No.

IN THE

SUPREME COURT OF THE UNITED STATES

M. H.,

Petitioner,

v.

INDIANA DEPARTMENT OF CHILD SERVICES

Respondent.

On Petition for Writ of Certiorari
To The Indiana Supreme Court

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APPENDIX

TABLE OF APPENDICES

APPENDIX A

IN THE

Indiana Supreme Court

Supreme Court Case No. 19S-JT-323

In the Matter of Ma.H., Le.H., Lo.H., W.H., La.H., Me.H., and S.W. (Minor Children); M.H. (Father) and R.H. (Mother),

Appellants (Respondents)

—v—

Indiana Department of Child Services,

Appellee (Petitioner)

Argued: June 18, 2019 | Decided: October 31, 2019

Appeal from the Wells Circuit Court,
Nos. 90C01-1707-JT-22, -29, -30, -31, -32, -34, -35
The Honorable Kenton W. Kiracofe, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 18A-JT-1296

Opinion by Chief Justice Rush

Justices David, Massa, Slaughter, and Goff concur.

Rush, Chief Justice.

Civil child welfare proceedings often implicate a parent in criminal activity. In such cases, the trial court needs to strike a delicate balance: it must safeguard children's well-being, while protecting parents' constitutional rights.

Here, a mother and a father appeal the termination of parental rights to seven children, arguing that the trial court violated the father's Fifth Amendment privilege against self-incrimination. After a court found that the father sexually abused his stepdaughter, he was required to select and complete a sex-offender treatment program. He briefly attended a program but stopped when it required an admission of wrongdoing. The father has always denied the sexual abuse, and the mother has likewise never believed her daughter.

We find no constitutional violation. The trial court's order did not require the father to admit to a crime at the risk of losing his parental rights. And because the parents failed to address the sexual abuse allegations—several of which a court found were true—we find sufficient evidence to support the trial court's termination decision and affirm.

Facts and Procedural History

M.H. (Father) and R.H. (Mother) have a blended, Amish family of nine children. Seven of the children were born during their marriage; the oldest two, S.W. and R.W., are Mother's daughters from a prior relationship.[1]

In early spring 2016, seventeen-year-old R.W. abruptly left home. About a week later, the Department of Child Services (DCS) received a report alleging that Father had sexually abused R.W. for years and that the condition of Parents' home was unacceptable. Parents denied both allegations; but after a detective interviewed R.W., DCS removed the

[1] Neither Parents' youngest child nor R.W. are part of this appeal. Thus, the term "children" hereafter refers only to the seven other children.

remaining children from the home. They were placed with their maternal uncle and his family, who are also part of the Amish community.

DCS alleged the children were in need of services (CHINS) based on the Parents' actions. At the hearing, DCS provided testimony on the home's deplorable condition, and R.W. testified to numerous and specific instances of sexual abuse by Father. The court found the children to be CHINS, noting that R.W.'s testimony was credible and that most of the allegations in DCS's petition were true.

As a result, Parents were ordered to complete services, including ones to address sexual abuse. Specifically, Father had to complete sex-offender treatment; and Parents were required to create a safety plan to protect the children from future abuse.

Father objected to the sex-offender treatment. He was concerned that completing such a program would involve a polygraph examination, which he argued would require him to waive his Fifth Amendment privilege against self-incrimination. The trial court disagreed. In its order, the court explained that Father could refuse to answer questions during treatment, but that if Father chose to remain silent, then the court could "infer what his answer[s] might have been."

About a month later, Father began sex-offender treatment. But because of his continued denial, little progress was made. So, the therapist recommended a polygraph test to show that Father had done nothing wrong—"to help things move forward." Father took the polygraph, and the results showed he was "deceptive" when asked about the sexual abuse.

At that point, the therapist could not continue the program with Father unless he admitted wrongdoing. Father refused and stopped attending. During this time, Mother never wavered in her support of Father or in her belief that R.W. lied about the sexual abuse. Thus, Father never completed sex-offender treatment, and Parents never created a safety plan.

In late summer 2017, DCS petitioned to terminate parental rights, citing Parents' failure to adequately address the CHINS court's finding that Father sexually abused R.W. During a four-day hearing, R.W. described

Father's sexual abuse and explained that she twice told Mother about it, including once after the first encounter. The court also heard testimony about Father's failure to complete sex-offender treatment; Parents' continued denial of R.W.'s allegations; and Parents' failure to develop a safety plan. Additionally, both the children's guardian ad litem (GAL) and a DCS caseworker recommended termination. A few months later, the trial court terminated Parents' parental rights.

Mother and Father both appealed, and a divided panel reversed. *In re Ma.H.*, 119 N.E.3d 1076, 1090 (Ind. Ct. App. 2019). The majority concluded that Father's Fifth Amendment rights were violated and reversed the termination. *Id.* Judge Robb dissented, believing that no Fifth Amendment violation occurred and that sufficient evidence supported the court's decision. *Id.* at 1091–92, 1091 n.8 (Robb, J., dissenting).

DCS petitioned for transfer, which we granted, vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

Standard of Review

This challenge to the trial court's termination decision invokes two standards of review.

We affirm a trial court's termination decision unless it is clearly erroneous; a termination decision is clearly erroneous when the court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment. *In re K.E.*, 39 N.E.3d 641, 646 (Ind. 2015). But to the extent our analysis depends on whether Father's Fifth Amendment privilege against self-incrimination was violated, we review that purely legal question de novo. *See Bleeke v. Lemmon*, 6 N.E.3d 907, 917 (Ind. 2014).

Discussion and Decision

Parents have a fundamental right to raise their children—but this right is not absolute. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated. *Id.*

To terminate parental rights, Indiana law requires DCS to prove certain elements by clear and convincing evidence. Ind. Code §§ 31-35-2-4(b)(2); 31-37-14-2 (2018). We focus today on two: (1) a reasonable probability that the conditions that resulted in the children's removal will not be remedied;[2] and (2) that termination is in the children's best interests. I.C. § 31-35-2-4(b)(2)(B)(i), (C).

Here, the trial court determined that DCS met its burden on both elements. Parents argue that the trial court's conclusions are clearly erroneous.

Specifically, they assert that the trial court violated Father's Fifth Amendment privilege against self-incrimination; and thus, the trial court erred in considering evidence of Parents' response to services addressing the CHINS court's finding that Father sexually abused R.W. Father argues that, when the improperly considered evidence is removed, there remains insufficient evidence to support the court's conclusion that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied. And each parent similarly argues that there is insufficient evidence to support the trial court's conclusion that termination is in the children's best interests. We disagree.

Our review of the record shows there is no constitutional violation because the court never ordered Father to admit to a crime. We also find

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[2] Section 31-35-2-4(b)(2)(B) requires DCS to make one of three showings. The trial court here found that DCS met its burden on two: (1) a reasonable probability that the reasons for removal will not be remedied; and (2) a reasonable probability that the continuation of the parent-child relationship poses a threat to the children's well-being. I.C. § 31-35-2-4(b)(2)(B)(i), (ii). Because we determine that the court's findings support its conclusion on the former, we need not address the latter. *See K.T.K.*, 989 N.E.2d at 1234.

that the evidence favorable to the trial court's decision supports its factual findings, which in turn support its challenged legal conclusions. Thus, Parents have failed to show that the trial court's termination decision is clearly erroneous.

I. There is no Fifth Amendment violation.

CHINS proceedings and proceedings to terminate parental rights (TPR), though non-criminal, can implicate a parent in criminal activity. For example, a CHINS or TPR petition may include allegations of neglect, physical abuse, illegal drug activity, human trafficking, endangerment, or sexual abuse—each its own criminal offense carrying serious consequences. *Compare* I.C. §§ 31-34-1-1, -2(a), -2(d), -3, -4, *with* Ind. Code §§ 35-46-1-4, -42-2-1, -42-4-1, -48-4-1.2 (2018).

