents,	)	
vs.	)	No. 10A04-1102-JT-92
INDIANA DEPARTMENT OF CHILD SERVICE,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Vicki Carmichael, Judge
Cause No. 10D01-0901-JT-36, -37, -38, and -39

December 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

A.T. ("Father") and L.S. ("Mother") appeal the involuntary termination of their parental rights to their children. In so doing, both parents claim the trial court abused its discretion in denying their respective motions to continue the termination hearing. In addition, Father asserts he was denied due process of law, and Mother challenges the sufficiency of the evidence supporting the trial court's judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of Kr.T., born in August 1995, C.T., born in September 1997, Ke.T., born in June 2003, and S.S., born in October 2007. Although Father is the legal or the alleged biological father of all four children, paternity has not been established.[1] Father challenges the involuntary termination of his parental rights to Kr.T. only.

The facts most favorable to the trial court's judgment reveal that, shortly after S.S.'s birth, the local Clark County office of the Indiana Department of Child Services ("CCDCS") was notified that the baby had been born testing positive for amphetamines and barbiturates. Mother also tested positive for amphetamines and barbiturates. As a result, S.S. and his three older siblings were taken into protective custody. Several days after the children's emergency removal from Mother's care, Father telephoned CCDCS family case manager Christina Franklin ("Franklin") to inquire about the children's

[1] It appears from the record that Father and Mother were married at the time Kr.T, C.T. and Ke.T. were born, making Father the legal father of all three children. However, certain other evidence indicates Father may not be the biological father of C.T. and Ke.T. In addition, Father and Mother were not married or living together at the time S.S. was born, and Father voluntarily relinquished his parental rights to S.S. during the underlying proceedings.

situation. During his conversation with Franklin, Father acknowledged that he had not seen the children in approximately three years. Father also indicated that he had only recently been released from incarceration, was living in a homeless shelter, and was unable to care for any of the children at that time. Father did not provide Franklin with a phone number or address and, apart from this single telephone conversation, did not communicate thereafter with CCDCS for more than two years.

Meanwhile, Kr.T., C.T., Ke.T., and S.S. were adjudicated children in need of services ("CHINS") in March 2008. This was not, however, CCDCS's first encounter with this family. Since 1997, CCDCS had substantiated eleven referrals of neglect and one report of abuse involving Mother and one or more of the children. Mother also had participated in six programs of Informal Adjustment ("IA"),[2] and two CHINS cases. Similarly, CCDCS had previously substantiated six reports of neglect involving Father and one or more of the children. Father also participated in two IA programs with Mother over the years. The parents' most recent involvement with CCDCS began in 2004 when Kr.T., C.T., and Ke.T. were removed from Father's and Mother's care after both parents were arrested in Kentucky on charges of fleeing from law enforcement officers. The 2004 CHINS case was eventually dismissed in 2006 with the establishment of a guardianship with the children's relative foster care placement. Approximately one year later, in August 2007, the children were returned to Mother's care following her release from incarceration, and the guardianship was dissolved. Two months after the

[2] A program of Informal Adjustment is a negotiated agreement between a family and a local office of the Indiana Department of Child Services whereby the family agrees to participate in various services provided by the county in an effort to prevent the child/children from being formally deemed children in need of services (CHINS). *See* Ind. Code 31-34-8 *et seq*.

guardianship was dissolved, however, S.S. was born testing positive for illegal substances giving rise to the instant case.

Following a hearing in April 2008, the trial court issued its dispositional order formally removing the children from Mother's care and custody and adjudicating them wards of CCDCS. The court's dispositional order also directed Mother to successfully complete a variety of tasks and services designed to enhance her parenting abilities and to facilitate her reunification with the children. Specifically, Mother was ordered to, among other things: (1) complete a drug and alcohol assessment and follow all resulting recommendations; (2) submit to random drug screen requests; (3) undergo a psychological evaluation and follow all resulting recommendations; (4) participate in parenting education classes; (5) exercise regular supervised visitation with the children; (6) establish paternity of all four children; (7) pay five dollars ($5.00) in weekly child support; (8) maintain consistent contact with CCDCS; and (9) create an appropriate and safe home environment for the children.

