MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

IN THE

Court of Appeals of Indiana

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

B.D. (Minor Child)

and

W.A. (Mother)

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

April 25, 2024

Court of Appeals Case No.
23A-JT-1966

Appeal from the Knox Superior Court

The Honorable Gara U. Lee, Judge

Trial Court Cause No.
42D01-2209-JT-37

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] W.A. ("Mother") is the biological mother of B.D. ("Child"), who was born in December of 2013. In 2021, the Department of Child Services ("DCS") petitioned the juvenile court to adjudicate Child to be a child in need of services ("CHINS") based on Mother's incarceration and Father's housing conditions and instability.[1] Eventually, on DCS's petition and after a hearing, the juvenile court terminated Mother's parental rights to Child. Mother argues that the State failed to present clear and convincing evidence that there was a reasonable probability that the conditions resulting in Child's removal would not be remedied or that continuation of the parental relationship threatened Child, termination was in Child's best interests, and there was a satisfactory plan in place for Child after termination. We affirm.

[1] Father has voluntarily relinquished his parental rights to Child and does not participate in this appeal.

Facts and Procedural History

[2] In April of 2021, Child was in Father's custody, but actually living with a couple who were friends of Father, when DCS became involved after having received reports from the couple that Father had been neglecting Child due to his housing instability. Mother has struggled with drug addiction and psychotic disorder with schizophrenia and was incarcerated throughout the pendency of the CHINS case. Moreover, Mother had not had contact with Child in two years and her addiction struggles and numerous incarcerations had interfered with her ability to develop a bond with him. In fact, Mother was unsure whether she still had parental rights to Child at the time of removal, and he did not "know [Mother] is his mom." Ex. Vol. III p. 49.

[3] In May of 2021, DCS petitioned the juvenile court to find Child a CHINS. Shortly thereafter, the juvenile court conducted a hearing, after which it authorized Child's removal from Father's custody and placed him in relative care with an uncle. In August of that year, DCS referred Mother to Ireland Home Based Services for home-based case management, which Mother began in September. Also in September, DCS moved to amend its CHINS petition to include allegations of physical abuse by Father. On November 1, the juvenile court conducted an initial hearing on the CHINS petition as it related to Mother. At that hearing, Mother admitted that Child was a CHINS because "she is the non-custodial parent and is currently incarcerated[,]" and the juvenile court took her admission under advisement. Ex. Vol. I p. 96. In the

meantime, DCS had removed Child from his uncle's care and placed him in foster care.

[4] While incarcerated, Mother had been participating in the RARE program in the Daviess County Jail; however, by the end of November of 2021, she had stopped because she had "had a psychotic episode and was put back in general population." Ex. Vol. III p. 48. Mother rejoined the RARE program, but again stopped participating after a confrontation with another inmate. In January of 2022, DCS referred Mother and Child to supervised visitation, which included virtual visits for one hour every other week.

[5] On February 17, 2022, the juvenile court entered an order finding Child to be a CHINS. The juvenile court ordered Mother to, among other things, refrain from using drugs, complete a parenting and substance-abuse assessment, complete all recommended services, submit to random drug screens, and attend all scheduled visitation. In July of 2022, DCS closed Mother's referral with Ireland Home Based Services because Mother had enrolled in the Integrated Reentry and Correctional Services ("IRACS") Matrix program, which had a parent-aide component.

[6] In August, the trial court in one of Mother's criminal cases revoked her suspended sentence after Mother had violated the rules of the Daviess County community-corrections program. As a result, the trial court ordered Mother to serve 496 days of incarceration and complete the RARE program for a possible modification of her sentence.

[7] The next month, DCS petitioned to terminate Mother's parental rights. Mother had been incarcerated since April 1, 2021, and remained so at the time of the termination hearing, which began on November 28, 2022, with an expected release date of October 6, 2023. Upon her release, Mother planned to reside at the NOW Counseling sober-living home. The NOW Counseling program is at least a six-month program and does not allow children to be placed with their parents.