As a result, trial courts presiding over CHINS and TPR proceedings must remain conscientious of possible criminal implications and safeguard a parent's constitutional rights—such as those guaranteed by the Fifth Amendment, including the privilege against self-incrimination. Father argues that the trial court violated this privilege "by expressly requiring him to confess to a crime for which he was never charged."

Generally, in any proceeding—civil or criminal—the Fifth Amendment protects an individual from being compelled to answer questions when the answers might be used in a future criminal proceeding. *See Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973); *Bleeke*, 6 N.E.3d at 925. This means that, in CHINS and TPR proceedings, a court may not compel a parent's admission to a crime—if the admission could be used against him or her in a subsequent criminal proceeding—under the threat of losing parental rights. *See In re A.D.L.*, 402 P.3d 1280, 1285 (Nev. 2017) (collecting cases). *See generally Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977) ("[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment[.]").

Yet, in civil proceedings, a court can draw a negative inference from a claim of the Fifth Amendment privilege against self-incrimination. *See*

Baxter v. Palmigiano, 425 U.S. 308, 318 (1976); *Hardiman v. Cozmanoff*, 4 N.E.3d 1148, 1152 (Ind. 2014). To that end, the trial court here noted that Father could choose not to answer questions during sex-offender treatment, but the court could then "infer what his answer[s] might have been." The trial court was correct. Ultimately, though, Father voluntarily took the polygraph, so there was no silence from which to draw an adverse inference. Our inquiry then is whether any court action forced Father to choose between losing his parental rights and waiving his right against self-incrimination.

"[T]here is a distinction between a court-ordered case plan that mandates admission of culpability for family reunification and one that requires meaningful therapy for family reunification." *A.D.L.*, 402 P.3d at 1286. While the former constitutes a Fifth Amendment violation, the latter does not. *Id.* Here, the trial court ordered Father to "select" and "complete a course of sex offender treatment" from options that DCS would provide, within sixty miles of his home. Father began a sex-offender treatment program that ultimately required him to admit wrongdoing after a voluntary polygraph showed deceptive denials of misconduct. Refusing to admit to sexual abuse, Father stopped attending.

We recognize that Father attended a program that eventually required an admission of guilt. But the trial court's order did not compel Father to admit to a crime; the order simply required Father to select and complete a course of sex-offender treatment. *See Ma.H.*, 119 N.E.3d at 1091 n.8 (Robb, J., dissenting). Other states have made a similar distinction. *See In re A.W.*, 896 N.E.2d 316, 326 (Ill. 2008) ("[A] trial court may order a service plan that requires a parent to engage in effective counseling or therapy, but may not compel counseling or therapy requiring the parent to admit to committing a crime."); *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002) ("The State may require parents to otherwise undergo treatment, but it may not specifically require an admission of guilt as part of the treatment.").

Father, nonetheless, asserts that the trial court's order "created a requirement for [him] to testify against himself and make an admission of a specific crime." In other words, Father seemingly argues that, even if the

court order didn't explicitly mandate him to participate in a program that would require an admission, this was the order's practical effect. Yet, Father points to no evidence that he sought out a different program; that he requested DCS to provide him with other options; or that there were no treatment programs available, within sixty miles of his home, that did not require an admission of sexual abuse. *See A.W.*, 896 N.E.2d at 326 (noting that the court did not order the parent "to complete a specific program requiring him to admit abuse" and pointing out that the parent had "presented no evidence that there are no other treatment programs available offering sex offender counseling without requiring an admission of sexual abuse"); *C.H.*, 652 N.W.2d at 150 (finding no evidence that the State required the father "to complete any particular sexual offender treatment program" or "disapproved of [the father's] participation in a treatment program that would not require an admission of guilt").

In sum, the trial court did not violate Father's Fifth Amendment privilege against self-incrimination. And so the trial court could properly consider evidence of Parents' failure to respond to services addressing the CHINS court's finding that Father sexually abused R.W.