At the time of this dispositional hearing, Father's whereabouts and his paternity of the children remained unknown to CCDCS and the trial court. The trial court's dispositional order was therefore silent as to any specific dispositional goals or services for Father. It was discovered much later, however, that Father had been arrested in February 2008, prior to the dispositional hearing, on felony robbery and habitual offender charges and remained incarcerated at the Floyd County Jail. Despite his actual knowledge of the children's removal from the family home and involvement with

CCDCS several months earlier, Father never contacted CCDCS and/or informed CCDCS of his most recent arrest and incarceration.

Mother likewise refused to participate in essentially all court-ordered reunification services during the CHINS case. Mother failed to visit with the children, apart from two supervised telephone calls, one in October 2007 and one in November 2007, and she neglected to maintain consistent contact with CCDCS case workers. In addition, Mother failed to provide CCDCS with her current address and telephone number, refused to submit to random drug screen requests, did not pay child support, and declined to regularly attend scheduled court hearings.

In May 2008, Mother was arrested and incarcerated in the Clark County Jail on stalking, invasion of privacy, and failure to appear charges. Following her arrest, Mother never contacted her caseworker or informed CCDCS of her incarceration. As a result, CCDCS was unaware of Mother's whereabouts until February 2009.

CCDCS filed petitions, under separate cause numbers, seeking the involuntary termination of Mother's parental rights to all four children in January 2009. Due to inadvertent errors by CCDCS in naming the appropriate father of the children in its termination petitions, however, Father's name did not appear on the original termination petitions. By August 2009, the mistake had been discovered and Father was appointed counsel. The following month, CCDCS case manager Faith Jackson ("Jackson") learned Father was incarcerated at the Floyd County Jail and immediately sent him a letter notifying him of the pending termination proceedings. Father later appeared in person

and by counsel at a pre-trial conference in August 2010, at which time the trial court confirmed the termination hearing date scheduled for October 28, 2010.

On October 25, 2010, Mother filed a motion to continue the termination hearing which was denied by the trial court. At the commencement of the termination hearing on October 28, 2010, Mother renewed her motion to continue the hearing, and argument was heard. At the same time, Father also filed a motion seeking to dismiss the involuntary termination proceedings, or, in the alternative, to continue the termination hearing until such time as Father was released from incarceration and provided with an opportunity to participate in reunification services. The trial court denied both Mother's and Father's motions, and the evidentiary hearing proceeded as scheduled.

During the termination hearing, CCDCS presented abundant evidence concerning both parents' significant histories of criminal convictions, recurrent incarcerations, substance abuse, and involvement with CCDCS. CCDCS also presented evidence showing the significant trauma suffered by the children as a result of being raised in an environment where they were repeatedly exposed to physical abuse, neglect, and drug use in the family home and where they were constantly bounced between living in various relatives' homes and foster care placements over the years. Additionally, CCDCS established that both Father and Mother remained incarcerated, that neither parent had successfully completed the trial court's dispositional goals although both parents had begun to participate in some programs while incarcerated, and that Ke.T., C.T., and S.S. were living together and thriving in a pre-adoptive foster home where all their needs were being met. Although Kr.T. was residing at Childplace Residential Treatment and Foster

Care Services ("Childplace") at the time of the termination hearing in order to address his significant struggles with anger management, his behavior was improving, and he was working toward reunifying with his siblings at the relative foster home in the near future. In addition, testimony revealed that Kr.T., C.T., and Ke.T. had consistently expressed to therapists and case workers that they did not wish to be reunited with either of their parents. Fifteen-year-old Kr.T. confirmed these sentiments while testifying at the termination hearing. He also informed the trial court of his profound fear for the safety of himself and that of his siblings should they ever be returned to either parent's care.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On February 3, 2011, the trial court entered its judgment terminating both Mother's and Father's parental rights to all four children. This consolidated appeal ensued.