[8] In February of 2023, Mother completed the IRACS Matrix program, the reentry program for community corrections, and otherwise participated in services available to the extent allowed by her incarceration. However, Mother did not complete the RARE program. At the termination hearing, Mother testified that, while she had known that the criminal trial court had ordered her to complete the RARE program, she had not done so because of "certain anxieties that were bothering [her] at the time." Tr. Vol. II p. 41.

[9] By March of 2023, Mother had not seen Child in person or provided day-to-day care for him in nearly four years. Family case manager ("FCM") Mindi Reel testified that Child's relationship with Mother is "not even a friend relationship" but a "relationship of I have to see this person every other week virtually." Tr. Vol. II p. 60. Moreover, court-appointed special advocate ("CASA") Cathy Beaman spoke to Child and testified that he neither appeared "attached" to Mother nor "he misse[d] her or want[ed] to be with her." Tr. Vol. II p. 22. CASA Beaman further testified that there is "not a big chance of rebuilding [their] bond right now" and that Mother would need "a minimum of

six months, if not a year" after her release from incarceration before she would be stable enough to care for Child. Tr. Vol. II p. 23. Additionally, both CASA Beaman and FCM Reel testified that termination is in Child's best interests and that he is in a "[v]ery good placement" where his needs are being met and his grades and behavior have been improving. Tr. Vol. II p. 23. Child is in a pre-adoptive foster home that is "still up in the air about the adoption." Tr. Vol. II p. 68. On July 12, 2023, the juvenile court terminated Mother's parental rights to Child.

Discussion and Decision

[10] "The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children." *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* 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.*

[11] When reviewing termination proceedings, we will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Term. of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and the reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[12] In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* "A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[13] Mother contends that the evidence is insufficient to support the termination of her parental rights to Child. Of relevance to this appeal, DCS was required to prove the following:

> (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). Mother argues that the evidence is insufficient to satisfy the requirements of subsections (B), (C), and (D).

I. The Evidence Establishes that there was a Reasonable Probability that the Conditions Resulting in Removal would not be Remedied.

[14] Because Indiana Code subsection 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court's determination, it is not necessary for DCS to prove, or for the juvenile court to find, the others. *See In re S.P.H.*, 806 N.E.2d at 882.

[15]

> When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, 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 so doing, the trial court may consider the parent's response to the services offered through

> [DCS]. A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability that the parent's behavior will not change.

In re B.J., 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008) (internal citations and quotations omitted), *trans. denied*.

[16] The juvenile court's findings under subsection (B)(i) were not clearly erroneous because Mother had exhibited a pattern of engaging in criminal activity and abusing illegal drugs since she was thirteen years old. *See In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (concluding that a juvenile court's duty to consider changed conditions does not preclude it from finding that parents' past behavior is the best predictor of future behavior); *In re K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1234 (Ind. 2013) (concluding that mother's habitual pattern of substance abuse and criminal conduct had resulted in continued neglect of the children such that there was a substantial probability of future neglect or deprivation). DCS originally removed Child from Father's care due to signs of neglect; however, DCS did not place him with Mother because she was incarcerated at the time and, in fact, remained so throughout the CHINS case. Both FCM Reel and Mother testified that Mother's drug addiction and incarceration had rendered her unable to care for Child for almost four years and had prevented them from forming a bond. At the time of the termination

hearing, Child was nine years old and had "not even a friend relationship" with Mother but a "relationship of I have to see this person every other week virtually." Tr. Vol. II p. 60.

[17] While Mother has participated in various services to address parenting issues due to her incarceration, "she has been unable to show that she can meet [Child]'s ba[s]ic needs including providing food, clothing[,] shelter, medical and mental health, and education needs." Appellant's App. Vol. II p. 23. When considering whether there is a reasonable probability that the conditions resulting in a child's removal will be remedied, juvenile courts have the discretion to weigh a parent's history more heavily than efforts made shortly before termination. *D.B.M. v. Ind. Dep't of Child Servs.*, 20 N.E.3d 174, 181–82 (Ind. Ct. App. 2014), *trans. denied*. Moreover, while there is no evidence that Mother has been continuing to use drugs, the juvenile court was within its discretion to consider Mother's incarceration and the corresponding lack of access to drugs and exposure to the stresses of everyday life contribute to drug use when evaluating her sobriety. *See In re K.T.K.*, 989 N.E.2d at 1234.

