

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-Child Relationship of:

K.G. (*Minor Child*)

and

S.D. (*Mother*) & D.G. (*Father*),

*Appellants-Respondents,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner,*

September 17, 2021

Court of Appeals Case No.  
21A-JT-397

Appeal from the Wayne Superior  
Court

The Honorable Darrin M.  
Dolehanty, Judge

Trial Court Cause No.  
89D03-2006-JT-17

**Robb, Judge.**

## Case Summary and Issue

- [1] S.D. (“Mother”) and D.G. (“Father”) jointly appeal the involuntary termination of their parental rights to K.G. (“Child”). Parents raise one issue for our review, which we restate as whether sufficient evidence supported the termination of their parental rights. Concluding that clear and convincing evidence supports the termination, we affirm.

## Facts and Procedural History

- [2] Father and Mother (collectively, “Parents”) are the biological parents of Child, born on April 4, 2018. The facts most favorable to the juvenile court’s judgment reveal that on the date of Child’s birth, the Indiana Department of Child Services (“DCS”) received a report that Child was born drug exposed. DCS developed a Program of Informal Adjustment (“I.A.”) to provide services for Parents, and on May 14, the juvenile court approved the I.A. and ordered Parents to participate in the program for a period of six months. Under the I.A., Parents were referred for services that included case management (to aid Parents in securing housing and a stable source of income) and substance abuse assessment and treatment, and were required to submit to random drug screens. On October 11, the juvenile court extended the I.A. period for an additional three months. However, with the exception of limited participation in inpatient

rehabilitation and submitting to drug screens, Parents largely failed to take advantage of or participate in the prescribed services.

[3] During the I.A. period, Parents admitted to using methamphetamine and continued to test positive for illegal drug use. Syringes and paraphernalia from methamphetamine use were found in Parents' home. Mother underwent inpatient substance abuse treatment on September 21, 2018, but did not complete the program. She missed several group sessions and left the treatment facility on October 12. Parents also admitted to engaging in acts of domestic violence while caring for Child. On October 29, Child was removed from Parents' home on an emergency basis, due to allegations of abuse and neglect, and placed in relative care.<sup>1</sup>

[4] On October 31, 2018, DCS filed a petition alleging that Child was a child in need of services ("CHINS"). That same day, the juvenile court held the initial and detention hearing. However, Parents did not appear for the hearing because the address listed for Parents on the CHINS petition was incorrect. The court then set an "additional initial hearing" for November 14, so that Parents could be properly served with the CHINS petition. Volume of Exhibits, Volume I, Exhibit 7 at 18. Despite Parents' absence, the court heard evidence, and at the conclusion of the hearing, the court determined that it was in Child's best interests that she be removed from Parents' home; it would be contrary to

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<sup>1</sup> The I.A. was discharged on February 13, 2019.

Child's welfare to return her to Parents' home; reasonable efforts were made to prevent Child's removal from Parents; and Child should be made available for daily supervised parenting-time sessions so long as Parents remained drug-free.

[5] On November 14, the juvenile court held the additional initial hearing. The court informed Parents of matters required by statute<sup>2</sup> and modified the parenting-time schedule from daily to two or three days each week. On December 5, another hearing was held, and the juvenile court adjudicated Child a CHINS. Mother admitted that she would benefit from case management, substance abuse treatment, and domestic violence counseling. Father admitted that he had a substance abuse problem that impacted his ability to provide Child with food, shelter, and supervision and that he needed substance abuse treatment and anger management classes.

[6] The juvenile court issued a dispositional order as to Mother on January 3, 2019, and as to Father on January 16, 2019, inclusive of a parent participation plan which directed Parents to do, among other things, the following: (1) “[c]ontact the Family Case Manager [(“FCM”)] every week to allow the [FCM] to monitor compliance with [the CHINS] matter”; (2) “[n]otify the [FCM] of any changes in address . . . within five (5) days of said change”; (3) “[k]eep all appointments with any service provider, DCS, or CASA”; (4) “[m]aintain

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<sup>2</sup> The juvenile court advised Parents of the material allegations of the CHINS petition, the rights of Child and Parents, Parents' right to be represented by counsel, the dispositional alternatives available to the court if Child was adjudicated a CHINS, the potential for parental participation, the consequences for failure to comply with the court's orders, and the possible financial responsibility of Parents.