The trial court relied on this evidence, and other evidence in the record, to support its conclusions that there is a reasonable probability that a primary reason for the children's removal will not be remedied and that termination is in the children's best interests. We now address whether that evidence was sufficient.

II. The evidence-backed findings support the trial court's conclusion that there is a reasonable probability that a primary reason for the children's removal will not be remedied.

Father argues there is insufficient evidence to clearly and convincingly show that there is a reasonable probability that the conditions leading to the children's removal will not be remedied. He is incorrect.

Here, the trial court's findings show that it engaged in the appropriate two-step analysis. *See In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010). First, it identified the removal conditions. *Id.* Specifically, the court found that the children were removed, in relevant part, because of Father's alleged long-term sexual abuse of R.W. Second, the trial court made findings on whether there is a reasonable probability that this removal condition will not be remedied. *Id.* On that point, the court found that despite Father's "history of substantiated sexual abuse of his stepdaughter," he "failed to complete . . . sex offender specific treatment, and has refused to admit he has a problem." Ample evidence in the record supports these findings.

Turning to that evidence, there is no dispute that the CHINS court found several of R.W.'s sexual-abuse allegations to be true, including the following: When R.W. was a young girl, Father told R.W. to come into his bedroom where he pulled her on top of him. She said that she "didn't understand what was happening" and "was frightened." On another occasion, R.W. was asleep on the couch and woke up to Father on top of her, touching his penis to her vagina. A couple of years later, Father told R.W. to take water to the horses in the barn. Once inside the barn, Father pulled his pants down and inserted his fingers and then his penis into R.W.'s vagina while she cried. R.W. also testified at the termination hearing, explaining that Father molested her "almost all the time I was left alone with him," until she was a teenager.

Similarly, there is no dispute that Father did not complete a sex-offender treatment program. In fact, at the termination hearing, Father displayed resentment toward the court-ordered service. When Father was asked if he agreed that he needed to attend sex-offender treatment, he responded, "No." When asked whether he felt that he could benefit from the treatment, Father responded, "I don't know how I could." And most notably, when Father was asked what he had done to remedy R.W.'s claims that he molested her, he responded, "Nothing." By his own words, Father conceded that he has done **nothing** to remedy a primary reason for the children's removal.

Ultimately, the court's findings—that Father repeatedly sexually abused his stepdaughter and that he failed to complete sex-offender

treatment—are supported by the evidence. And those findings clearly and convincingly support the trial court's conclusion that there is a reasonable probability that a primary reason for the children's removal—R.W.'s sexual abuse allegations against Father—will not be remedied.

We now address whether sufficient evidence supports the trial court's conclusion that termination is in the children's best interests.

III. The evidence-backed findings support the trial court's conclusion that termination is in the children's best interests.

Parents each argue that there is insufficient evidence to clearly and convincingly show that termination is in the best interests of the children. Specifically, Father alleges that terminating all parental rights based on a "sole allegation" of sexual abuse is not in the children's best interests. And Mother maintains that she completed all services offered to her and her continued support of Father is likewise not sufficient to show termination is in the children's best interests. We disagree. Parents' arguments are a request for us to reweigh the evidence and substitute our judgment for that of the trial court, which we will not do. Instead, looking at the evidence favorable to the trial court's ruling, we find ample evidence supporting the court's findings, which in turn support its best-interests conclusion.

Deciding whether termination is in children's best interests is "[p]erhaps the most difficult determination" the trial court must make. *E.M.*, 4 N.E.3d at 647. To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied.* Central among these interests is children's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648.

The trial court here echoed the children's need for permanency, noting that Parents have had plenty of time "to accomplish the steps necessary to

have the children returned to their care." Those "steps" included Parents' addressing R.W.'s allegations of sexual abuse against Father—several of which the CHINS court found to be true. Yet, Parents failed to address the sexual abuse, and the court made many findings on this failure. It referenced Father not completing a sex-offender treatment program; Father not believing that he needed treatment or that he would benefit from it; Mother dismissing R.W.'s claims and refusing to acknowledge the sexual abuse; Mother not believing Father posed any potential danger to her other children; and testimony from others showing concern for the children's safety if they were to return without a safety plan in place and with Father not having completed treatment. Evidence in the record supports each finding.

