

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of K.H. and A.H.  
(Minor Children), and J.H.  
(Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

October 22, 2021

Court of Appeals Case No.  
21A-JT-942

Appeal from the Spencer Circuit  
Court

The Honorable Karen Werner,  
Temporary Judge

Trial Court Cause Nos.  
74C01-2010-JT-263  
74C01-2010-JT-264

**May, Judge.**

[1] J.H. (“Mother”) appeals the involuntary termination of her parental rights to K.H. and A.H. (collectively, “Children”). She presents multiple issues for our review, which we consolidate and restate as:

1. Whether the trial court abused its discretion when it denied Mother’s second motion to continue;
2. Whether the Department of Child Services (“DCS”) presented evidence to support the challenged trial court findings;
3. Whether the trial court’s findings support its conclusion that there was a reasonable probability the conditions under which Children were removed from Mother’s care would not be remedied or that the continuation of the Mother-Children relationship posed a threat to Children’s well-being; and
4. Whether the trial court’s findings support its conclusion that termination of Mother’s parental rights was in Children’s best interests.

We affirm.

## Facts and Procedural History

[2] Mother gave birth to A.H. on January 16, 2014, and K.H. on January 2, 2016.<sup>1</sup> Prior to DCS involvement, Children lived with Mother and her boyfriend, F.S. (“Boyfriend”). Father was incarcerated in Kentucky beginning February 15,

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<sup>1</sup> Children’s father is M.S. (“Father”). Father’s parental rights were also involuntarily terminated, but he does not participate in this appeal. We will thus limit our recitation of the facts to those relevant to Mother.

2017, for convictions of rape and sodomy involving a minor and his earliest release date is in 2027.

[3] On August 20, 2019, DCS received a report that Children were victims of neglect based on the poor condition of the home that they shared with Mother and Boyfriend. The same day, law enforcement officials were called to the residence to address the “dumping and hoarding trash and garbage, around and in the residence.” (Ex. Vol. I at 8.) When they arrived, police observed “massive heaps of rotting building material, household garbage and rotten food piled up from the front door of the single wide trailer . . . on the porch, the entire width of the trailer and on the lot over to the next trailer.” (*Id.*) Police also arrested Boyfriend on an outstanding warrant for theft in Perry County.

[4] On August 21, 2019, DCS went to investigate the report of neglect. The Family Case Manager (“FCM”) observed Mother coming into the home from “down the street.” (*Id.* at 9.) When asked where Children were, Mother initially said they were at school, but three-year-old K.H. was subsequently discovered sleeping in Mother’s bed. The FCM noticed “the home was cluttered with an extensive amount of trash and household items, appears to have water damage,” additionally, “there were holes in the floors and ceiling and there were concerns with the structure of the home.” (*Id.*) The FCM also observed roaches, exposed electrical wires, and animal feces and urine throughout the home. Children had “a strong odor on their bodies and clothing[,]” Children had head lice, and K.H. “was observed wearing clothing that is too small for

her.” (*Id.*) DCS removed Children from Mother’s care and placed them in foster care, where they have remained throughout these proceedings.

[5] On August 22, 2019, DCS filed petitions alleging Children were Children in Need of Services (CHINS) based on neglect, lack of supervision, and poor living conditions. On August 23, 2019, the trial court held an initial hearing as to Mother, who requested counsel and admitted the allegations in the CHINS petition. Father, who was incarcerated, also admitted the allegations at a subsequent hearing. On December 16, 2019, the trial court held a dispositional hearing. On January 24, 2020, the court entered its dispositional order, requiring Mother, among other things, to participate in services to address parenting skills, mental health issues, and substance abuse issues; submit to random drug screens; maintain suitable housing; obtain and maintain a legal source of employment; and attend supervised visits with Children. Mother was initially compliant with services.

[6] In March 2020, DCS substantiated an allegation of sexual abuse perpetrated against A.H. by Boyfriend. Mother continued to participate in services and visitation, but the condition of the home did not substantially improve. In August 2020, DCS reported that Mother was not compliant with services – she had attended fewer than half of her homebased appointments and the home still was not suitable for Children, she had not followed-up as requested with a mental health provider, and she had missed twenty-one of thirty-three visits with Children, despite the fact that Mother was offered numerous virtual visits

with Children due to the COVID-19 pandemic. Mother also was sporadic with her participation in random drug tests.