suitable, safe and stable housing”; (5) “[n]ot use, consume, manufacture, trade, distribute or sell any illegal controlled substances” and “[o]nly take prescription medications for which a valid and current prescription exists”; (6) “[c]omplete a substance abuse assessment and follow all treatments and successfully complete all treatment recommendations developed as a result of the substance abuse assessment”; (7) “[s]ubmit to random drug screens”; (8) “[a]ctively participate in, cooperate with, and successfully complete all recommendations as a result of any domestic violence assessment(s)/programs”; and (9) “[a]ttend all scheduled visitations with [Child.]” Vol. of Exs., Vol. 1, Ex. 10 at 27-29. The permanency plan was reunification.

[7] A periodic review hearing was held on April 29, 2019. The permanency plan remained reunification. Six months later, on October 23, a permanency and periodic review hearing was held. The permanency plan was modified to adoption.

[8] On February 24, 2020, the juvenile court held a “[s]how cause” hearing, following which Mother and Father were found to be in indirect contempt for failure to comply with the requirements of the dispositional orders. Vol. of Exs., Vol. 1, Ex. 14 at 46. Mother admitted that she completed a substance abuse assessment but failed to participate in the services recommended as a result of the assessment. Mother also admitted that she had failed to attend parenting-time sessions on November 26, December 3, December 5, and December 13, 2019. Father admitted that he failed to participate in the services that were recommended as a result of his substance abuse assessment.

- [9] On April 28, 2020, the juvenile court held a subsequent permanency and periodic review hearing. Mother and Father failed to appear for the hearing. On April 30, the juvenile court changed the permanency plan to termination of parental rights and adoption.
- [10] On June 22, 2020, DCS filed its Verified Petition for Involuntary Termination of Parent-Child Relationship, requesting that the juvenile court terminate Parents' parental rights as to Child. On June 23, 2020, a court appointed special advocate ("CASA") was appointed for Child. The initial hearing for Mother was held on August 24, 2020. Father's initial hearing was held on September 14, because he was hospitalized shortly before the August 24 hearing began and was unable to attend. The factfinding hearing for the termination ("TPR hearing") was held over three days—October 27, 2020, November 18, 2020, and January 27, 2021. On January 29, 2021, the juvenile court issued findings of fact and conclusions thereon and terminated Parents' parental rights as to Child.<sup>3</sup> Mother and Father now appeal. Additional facts will be provided as necessary.

## Discussion and Decision

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<sup>3</sup> We commend the juvenile court on its thorough findings of fact and conclusions thereon, which greatly aided in our determination of this case.

## I. Standard of Review

[11] Although we acknowledge that the parent-child relationship is “one of the most valued relationships in our culture,” we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotations omitted). The involuntary termination of one’s parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to his or her children. *See In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. As such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating one’s parental rights is not to punish the parent, but rather to protect the child. *Id.*

[12] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the trial court’s unique position to assess the evidence, we will set aside its 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; cert. denied*, 534 U.S. 1161 (2002). Thus, if the evidence and inferences support the decision, we must affirm. *Id.*

[13] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester*, 839 N.E.2d at 147. 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). A judgment is clearly erroneous only if the findings do not support the court’s conclusions or the conclusions do not support the judgment thereon. *Id.*

## II. Statutory Requirements

[14] “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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008).

[15] For our purposes, to terminate a parent-child relationship, DCS must have alleged and proven by clear and convincing evidence:

(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[; or]

\* \* \*



(iii) The child has been removed from the parent and has been under the supervision of a local office 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[; or]

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child[;]

\* \* \*

(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). “[I]f the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a) (emphasis added).