The evidence supporting the court's findings on Father is well-documented: he did not complete a court-ordered sex-offender treatment program; and he testified that he does not need treatment and does not believe he could benefit from it.

The evidence similarly supports the trial court's findings on Mother. Mother testified at the termination hearing that R.W. never mentioned anything to her at the time of Father's alleged sexual abuse. But R.W. later confirmed that she twice told Mother about the abuse, including once after the first time it happened. Mother has also twice listened to her daughter provide specific, detailed testimony of Father's sexual abuse. And R.W. recalled a more recent conversation with Mother, which ended with Mother telling R.W. to "basically, forgive and forget—just get over what happened." Yet, Mother testified at the termination hearing that she has never believed R.W. and does not believe Father poses any danger to the children. Mother is free to believe Father, but the trial court—responsible for resolving conflicting testimony—believed R.W. *See Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 149 (Ind. 2005).

Finally, the evidence supports the trial court's findings on a concern for the children's well-being if returned home. Specifically, the court heard testimony from four witnesses who shared a concern for the well-being of the children should they return home without a safety plan in place and without Father having completed treatment.

A psychologist testified that, when one child is sexually abused within a home, there is a similar risk to the other children in that home. The GAL shared her trepidation on returning the children: "[W]e have no safety plan in place, we have no plan where [Mother] has talked to her individual therapist or anyone that she worked with about what she's gonna do to be a protective factor for her own children." R.W. similarly voiced her concern that her siblings wouldn't "get the proper care that they need," if they were to return home and Father hadn't changed. And a DCS caseworker testified that she feared for the children's safety if they were returned to the home without Father completing treatment.

Though we acknowledge that Mother and Father completed most of the required services, "simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change," *In re J.S.*, 906 N.E.2d 226, 234 (Ind. Ct. App. 2009). Here, Parents have not made the needed change to address the CHINS court's finding that Father sexually abused R.W. or to protect the other children from future abuse. As the GAL observed, the children are "no closer to being reunified" than when they were removed "twenty months ago."

In sum, the totality of the evidence above supports the trial court's findings, which in turn support the court's best-interests conclusion.

Conclusion

The trial court did not violate Father's Fifth Amendment privilege against self-incrimination, and the court's decision to terminate Parents' parental rights is not clearly erroneous. We thus affirm.

David, Massa, Slaughter, and Goff, JJ., concur.

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APPENDIX B

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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Parent-Child Relationship of Ma.H., Le.H., Lo.H., W.H., La.H., Me.H., and S.W. (Children) and M.H. (Father) and R.H. (Mother);

M.H (Father) and R.H. (Mother),

Appellants-Respondents,

v.

The Indiana Department of Child Services,

Appellee-Petitioner

February 18, 2019

Court of Appeals Case No. 18A-JT-1296

Appeal from the Wells Circuit Court

The Honorable Kenton W. Kiracofe, Judge

Trial Court Cause No.
90C01-1707-JT-22
90C01-1708-JT-29
90C01-1708-JT-30
90C01-1708-JT-31
90C01-1708-JT-32
90C01-1708-JT-34
90C01-1708-JT-35

May, Judge.

[1] M.H. ("Father") and R.H. ("Mother") (collectively, "Parents") appeal the termination of their parental rights to Ma.H., Le.H., Lo.H., W.H., La.H., Me.H., and S.W. (collectively, "Children"). Father argues the trial court violated his due process rights when it impermissibly infringed on his constitutional right against self-incrimination under the Fifth Amendment by requiring him to complete sex offender treatment in which he had to admit he molested his step-daughter, R.W., as a condition of reunification with Children.

[2] In addition, Parents argue the trial court's findings did not support its conclusions that: (1) the conditions under which Children were removed from Parents' care would not be remedied; (2) the continuation of the parent/child relationship posed a threat to the well-being of Children; and (3) termination was in Children's best interests.

[3] We conclude the requirement that Father admit molesting R.W. violates Father's Fifth Amendment right against self-incrimination and the trial court's reliance on his refusal to so admit as proof that his parental rights should be terminated violates his Fourteenth Amendment right to due process. Based on these procedural insufficiencies and the lack of sufficient findings to support the trial court's conclusion that termination was in the best interests of Children, we reverse and remand.

Facts and Procedural History[1]

[4] Mother has two daughters from a previous marriage: R.W., born May 19, 1998, who is not subject to these proceedings,[2] and S.W.,[3] born May 14, 2001.[4] Parents' marriage produced six children: Ma.H., born November 26, 2005; Le.H., born September 8, 2007; Lo.H., born July 6, 2009; W.H., born September 16, 2010; La.H., born February 6, 2013; and Me.H., born September 23, 2014. The facts regarding Children's removal from Parents' care were noted in our earlier opinion affirming Children's adjudication as Children in Need of Services ("CHINS"):

> On March 28, 2016, the Indiana Department of Child Services ("DCS") received a report alleging Father had sexually abused his stepdaughter, R.W., multiple times throughout her childhood. One week prior to the DCS receiving that report, then seventeen-year-old R.W. left home without permission and began residing with her maternal aunt and uncle. R.W. turned eighteen on the same day the DCS began its investigation.
>
> In response to the report and allegations, Wendy Garrett, a DCS Family Case Manager, visited Mother and Father's home. Father answered the door but refused to permit Garrett to enter

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[1] We held oral argument on November 28, 2018, in the Indiana Court of Appeals Courtroom. We thank counsel for their arguments.

[2] Because R.W. is not a minor, does not reside with Parents, and is not subject to these proceedings, she is not included in Children.

[3] S.W. has cerebral palsy, is unable to communicate verbally, and requires the assistance of a wheelchair.

[4] The father of R.W. and S.W. passed away prior to these proceedings.

the home. Mother and Father refused to cooperate with the investigation at that time.

Following an interview with R.W. concerning her allegations of sexual abuse, the DCS removed the Children from the home and placed them with their maternal aunt and uncle. While removing the Children, Garrett observed the Children had "incredibly poor hygiene" and noted the Children's hair was "matted." Garrett further observed Me.H.'s diaper was "literally falling off, leaking." As to the condition of the home, Garrett described it as "deplorable" and "unsanitary." Garrett observed food, debris, and trash littering the floor of the home, a cluttered kitchen filled with dirty dishes, and piles of soiled clothing throughout the home. Garrett also noted the home did not appear to have a shower or access to water except through a hose brought in from outside the home. There also appeared to be structural issues with the home with portions of the ceiling collapsing over the Children's sleeping space. Garrett was not permitted to view the upstairs area because it "wasn't anything that had been worked on."

On March 31, 2016, the DCS filed verified petitions alleging each child to be a CHINS. The DCS later moved to dismiss the CHINS petition as to R.W. because she reached the age of eighteen. Mother and Father denied the allegations contained in the verified petitions.

On June 10, 2016, the juvenile court held a fact-finding hearing at which R.W. testified concerning her allegations of sexual abuse. R.W. testified the sexual abuse began when she was a young girl. During one instance, R.W. stated Father called her into the bedroom of their home. When she entered the room, he pulled her on top of him and put his hands down her pants. R.W. did not remember how old she was when this incident occurred. During another instance when she was about twelve years old, R.W. awoke on the living room couch and Father was

on top of her. R.W. stated Father's penis touched her vagina. Father told R.W. not to tell anyone or he would do it again. R.W. attempted to speak to Mother about the incident but was too embarrassed to do so. When R.W. was about thirteen years old, Father told R.W. to take water to their horses in the barn and insisted on coming with her. R.W. stated she knew what Father was going to do. In the barn, Father ordered R.W. to lay on a bale of hay and pulled his pants down. Father then inserted his fingers into R.W.'s vagina. Father also inserted his penis into her vagina. R.W. stated the sexual abuse stopped when she was about fifteen or sixteen years old.

