MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

G.H. and I.M. (Minor Children),

and

T.H. (Mother) and K.M. (Father),

Appellants-Respondents,

v.

October 14, 2021

Court of Appeals Case No. 20A-JT-2219

Appeal from the Madison Circuit Court

The Honorable G. George Pancol, Judge

Trial Court Cause Nos. 48C02-2004-JT-79, 48C02-2004-JT-80

Indiana Department of Child Services,

Appellee-Petitioner.

Altice, Judge.

Case Summary

[1] T.H. (Mother) and K.M. (Father) (collectively, Parents) appeal the termination of their parental rights as to their minor children, G.H. and I.M. (collectively, Children). Parents challenge several specific findings that the juvenile court entered in the order, claiming that those findings were not supported by the evidence. Parents also contend that the evidence was insufficient to support the termination order because the Indiana Department of Child Services (DCS) failed to establish that the conditions resulting in Children's removal from their care would not be remedied, or that continuation of the parent-child relationship poses a threat to Children's wellbeing.

[2] We affirm.

Facts and Procedural History

[3] In 2018, Parents and Children were living together in an Elwood residence. In December 2018, DCS became involved with the family after receiving reports about the living conditions in the home. At the time, G.H. was about eighteen months old and I.M. was three years old. When DCS personnel arrived, they noticed feces in various places throughout the residence and on Children. There was also evidence of cockroaches, bedbugs, and lice in the house, and it was determined that Children had been left unattended in rooms without parental supervision. As a result, Children were removed from Parents' care because of the deplorable conditions in the residence and Parents' refusal or inability to provide Children with necessary care and supervision. Although Children were initially placed with relatives, they were quickly removed from that situation and placed in foster care after it was learned that the relatives permitted a registered sex offender to have access to Children.

[4] DCS filed a petition on December 20, 2018, alleging that Children were in need of services (CHINS). The juvenile court adjudicated Children as such on January 2, 2019, at which time Parents admitted that they had "issues with parenting and housing." *Appellants' Appendix Vol. II* at 12, 33. Parents also struggled with addiction and mental health issues, and it was determined that Children suffered from developmental and speech delays as well as physical issues that limited their mobility.

[5] Parents were ordered to participate in various services offered through DCS including individual and family counseling. Parents were also directed to visit

Children on a regular basis, participate in homebased services, submit to random drug screens, and undergo psychological evaluation.

[6] On June 12, 2019, the juvenile court conducted a review hearing and found that Parents were homeless. It was also established that Parents had failed to participate in most of the DCS services and were uncooperative with DCS staff and personnel regarding various counseling and therapy appointments and visits with Children.

[7] At a subsequent hearing on August 14, 2019, the juvenile court found that Parents only sporadically visited with Children, and that Mother appeared at a child and family team meeting under the influence of drugs. Mother tested "drug positive" in eighteen out of twenty-four drug screens. *Appellants' Appendix Vol. II* at 34. Father, who had obtained his own residence, only submitted to seven drug tests and three were positive for methamphetamine or THC. Following that hearing, the juvenile court modified the dispositional decree to include adoption in the permanency plan for Children.

[8] On November 27, 2019, the juvenile court held a permanency hearing and determined:

> That the court ordered Parents to participate in a substance abuse assessment and to follow all recommendations, random drug screens, parenting assessment, home based therapy, casework, and supervised visitation.
>
> Parents have not complied with Children's case plan.

> Mother refused to go to Aspire and her services there have been closed.
>
> Mother is not willing to look for appropriate housing.
>
> Mother had not been submitting to drug screens.
>
> Mother stopped visiting Children in August, and had seen Children only once since that time.
>
> Father completed an intake with Aspire for substance abuse, but was inconsistent with services and the referral remains open.
>
> Father found housing.
>
> Father stated he wishes for Children to be adopted and is willing to sign a consent for adoption.
>
> Father has not visited Children for seven weeks.

Exhibits 18, 19, 41, 42.

[9] Parents made little progress and they continued to be uncooperative with DCS staff and noncompliant with the court-ordered services and programs. In fact, Parents were "closed out" of various services because of their failure to participate. *Appellants' Appendix Vol. II* at 33. Father quit homebased case management after deciding that "it was too much." *Id.* at 34. Father also failed to complete a psychological evaluation and he continued to abuse methamphetamine and THC.

[10] On April 30, 2020, DCS filed petitions to terminate Parents' rights as to Children. A final hearing was conducted on the petitions on September 28, 2020. At the hearing, the family case managers testified[1] that Parents were noncompliant with the services that were offered and that Mother only visited twice with the children after July 2019. The caseworkers further testified that Mother's residence was infested with insects during home visits. Although Father had obtained employment and was maintaining his own residence, Father ceased visitation with Children in November 2019. The evidence further showed that Children had bonded with foster parents.

[11] It was also established that Parents stopped participating in counseling and therapy sessions, failed to keep appointments with service providers, and did not cooperate with DCS personnel. Parents continued to test positive for illegal substances, and Father admitted being an alcoholic and drinking on a regular basis. Although Father attended alcoholics anonymous meetings on occasion, he stopped because of anxiety issues. At some point, Father decided that he no longer wanted to be a parent and, therefore, stopped participating in all services. Father also agreed that Children should be adopted and executed an adoption consent form.

[12] Mother testified that she "gave up" on services and felt "hopeless" because of her depression, post-traumatic stress syndrome, and anxiety. *Id.* at 35. She was

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[1] On January 4, 2021, the Madison County Court reporter filed notice that the recording of the hearing could not be located. Thereafter, on May 10, 2021, the parties filed an agreed statement of the evidence.

concerned about her ability to care for Children and executed an adoption consent form.

[13] DCS caseworkers and managers testified that termination of parental rights and adoption were in Children's best interests. The caseworkers believed that Parents could not remedy the reasons for Children's removal because neither parent completed DCS-offered services, they stopped visiting Children, and they agreed to adoption.

[14] It was also established that Children were "flourishing" in foster care and had made "significant progress on their academic and emotional delays." *Id.* at 7. DCS caseworkers agreed that Children's current foster care arrangement was "appropriate," and that adoption of Children by the foster parents was a satisfactory plan. *Id.* at 34.

[15] The juvenile court terminated Parents' rights as to Children on October 30, 2020, and issued the following order in relevant part:

FINDINGS OF FACT

> 5.) The child's mother and father have failed to participate in or successfully complete any court ordered services designed to address their parenting deficiencies. The mother has refused to comply with services designed to help improve her mental health. Mother is no closer to the completion of services at this time then [sic] she was at the beginning of this case. At trial, mother admitted that she was not mentally able to care for the children and that she had previously and voluntarily signed consents to having her children adopted (Exhibit E, admitted without objection). The father was referred for services, and did

participate in some of the services ordered by the court, but not to the extent that would allow him to care for the children. In November of 2019, father admitted to the DCS caseworker that he was both unwilling and unable to care for the children and did knowingly and voluntarily sign a consent for their adoption (Exhibit F Admitted without objection). The parents failed to perform services throughout the life of the CHINS proceedings through to the date of the termination hearing. As of the termination of parental rights hearing, neither parent has the means to provide even the basic of necessities to care for the children.

6.) The children have flourished in their current placement, a retired teacher and a physician, with [G.H.] overcoming his physical delays and both children making significant progress on their academic and emotional delays.

7.) The Family Case Manager and CASA believe it would be in the best interest of the child[ren] for the Court to grant the Petition and to terminate the parent-child relationship. The Court finds these opinions to be accurate and adopts them as its own as found facts for purpose of these proceedings. The Court also finds as fact that the plan for Adoption for the children is a satisfactory plan for the children's permanency and for all statutory purposes in these termination proceedings.

8.) The mother and father's lack of interest in the children's life, as demonstrated by the lack of participation in reunification services, lack of contact with the child[ren], continued substance abuse, and lack of participation in these court proceedings, constitutes clear and convincing evidence of the reasonable probability that the conditions which resulted in the removal of the children and reasons for the continued placement of the children outside the parents' home will not be remedied, and that continuation of the parent-child relationship poses a threat to the children's well-being.

9.) There is a satisfactory plan for the permanency of the children, that being adoption.

. . .

CONCLUSIONS OF LAW

6.) There is a reasonable probability that the continuation of the parent-child relationship between the parents and [the children] poses a threat to the well-being of the children.

7.) There is a reasonable probability that the conditions that resulted in the children's removal from and continued placement outside the care and custody of the parents will not be remedied.

8.) Termination of the parent-child relationship between the parents and the minor children is in the best interests of the children.

9.) The plan of DCS for the care and treatment of the children, that being adoption of the children, is acceptable and satisfactory.

Appellant's Appendix Vol. II at 11-16.

[16] Parents now appeal.

DISCUSSION AND DECISION

I. Standard of Review

[17] We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Off. of Fam. & Child.,* 839 N.E.2d 143, 147 (Ind. 2005). A parent's interest in the care, custody, and control of his or her children is "perhaps the oldest of the fundamental liberty interests." *Id.* However, parental rights "are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Id.* If parents are "unable or unwilling to meet their parental responsibilities," termination of parental rights is appropriate. *Id.* We recognize that the termination of a 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).

[18] We rely on a deferential standard of review in cases concerning the termination of parental rights due to the trial court's "unique position to assess the evidence." *In re A.K.,* 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed.* We neither reweigh evidence nor assess the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.,* 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court's judgment. *Id.*

[19] Relevant here is Ind. Code § 31-35-2-4(b)(2)(B), which provides that before terminating a parent's rights to his or her child, DCS must prove:

(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 [CHINS];

(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.

[20] DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.,* 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). "[C]lear and convincing evidence requires the existence of a fact to be highly probable." *Id.*

II. Parents' Claims

A. Challenge to Specific Findings

[21] Parents first claim that several findings that the juvenile court made were not supported by the evidence. Thus, Parents contend that those finding were clearly erroneous, and the termination order must be set aside.

[22] We note that a factual finding is clearly erroneous when there are no facts in the record or inferences to be drawn that support the finding. *In re S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). Even when a factual finding is clearly

erroneous, however, we will not reverse if the other findings of fact support the trial court's conclusions. *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), *trans. denied*. We may reverse the trial court's judgment only if its findings constitute prejudicial error. *Id.* A finding of fact is not prejudicial to a party unless it directly supports a conclusion. *See id.* (observing that because there was evidence sufficient to support the trial court's ultimate findings on the elements necessary to sustain the judgment, the erroneous finding was merely harmless surplusage that did not prejudice the complaining party and was not grounds for reversal).

[23] In this case, Parents claim that the termination order cannot stand because the juvenile court's finding number three that the "home was covered in feces *and urine*" was not supported by the evidence. *Appellants' brief* at 9 (emphasis added). Although Parents correctly point out that the record does not state that there was urine in the residence, the Court Appointed Special Advocate's (CASA) report noted that the family home had "feces on the living room floor" and there was "feces smeared on" Children and Children "smell[ed] strongly of feces." *Appellants' Appendix Vol. II* at 28–29. In our view, CASA'S statement supported Children's initial removal from the residence due to the deplorable conditions that were reported. Simply put, absence of the "word" urine in the record amounts to "harmless surplusage" that does not require reversal of the termination order. *See In re B.J.*, 879 N.E.2d at 20.

[24] Parents also challenge finding five, to the extent it states only that Parents signed consents for Children to be adopted rather than specifying that the

consents were for adoption "only by Maternal Grandparents." *Appellants' Brief* at 10. However, there was nothing to suggest that Parents' consent to adoption was conditioned upon adoption only by maternal grandparents. Parents both stated to DCS caseworkers that they wanted Children to be adopted because they were concerned about their ability to adequately parent Children. In short, Parents have failed to show that this finding was clearly erroneous.

[25] Parents next claim that another portion of finding number five that "mother admitted that she was not mentally able to care for the children," *Appellants' Appendix Vol. II* at 12, was erroneous because Mother only acknowledged that she was "concerned" about her ability to care for Children. *Appellants' Brief* at 10. Specific wording aside, Mother's testimony that she had "given up" and felt "hopeless," certainly created the reasonable inference that she did not believe that she was able to care for Children. *Appellants' Appendix Vol. II* at 35. Moreover, Mother's decision to consent to adoption supports such a finding.

[26] Parents also attack the part of finding five that pertained to Father that states "In November of 2019 father admitted to the DCS case worker that he was both unwilling and unable to care for the children and did knowingly and voluntarily sign consents for their adoption." *Appellants' Appendix Vol. II* at 13. Parents assert that there is no indication Father said he was unable or unwilling to care for Children. Further, Parents maintain that it is not clear from the record whether Father made this statement prior to obtaining housing and finding employment.

[27] Although the agreed statement of evidence does not reflect that Father expressly told DCS personnel that he was unable or unwilling to parent Children, the case manager testified at the termination hearing that Father wished for Children to be adopted. Moreover, it was established that immediately after Father expressed that desire, he ceased all visits with Children. Thus, the finding is largely supported by the evidence and is not clearly erroneous.

[28] Finally, Parents claim that the remainder of finding number five stating that "neither parent has the means to provide even the basic of necessities to care for the children" is erroneous because Father had found adequate housing and was employed at the time of the termination hearing. *Id.* Although the evidence showed that Father had in fact obtained housing and was employed at the time of the termination hearing, reversal is not warranted because the other evidence presented at the hearing and remaining findings support the termination order. In other words, even though this finding may have been erroneous, it was not the sole support for any conclusion of law that was necessary to sustain the judgment. *See In re B.J.*, 879 N.E.2d at 20. As will be discussed below, the other circumstances and evidence presented at the termination hearing—even absent this finding—supported the juvenile court's judgment. Thus, we decline to set aside the termination order on this basis. *See, e.g., Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015) (recognizing that this court will affirm if the unchallenged findings support the judgment), *trans. denied*.

B. Conditions Not Remedied

[29] Parents argue that DCS failed to prove by clear and convincing evidence that the conditions that resulted in Children's removal and continued placement of Children outside their care would not be remedied, and that DCS failed to show that continuation of the parent-child relationship poses a threat to Children's wellbeing. Thus, Parents contend that the termination order must be set aside.

[30] Before proceeding to the merits of Parents' arguments, we note that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. That is, DCS must prove there is a reasonable probability that the conditions that resulted in Children's removal will not be remedied, *or* the continuation of the parent-child relationship poses a threat to Children's well-being, *or* children have been adjudicated CHINS on two separate occasions. I.C. § 31-35-2-4(b)(2)(B)(i)–(iii). Therefore, the juvenile court need only find that one of the three elements was proven by clear and convincing evidence. *K.E.,* 39 N.E.3d at 646 n.4. Here, the juvenile court found that DCS proved the statutory of I.C. § 31-35-2-4(b)(2)(B)(i) and (ii) by clear and convincing evidence.[2] Thus, we begin our analysis by addressing Parents' contention under subsection (i) of the statute—that DCS failed to prove there is a reasonable probability that the conditions that resulted in Children's removal will not be remedied.

[2] The juvenile court made no finding as to whether Children had been adjudicated CHINS on two separate occasions.

[31] When examining this issue, we engage in a two-step process. *K.T.K.,* 989 N.E.2d at 1231. First, we ascertain what conditions led to Children's placement and retention in foster care, and second, whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[32] In the second step, the juvenile court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *E.M. v. Ind. DCS*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). In judging fitness, the juvenile court may properly consider, among other things, a parent's substance abuse and lack of adequate housing and employment, and a parent's failure to respond to services offered by DCS. *In re N.Q.,* 996 N.E.2d 385, 392 (Ind. Ct. App. 2013); *McBride v. Monroe Co. v. OFC,* 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. *Lang v. Starke Co. OFC,* 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In other words, while trial courts must give due regard to changed conditions, they are not precluded from finding that a parent's past behavior is the best predictor of their future behavior. *In re E.M.,* 4 N.E.3d at 644-45. "We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before

termination." *Id.* at 643. Additionally, a parent's failure to visit with his or her child demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship. *Lang,* 861 N.E.2d at 372.

[33] We further note that the juvenile 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." *Stone v. Daviess Cnty. Div. of Children & Family Servs.,* 656 N.E.2d 824, 828 (Ind. Ct. App. 1995). Furthermore, "[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." *K.T.K.,* 998 N.E.2d at 1230.

[34] In this case, the evidence established that DCS removed Children from Parents' care in December 2018, due to the deplorable conditions of the home. DCS personnel observed that Children's diapers had not been "regularly changed," and that feces were present on Children and in various places throughout the residence. *Appellants' Appendix Vol. II* at 33. Additionally, Parents consistently struggled with "substance abuse issues" and were unable to maintain appropriate living conditions for Children. *Id.* at 12. Although Mother initially participated in some of the DCS services, she failed to complete any of those programs. Mother also refused to undergo a court-ordered psychological assessment. Throughout the pendency of the proceedings, Mother's residence remained infested with "bed bugs, lice, and cockroaches." *Id.* at 33. Father

also was noncompliant with individual and family counseling and homebased case management, and he did not complete psychological evaluation.

[35] Parents tested positive for drugs throughout the pendency of the case, and they seemed focused on adoption rather than participating in DCS services and working toward reunification.

[36] Given this evidence, we agree with the juvenile court's conclusion that there is a reasonable probability that the conditions that resulted in Children's removal will not be remedied because of Parents' failure to address their substance abuse, housing, and other parental deficiencies, along with their lack of interest in continuing to parent Children. Thus, based on the foregoing, we conclude that DCS presented sufficient evidence to support the juvenile court's termination order. [3]

[37] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.

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[3] Because I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS needed to prove only one of the requirements of subsection (B). As we have concluded that DCS presented sufficient evidence of a reasonable probability that the conditions resulting in Children's removal from Parents' care would not be remedied pursuant to I.C. § 31-35-2-4(b)(2)(B)(i), we need not address whether there is sufficient evidence that continuation of the parent-child relationship posed a threat to Children as set forth in subsection (ii) of the statute. *See A.D.S. v. Ind. Dep't of Child Serv.,* 987 N.E.2d 1150, 1158 n.6 (Ind. Ct. App. 2013), *trans. denied.*