[18] Given Mother's "long criminal history[,]" "addiction to methamphetamine[,]" and "struggles to meet her own mental health needs[,]" the juvenile court reasonably determined that there was a reasonable probability the conditions resulting in Child's removal would not be remedied. Appellant's App. Vol. II p. 20. Mother's argument on this issue essentially amounts to an invitation to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879. Because we conclude that the juvenile court's determination that there was a

reasonable probability that the conditions resulting in Child's removal would not be remedied, we need not address Mother's argument that there is insufficient evidence to sustain the juvenile court's finding that there is a reasonable probability that the continuation of the parent-child relationship threatens Child's well-being. *See id*. at 882.

II. The Evidence Establishes that Termination was in Child's Best Interests

[19] When considering whether the termination of a parent's parental rights serves a child's best interests, we look to "the totality of the evidence." *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). "A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same supports a finding that termination of parental rights is in the best interests of the children." *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. Importantly,

> The [juvenile] court need not wait until the child is irreversibly harmed such that [the child's] physical, mental, and social development is permanently impaired before terminating the parent-child relationship. 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 providers may support a finding that termination is in the child's best interests.

In re A.K., 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citation omitted).

[20] Mother argues that "[t]erminating the parent-child relationship between [Mother] and [Child] was not in [Child]'s best interest[s]." Appellant's Br. p. 15. We disagree. As mentioned, Mother, at the time of termination, had not provided day-to-day care for Child in nearly four years, and she admitted that her frequent incarceration and drug use had prevented her from forming a bond with him. Moreover, at the time of termination, Mother had had three months remaining of her incarceration and, after her release, expected to stay at the NOW Counseling sober-living home, a program which takes *at least* six months and does not allow children. Additionally, the juvenile court recognized that Mother "struggles to meet her own mental health needs including sobriety[,]" "would have difficulty ensuring that [Child]'s mental health and education needs are met[,]" and she has a "long criminal history" due to her addiction to methamphetamine. Tr. Vol. II pp. 22, 23.

[21] Further, CASA Beaman and FCM Reel testified that they believed termination was in Child's best interests, testimony that is likely sufficient on its own to support the juvenile court's decision on the matter. *See Lang*, 861 N.E.2d at 374 (providing that the testimony of the case worker, guardian ad litem, or a CASA regarding the children's best interests supports a finding that termination is in a child's best interests). Consequently, we cannot say that the juvenile court's determination that termination of Mother's parental rights was in Child's best interest was clearly erroneous. Again, Mother's argument to the contrary amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

III. The Evidence Establishes that there was a Satisfactory Plan in Place for Child Post-Termination

[22] Finally, Mother argues that the State failed to present sufficient evidence that there is a satisfactory plan in place for Child's care. For a plan to be satisfactory under the statute, it "need not be detailed, so 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 Term. of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied*. While Child's current placement had not yet committed to adoption at the time of the termination hearing, the juvenile court found that "DCS'[s] plan for Child is that he be adopted" and "this plan is satisfactory for Child's care and treatment." Appellant's App. Vol. II p. 23. CASA Beaman agreed with this plan. The fact that a specific adoptive family has not yet been identified does not render a plan unsatisfactory. *See In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). Simply "[a]ttempting to find suitable parents to adopt [Child] is clearly a satisfactory plan." *Lang*, 861 N.E.2d at 375. Therefore, the juvenile court's conclusion that there was a satisfactory plan in place for Child is not clearly erroneous.

[23] The judgment of the juvenile court is affirmed.

Altice, C.J., and Felix, J., concur.

ATTORNEY FOR APPELLANT
Michael G. Moore
Indianapolis, Indiana

Attorneys for Appellee

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana