

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Termination  
of the Parent-Child Relationship  
of A.G., Mother, W.A.H.,  
Father, and H.H., Minor Child,  
A.G. and W.A.H.,

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

December 13, 2022

Court of Appeals Case No.  
22A-JT-879

Appeal from the  
Dearborn Circuit Court

The Honorable  
James D. Humphrey, Judge

Trial Court Cause No.  
15C01-2104-JT-2

**Foley, Judge.**

[1] A.G. (“Mother”) and W.A.H. (“Father”) are the parents of H.H. (“Child”) and the parental rights of both Mother and Father were terminated by the trial court. In this consolidated appeal, Mother and Father appeal the termination of their parental rights and separately raise the following issues:

- I. Whether the trial court’s judgment terminating the parental rights of both Mother and Father was supported by clear and convincing evidence, and
- II. Whether the trial court’s order terminating her parental rights violated Mother’s right to due process.

Finding no error in the trial court’s judgment terminating the parental rights of Mother and Father, we affirm.

**Facts and Procedural History<sup>1</sup>**

[2] Mother and Father are the parents of Child, who was born on September 20, 2006. On July 20, 2017, the Indiana Department of Child Services (“DCS”) filed a petition alleging that Child was a child in need of services (“CHINS”) under Indiana Code section 31-34-1-1 based on allegations that Mother and Father were unable to control Child’s behavior and were unable to provide Child with the services that she needed. DCS received a report that Child was

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<sup>1</sup> Based upon the extensive record, duration of the proceedings, and arguments raised by the parties, it is necessary for this Court to engage in an exhaustive recitation of the relevant facts.

physically aggressive and had spit, slapped, and pulled a knife on family members. As a result of that report, Child was taken to juvenile detention and removed from Parents' care. On July 27, 2017, an initial hearing on the CHINS petition was held, and DCS intended to place Child back in Mother's home, but Mother stated she had plans to be out of town and had concerns with placing Child back in the home. Because of this, DCS placed Child in foster care, where she remained for the majority of the proceedings.<sup>2</sup>

[3] On August 24, 2017, based on Parents' admissions that they were unable to control Child's behaviors and were unable to provide Child with necessary services, the trial court adjudicated Child a CHINS. Child remained in foster care, and the trial court found that it was in the best interests of Child to remain removed from the home environment and that remaining in the home of Mother or/and Father would be contrary to Child's welfare.

[4] On September 11, 2017, the trial court held the dispositional hearing and found that Parents needed to participate in services and facilitate a safe and stable home environment. Among other things, the trial court ordered Parents to: (1) stay in weekly contact with DCS, keep DCS updated on contact information, addresses, criminal charges or arrests, and permit DCS and other service providers to make announced and unannounced visits to the home; (2) obtain and maintain stable and safe housing and stable and legal source of income; (3)

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<sup>2</sup> Although the record is silent as to the past relationship between Mother and Father, at the time of the proceedings, Mother was married to T.G., and Mother and Father did not live in the same residence.

engage in home-based counseling as recommended and demonstrate positive changes in their lives as a result of counseling services; (4) complete psychological and parenting assessments, and follow all recommendations from such assessments; (5) assist in the formation and implementation of a protection plan which protects the child from abuse or neglect from any person; (6) provide for Child's financial, educational, and medical needs; (7) participate and complete an Intensive Family Preservation program; and (8) attend all visits with Child and comply with visitation rules and procedures.

[5] During the course of the CHINS proceedings, Child was diagnosed with Reactive Attachment Disorder ("RAD") among other things. RAD typically begins in early childhood when an infant's or toddler's needs are not being met resulting in a lack of security because they do not have trust in their caregivers to meet their needs and take care of them and difficulty forming emotional attachments because of this insecurity. Another factor contributing to RAD is a young child having multiple caregivers who do not care for the child's needs, resulting in emotional and physical neglect occurs. In later childhood, this can cause a child to not trust a caregiver and develop an emotional distance where they push people away as a mechanism to avoid being hurt and disappointed. To manage RAD, consistent therapy is needed, including relational therapy, done in conjunction with a caregiver who is willing to develop a trusting relationship with Child and to offer Child unconditional caretaking and love.