DISCUSSION AND DECISION

I. Abuse of Discretion/Procedural Due Process

We first consider each parent's separate contention that the trial court abused its discretion in denying their respective motions to continue the termination hearing. In making this assertion, Father directs our attention to the fact he participated in several services while incarcerated, including an in-patient substance abuse program through Richmond State Hospital, parenting classes, anger and stress management classes, as well as a vocational rehabilitation program, earning "substantial time cuts." *Appellant Father's Br.* at 7. Based on this evidence, Father contends that the trial court abused its discretion in denying his motion to dismiss or, in the alternative to continue the

termination hearing, by "disallowing [Father], after show of good cause, the ability to demonstrate his willingness and ability to assume parental duties once released from incarceration." *Id.* Similarly, Mother asserts that her motion to continue should have been granted "to allow [Mother] an opportunity to participate in services upon her release from incarceration" in order to have a "greater opportunity to comply with the [court's dispositional] [o]rders" and thus have a "stronger standing" during the termination hearing. *Appellant Mother's Br.* at 9.

The decision whether to grant or to deny a non-statutory motion to continue rests within the sound discretion of the trial court. *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. We will reverse the trial court only for an abuse of that discretion. *Id.* Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance. *J.M. v. Marion Cnty. Office of Family & Children*, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004), *trans. denied*. An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion. *Rowlett*, 841 N.E.2d at 619. No abuse of discretion will be found, however, when the moving party has not demonstrated that he or she was prejudiced. *Id.*

On appeal, Father and Mother each attempt to liken their situation to the parent in *Rowlett*. In that case, this court reversed the trial court's termination order concluding that the parent had established good cause for granting his motion to continue the dispositional hearing in order to have an opportunity to participate in reunification services offered by the Indiana Department of Child Services upon his release from

incarceration. The facts involved in the instant case, however, are easily distinguished from those in *Rowlett*.

In *Rowlett*, the parent was involved in his children's lives before removal from the family home, was subsequently incarcerated for a criminal act committed prior to the CHINS adjudication, and did not have an opportunity to participate in reunification services prior to his incarceration. Additionally, the parent successfully completed approximately 1,100 hours of intensive individual and group services offered through the correctional facility, earned twelve hours of college credit, and was enrolled in an additional eighteen hours of college courses at the time of the termination hearing. The parent also had maintained a positive and reciprocal relationship with his children while incarcerated via correspondence and telephone calls during which the children appeared happy to talk with the parent and told him they loved him. Based on these and other facts, this court determined that termination of parental rights was a "particularly harsh" result given the great interest the parent had shown in maintaining his parental relationship and the significant and positive strides the parent made toward achieving that end while incarcerated. *See id.* at 623.

Here, the facts are strikingly different. Both Father and Mother had the opportunity to participate in court-ordered reunification services and supervised visits with the children for many months prior to their respective incarcerations, yet both parents steadfastly refused to do so. Also significant, Father and Mother both became incarcerated during the underlying CHINS proceedings after committing *new* criminal offenses following the children's removal from the family home. Additionally, Father

had not seen or participated in the children's lives for several years prior to their removal from Mother's care, and Kr.T., C.T., and Ke.T. were consistently adamant that they never wanted to be returned to either parent's care.

Based on the foregoing, we conclude that the trial court did not abuse its discretion in denying the motions for continuance. Unlike in *Rowlett*, there was no showing by either parent that the grant of additional time, in and of itself, would likely aid Father or Mother in their respective efforts to reunify with the children. In addition, neither parent explains what specific evidence he or she might have proffered, nor what alternative strategy could have been employed, had the parent been afforded additional time. Rather, it appears that Father and Mother were simply requesting more time to complete services. "[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Moreover, the trial court was in a position where it could only speculate as to whether the granting of additional time, in and of itself, would likely aid either parent in their respective efforts at reunification in light of each parent's significant history of substance abuse and criminal activity, past involvement with CCDCS, and ongoing incarceration.

