MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

David W. Stone
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

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

L.A. and A.A. (Minor Children),

and

A.C. (Mother) and J.A. (Father),
Appellants-Respondents,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

September 29, 2022

Court of Appeals Case No. 22A-JT-563

Appeal from the Madison Circuit Court

The Honorable Stephen Koester, Judge

Trial Court Cause Nos. 48C02-2102-JT-27
48C02-2102-JT-28

Bailey, Judge.

Case Summary

[1] A.C. ("Mother") and J.A. ("Father") (collectively, "Parents") appeal the trial court's judgment terminating their parental rights to L.A. and A.A. The consolidated and restated issue they raise on appeal is whether the trial court clearly erred when it terminated their respective parental rights.

[2] We affirm.

Facts and Procedural History

[3] Parents have three children together, a daughter, K.A., born February 15, 2011,[1] and two sons, L.A., born October 10, 2013, and A.A., born January 8, 2017. K.A. and L.A. were found to be Children in Need of Services ("CHINS") in September of 2014 due to Mother committing domestic battery against Father in the children's presence. However, that CHINS case was closed on March 16, 2017, when Parents—along with newly born A.A.—were successfully reunited with K.A. and L.A.

[4] On November 7, 2017, all three children were with Parents in a vehicle that was parked in a Dollar Tree parking lot. Father was under the influence of

[1] K.A. has an active Child in Need of Services case open but is not a subject of the termination of parental rights action at issue in this case.

methamphetamine. Mother and Father argued, and Mother then left the vehicle and took K.A. with her; Mother left L.A. and A.A. in the car with Father. Father was subsequently arrested on allegations of battering L.A. and neglecting both L.A. and A.A., and Mother was arrested on allegations of neglect by abandoning L.A. and A.A. to Father's care while he was under the influence of drugs.

[5] Based on the November 7 incident, Father was charged with neglect of a dependent, as a Level 5 felony; criminal confinement of a victim under 14 years of age, as a Level 5 felony; domestic battery with bodily injury on a person under the age of 15, as a Level 5 felony; domestic battery with bodily injury with a victim under 14 years of age, as a Level 5 felony; neglect of a dependent when placing a dependent in a situation that endangers the dependent, as a Level 6 felony; strangulation, as a Level 6 felony; and possession of methamphetamine, as a Level 6 felony. Father subsequently pled guilty to one count of neglect of a dependent causing injury, as a Level 5 felony, and one count of neglect of a dependent, as a Level 6 felony. Father also pled guilty to possession of methamphetamine, as a Level 6 felony. As part of Father's sentence, he was ordered not to have contact with the children.

[6] As a result of the same November 7 incident, Mother was charged with neglect of a dependent, as a Level 5 felony, and neglect of a dependent which placed the dependent in a situation that endangers the dependent, as a Level 6 felony. Mother subsequently pled guilty to both charges. On June 11, 2019, Mother was sentenced and ordered to have no contact with Father or the children.

[7] The Department of Child Services ("DCS") removed all three children from Parents' care on November 8, 2017, and filed CHINS petitions. On November 15, 2017, the court adjudicated all three children as CHINS based on Parents' admissions that they were incarcerated—due to the November 7 incident—and therefore could not provide care and supervision for the children. Parents each have extensive criminal histories, which include incidents of failure to comply with the terms of sentencing, and which have resulted in repeated periods of incarceration during their children's lives. The children were placed in foster care, and they have not been returned to Parents' care at any point.

[8] On December 13, 2017, the court ordered Parents to participate in services to "ensure no further episodes of abuse or neglect." Ex. v. 1 at 132. Mother eventually completed many of the ordered services. However, Mother failed to comply with the following requirements in the participation order: she did not obey the law—specifically, she continued to have contact with Father despite no contact orders, and she possessed methamphetamine as shown by her August 8, 2020, positive test for that substance; she ceased providing her family case manager with evidence of her attendance at AA/NA meetings; and she failed to seek and enforce child support orders for the children. Father consistently failed to engage in court-ordered services and was repeatedly terminated from such services due to his non-compliance. Court-ordered services in which Father failed to participate include: completing parenting classes, engaging in Batterer's Intervention programming, obtaining an anger management assessment, and participating in random drug screening.