- [7] On October 19, 2020, DCS filed petitions to terminate Mother’s parental rights to Children based on Mother’s non-compliance with services. The trial court held an initial hearing on December 14, 2020, appointed Mother counsel, and set a fact-finding hearing for January 11, 2021. At the January 6, 2021, pretrial conference, Mother was not present and her counsel requested a continuance to allow him to meet with Mother. The trial court rescheduled the fact-finding hearing to March 1, 2021. On February 25, 2021, Mother’s counsel filed a second motion to continue, asking the trial court to reschedule the fact-finding hearing because she was trying to “re-establish communication” with her counsel. (App. Vol. II at 188.) DCS objected to the motion, arguing “[M]other’s failure to contact her counsel is not a justification for a continuance or further delay of permanency for [Children].” (*Id.* at 190.) The trial court denied Mother’s motion to continue on February 26, 2021.
- [8] The trial court held a fact-finding hearing on March 1, 2021. Mother did not attend but she was represented by counsel. During the hearing, several witnesses testified regarding Mother’s noncompliance with services. FCM Lilley testified Children were doing well in their foster parent’s care, Children were enrolled in gymnastics and swimming, and foster parent was interested in adopting Children. On March 17, 2021, the trial court issued its orders terminating Mother’s parental rights to Children.

[9] On March 31, 2021, Mother filed a motion to correct errors in which she alleged the trial court’s denial of her motion to continue the March 1, 2021, hearing implicated Mother’s due process rights because she “was not provided an opportunity to present relevant testimony that disputes the findings made by the Court” and the trial court’s decision to terminate her parental rights to Children was clearly erroneous. (*Id.* at 226.) The trial court held a hearing on Mother’s motion to correct errors on April 26, 2021, and the court entered an order denying Mother’s motion to correct errors on May 3, 2021.

## Discussion and Decision

### 1. Motion to Continue

[10] The decision to grant or deny a continuance rests within the sound discretion of the juvenile 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 court’s decision only for an abuse of that discretion. *Id.* An abuse of discretion occurs when the party requesting the continuance has shown good cause for granting the motion and the juvenile court denies it. *Id.* No abuse of discretion will be found when the moving party is not prejudiced by the denial of its motion. *Id.*

[11] Mother argues she was denied her due process rights because the trial court would not continue the March 1, 2021, fact-finding hearing.<sup>2</sup> Due process is

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<sup>2</sup> Mother also argues alleged procedural irregularities during the CHINS case violated her due process rights. These allegations include an alleged inability to connect to a Zoom hearing, the fact that Mother admitted

essentially “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). We recognize that, “although due process is not dependent on the underlying facts of the particular case, it is nevertheless ‘flexible and calls for such procedural protections as the particular situation demands.’” *Lawson v. Marion Cnty. Office of Family & Children*, 835 N.E.2d 577, 580 (Ind. Ct. App. 2005) (quoting *In re B.T.*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied*).

[12] A parent does not have a constitutional right to be physically present at a termination hearing. *In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011). Mother’s counsel was present at the hearing, and he was able to provide argument and cross examine witnesses. Therefore, the trial court afforded Mother the due process protections to which she was entitled even though she chose not to appear for the termination hearing. *See In re E.E.*, 853 N.E.2d 1037, 1044 (Ind. Ct. App. 2006) (parental due process rights not violated when parent is represented throughout the proceedings by counsel and counsel attends hearing and has opportunity to cross-examine witnesses and offer argument), *trans. denied*. Thus, we conclude the trial court did not abuse its discretion when it

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Children were CHINS before being appointed counsel (she had waived appointment of counsel earlier in the same hearing), and the involvement of three different judges in the case. However, Mother did not present these issues before the trial court, nor did she cite legal precedent to support her arguments. Thus, these claims are waived. *See In re K.S., D.S., B.G., & J.K.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (issue presented for the first time on appeal is waived); *see also* Indiana Appellate Rule 46(A)(8)(a) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]”); *and see Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999) (failure to present cogent argument results in waiver of the issue on appeal).

denied Mother's motion to continue the March 1, 2021, fact-finding hearing. *See Matter of L.C.*, 659 N.E.2d 593, 597 (Ind. 1995) (trial court did not abuse its discretion when it denied parents' motion to continue because parents did not demonstrate they were prejudiced by the denial).

## 2. Termination of Mother's Parental Rights to Children

[13] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of 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 juvenile court's unique position to assess the evidence, we will set aside a 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).

[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*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own child should not be terminated solely because there is a better home available for the child, *id.*, but parental



rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[15] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

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

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*.

“[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply with the statute terminating parental rights.” *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

### ***A. Challenged Findings***

[16] When, as here, a 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). We determine whether the evidence supports the findings and 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 juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). Mother challenges a number of the trial court’s findings.

[17] First, Mother argues the trial court’s finding, “[Mother] failed to appear for this hearing” (App. Vol. II at 30),<sup>3</sup> is not supported by the evidence because “she had transportation issues that prevented her from attending the fact finding [hearing.]” (Mother’s Br. at 22.) However, Mother does not dispute that she did not attend the fact-finding hearing. Therefore, the trial court’s finding was accurate even though Mother now attempts to advance an excuse for her failure to appear.

[18] Next, Mother argues two of the trial court’s findings, “[Mother] has not visited with [Children] or participated in any services<sup>[4]</sup> since August of 2020” and “[Mother] has not participated in any services to address the substance abuse” (App. Vol. II at 30), are not supported by the evidence because she “had requested virtual services and visitations from the FCM[.]” (Mother’s Br. at 22.)

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<sup>3</sup> The trial court entered individual orders terminating Mother’s parental rights to each child. The language of the orders is virtually identical. We quote from the order concerning K.H. unless otherwise noted.

<sup>4</sup> Mother also argues that DCS failed to make reasonable efforts to reunite and preserve her family because Mother “texted FCM Lilly and had asked for virtual services for therapy as well as virtual visits prior to the fact finding.” (Mother’s Br. at 26.) However, the adequacy of the services provided to Mother as part of Children’s CHINS case is unavailable for our review during an appeal following termination of parental rights. See *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009) (“failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law”).

FCM Lilley testified that Mother “reached out to [her] through text message” to restart services and FCM Lilley “informed her to call those providers to schedule a time” but that Mother did not do so. (Tr. Vol. II at 35-6.) DCS also presented evidence that Mother last visited with Children in August 2020 and her services, including those to address her substance abuse issues, had been discontinued due to noncompliance.

[19] Mother also challenges the trial court’s finding “[t]he home conditions continued to be inappropriate for [Children] to reside in throughout the case and actually deteriorated rather than improved.” (App. Vol. II at 30.) Mother contends this finding is not supported by the evidence because “Mother was no longer residing in the residence from which the minor children had been removed and that [DCS representatives] had not been to the residence Mother was staying in at the time of the fact finding.” (Mother’s Br. at 21.) During the fact-finding hearing, FCM Lilley testified Mother’s progress in addressing the conditions of the home from which Children were removed was “[v]ery minimal” and “[t]he electric got turned off and never got turned back on. The heating and cooling system was ripped from the home and never put back in.” (Tr. Vol. II at 24.) FCM Lilley testified Mother “[n]ever” obtained housing appropriate for Children and at the time of the fact-finding hearing, Mother was living in White Plains, Kentucky with her mother and her mother’s boyfriend, both of whom had criminal records. (*Id.*) FCM Lilley further testified that Mother had moved back and forth between Kentucky and Indiana, but only

gave the FCM the address in Kentucky one month prior to the fact-finding hearing.

[20] Next, Mother challenges the trial court’s finding that “[Mother] was hospitalized three times for methamphetamine overdose in Fall of 2020.” (App. Vol. II at 30.) Mother contends she was sober at the time of the fact-finding hearing. However, the finding does not concern Mother’s condition at the time of the fact-finding hearing, but instead specifically refers to her three hospitalizations for methamphetamine overdose. FCM Lilley testified Mother provided her the authorization to receive her hospital records concerning those three visits, but the trial court did not admit those records. However, FCM Lilley testified Mother self-reported that she had been in the hospital because “[s]he was overdosing on meth.” (Tr. Vol. II at 29.) Mother’s arguments regarding this finding and the other four challenged findings<sup>5</sup> are invitations for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge witness’ credibility).

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<sup>5</sup> Mother challenges the trial court’s finding “[Mother] has not maintained gainful employment” (App. Vol. II at 30); however, she does not make an argument regarding why this finding is not supported by the evidence. The home-based service provider, Halie Aders, testified Mother did not have employment as of October 2020. FCM Lilley also testified Mother had not maintained employment during the pendency of the case. There is no evidence in the record that Mother was employed at any time relevant to our review.