R.W. testified she did not believe Father has abused any of her siblings, although she worried it may happen. She also stated that when she lived in the home, she was responsible for helping Mother and Father with the other Children, cleaning the house, and feeding and bathing S.W. R.W. also thought Father punished S.W. with unnecessary force. Occasionally, S.W. would cry uncontrollably and the family struggled to calm her down. Father used to spank her over and over in an attempt to make her stop, but she would not. Mother would cry and tell Father "she's not going to stop crying if [you] just keep[ ] beating her."

On June 11, 2016, the juvenile court issued its order which included its findings of fact and conclusions thereon. The juvenile court found R.W.'s testimony and allegations to be true and adjudicated all seven Children as CHINS. In addition to the sexual abuse of R.W., the juvenile court also found the Children to be CHINS due to the poor condition of the home, the fact Father remained in the home after R.W.'s allegations came to light, and the fact R.W., who provided care and supervision for the Children, was no longer living in the home. The juvenile court ordered the Children to remain in relative placement. On August 18, 2016, the juvenile court held a dispositional hearing at which it adopted the DCS' recommendations to have Mother

> and Father participate in services including home based counseling, a parental assessment, random drug screens, and a psychological evaluation. Father was also ordered to complete a substance abuse assessment and sex offender treatment program.

Matter of La.H., 90A02-1609-JC-2135 (Ind. Ct. App., May 31, 2017) (internal citations to the record omitted).

[5] On February 13, 2017, the trial court entered its dispositional decree with a goal of family reunification. The trial court ordered the Children to remain in relative placement with maternal aunt and uncle. The trial court granted Mother supervised visits and Father was denied visitation due to R.W.'s allegations of sexual abuse by Father. In addition, the trial court ordered:

> e. [Parents] shall allow the Family Case Manager or other service provider to make announced or unannounced visits to their home and permit entrance to the home to monitor progress toward compliance with any court order.
>
> j. [Parents] shall maintain suitable, safe and stable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities.
>
> t. [Parents] shall complete a parenting assessment and successfully complete all recommendations developed as a result of the parenting assessment.
>
> u. [Father] shall complete a substance abuse assessment and follow all treatments [sic] and successfully complete all treatment recommendations developed as a result of the substance abuse assessment.

> w. [Parents] shall complete a psychological evaluation as referred and approved by DCS and successfully complete any recommendations that results [sic] from the evaluation.
>
> z. [Parents] shall not commit any acts of domestic violence on anyone including [Children], and agree that if an instance of domestic violence occurs they will immediately report it to the Family Case Manager.
>
> aa. [Father] shall refrain from using any form of physical discipline on [S.W.] while subject to the court's jurisdiction. [Father] shall complete a course of sex offender treatment.

(Father's App. Vol. II at 113-14) (nonsequential lettering in original).

[6] Later in the proceedings, the trial court took under advisement Father's challenges to some of the requirements in the dispositional decree:

> The Indiana Department of Child Services requested in its parental participation request that "[Father] will participate in counseling services that will focus on sexual predator discussion due to the CHINS and DCS finding that sexual abuse occurred." The Indiana Department of Child Services requested that [Father] address through counseling his sexual abuse of his step-daughter [R.W.] and its effect on his parenting of [Children]. [Father], through counsel, requests that he not be ordered to participate in sex offender treatment, especially if the treatment requires that [Father] complete a polygraph as a condition of the continuation of counseling. [Father] objects to the counseling first because he denies that he sexually abused [R.W.]. Secondly, [Father] objects to counseling if there is a requirement of completing a polygraph because being ordered to participate in and/or participating in the polygraph waives his right to remain silent as found in the Fifth Amendment to the U.S. Constitution.