We have previously observed that there is a cost in delaying the adjudication of termination cases in that it imposes a strain upon the children involved and exacts "an intangible cost to their lives." *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. While continuances may certainly be necessary to ensure the protection of a parent's due process rights, courts must also be cognizant of the strain these delays

place on a child. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. Father and Mother have failed to show that they suffered any specific prejudice as a result of the trial court's denial of his or her motion to continue. The trial court's decision to proceed with the termination hearing was thus reasonable in light of the facts and circumstances before it. *See J.M.*, 802 N.E.2d at 44-45 (concluding that trial court did not abuse its discretion by denying mother's motion for continuance where mother failed to show she was prejudiced by trial court's refusal to grant motion).

II. Procedural Due Process

Next, we consider Father's assertion that he was denied due process of law during the underlying proceedings. In making this argument, Father points out that he was not named as Kr.T.'s father and did not receive copies of several CHINS and termination documents, including the Emergency Custody Order, various periodic review documents, the pre-dispositional report, dispositional decree related to Kr.T., involuntary termination petition, and the trial court's entry for the initial hearing on the termination petition. Based on these omissions, Father contends that "it is clear" the State violated his right to due process and he is therefore entitled to reversal. *Appellant Father's Br.* at 9.

When seeking to terminate a parent-child relationship, the State is bound by the requirements of the Due Process Clause of the Fourteenth Amendment to the United Sates Constitution. *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 376-77 (Ind. Ct. App. 2007), *trans. denied*. Assessing whether a parent's due process rights have been violated in a termination proceeding involves the balancing of three factors: "(1) the private interests affected by the proceeding; (2) the risk of error created

by the State's chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure." *Id.* at 377 (quoting *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002)). Father's interest in maintaining his parental rights and the State's countervailing interests in protecting the welfare of the children are both substantial. *Id.* Therefore, we must examine the risk of error created by CCDCS's actions in this case.

If a record is "replete with procedural irregularities throughout the CHINS and termination proceedings that are plain, numerous, and substantial, we are compelled to reverse a termination judgment on procedural due process grounds." *A.P. v. Porter Cnty. Office of Family & Children*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000), *trans. denied*. Such is not the case here. Although Father correctly points out that CCDCS failed to include his name on several CHINS documents, as well as the initial termination petition, it is also undisputed that Father had actual knowledge of the children's emergency removal from Mother's care in October 2007. Father admitted during the termination hearing that he had spoken with CCDCS case manager Franklin regarding Kr.T.'s situation just days after the child's removal from Mother's care. Father further admitted, however, that he never provided Franklin with any contact information and thereafter remained *incommunicado* with CCDCS and the trial court for over two years.

As for the termination proceedings, Father acknowledges he was assigned counsel in August 2009, was located by CCDCS in September 2009 at the Floyd County Jail and was thereafter immediately notified of the pending termination hearing. Father also appeared both in person and by counsel at the pre-trial conference in August 2010 as well

as the termination hearing in October 2010. Moreover, the record confirms that Father fully participated in the termination hearing by testifying about his improved conditions and desire to maintain a parental relationship with Kr.T. Father was also zealously represented by counsel, who cross-examined witnesses and presented favorable evidence concerning Father's successful participation in various programs while incarcerated. Based on the foregoing, we conclude that CCDCS's inadvertent failure to include Father's name on several documents during the CHINS and termination proceedings, although troubling, did not amount to a violation of Father's due process rights under the specific facts of this case.[3]

III. Sufficiency of the Evidence

We now turn to Mother's final contention that there is insufficient evidence to support the trial court's judgments terminating her parental rights to all four children. Initially, we note that when reviewing termination of parental rights cases, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d