***B. Conditions Under Which Children were Removed from Mother's Care***

[21] The trial court found the conditions that resulted in Children's removal from Mother's care would not be remedied. In making such a determination, a trial court must judge a parent's fitness to care for her children 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. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly 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.* A trial 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).

[22] Mother contends the trial court's findings do not support its conclusion that the conditions under which Children were removed from her care would not be remedied because she "made some improvements to the home[,]” she "was no longer residing in the same residence from which the children were removed[,]”

and none of the relevant service providers had visited her new residence “to ascertain its conditions.” (Mother’s Br. at 18-9.) In its findings, the trial court noted Children were removed from Mother’s care due to the conditions of the home where the family resided, that Mother had made some progress with services, but by a March 9, 2020, review hearing, she was only “partially compliant” and “had missed service sessions and was having trouble following through when disciplining [Children].” (App. Vol. II at 29.) The trial court further found that by the time DCS filed petitions to terminate Mother’s parental rights to Children in October 2020, Mother

was not complying with the case plan. She had attended less than half of her homebased casework [sic] sessions. The home still did not meet minimum standards. [Mother] missed therapy sessions. [Mother] only attended 12 out of 33 offered visitations. [Mother] also failed to attend the [Child Family Team Meeting] scheduled.

(*Id.* at 30.)

[23] Additionally, the trial court found:

1. [Mother] failed to appear for this hearing.

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5. [Mother] has not visited with [Children] or participated in any services since August of 2020.

6. The home conditions continued to be inappropriate for [Children] to reside in throughout the case and actually deteriorated rather than improved.

7. [Mother] was hospitalized three times for methamphetamine overdose in Fall of 2020.

8. [Mother] has not participated in any services to address the substance abuse.

9. [Mother] has not maintained gainful employment.

(*Id.*) The unchallenged findings stand proven, and we have rejected Mother’s invitation to reweigh the evidence regarding her challenged findings. Mother did not complete services for reunification as ordered, did not have suitable housing, was not employed, and had not completed substance abuse treatment as ordered. Thus, we hold the trial court’s findings support its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied.<sup>6</sup> See *Lang v. Starke Cnty. Ofc. of Fam. & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (“A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions” supports the trial court’s conclusion

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<sup>6</sup> Mother also challenges the trial court’s conclusion that the continuation of the parent-child relationship posed a threat to Children’s well-being. As Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only decide if the trial court’s findings support one of these requirements. *In re L.S.*, 717 N.E.2d at 209 (because statute written in disjunctive, court needs to find only one requirement to terminate parental rights). Thus, we need not consider Mother’s argument regarding that requirement.



that “there exists no reasonable probability that the conditions will change.”), *trans. denied*.

### ***C. Children’s Best Interests***

[24] In determining what is in the children’s best interests, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do so supports finding termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child’s best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[25] Mother argues termination of her parental rights to Children is not in Children’s best interests because “[t]here is nothing in the record that indicates the foster parent would not be willing the keep the minor children in her home while the CHINS case proceeded forward or that her willingness to adopt the minor child would change if the termination is delayed.” (Mother’s Br. at 20.) However, at the time of the fact-finding hearing, Children had been removed from Mother’s care for over a year and a half and Mother had not visited with Children in almost a year. Mother had made minimal progress in services, at best, and did not have a suitable home or employment. The FCM testified

termination of Mother's parental rights was in Children's best interests. Children cannot be made to languish, waiting for permanency, until Mother demonstrates she can provide them with a safe, stable home. The trial court's findings support its conclusion that termination of Mother's parental rights is in Children's best interests. *See In re S.P.H.*, 806 N.E.2d 874, 883 (Ind. Ct. App. 2004) (Termination of father's parental rights to children in children's best interests because father had not completed services and "the needs of the children [are] too substantial to force them to wait while determining if [father] would be able to be a parent for them.").

## Conclusion

[26] The trial court did not abuse its discretion when it denied Mother's motion to continue. Additionally, DCS presented evidence to support the trial court's challenged findings. Finally, the trial court's findings supported its conclusions that the conditions under which Children were removed from Mother's care would not be remedied and that termination of Mother's parental rights was in Children's best interests. Accordingly, we affirm the trial court's involuntary termination of Mother's parental rights to Children.

[27] Affirmed.

Vaidik, J., and Molter, J., concur.