### III. Sufficiency of the Evidence

[16] Parents challenge the sufficiency of the evidence supporting the juvenile court’s findings as to subsection (b)(2)(B) of the termination statute cited above, that is, remedy of conditions resulting in removal. *See* Ind. Code § 31-35-2-4(b)(2)(B). Parents also challenge whether termination was in the best interests of Child. We note that Parents do not challenge any of the juvenile court’s findings; therefore, we accept the findings as true. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied*. Instead, Parents argue that “the [juvenile] court’s failure to acknowledge additional facts erroneously led the [juvenile] court to the conclusions that: the reasons for original removal had not been remedied and that the best interests of [Child] were served by terminating the parent[-]child relationship.” Brief of Appellants at 8. Therefore, they argue “DCS failed to prove by clear and convincing evidence that the parent-child relationship should be terminated.” *Id.*

#### A. Remedy of Conditions Resulting in Removal

[17] First, we address Parents’ argument that there was not sufficient evidence to support the juvenile court’s conclusion that the circumstances leading to Child’s removal would not be remedied. Parents maintain that had the juvenile court considered the following “additional facts,” the court would not have terminated their parental rights:

- “Mother’s consistent efforts to become abstinent from substance use”;

- “Mother met with her caseworker for treatment on several occasions”;
- Mother “completed [inpatient] treatment from September 21 through October 12, 2018[,]” and “attended therapy for two months in the summer [of] 2019”;
- in 2020, Mother began attending a substance abuse recovery center three times each week;
- Father was participating in substance abuse recovery services as well as therapy sessions;
- Mother and Father “both have a place to stay” until they can find permanent housing; and
- the “COVID[-19] pandemic contributed to Father’s ongoing homelessness.”

*Id.* at 12-14.

[18] In deciding whether the conditions that resulted in a child’s removal will not be remedied, a juvenile 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*. It must evaluate the parent’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *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. Off. of Fam. & Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*.

[19] The juvenile court also may consider, as evidence of whether conditions will be remedied, the services offered to the parent by DCS, and the parent's response to those services. *Id.* at 1252. A juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). A pattern of unwillingness to deal with parenting problems and to cooperate with counselors and those providing social services, in conjunction with unchanged and unacceptable home conditions, will support a finding that there exists no reasonable probability that the conditions will change. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990).

[20] Here, the juvenile court's findings show that Child remained in relative care due to Parents' lack of stable housing, lack of income, continued drug use, and failure to comply with required services. We, therefore, find that the testimony presented at the TPR hearing supports the juvenile court's findings and the court's ultimate conclusion that the conditions resulting in the Child's removal would not be remedied.

[21] DCS's involvement began in April 2018 because Child was born with Suboxone in her system. During the I.A. period, DCS made referrals for Parents to receive inpatient and outpatient substance abuse treatment as well as services to

help them obtain and maintain housing and a stable source of income. However, Parents were largely unsuccessful in their participation. Mother entered an inpatient substance abuse rehabilitation program through Volunteers of America (“VOA”) but left the facility before she completed the program. Parents admitted to using methamphetamine, and drug paraphernalia was found in their home. During the I.A. period, Parents continued to test positive for illegal drug use. Parents also admitted to engaging in acts of domestic violence. DCS removed Child from Parents’ home in October 2018 due to allegations of abuse and neglect and placed Child in relative care, where Child has remained while the case has been ongoing.

[22] Over the course of the underlying CHINS case, Parents have consistently failed to participate in services. They have continued to use illegal substances and have been unable to secure housing and a stable income. Lydia Samaan, an FCM with DCS, worked with Mother from April 2018 until May 2020. At the TPR hearing, FCM Samaan testified that Mother was unable to obtain social security income (“SSI”). She further testified that Parents’ housing situation was tenuous. Parents had a home during the I.A. but were evicted and became homeless from March through October 2019. In December 2019, Father was able to secure an apartment for himself and Mother; however, Parents were evicted from the apartment in February 2020 because Father was unable to pay the rent. After the eviction Parents did not provide FCM Samaan with a permanent address. Mother told the FCM that “she had been moving around friends [sic] and family [sic] houses.” Transcript of Evidence, Volume II at 155.

[23] Regarding Mother's participation in substance abuse treatment, FCM Samaan told the juvenile court that after failing to complete the inpatient treatment program through VOA, Mother did not participate in any other inpatient treatment. Father completed a substance abuse assessment but did not participate in any substance abuse treatment. As for visitation with Child, FCM Samaan testified that Parents were supposed to participate in supervised visitation with Child twice each week. However, Parents only attended "an average of fifty (50) percent" of the visitations. *Id.* at 156, 160. DCS provided Mother with bus passes so that she could attend the visitations, but the FCM testified that Mother "never used them." *Id.* at 157.