[9] A.A. has little memory of Parents, as he was only approximately ten months old when he was removed from their care. L.A. has negative memories of Father; L.A. stated that Father hurt him and that he hates Father. Both children are in the same foster home, where they feel secure. The children call the foster parents "mom" and "dad," and the foster parents have committed to adopting both children should parental rights be terminated.

[10] In April of 2019, DCS filed and dismissed a petition for involuntary termination of Parents' parental rights. On February 17, 2021, DCS again filed a petition for involuntary termination of Parents' rights as to L.A. and A.A. The trial court held a hearing on that petition on June 29 and November 30 of 2021. In an order dated February 14, 2022, the trial court granted DCS's petitions and terminated Parents' parental rights as to L.A. and A.A. In so ruling, the trial court issued findings of fact and conclusions thereon which, in addition to the facts stated above, also made the following fact findings:

> 25. Mother continues to downplay the negative impact that Father's behavior has had on the boys, refusing to acknowledge that he hurt them, even though Father entered a guilty plea and has been sentenced for doing so.
>
> 26. Each parent continues to assert the other parent to be an outstanding parent to the children, displaying that each continues to be unable to see with depth [the] impact that other parent's negative behavior has had and is continuing to have on [L.A.] and [A.A.].

27. [Father] and [Mother] have been and are toxic when they are together[,] although their relationship has extended over more than 11 (eleven) years.

28. Mother has continued contact with Father, violating court orders to the contrary, including attending the same AA/NA group meetings; jointly attending social activities for their AA/NA group, including trips to Las Vegas, Kings Island (on June 28, 2021, one day before the inception of evidence herein) and camping; and communicating directly with Father as well as permitting him to come to her home, all of which Mother ultimately admitted were a violation of her current criminal case sentence.

29. Mother excuses her violations of court orders by claiming to be unaware of the terms of her plea agreement and criminal sentence or to have not been told by DCS, probation, or community corrections personnel the terms of Orders issued to her in open court; she continues even into this evidentiary hearing to refuse to take accountability for her non-compliance with the terms of her court Orders.

* * *

58. While Mother and Father have both testified that their relationship now is solely one of co-parenting, the Court finds it improbable in light of their long term on-again/off-again involvement and their repeated contact outside of the context of parenting their children, notwithstanding specific court orders disallowing their involvement.

59. The Court notes that Father explicitly lied to the Court about the last time he saw Mother during a portion of the evidentiary hearing. Only when confronted by CASA about the two of them being together at Kings Island THE NIGHT BEFORE one of the

evidentiary hearings did Father admit he was with her. His testimony prior to the revelation was that he had not seen her in months. All of Father's testimony is suspect based on his lack of candor with the Court.

60. Most of Mother's and Father's testimony during the evidentiary hearing was self-serving and not support[ed] by credible evidence.

61. In short, both Mother and Father have had repeated opportunities to avail themselves of services, at no cost to themselves, to enhance their ability to parent their children. They have completed a bare minimum of programming (such as Father engaging in inpatient treatment only after the filing of the Petition herein) or compliance at a surface level (such as Mother engaging in treatment but using Methamphetamine after treatment and using attendance at AA/NA to facilitate her and Father's continued interpersonal contact through joint entertainment activities notwithstanding that those contacts clearly violated the terms of each's criminal sentence).

62. This Court has no doubt that Mother and Father would like to be involved in the children's life on their own terms. What the Court doubts is their commitment to overcoming on a long-term basis the serious deficits that led to the children's detention in 2017, caused [L.A.]'s detention in 2014, and [that] kept the children from either of their care since this latest detention.

63. The Court finds it imperative at this late hour to put the best interests of these boys above further opportunity beyond the four years already afforded for the parents to fully comply with the CHINS court's orders so the Court can be assured one of them is able to safely, successfully, and permanently parent the children.

> 64. The Court finds there is an untenable risk of future removals, denying [L.A.] and [A.A.] of the permanency that is critical at their stage of development, if the children are returned to parents' care.
>
> 65. The Court is not required to, and does not, credit as authoritative Mother's claim that she has successfully complied with the terms of the Dispositional Order, the evidence presented having shown that Mother continues to pick and choose among the Orders with which she will comply and the extent to which she will comply.
>
> 66. The Court further notes that both parents claim to have no knowledge of, or a different view of[,] the no contact order between the two of them. A cursory look at the records submitted, however, shows a clear record that a no contact order exists in other courts between the two during the course of this case and the underlying CHINS proceedings…. Further,… Mother requested that the no contact order be dismissed on January 13, 2020, and it was explicitly denied by a February 14, 2020[,] Order.
>
> 67. The Court also notes that Mother's demeanor while testifying about the no contact order indicated she was being deceptive. Mother made no eye contact with the Court, despite making eye contact during previous testimony, her eyes were "shifty[,]" and she was shaking. Her demeanor while testifying about the no contact order was clearly different than it was during testimony about non-controversial or undisputed matters.

Appealed Order at 3-4, 6-7 (emphasis in original).

[11] Both Parents now appeal.

Discussion and Decision

Standard of Review

[12] Parents maintain that the trial court's orders terminating their parental rights are clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution. *See*, *e.g.*, *In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[13] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

> (A) that one (1) of the following is true:
>
> * * *
>
> > (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.
>
> (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) [and] that termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[14] When reviewing a 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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child

relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

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

Challenge to Trial Court's Factual Findings

[16] Parents challenge the sufficiency of the evidence to support some of the court's factual findings. In reviewing a court's factual findings, we bear in mind that the "factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe,… and is not required to believe a witness' testimony even when it is uncontradicted." *Wood v. State*, 999 N.E.2d 1954, 1064 (Ind. Ct. App. 2013) (citations omitted), *trans. denied*. Moreover, even erroneous findings are not reversible error if they are harmless. *See, e.g.*, *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) ("We may reverse a trial court's judgment… only if its findings constitute prejudicial error. … A finding of fact

is not prejudicial to a party unless it directly supports a conclusion."), *trans. denied*. An erroneous finding is "merely harmless surplusage" when the unchallenged findings "provide ample support for the trial court's ultimate conclusion." *Id*.

[17] Mother challenges Finding 2, which stated: "Mother and her children have been the subject of DCS investigations on more than five (5) occasions." First, we note that this finding, even if erroneous, constitutes only harmless error as it not necessary to support the trial court's conclusions, which are amply supported by other evidence as discussed below. Second, the record contains undisputed evidence that Mother has three children with Father, and each child had at least two CHINS cases opened; i.e., DCS investigated two sets of CHINS allegations for each of the three children. Thus, the only potential error in the finding appears to be a harmless scrivener's error in that the finding refers to more than five DCS "investigations on more than five (5) occasions" instead of the more than five CHINS "cases" that were investigated in both 2014 and 2017.

[18] Parents also challenge Finding 14,[2] which notes that the children "have been the subject of three actions for termination of parental rights during the underlying CHINS case, [to wit:], cause 48C02-1904-JT-193 and -195 and

---

[2] We note Parents also list Finding 10 as one they challenge but, instead of challenging the accuracy of that fact finding, Parents simply note that it is "not surprising." Appellant's Br. at 11. That is not a challenge of the fact.

48C02-2004-JT-092 and -093." Appealed Order at 2. Parents erroneously assert that the latter two causes took place in 2004, before the children were born. Parents misread the date portion of the cause numbers; "2004" refers to the year 2020 and the month of "04," i.e., April. *See* Ind. Administrative Rule 8(B).

[19] Mother contends that Finding 18, which states Mother did not successfully begin substance abuse programing until August of 2019, is erroneous in that it conflicts with Finding 20, which states that Mother completed two substance abuse programs in March and April of 2019. Mother is correct that Finding 18 contains a scrivener's error; it should have stated that Mother did not begin substance abuse programing until March of 2019, rather than August of 2019. However, that error is harmless as both the incorrect date and the correct date show the same thing: i.e., Mother waited well over one year to begin substance abuse programing as ordered in the December 2017 parental participation order.

[20] Mother challenges Findings 21 and 22 to the extent they rely on CHINS documentation to support the finding that Mother tested positive for methamphetamine in August of 2020. However, documentation regarding the underlying CHINS action is not only admissible in an action to terminate parental rights but is necessary to prove some facts, such as the reason for the initial removal of the child from the parent and/or continued removal. *See Tipton v. Marion Cty. Dep't of Pub. Welfare*, 629 N.E.2d 1262, 1266-67 (Ind. Ct. App. 1994) (noting DCS failed to prove its case in a termination of parental

rights action where DCS failed to introduce into evidence any of the CHINS documentation that would have proven the reason for the children's initial removal from parents). And, here, the CHINS documentation supports the trial court's factual finding that Mother tested positive for methamphetamine in August of 2020. Ex. v. 1 at 16.

[21] Finally, Father challenges Finding 36 to the extent the trial court found that Father was "untruthful when he denied having admitted to having caused injury to one of his children as a part of [his] criminal case's guilty plea." Appealed Order at 4. However, the record is clear that Father pled guilty to one count of neglect of a dependent *causing injury*, as a Level 5 felony, related to the incident of November 7, 2017. Father's assertion that "CHINS orders found on more than one occasion the children had not been injured before removal" is merely a request that we reweigh the evidence—something we may not do. *See, e.g., In re D.D.*, 804 N.E.2d at 265. The finding that Father admitted to the crime of neglect causing injury to one of his children but then "untruthfully" denied having made such an admission at the termination hearing is supported by the evidence.

[22] Thus, we find no harmful error in the challenged factual findings. Moreover, we note that the unchallenged findings alone support the termination of Parents' parental rights, as we discuss in more detail below.

Conditions that Resulted in Child's Removal/Continued Placement

[23] Parents challenge the trial court's ultimate findings that there is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside the home will not be remedied and that continuation of the parent-child relationship poses a threat to the children. Because we find that DCS established the former factor, we need not, and do not, address Parents' claims regarding a reasonable probability that their relationships with the children pose a threat to them. *See* I.C. § 31-35-2-4(b)(2)(B) (providing that DCS must establish only one of the requirements contained in that subsection).

[24] When addressing the likelihood that the reasons for removal and continued placement outside the home will not be remedied, we must determine whether the evidence most favorable to the judgment supports the trial court's determination. *In re D.D.,* 804 N.E.2d at 265; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). "First, we identify the conditions that led to removal; and second, we determine whether there is a reasonable probability that those conditions will not be remedied." *Id*. (quotations and citations omitted).

[25] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent's fitness to care for his or her children at the time of the termination

hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the "trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship"). In evaluating the parent's habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent's prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Moore*, 894 N.E.2d at 226.

[26] Here, the children were removed from Parents' care and custody because Parents were incarcerated due to their abuse and neglect of the children. At the time of the termination hearing, Parents were no longer incarcerated. Nevertheless, there is ample evidence supporting the trial court's ultimate finding that Parents are not likely to remedy the abuse and/or neglect that led to their incarceration and the removal of their children in the first place. Regarding Father, he admitted to engaging in neglect causing injury to L.A. and to neglecting A.A. during the November 7, 2017, incident. Since then, Father has failed to participate in the court-ordered services designed to assist

him in reuniting with his children. Specifically, Father failed to complete parenting classes, engage in Batterer's Intervention programming, obtain an anger management assessment, and participate in random drug screening. Moreover, Father continued to have contact with Mother right up to the day before the termination hearing, despite the existence of no contact orders. Given Father's failure to even attempt to remedy his past abuse and neglect of his children through the completion of court-ordered services and his continued flagrant violation of no contact orders as to Mother, the trial court did not clearly err when it found he is not likely to remedy the reasons for the children's removal.