[3] Mother also asserts on appeal that her due process rights were violated when, during the CHINS case, the trial court granted CCDCS's request that Mother's visits with the children be suspended while Mother remained incarcerated. In making this argument, Mother simply states that CCDCS is "required to make reasonable efforts to preserve and reunify families" according to Indiana Code section 31-34-21-5.5(b) (a CHINS statute) and then cites to a statement made by another panel of this court in a termination of parental rights case indicating that the Indiana Department of Child Services "is justified in denying visitation when it has a justifiable belief that the children will be subject to abuse." *See Castro v. State of Indiana Office of Family & Children*, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006), *trans. denied*. Mother then concludes, without further explanation, that by suspending her visitation privileges with the children during the CHINS case even though the children were "never in danger of being abused during supervised visitation," the trial court violated her substantive due process rights. *Appellant Mother's Br.* at 9.

Mother raises this procedural due process argument for the first time on appeal and fails to support her allegation with cogent argument. We therefore deem this issue waived. *See McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (stating that party on appeal may waive constitutional claim if issue is raised for first time on appeal); *see also* Ind. Appellate Rule 46(A)(8)(a) (providing that failure to support allegation of error with cogent argument and citation to authority results in waiver of appellate review).

258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the trial court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Here, in terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

The "traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or

unwilling to meet his or her parental responsibilities. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

> (B) that one (1) of the following is true:
>
> > (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
> >
> > (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]
>
> (C) that termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). Moreover, if the trial court finds that the allegations in a petition described in the above section are true, the trial court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) through (C) of the termination statute cited above.

A. Conditions Remedied/Threat to Well-Being

To properly effectuate the termination of parental rights in Indiana, the trial court need only find that one of the three requirements of Indiana Code section 31-35-2-

4(b)(2)(B) has been established by clear and convincing evidence. Here, the trial court determined that the first two elements of subsection (b)(2)(B) had been satisfied. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether CCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside of Mother's care will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making such a determination, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also consider any services offered to the parent by the county department of child services and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, CCDCS is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). In challenging the sufficiency of the evidence supporting the trial court's

termination order, Mother acknowledges that she "could not *on that day* parent the children due to her incarceration." *Appellant Mother's Br.* at 10. Nevertheless, Mother asserts she made "significant progress in complying with the prior [court] [o]rders" and "successfully completed various parenting and substance abuse programs" while incarcerated, but that the trial court erroneously "failed to consider [her] efforts to correct the conditions [that] led to the [c]hildren's removal from the home." *Id.* at 10-11.

In terminating Mother's parental rights, the trial court made extensive and detailed findings regarding Mother's significant substance abuse issues, parenting deficiencies, recurrent involvement with CCDCS, and lengthy criminal history that includes convictions "ranging from fleeing and evading police, possession of forgery device, possession of meth[amphetamine] and wanton endangerment." *Appellant Mother's App.* at 29.[4] The trial court also noted that Mother had "no involvement" with "the child[ren], the family case manager, or the trial court" before her incarceration. *Id.* at 28. The trial court went on to describe Mother as being "oppositional regarding participating in services," and further found that Mother had refused to comply with the trial court's orders to participate in a substance abuse evaluation, submit to random drug screen requests, take part in parenting classes, undergo psychological testing, and maintain weekly contact with CCDCS. *Id.*

[4] For clarification purposes we note that in terminating Father's and Mother's parental rights to the children, the trial court issued separate termination orders for each child. Although there are some differences in the trial court's findings as they apply to each specific child, the majority of the findings and conclusions are substantially the same and/or rely upon the same underlying facts. We therefore shall cite to only one of the termination orders throughout this opinion, unless it becomes necessary to do otherwise.