[6] On October 3, 2017, the trial court held an emergency hearing on DCS's request to place Child with Father. Child's foster care placement had become

disrupted because Child was behaving aggressively and violently. The trial court denied DCS's request because, although Father was actively engaged in services at the time, he had a long criminal history with multiple convictions for felonies and misdemeanors. He was a registered sex offender after being convicted of sexual misconduct with a minor, and there was a protective order against him that prevented him from having contact with Mother and with Child until Child's therapist found that contact with Father would be beneficial for Child.

[7] At the December 7, 2017 review hearing, the trial court found that Mother was partially complying with the case plan but was struggling with appropriate conversations with Child and with maintaining a positive influence in Child's life. Mother was participating in supervised visitation with Child, but occasionally she chose to be with Child's stepfather—who was incarcerated—“rather than visiting [Child].” Ex. Vol. I p. 36. Father was complying with the case plan and engaging in services. Due to her behavioral issues, Child was placed in DAMAR to stabilize Child in hopes that Child could be placed back with either Mother or Father.

[8] On January 19, 2018, Child began a trial home visit with Mother, with a service provider (“Homebuilders”) coming to the home three to five days a week to help Mother with parenting. At a February 13, 2018 status hearing, it was reported that Child still struggled in Mother's home and had behavioral issues. The family case manager (“FCM”) was concerned that Parents were discussing inappropriate things with Child. Homebuilders was working with Mother to

obtain her driver's license and a job. Mother was engaged in substance abuse classes through a community mental health center ("CMHC"), and Father was working with Father Engagement.

[9] At a review hearing on March 1, 2018, the trial court found that Parents were complying with Child's case plan and participating in services, but Mother was struggling when Child became "disrespectful and violent" during the trial home visit. *Id.* at 44. The trial court found that Child had "engaged in disturbing and potentially dangerous behaviors toward household members." *Id.* An emergency review hearing was held on March 12, 2018, because Mother was not following the safety plan, and Child was still acting violently toward family members with her behaviors escalating in severity. The trial court removed Child from Mother's care, placed Child in residential care, and ordered DCS to look for "acute stay treatment until long-term residential treatment is finalized" for Child. *Id.* at 48. The trial court also found that allegations had been made that Father "possessed photographs of [Child] in various stages of undress, specifically in a bra and stockings." *Id.*

[10] At the April 11, 2018 review hearing, among other things, the trial court found that Mother was participating in services but still struggled with disciplining Child, engaging in appropriate conversations with her, and being a positive influence in Child's life. At that time, Child was in a residential placement, and had "exhibited disturbing and violent behaviors," including physically attacking and biting an employee. *Id.* at 52. The trial court also found that the "cause of [Child's] out-of-home placement . . . ha[d] not been alleviated," and Mother

and Father still needed “to continue working on services provided by [DCS].” *Id.* at 53.

[11] The trial court held a permanency hearing on June 25, 2018, and found that Father was not complying with Child’s case plan because he had not been checking in with his home-based caseworkers had not completed the psycho-sexual evaluation as recommended. DCS had concerns because Father had received some “inappropriate photos of Child” from Child and failed to inform DCS and because he was having inappropriate conversations with Child. *Id.* at 57. Mother had somewhat complied with services through Homebuilders when Child was on the trial home visit, but during those services, Mother struggled with disciplining Child, had inappropriate conversations with Child, and was not being a positive influence in Child’s life. Services through Homebuilders ended when the trial home visit ended. Mother had transportation issues, preventing her from regularly visiting Child since the trial home visits ended. At that time, the permanency plan was reunification with Mother.

[12] A review hearing was held on August 20, 2018, and the trial court found that Mother had partially complied with the case plan and had completed some education regarding RAD and “how to parent a child with RAD.” *Id.* at 60. Mother was still lacking parenting skills, and Mother’s service provider from Ireland Home Based Services, Karen Duquette (“Duquette”), expressed that although Mother was engaging in services and was “going through the motions,” she was not applying the parenting skills she was taught. *Id.* Father had not completed his ordered psycho-sexual evaluation and had not been in

contact with DCS since June 2018. The trial court found that neither Mother nor Father had enhanced their parenting obligations, that Mother had not visited Child “face-to-face, in quite some time,” and that Father was “no longer receiving visitation” with Child. *Id.* at 61. The trial court found that Child had RAD, which required family therapy and that, at the time, Child was residing at a residential facility in Lake County to meet Child’s needs. Further, the trial court found that without face-to-face visits, Child was unable to work on her disorder and ordered Mother to start face-to-face visitations with Child.

[13] At review hearings held on October 24, 2018, January 14, 2019, and April 22, 2019, the trial court found that Father had not been complying with Child’s case plan and he had not enhanced his parenting abilities. Father had stopped engaging in services after completing his psycho-sexual evaluation and had been arrested for theft. At the time of the April 22 hearing, Father was arrested on an outstanding warrant for “substance abuse issues” but quickly bonded out. *Id.* at 76. Although he had started complying with home-based services, he subsequently stopped, and he was not visiting Child. By the April 22 review hearing, Mother had missed “multiple visits with the child” and acknowledged her inability to control Child. Duquette indicated that visits with Child had been difficult due to Mother’s anxiety from riding in a vehicle and Child’s behaviors at visits. Child had been sent to at least two different facilities with one of them refusing to allow her to come back to the facility. DCS was looking for another placement for Child, including another residential facility.



[14] At the June 10, September 23, and October 30, 2019 hearings, the trial court found that Parents were primarily in compliance with Child’s case plan. However, Mother continued to struggle with her anxiety, “appear[ed] to be easily stressed,” and continued to struggle to make it to counseling appointments. *Id.* at 82. Father still had not gone to CMHC to complete a required program and was not compliant with drug screens. Father had not engaged in home-based therapy to help him improve his relationship with Child since July 2019 and had been having some issues with criminal charges. In September 2019, it was determined that he was “not a current, viable option for reunification.” *Id.* at 85, 86. Child was in foster care and was still exhibiting unacceptable behaviors and required treatment to address those behaviors before being placed back at home. Child’s permanency plan remained reunification.

[15] At the November 27, 2019 review hearing, the trial court found that while Mother was engaged in services, she continued to have difficulty identifying “what she would be capable of following through in the case of crisis with [Child].” *Id.* at 94. Mother had recently lost her home in a fire and had moved to Kentucky to live with her mother. Father had not been in contact with Child since October 31, 2019, had not complied with the case plan, was arrested on November 13 for a probation violation, and remained incarcerated at the time of the hearing. The trial court found that Father had not enhanced his parenting abilities.

[16] At the February 12, 2020 review hearing, the trial court added adoption to Child's case plan as a concurrent plan. Because of Child's specialized treatment needs, she was placed in a new residential treatment facility, which was not near the home of Parents. Mother had two telephonic sessions with Child after her admission to the facility, but Father had not visited Child because of a no contact order that was in place. The trial court found that the cause of Child's out of home placement had not been alleviated.

[17] At the review hearing on May 11, 2020, the trial court found that Mother was only in partial compliance with Child's case plan because, although she was participating in therapy, she had rescheduled and missed several virtual visits with the family and individual therapist without giving a reason. Father had not been participating in services, had not visited Child, had not cooperated with DCS, and had not enhanced his parenting abilities. The trial court again found that the cause for Child's out of home placement had not been alleviated, and she remained in a residential facility.

[18] Following the July 13, 2020 review hearing, the trial court found that Mother had partially complied with Child's case plan but had not enhanced her ability to parent Child. She remained unemployed and unable to provide financially for Child. She had cancelled appointments with her individual therapist twice and "no showed" for appointments three times. *Id.* at 116. She only kept one appointment with the family therapist during the month of May and had "no showed" twice, which prompted the therapist to make "random stops to the home" trying to locate Mother. *Id.* at 116–17. The trial court found that Father

had not enhanced his abilities to parent Child, had not cooperated with DCS, had not provided for Child financially for Child although he was employed, and had not participated in any services or contacted CMHC. The trial court found that the reasons for Child's out of home placement had not been alleviated because neither Mother nor Father has fully participated in Child's case plan and had not shown they could provide for Child's needs.

[19] Following the September 3, 2020 review hearing, the trial court found that Mother and Father had not complied with Child's case plan and had not enhanced their parenting abilities. Father had not contacted DCS to "inquire about the well-being of [Child]," had not cooperated with DCS, had not participated in any services, and could not visit Child due to the no contact order. *Id.* at 123–24. Mother remained unemployed, was unable to provide for Child financially, and did not have the resources to provide for Child because she was preparing for the birth of twins. From July 19 to August 22, Mother had only one contact for services. She had not stayed in contact with DCS and had not checked into Child's well-being since July 19, 2020. Child was still having behavioral issues and remained in therapeutic foster care.

[20] At a permanency hearing on November 18, 2020, the trial court found Child was progressing well in her placement but struggled with boundaries and was in "constant search for acceptance, attention, and feelings of belonging somewhere." *Id.* at 128. Neither Mother nor Father had complied with Child's case plan. Father had not been in contact with DCS since July 10, 2020, and DCS was unsuccessful in contacting him despite having made multiple

attempts. Mother remained unemployed and unable to provide financially for Child. Mother had been evicted from her home in Indiana and was currently living in Kentucky with her mother. Mother had not maintained consistent contact with DCS and had not checked in on the well-being of Child or scheduled any visits. Because Father and Mother had not complied with Child's case plan, Child's permanency plan was changed from reunification to adoption, with a concurrent plan of guardianship.

[21] At the review hearing on December 30, 2020, Mother and Father continued in their non-compliance of Child's case plan and had not cooperated with DCS, nor had they enhanced their parenting abilities. Neither Mother nor Father had been in contact with DCS regarding the case or to visit Child, and neither had provided anything for Child's benefit. Father's whereabouts were unknown, and neither of the Parents had been participating in services. The trial court found that neither Mother nor Father had alleviated the reasons for Child's out-of-home placement.

[22] At review hearings held on March 17 and June 23, 2021, the trial court found that neither Mother nor Father had complied with Child's case plan, they had not kept in contact with DCS, they had not enhanced their ability to parent Child, they had not participated in services, and they had not alleviated the reasons for Child's out-of-home placement. At the March 17 hearing, Father's whereabouts remained unknown, and there was a warrant for his arrest for failing to register as a sex offender. He had violated the no-contact order by contacting Child by sending her messages and videos through Facebook.

Mother had not consistently visited Child and had last visited Child in February 2021. At the time of the June 23 hearing, Father had been arrested for failure to register as a sex offender and was incarcerated, and the no-contact order remained in place regarding Child.

[23] On April 19, 2021, DCS filed a petition to terminate the parental rights of both Mother and Father. On June 23, 2021, the trial court ordered that it was in DCS's discretion whether it continued to provide rehabilitative reunification services to Father and Mother and whether Mother could have visits with Child; the no contact order between Child and Father remained in place. Fact-finding hearings on the DCS's petition to terminate the parental rights of Mother and Father were held on May 27, September 15, November 30, and December 8, 2021, and on February 17 and 18, 2022.

[24] At the fact-finding hearings, testimony was heard regarding Child's diagnosis of RAD, which can "tend[s] to turn into borderline personality disorder in adulthood." Tr. Vol. III p. 29. Child's defiance and outbursts towards caregivers is common in children with RAD. It is common for children with RAD to push away a foster family, and Child may feel like she is betraying or rejecting her biological family if she disconnects from them and forms a healthy relationship with a foster family. Despite Child's diagnosis of RAD, she has the ability to form a healthy relationship and attachment with a caregiver. Family centered therapy would be the best way to work on creating healthy relationships.

[25] Testimony was also given that, in January 2020, Child, Mother, and Father were supposed to begin working in Dialectical Behavioral Therapy to address negative thinking patterns and exchange them for positive behavioral changes. Parents were provided handbooks to use during telephonic therapy sessions, which were set to occur every weekend, and were to continue upon Child's release and anticipated placement in Mother's home. Father was somewhat consistent in attending the telephonic therapy sessions, and Mother was inconsistent and made excuses to not participate in the sessions.

[26] Evidence presented at the fact-finding hearings showed that over the course of the proceedings, Mother was offered and provided numerous services, including home-based casework, home-based therapy, wrap around services, parenting education, and therapeutic visitation. During the trial home visit in early 2018, Mother did not follow any safety plans that she helped create to keep Child in the home and showed no ability to comply with any parenting techniques she had been taught, despite Homebuilders being in the home three to five days per week during the trial home visit. This non-compliance ultimately led to the unsuccessful termination of the trial home visit and Child being removed from Mother's home.

[27] Testimony was also given that, following the failed trial home visit in March 2018, Child was moved to a residential facility in Lake County. DCS offered Mother gas cards and transportation to allow her to visit Child, but Mother only visited Child in person once in the seven months Child was there. Mother made excuses for not visiting Child, including that she had car anxiety, for

which she never sought treatment. In October 2018, Child was moved closer to Mother, but although Child was closer to Mother—and DCS provided and offered transportation to Mother for visits—Mother only engaged in two in-person visits with Child.

[28] FCM Karen Lindsey (“FCM Lindsey”) testified that during her time on the case, March 2018 through July 2019, Mother admitted she was unable to take care of Child. While FCM Lindsey worked on the case, Mother was never employed and never obtained her driver’s license. FCM Lindsey testified that DCS provided Mother with all available services to work towards reunification, but Mother never implemented the techniques she was taught.

[29] Duquette testified that she started working with Mother in December 2017 and that Mother’s goals included obtaining appropriate housing, getting her driver’s license and appropriate employment, and improving her parenting skills. Mother never made any progress in any of her goals. She was unable to get her driver’s license until she paid \$10,000 in child support arrears and never obtained employment because she reported that her social anxiety was too high to maintain employment. Mother never had independent housing, and at the time Duquette stopped working with Mother in February 2020, Mother was living at her mother’s home in Kentucky. Mother continued to struggle with parenting skills and had difficulty maintaining routines in the home. When Mother was supposed to begin work on family centered therapy to address Child’s needs, Mother was reluctant to participate “due to the intensity of the sessions”; the sessions occurred two to three days a week for a minimum of two

hours per session. Duquette testified that she supervised some of Mother's visits with Child and had concerns about their relationship, which was more of a friendship than a mother-daughter relationship. She observed an "obvious lack of attachment" between Mother and Child. Tr. Vol. III p. 84. Mother also routinely placed her own needs above Child's needs and consistently blamed Child and others for her lack of progress.

[30] FCM Tiffany Batton ("FCM Batton") took over the case in July 2019 and remained Child's case manager at the time of the fact-finding hearings. When FCM Batton took over the case, Mother and Father were open to consenting to Child's adoption, but that did not occur. FCM Batton testified that although Mother somewhat engaged in services, she was unable to implement the skills she was taught. Although intensive services had been provided to Mother to prepare her for Child to return to the home, Mother was never ready to bring Child home. DCS offered the services to address Child's behaviors and diagnosis of RAD, but Mother never took advantage of those services. FCM Batton testified that, at the time of the fact-finding hearing, Mother had recently been evicted from the home where she was residing in Kentucky, and Mother was residing in a friend's home, which was not appropriate for Child.

[31] As to Father, FCM Lindsey testified that DCS provided him with all available services to work towards reunification, but Father never implemented the techniques he was taught. Although Father was not permitted to have visits with Child at the beginning of the case due to the no contact order, the no contact order was modified at the DCS's request, and Father participated in



some telephonic visitation with Child. From January to June 2020, Father was permitted visits with Child, but by July, Father was missing all visits. While FCM Lindsey was involved in the case, Father had periods of unemployment, lack of stable housing, lack of participation in services, and periods of incarceration. Father admitted that he was unable to care for Child or meet her needs during the same timeframe.

[32] Duquette testified that she worked in October 2017 with Father on fatherhood engagement, anger management, and therapy to help address Child's RAD. Father's participation was inconsistent, and in July 2020 Father was withdrawn from the services due to his inconsistency and lack of progress. During FCM Batton's time on the case, Father's participation in services was sporadic, mostly because of his incarceration and substance use. In February 2021, Father had unauthorized conversations with Child in which Father talked about coming to get Child from her foster home. Father later admitted he was under the influence of drugs when he sent the messages to Child. During the proceedings, Father pleaded guilty to possession of paraphernalia and was charged with failure to register as a sex offender in March 2021. Father was incarcerated from March 2021 until the date of the fact-finding hearings. Father sporadically submitted to drug screens and tested positive for methamphetamine, amphetamine, and/or THC on all submitted screens.

[33] FCM Batton testified that she believed it was in Child's best interests for the trial court to terminate Mother's and Father's parental rights and that Parents were a threat to Child's emotional well-being. Patricia Coghill ("Coghill"),

Child's Guardian Ad Litem, was involved in the case since the initial hearing on July 27, 2017, and she testified that she believed it was in Child's best interests that Parents' rights be terminated. Coghill indicated that there was never any significant change in the family's circumstances since Child's removal in July 2017. Although Child spoke of having a relationship with Parents, Coghill stated that, "I don't really see that that's going to be something that's going to be long[-]lasting for her." Tr. Vol. III p. 170. Coghill stated that when Child was removed, Mother was unemployed, had no driver's license, and did not have stable or independent housing, and that none of those circumstances had changed. She further testified that, although Child had an emotional bond with Father, it was not necessarily a healthy one. Because of his incarceration, Father was not in a position to care for Child, and due to his prolonged periods of absence during the proceedings, he failed to make any progress. Coghill testified that adoption is the best way for Child to move forward and develop healthy relationships.

[34] Jennifer Carroll ("Carroll"), an Adoption Consultant with DCS, had been involved in the case for two years and was familiar with Child and the efforts to find Child an adoptive home. Carroll had success in finding homes for children with similar diagnoses as Child and had utilized recruitment videos in these successful adoptions. Because Father and Mother would not consent to Child creating a recruitment video, Child had not been able to participate in making one. Carroll testified that making a recruitment video for Child would provide families with further information, help humanize Child, and attract families

that know they are going to be adopting a child with trauma history. The permanency plan for Child at the time of the fact-finding hearings was adoption with a concurrent plan of guardianship. At the time of the fact-finding hearings, there was a pre-adoptive family interested in Child.

[35] On March 17, 2022, the trial court entered its order terminating Mother's and Father's parental rights. Mother and Father now appeal.

### **Discussion and Decision**

[36] While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parents to establish a home and raise their children, the law allows for the termination of parental rights based on the inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child's interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

## I. Sufficiency of the Evidence

[37] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts . . . .” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). Where, as here, the trial court enters specific findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,<sup>3</sup> and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn from it that support it. *Id.* If the evidence and inferences support the trial court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[38] Before an involuntary termination of parental rights may occur, the State must allege and prove, among other things:

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

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<sup>3</sup> Mother does not challenge the trial court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. See *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

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

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

(iii) The child has, on two (2) separate occasions, been adjudicated a [CHINS];

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

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

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, "if 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." I.C. § 31-35-2-8(a) (emphasis added).

### ***A. Conditions Not Remedied***

[39] Mother and Father first argue that in the trial court's conclusion there was a reasonable probability that the conditions resulting in the removal of Child and the reasons for placement outside of the home would not be remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child's removal and continued placement outside the home will not be remedied, we engage in a two-step

analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must determine what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[40] In the second step, the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, "trial 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." *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).

[41] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *E.M.*, 4 N.E.3d at 643. When determining whether the conditions for the removal would be remedied, the trial court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

- [42] In July 2017, DCS filed the CHINS petition and removed Child from the Mother's home based on allegations that Child was physically aggressive and had spit, slapped, and pulled a knife on family members and because Parents were unable to care for her due to these behaviors. Among other things, Child was diagnosed with RAD.
- [43] There was never a sustained effort to comply with services and therapy in order to achieve the ability for Child to return to the care of Parents. Because of Child's RAD diagnosis, consistent therapy is necessary, including family-centered therapy with a caregiver willing to devote time to developing a trusting relationship with Child and to offering Child the unconditional caretaking and love she needs. But at no point in the lengthy duration of this case, have Mother and Father even proceeded to the point where they could begin the intensive therapy required to manage Child's RAD.
- [44] Both Mother and Father failed to consistently participate in services and visitations with Child. Throughout the case, Parents at times participated in services, but despite the many years and multiple services offered by DCS to address Child's mental health issues, they were never able to benefit from the services. Additionally, when Child was placed in different residential facilities around the State, Mother only had occasional visits with Child due to both her lack of a driver's license and her denial of transportation by DCS because of her car anxiety. Father was unable to have visitations with Child over a significant portion of the case due to his incarceration and a no contact order barring him from having contact with Child.

[45] In 2021, when the petition to terminate parental rights was filed, neither Mother nor Father were participating with the case plan, keeping in contact with DCS, or engaging in services, and they had not enhanced their ability to parent Child and had not alleviated the cause for Child being placed out of the home. Father had a warrant for his arrest for failing to register as a sex offender, for which he was later arrested. There was also still a no contact order in place that prevented Father from contacting Child.

[46] Despite many years of access to services, Parents never became equipped to be the safe, secure, and compassionate parents Child needed, and at the time of the fact-finding hearings, they remained unable or unwilling to meet their parenting responsibilities. The evidence demonstrates that at no time during these proceedings were Parents in a position to properly parent Child or to provide her with safe and stable permanency. Parents' unwillingness to address their own and Child's needs showed a reasonable probability that the conditions for removal will not be remedied. At best, the Parents' compliance with the trial court's orders was sporadic and incomplete. The trial court did not err in its conclusion that the conditions for removal and continued placement outside the home would not be remedied.<sup>4</sup>

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<sup>4</sup> We need not address whether the trial court properly concluded that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Child's well-being because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the juvenile court need only find that one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See* Ind. Code § 31-35-2-4(b)(2)(B); *A.D.S. v. Ind. Dep't Child Servs.*, 987 N.E.2d 1150, 1157 n.6 (Ind. Ct. App. 2013), *trans. denied*. Because we have concluded that the trial court's



## ***B. Best Interests***

[47] Both Mother and Father argue that the trial court's conclusion that termination was in the best interests of Child was not supported by clear and convincing evidence. In determining what is in the best interests of the child, a 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) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent's historical inability to provide a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In re A.P.* 981 N.E.2d 75, 82 (Ind. Ct. App. 2012). Testimony of the service providers, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child

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determination that the conditions for Child's removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence, we do not need to reach this argument.

relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[48] In looking at the totality of the evidence, at the time of the fact-finding hearings, Child had been removed from the care of Parents for over four years, and Parents had failed to make the changes necessary to provide Child with a safe and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Mother and Father would not remedy the reasons for Child’s removal from their care. Additionally, FCM Batton testified that she believed it was in Child’s best interests for the trial court to terminate Mother’s and Father’s parental rights and that Parents were a threat to Child’s emotional well-being. Coghill, Child’s GAL, testified that she believed it was in Child’s best interests that Parents’ rights be terminated. She indicated that there was never any meaningful change in the family’s circumstances since Child’s removal in July 2017 and that adoption is the best way for Child to move forward and develop healthy relationships.

[49] The trial court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Child should not have to wait any longer for the opportunity to enjoy the permanency that is essential to her development and overall well-being. The trial court’s conclusion that

termination of Mother's and Father's parental rights was in Child's best interests was supported by clear and convincing evidence.

### ***C. Satisfactory Plan***

[50] Mother additionally argues that DCS did not have a satisfactory plan for Child's care and treatment. Indiana courts have traditionally held that for a plan to be satisfactory for the purposes of the termination statute, it need not be detailed, as long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re A.S.*, 17 N.E.3d at 1007 (citing *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*). A DCS plan is satisfactory if the plan is to attempt to find suitable parents to adopt the children and does not need to be a guarantee that a suitable adoption will take place, only that DCS will attempt to find a suitable adoptive parent. *Id.*

[51] Here, DCS's plan was for Child to be adopted. Although an adoptive family had not yet been identified at the time of the fact-finding hearings, there was testimony from Carroll, a DCS Adoption Consultant familiar with Child and the efforts to find Child an adoptive home. Carroll had success in finding homes for children with similar diagnoses as Child and had utilized recruitment videos in these successful adoptions. Child had not yet been able to participate in making a recruitment video because Father and Mother would not consent to Child doing so. Carroll testified that making a recruitment video for Child would provide more families with further information and would help humanize Child and attract families that know they are going to be parenting a

child with trauma history. At the time of the fact-finding hearings, there was a pre-adoptive family interested in Child. Although Child's situation was made more difficult due to her RAD diagnosis and other issues that she has suffered, DCS's plan for adoption took into account the difficulties that may occur and ordered solutions to try to get Child adopted quickly and by a family who was aware of Child's specific needs. The trial court's conclusion that DCS had a satisfactory plan for the care and treatment of Child was supported by clear and convincing evidence.