[24] FCM Samaan also testified to the results of the drug screens that she administered to Parents throughout her involvement in the CHINS case. The results revealed that from June 18, 2018, through April 2, 2020, Mother tested positive thirty-one times and Father tested positive nineteen times for the following illegal substances: amphetamine, methamphetamine, buprenorphine, and cocaine.

[25] When FCM Samaan was asked during direct examination if she thought Child could be returned to Parents' care, she replied, "No[,]” and explained:

Parents, they were not consistent with visitation. They were not consistent with services. They continued to use illegal substance[s]. Several times they admitted using when I conducted these drug screens. They would tell me they would be positive for Suboxone and meth[amphetamine].

\* \* \*

When I asked them when the last time they used, the maximum time would be three (3), five (5) days before the drug screen. They never had a long sober and clean time. They never had stable housing or stable income. And they were never consistent with visitation. The visits continued to be supervised during those whole entire two (2) years that I was involved with the family. They – we never even moved to unsupervised visit[s].

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That means that [there] was no progress in the case in regards to [Parents'] condition.

*Id.* at 173.

[26] Michele Montgomery became the FCM for Parents' CHINS case when FCM Samaan left her employment with DCS in May 2020. FCM Montgomery testified that Parents had a referral for family therapy services but did not participate. She further testified that Mother had not provided her with an address for where Mother was staying and that the last place FCM saw Parents residing was in a garden shed with no plumbing that was located on private property. FCM Montgomery told the juvenile court that Mother was not employed and still had not obtained SSI, and Father had no income and was not employed because, as he told the FCM, he was "struggling with some

medical issues.”<sup>4</sup> *Id.* at 184. Regarding Mother’s substance-abuse-treatment referrals, FCM Montgomery testified that Mother had not engaged in inpatient treatment because, as Mother told the FCM, she “had several things she wanted to do before [attending inpatient treatment].” *Id.* at 180. FCM Montgomery explained:

[Mother] would often say that she had some things to tie up for [her] daughter before she would [enter treatment]. Or she could not leave at this time, because [Father] would be in the hospital for his medical needs. She wouldn’t go into inpatient because she was worried that her family might need her when she’s in inpatient; her adult children and [Father].

*Id.* at 180. As for Father, FCM Montgomery testified that he was referred to intensive outpatient substance abuse treatment but did not engage in any treatment. The FCM told the court that Parents also were referred for medication evaluation and medication management services to assist with their anxiety and depression, but neither Mother nor Father participated.

[27] FCM Montgomery further testified that she administered drug screens to Parents. The results from the screens revealed that from August 11, 2020, through December 3, 2020, Mother tested positive five times for illegal substances that included amphetamine, methamphetamine, and buprenorphine.

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<sup>4</sup> Father told FCM Montgomery that during 2020, he was “in and out of the hospital” and had a toe amputated. Tr., Vol. II at 184.



During that same time period, Father tested positive three times for the same illegal substances.

[28] As for visitation with Child, FCM Montgomery testified that prior to August 2020, visits with Child were virtual due to COVID-19 restrictions, and Parents were told that visitation with Child would be virtual. However, the virtual sessions could not be coordinated because FCM Montgomery was unable to locate Parents between May and July 2020. Using a DCS “parent locator” tool, the FCM finally located Mother in August 2020, when COVID-19 restrictions were lifted and visitation returned to in-person. *Id.* at 183. Yet, FCM Montgomery testified that Mother was “so inconsistent [in attending visitation sessions], that we ha[d] to go to the place of the parenting time, ensure that [Parents] show up, and then go pick up [Child].” *Id.* at 181. FCM Montgomery told the juvenile court that despite Parents receiving assistance with transportation, Mother visited with Child three out of six possible times in August 2020, and Father visited with Child one out of six possible times; in September 2020, Mother visited one out of nine possible times, and Father attended no visitation sessions; in October 2020, Mother visited three out of nine possible times, and Father attended one session; in November 2020, Mother attended three out of five scheduled visitations, and Father attended none; in December 2020, Parents visited with Child once out of ten possible times; and as of January 27, 2021, neither Mother nor Father had visited Child during that month.

[29] Katherine Shepherd, who had served as Mother’s behavioral clinician since July 2019, testified that she met with Mother weekly and counseled Mother regarding her use of illegal substances. However, Shepherd did not meet with Mother between March and August 2020 because of COVID-19 restrictions.<sup>5</sup> Shepherd further testified that Mother primarily used methamphetamine and struggled to remain sober. Mother self-reported to Shepherd that she had continued to use methamphetamine between July 2019 and March 2020. Shepherd added that during her involvement with Mother, Mother “made some progress[,]” and, after in-person meetings resumed, Mother reported that she was “doing better” at maintaining her sobriety. *Id.* at 128, 129. However, Shepherd was unable to explain to the juvenile court what “better” meant for Mother. *Id.* at 130.

[30] Debra Heighway,<sup>6</sup> Mother’s case manager since October 2018, testified to many of the same concerns as did the FCMs and Shepherd regarding Mother’s housing situation, lack of a source of income, and substance abuse treatment. Regarding Mother’s housing situation, Heighway testified that Mother, at times, lived in a “shed in the back of somebody’s house, [on] porches, [and with] family members that would let her crash in their house at least long

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<sup>5</sup> Shepherd testified that while COVID-19 restrictions were in place, one of the only ways in which she could contact her patients was by phone. Mother did not have a cell phone, so Shepherd was unable to communicate with Mother until COVID-19 restrictions were lifted and in-person meetings resumed.

<sup>6</sup> The juvenile court, in its termination order, spells the case manager’s last name as “Highway.” However, in the transcript, the case manager’s last name is spelled “Heighway.” For purposes of this opinion, we will refer to the case manager as “Heighway.”

enough to sleep[.]” *Id.* at 71. Heighway told the juvenile court that as of the date of the TPR hearing, Mother did not have a “rental type situation, . . . just somebody allowing her to have a roof over her head.” *Id.* at 74.

[31] As for income, Heighway testified that Mother had obtained SSI in the past (before Heighway was assigned to work with Mother), but “at some point[,] social security couldn’t find her or . . . some paperwork didn’t get submitted, and so her [SSI] was stopped. And so we’ve had to start the application process over again[.]” *Id.* Heighway explained that Mother has twice been denied SSI, “and right now we’re awaiting a hearing with the Judge[.]” *Id.* As for Mother’s ability to obtain and maintain employment, Heighway testified that Mother’s “anxiety takes over in a work situation, when she’s having to work with other people, take directions from a boss[,]” and that Mother has “never really held a regular job.” *Id.* at 76.

[32] Regarding substance abuse treatment, Heighway told the court that in the summer of 2019, Mother went to an outpatient facility for treatment once a week but stopped attending after two months. In August 2020, Mother began attending another outpatient treatment facility approximately three times each month, with Heighway providing transportation for Mother to attend the appointments. Heighway testified that she tried to persuade Mother to participate in an inpatient addiction recovery program but Mother has not done so because she is concerned that something will happen to her family while she is in treatment. Heighway explained that Mother fears that if she completes inpatient treatment but is released to the “same situation she [is] in now, she

[will] go right back to her life as she is now.” *Id.* at 86. Regarding Mother’s ongoing substance abuse, Heighway testified that Mother told her she had relapsed as recently as the week before the TPR hearing took place.

[33] Heighway also testified that she was meeting with Mother fifteen to twenty times each month but Mother’s lack of a cell phone and stable housing made it difficult for Heighway to stay in contact with Mother. When asked on cross-examination if Mother was making an effort to have Child returned to her care, Heighway replied:

I believe she wants the child back. She wants very much to be a mother. Once again, it kind of goes in waves as to what she’s willing to do, in the finding housing, the going for her treatment. She – so she has the desire, but she doesn’t always follow through with things that she needs to.

*Id.* at 83.

[34] Brenda Johnson, a social worker, has served as Mother’s addictions counselor since November 2018. Johnson testified that when she performed an initial assessment of Mother in 2018, Mother told her that she was using methamphetamine nearly every day, or as close to daily as Mother could afford. Johnson told the juvenile court that after the initial assessment, Mother did not return to see Johnson until March 2019. When the two reconnected, Johnson tried to persuade Mother to attend inpatient treatment, as Mother was still actively using illegal substances; however, Mother disappeared and did not meet with Johnson again until July 2019. Johnson testified that between July

2019 and February 2020, Mother met with her no more than one time each month and did not meet with Johnson at all in August 2019. After February 2020, Johnson next saw Mother twice in September 2020. Johnson further testified that Mother’s next meeting took place on November 17, 2020, one day before the TPR hearing, and Mother reported at that time that she was using methamphetamine and Suboxone off the street and was homeless. During the time period that Johnson worked with Mother, Mother did not attend intensive outpatient or inpatient substance abuse treatment. Johnson told the juvenile court that Mother “was just not interested in going [to] inpatient [treatment,]” offering the same excuses that she provided to her other care providers. *Id.* at 117. Johnson’s recommendation for Mother remained the same at the TPR hearing as at the time of the initial assessment—that Mother needed to attend inpatient treatment to overcome her addiction.

[35] As for Father, Johnson testified that she performed an assessment of Father in August 2019. Father told Johnson that he was using methamphetamine and Suboxone off the street, and he was addicted to the drugs. Johnson recommended that he engage in individual substance abuse treatment with her. However, after the initial assessment, Father did not participate in any treatment with Johnson, and Johnson told the juvenile court that she never saw Father again.

[36] Father’s case manager and therapist testified that Father, like Mother, continues to struggle with substance abuse, obtaining steady income and employment, and homelessness. Father also has numerous health issues that require him to

be hospitalized from time to time, including heart problems, water retention, diabetes, hepatitis C, and the recent amputation of his toe.

[37] Lois Howell, a behavioral clinician, has been Father's case manager since February 2019. At the TPR hearing, she testified that she helped Father manage his doctors' appointments, medications, and substance abuse treatment, and also worked with Father on securing housing. She told the juvenile court that Father applied for and was able to obtain housing through a service provider in fall 2019; however, after three months, Father lost the housing because he was unable to obtain a full-time job and pay his required share of the rent and utilities. As of the date of the TPR hearing, Father had not found housing. Howell told the juvenile court that Father was currently living in a garden shed, and, before that, Father was homeless and living "wherever he could find a place to go." *Id.* at 96.

[38] Howell testified that she encouraged Father to seek substance abuse treatment at an inpatient facility, but Father would not do so, telling Howell that he did not want to attend because he is a smoker and the facility did not allow smoking. Father did attend an addictions recovery center, though sporadically. He was supposed to attend on a weekly basis but missed several appointments due, in part, to being hospitalized. Howell testified that Father told her approximately two weeks before the TPR hearing took place that he was using methamphetamine, in addition to prescribed Suboxone. Howell further testified that Father told her he used (unprescribed) Suboxone to "help[] his energy level" and "[h]elp[] him complete his work." *Id.* at 100. However,

Father was unemployed the entire time Howell worked with him. Howell assisted Father in his attempt to obtain SSI, but, at the time of the TPR hearing, Father had received no information from the local social security office on his claim.

[39] Serge Monperous, Father's therapist, testified that he was supposed to meet with Father one day each week. However, Father attended only the first therapy session, held on August 6, 2020, and did not return for additional sessions. Monperous told the juvenile court that at the first and only session, Father told him that he was homeless.

[40] While Parents contend that the juvenile court would not have terminated their parental rights had it considered the "additional facts" of Parents' efforts to comply with required services, Br. of Appellants at 12, Parents ignore that they have failed to complete the balance of their required services. Parents' efforts to comply were "too little" and "too late" and cannot overcompensate for their inability to remedy the conditions that led to Child's removal from their care. *See, e.g., In re E.M.*, 4 N.E.3d 636, 640 (Ind. 2014) (upholding trial court's determination that sufficient evidence supported termination of parental rights where Father's efforts to establish a relationship with his children were both "too little" in view of his violence and earlier pattern of hostility toward services, and "too late" in view of the children's urgent need for permanency after several years in out-of-home placement).

[41] Given the evidence presented at the TPR hearing, we find that DCS proved by clear and convincing evidence that the conditions resulting in Child's removal would not be remedied. The juvenile court's findings are not clearly erroneous.

## **B. Best Interests of Child**

[42] Parents also argue that there was insufficient evidence to support the juvenile court's conclusion that termination of their parental rights was in Child's best interests. Parents contend that DCS, in essence, frustrated Mother's efforts to visit with Child by denying her requests for visitations to take place at more convenient locations and that "it was the COVID[-19] restrictions that led to the estrangement of [Child] and not [Parents'] refusal to visit." Br. of Appellants at 14.

[43] In determining what is in the best interests of the children, the trial court is required to look beyond the factors identified by DCS and to look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 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 children. *Id.* The court need not wait until the children are irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation by both the FCM and CASA to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *See Ramsey v. Madison Cnty. Dep't of Fam. & Child.*, 707 N.E.2d 814, 818 (Ind. Ct. App. 1999)



(concluding that a counselor’s testimony that it would be in the child’s best interest to terminate the parent-child relationship, “along with the evidence that the condition will not be remedied and that the relationship poses a threat to Child” was sufficient to show by clear and convincing evidence that termination was in child’s best interest).

[44] Evidence was presented at the TPR hearing that Child was doing well in her relative care placement with her aunt. For example, Child’s aunt, who has cared for Child since Child was six months old, testified that Child is “doing really well. She was having a little difficulty with talking, but I have her in speech therapy, and she is doing really, really well. She interacts with kids very well. She adapts very well.” Tr., Vol. II at 60. Child’s aunt further testified that Child has “[c]lothing, food, shelter, toys, [and] love.” *Id.* at 61. The aunt told the juvenile court that she was able to provide financially for Child. The CASA testified,

Child is just a delightful little wonderful girl, who’s completed occupational therapy, she’s completed physical therapy, speech therapy, and she has had those opportunities, because of the love and care that she’s been provided by her aunt. Her placement has kept her safe, her placement has kept her in a drug free environment. . . . She’s just precious and well cared for.

*Id.* at 212. And, FCM Montgomery explained to the court that

[Child is] doing very well in [aunt’s] home. She’s provided a routine that she’s used to. She has – she has her own bedroom, bed, toys, necessities. She even has a bedroom just for her toys. She’s doing very well. She is very comfortable in her home. She

is cared for medically. She just finished up her speech therapy. She is talking. She is Miss Chatty Kathy now. She is doing really great.

*Id.* at 203.

[45] The CASA and FCM Samaan testified that they supported termination of Parents' parental rights to Child. The CASA testified that Child was nearly three years old and had been involved with DCS since being removed from her Parents' home at six months old and placed in the care of her aunt. The CASA further testified that since Child's removal from Parents' care,

DCS has provided a myriad of services to [Parents] that have never been completed. They've never treated their substance abuse accurately and fully. They've not had housing, they've not had income, or a way to provide for and protect [Child], keep her safe, keep her stable with the things that she needs. Her best interest has been provided, and her safety and well-being has been provided for almost her entire life by her [aunt].

\* \* \*

And I am not, not slighting the fact that I know [Parents] love her, but they have proven that they do not have the ability to care for her. They have been given a very unique opportunity, even through the pendency of this TPR, which started in August of 2020. It's now January of 2021. And if that is not a prompter to facilitate change when you know that this is pending, a termination of your parental rights, if that's not the prompter, then I don't believe that any else – anything else could be. They've had that many months to make a change, and nothing was changed. The most important piece to that to me is they've not increased their opportunity to see [Child]. Where they could

get that bond, where they could see her, and hug her, and love her, and they've not taken advantage of every opportunity. [Child] has been ready. [Child] has been available for those visits. She has her best interest protected by her [aunt]. I do believe that it is in her best interest that parental rights are terminated, and that she be allowed to move forward to adoption.

*Id.* at 212-13.

[46] FCM Samaan testified that Parents had made no progress in improving their circumstances. When FCM Montgomery was asked during direct examination why the plan for Child would be adoption if parental rights were terminated, she told the juvenile court that “[Parents] haven’t shown any progress or improvement in their situation since detention of [Child].” *Id.* at 202.

[47] In light of the evidence presented, we find that the juvenile court’s conclusion that termination of Parents’ parental rights was in Child’s best interests is supported by clear and convincing evidence.

## Conclusion

[48] Based on the foregoing, we conclude DCS presented sufficient evidence that there is a reasonable probability that the reasons for the Child’s removal from Parents’ care will not be remedied and conclude that the totality of the evidence supports the juvenile court’s conclusion that termination of Parents’ parental rights is in Child’s best interest. The judgment of the juvenile court terminating Parents’ parental rights is therefore affirmed.

[49] Affirmed.

Bradford, C.J., and Altice, J., concur.