Although the trial court acknowledged that Mother had participated in some parenting and substance abuse classes while incarcerated, it nevertheless determined that there "was no evidence presented to show what, if any, improvement [Mother] reached [(sic)] from her services while incarcerated." *Id.* at 30. Additionally, the trial court specifically found Mother had failed to "complete[] services to remedy the condition that caused the removal," to provide the children with "any type of stability," and that her "lack of effort, lack of participation[,] and lack of progress" made it "impossible for the child[ren] to return to the home." *Id.* at 31. Based on these and other findings, the trial court concluded as follows:

> 7. [CCDCS] has offered reasonable services to [Mother] in order to reunite [Mother] with the child[ren].
> 8. [Mother] has not had consistent involvement with services.
> 9. [Mother] has completed some services while she has been incarcerated, however, she has failed to complete all services.
> 10. [Mother] has a habitual pattern of criminal activity that has prevented her from being able to care, provide for, or be involved in the child[ren's] li[ves].
>
> * * *
>
> 12. [Mother] has willfully engaged in criminal activity, which has negatively impacted her ability to raise and care for the child[ren].
>
> * * *
>
> 15. [Mother] has a habitual pattern of neglect and abuse.
> 16. [Mother] has not provided a safe, stable environment for the child[ren].
> 17. It is highly probable that the conditions which resulted in the removal of the child[ren] will not be remedied by [Mother].

Id. at 37-38. Our review of the record leaves us convinced that ample evidence supports the trial court's findings cited above.

Mother's ability to provide the children with a safe and stable home environment had actually worsened since their removal, rather than improved, due in large part to the

fact Mother was incarcerated. At the time of the termination hearing, Mother's earliest possible release date was not for approximately six more months, thereby rendering her completely unavailable to care for the children at the time of the hearing. Additionally, Mother's significant history of criminal activity and unresolved substance abuse issues made it impossible for the trial court to predict if and/or when Mother might be able to regain custody of the children following her release. Mother's recurrent neglectful and/or abusive conduct in caring for the children despite a wealth of services available to her over the years through multiple CHINS and IA cases, lends further support to the trial court's determination that it is "highly probable the conditions which resulted in the removal of [the children] will not be remedied by [Mother]." *Id.* at 38. Finally, CCDCS family case manager Jackson's testimony supports the trial court's finding that there was no real evidence Mother had actually benefitted from the programs she participated in while incarcerated.

When asked whether the "issues that led to removal" had been remedied by Mother, CCDCS family case manager Jackson answered, "[N]ot to my knowledge." *Tr.* at 121. Jackson further testified that the fact Mother participated in some counseling and earned certificates of completion for her participation in at least two substance abuse classes while incarcerated did not, standing alone, prove Mother had improved her ability to parent the children, but rather only established she "has done some services while incarcerated." *Id.* at 135. In addition, Jackson acknowledged that "incarceration [was not] new for either parent," that both parents had been "given opportunities before to get

out of jail and do services" and "turn their life around," but that "neither parent has taken advantage of that." *Id.* at 149.

Mother's own testimony also supports the trial court's findings. When asked, "Isn't it fair to say that you've been offered numerous chances through [CCDCS] and the Court system to engage in services to be a better parent," Mother replied, "Yes, Ma'am." *Id.* at 201. When further questioned, "And isn't it true that as of today, . . . you cannot parent your . . . children," Mother replied, "Not while incarcerated." *Id.* at 202.

As noted above, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Here, in addition to being unavailable to care for the children for at least six months after the termination hearing due to her incarceration, Mother has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show she is capable of overcoming her substance abuse issues, improving her parenting skills, and refraining from criminal activities in order to provide the children with the safe, stable, and drug-free home environment that they need. This court has repeatedly recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*. Based

on the foregoing, we conclude that the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal from Mother will not be remedied is supported by clear and convincing evidence. Mother's assertions to the contrary amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 265.