[27] Mother did complete many of the court-ordered services. However, she consistently failed to comply with the order to obey the law—most importantly, the court orders that she have no contact with Father. The reason Mother was charged with, admitted to, and was convicted and incarcerated for neglecting the children on November 7, 2017, is that she left the children alone with Father even though he was under the influence of drugs, which resulted in battery and/or neglect of the children. Yet, in the four years that the children's CHINS and termination cases were pending—and even up to the date of the termination hearing—Mother continued to have contact with Father,[3]

---

[3] Although Mother testified that she did not continue to have contact with Father, the trial court specifically found that testimony to be self-serving and not credible, and part of that finding was based on Mother's demeanor during her testimony on the subject. The court also found that Father's testimony regarding contact with Mother was not credible, especially given that, until confronted with evidence to the contrary,

maintained that Father was an "outstanding parent to the children," and refused to acknowledge that Father had harmed the children. Appealed Order at 3. That evidence provides ample support for the trial court's ultimate finding that Mother is not likely to remedy the reasons the children were removed from her in the first place—i.e., because of her neglect of children by allowing them to have contact with an abusive, neglectful, and drug-using Father.

[28] The evidence supports the trial court's findings, and those findings support the court's ultimate finding that neither parent is likely to remedy the reasons for the children's removal and continued placement outside the home.

Best Interests

[29] In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*. "Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service

---

he blatantly lied to the court about having had recent contact with Mother. Of course, we may not judge witness credibility or reweigh evidence. *See, e.g.*, *In re D.D.*, 804 N.E.2d at 265.

providers may support a finding that termination is in the child's best interests." *In re A.K.*, 924 N.E.2d at 224. Such evidence, "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." *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[30] Again, Parents' contentions on this issue amount to requests that we reweigh the evidence and judge witness credibility, which we will not do. *See In re D.D.*, 804 N.E.2d at 265. The evidence most favorable to the judgment shows that, throughout the four years of the CHINS and TPR proceedings, Father consistently failed to participate in court-ordered services designed to help him parent and be reunited with children, despite having admitted that he had injured and/or neglected the children. The evidence that Mother consistently failed to acknowledge Father's harm of the children and consistently had contact with Father despite clear no contact orders shows that, even as of the time of the termination hearing, Mother is still unlikely to protect the children from Father.

[31] Moreover, the evidence shows that the children have not had contact with either parent since their removal in November of 2017, and the children now are in a safe, secure foster home with foster parents to whom they are close and who wish to adopt them. And both the DCS family case manager and the Court Appointed Special Advocate opined that it is in the children's best interests that the parent/child relationships be terminated because of the history of violence in the family, Parents' failure to participate in court-ordered services

or otherwise remedy conditions that led to the children's removal, and Parents' continued contact with each other despite their toxic relationship and the existence of no contact orders. Given that testimony, in addition to evidence that the children need permanency and stability that Parents cannot provide and that the reasons for the children's removal from Parents will not likely be remedied, we hold that the totality of the evidence supports the trial court's determination that termination is in the children's best interests. *In re A.D.S.*, 987 N.E.2d at 1158-59.

Conclusion

[32] The challenged, relevant findings of fact are supported by the evidence, and the relevant findings support the ultimate findings that: (1) there is a reasonable probability that the reasons for the children's removal from Parents and continued placement outside Parents' home will not be remedied, and (2) it is in the children's best interests that Parents' parental rights be terminated. The trial court's judgement is not clearly erroneous.

[33] Affirmed.

Riley, J., and Vaidik, J., concur.