## II. Due Process

[52] Mother argues that the trial court's order terminating her parental rights violated her due process rights. Mother concedes that she did not raise this argument to the trial court but argues that her contention rises to the level of fundamental error. Generally, a party waives on appeal an issue that was not raised before the trial court. *In re D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019) (citing *Plank v. Cmty. Hosp. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013)), trans. denied. However, we have discretion to address such claims, especially when they involve constitutional rights, the violation of which would be fundamental error. *Id.* Here, Mother's substantive due process right to raise her children and her procedural due process right to fair proceedings are at issue; therefore, we exercise our discretion to review Mother's due process claim even though it was not raised below. *See id.*

[53] Fundamental error review is extremely narrow and “available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.” *In re Eq. W.*, 124 N.E.3d 1201, 1214–15 (Ind. 2019) (quoting *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008)). The alleged misconduct must be reviewed in the context of all that happened in the proceeding and all the relevant information presented to the court. *Id.* at 1215.

[54] When the State seeks to terminate parental rights, it must do so in a manner that meets the requirements of due process. *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015). The nature of the process due in proceedings to terminate parental rights is governed by a balancing of the three factors: the private interests affected by the proceeding; the risk of error created by the State’s chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. *In re T.W.*, 135 N.E.3d 607, 613 (Ind. Ct. App. 2019), *trans. denied*. The private interest affected by the proceeding—a parent’s interest in the care, custody, and control of his or her child—is substantial, and the State’s interest in protecting the welfare of a child is also substantial. *Id.* Therefore, we focus on the risk of error created by DCS’s actions and the trial court’s actions. *See id.*

[55] Mother argues that the trial court violated her due process rights because the trial court based the termination of her parental rights on Mother’s failure to meet requirements that were not ordered by the trial court and because these

purported failures did not affect Child's well-being. She specifically points to two of the trial court's findings:

Mother has failed to take any initiative to make any improvements to her living situation and show that she is capable of being the parent this child must have. Mother has shown she is unwilling to make a commitment to [Child] going forward. Mother's lack of commitment was shown by her unwillingness to fully commit to family centered therapy (FCT). This reluctance was due to the time commitment involved.

During the entire pendency of the case, Mother has never obtained employment or a driver's license. She says that her social anxiety is too high for her to have employment. Mother has also never had her own place of residence for the child.

Appellant Mother's App. Vol. II p. 21.

[56] Mother's argument regarding these findings of the trial court is merely just an assertion that the evidence was not sufficient to support those findings and that those findings did not support the trial court's conclusion. Both of her challenged findings were in support of the conclusion that termination was in the best interests of Child. We have already concluded that the trial court's conclusion that termination was in the best interests of Child was supported by clear and convincing evidence. These two findings are only two of many findings that the trial court made in support of its conclusions and judgment, and Mother does not challenge any of those other findings. We, therefore, accept all of the unchallenged finding as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings

as true). Mother has not shown that the inclusion of the challenged findings constitutes fundamental error.

[57] To the extent that Mother argues that her due process rights were violated because she was not ordered by the trial court to obtain employment, a driver's license, and a residence of her own, Mother has failed to articulate how the alleged errors were so prejudicial as to make fair proceedings impossible in light of all of the other evidence presented at trial. *See In re Eq. W.*, 124 N.E.3d at 1214–15. Indeed, the evidence showed that when Child was adjudicated a CHINS, Mother was ordered to participate in services and facilitate a safe and stable home environment, to secure a legal and stable source of income, and to complete all recommendations resulting from a parenting assessment. Ex. Vol. I p. 19–21, 27–29. Therefore, the fact that Mother was expected to take steps and make an effort to ensure she could provide Child with a safe, stable, secure, and permanent living environment should not have been a surprise to Mother because these requirements were a part of the dispositional decree. The evidence also showed that, from early in the case, Homebuilders worked with Mother to obtain her driver's license and that not having her license interfered with reunification because Mother was not able to visit Child<sup>5</sup>. Contrary to her assertion on appeal, Mother was clearly advised of her obligations to engage in services during the course of the CHINS case, and the trial court's findings that Mother failed to meet all of her obligations did not deprive her of fundamental

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<sup>5</sup> Mother also refused offers by DCS to provide Mother transportation to the visits.

fairness. Mother has not shown fundamental error, and the trial court did not violate her due process rights.

### **Conclusion**

[58] Based on the above, we conclude that the trial court did not violate Mother's due process rights in its termination determination. Additionally, the trial court's judgment terminating the parental rights of both Mother and Father was supported by clear and convincing evidence.

[59] Affirmed.

Robb, J., and Mathias, J., concur.