B. Best Interests

Mother also asserts that CCDCS failed to prove that termination of her parental rights is in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

In addition to the findings previously cited, the trial court made many additional findings pertaining to the best interests of the children. Specifically, the trial court found that, prior to their removal, the three older children had witnessed Mother "engaging in drug use and drug deals," "being abused by boyfriends," and had also observed "numerous men coming in and out of the home." *Appellant Mother's App*. at 46. In addition, the trial court's findings acknowledged Kr.T.'s "valid fear that he will end up like [Mother], addicted to drugs and in and out of jail, if he is reunified with [Mother]," as well as the child's "fears for the safety of his young siblings if they are placed with

[Mother]." *Id.* The trial court also specifically found Mother had failed to provide the children with "any type of stability" in the past, failed to show she had "learned the skills to provide a stable life for the child[ren]" in the future, and that Mother's "continual lack of compliance with the law, and continuing incarceration poses a threat to the well-being of the [children]." *Id.* at 50.

As for the children, the trial court found that there was a "very strong bond" between the siblings, as well as between the children and their relative, pre-adoptive foster care family. *Id.* at 32. The trial court further observed that the older three children continued to struggle with "a lot of anger" directed toward Mother, and that Mother had "failed to acknowledge or take steps to fix" these issues. *Id.* at 33. Additionally, the trial court's findings indicate that the "core causes" of the older children's behavioral and emotional issues have been "their lives with [Mother]," and that if S.S. were returned to Mother's care the "same issues would be thrust upon this child." *Id.* at 34. Moreover, the trial court acknowledged in its findings that Kr.T., C.T., and Ke.T. were "very clear that they do not want to go back with [Mother]," and further found that "[t]his is something the therapist has rarely seen, as usually a child, no matter how bad the abuse has been, will want to return home." *Id.* Finally, the trial court determined that continuation of the parent-child relationship would be "harmful" to the children because, if they were returned to Mother's care and she again failed to "provide appropriate care," the children's "physical, mental, and/or social development would be seriously impaired" and any "progress made in treatment would be eliminated." *Id.* at 51. Based on these and other findings, the trial court concluded:

> 26. The child[ren's] exposure to drug use, domestic violence, and other adult issues in the home were very harmful and damaging to the child[ren]. The ones, [their] parents, who were supposed to protect and care for [the children] were unable to do so.
>
> 27. It is not foreseeable that the child[ren's] welfare will be best served by continuation of the parent-child relationship.
>
> 28. It is in the best interest[s] of the child[ren] and [their] health, welfare, and future[s] that the parent-child relationship[s] . . . between the child[ren] and [Mother] be forever and absolutely terminated.

Id. at 35. These findings and conclusions, too, are supported by the evidence.

In recommending termination of Mother's parental rights, therapist Chris Rakestraw ("Rakestraw") informed the trial court that he believed it would be "very detrimental" to the children's "emotional well-being" to be returned to either parent's care. *Tr*. at 66. Rakestraw further explained that he did not recommend termination of parental rights "freely or easily," but that in this particular case, he believed that "termination would be the right thing at this point," because the children had a "chance here to move on in their lives and . . . to be happy, well[-]adjusted kids." *Id.* at 67-68. Rakestraw further cautioned that "the longer we . . . go through the turmoil of deciding this, the longer the kids will . . . [be in] turmoil themselves." *Id.* at 68.

CCDCS case manager Jackson likewise recommended termination of Mother's parental rights as being in the children's best interests, stating all four children "need permanency" and that even though the children were currently in relative placement, they remained "kind of in limbo, [Kr.T.], especially, being at Childplace . . . and they don't know if . . . they are going back with mom and dad, or if . . . where they call home now, is it really, truly going to be their permanent home." *Id.* at 121-22.

Based on the totality of the evidence, including Mother's significant history of substance abuse, criminal activities, ongoing incarceration, and current inability to provide the children with a safe and stable home environment, coupled with the testimony from Rakestraw and Jackson recommending termination of the parent-child relationships, we conclude that there is sufficient evidence to support the trial court's determination that termination of Mother's parental rights to Kr.T., C.T., Ke.T., and S.S. is in all four children's best interests. *See, e.g.*, *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of court-appointed advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

This court will reverse a termination of parental rights '"only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made."' *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAKER, J., and BROWN, J., concur.