> The other area of parental participation that [Father] objects to is the requirement at the present time that he have no contact with [Children]. At the detention hearing on April 1, 2016 and then again at a status hearing on May 5, 2016, because of the allegations that [Father] had been sexually abusing [R.W.] over the course of several years, the allegation that [R.W.] had told [Mother] of the abuse and [Mother] did not protect her, and because there was an on-going criminal investigation in three counties regarding the allegations, the Court ordered that no visitation be implemented for the present time. The Indiana Department of Child Services and [Children's] Guardian ad Litem do not recommend that visitation for [Father] be implemented.

(*Id.* at 80-1.) The trial court's orders regarding sex offender treatment and visitation did not change during the proceedings.

[7] DCS offered Mother home-based services and individual therapy, both of which she successfully completed. However, she refused to believe Father sexually abused R.W. DCS offered Father individual therapy, substance abuse treatment, and sex offender treatment. The sex offender treatment was offered through Phoenix Associates, and it required that Father admit the truth of R.W.'s allegations in order to complete the treatment. Father refused to so admit.

[8] Mother was compliant with all services except those that required her to admit Father sexually abused R.W. Father completed the required assessments, but did not engage in individual therapy and minimally participated in substance abuse treatment, at best. On June 14, 2017, the trial court changed Children's permanency plan from reunification to termination. On July 25, 2017, DCS

filed petitions to terminate Parents' parental rights to Children. The trial court held hearings on the termination petitions on November 15, 21, 22, and 27, 2017.

[9] On May 15, 2018, the trial court entered its order terminating Parents' parental rights to Children. In its order, the trial court made extensive findings regarding Father's refusal to participate in sex offender treatment and his struggles with alcohol, as well as Mother's compliance with services with the exception of admitting that Father molested R.W. Based on those findings, the trial court concluded termination was in the best interests of Children, that the conditions under which Children were removed would not be remedied, and the continuation of the parent-child relationship posed a threat to Children's well-being. Specifically, the trial court concluded:

> 8. [Father] has a history of substantiated sexual abuse of his stepdaughter, failed to complete court-ordered counseling services and sex offender specific treatment, and has refused to admit he has a problem. [. . .]
>
> 9. [R.W.] testified at the CHINS fact-finding on June 10, 2016. [R.W.] testified that she was sexually abused by [Father], on a number of occasions. The Court found [R.W.'s] testimony credible. [. . .]
>
> 10. Mother and [Father] have had two (2) years to accomplish the steps necessary to have the children returned to their care. [. . .]

(*Id.* at 122-3.)

Discussion and Decision

[10] We review termination of parental rights with great deference. *In re K.S., D.S., & B.G.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied.* Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).

[11] "The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied.* A trial court must subordinate the interests of the parents to those of the children, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

[12] To terminate a parent-child relationship, the State must allege and prove:

> (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). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[13] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98,

102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

Father's Fifth Amendment Rights

[14] The Fifth Amendment to the United States Constitution provides, in relevant part, that no person "shall be compelled in any criminal case to be a witness against himself." The Fourteenth Amendment extends this protection to state proceedings. *Bleeke v. Lemmon*, 6 N.E.3d 907, 925 (Ind. 2014) (quoting *Withrow v. Williams*, 507 U.S. 680, 688-9 (1993), *reh'g denied*). "[T]his prohibition not only permits a person to refuse to testify against himself at a criminal trial . . . but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Id.* (quoting *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984), *reh'g denied*). "The Fifth Amendment prohibits only compelled testimony that is incriminating." *Id.* (quoting *Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177, 190 (2004), *reh'g denied*).

[15] Further,

> a witness protected by the privilege may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant. Absent such protection, if he is nevertheless compelled to answer, his answers are inadmissible against him in a later criminal prosecution.

Id. (quoting *Lefkowitz*, 414 U.S. at 78). "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Id.* at 925-6 (quoting *Hoffman v. United States*, 341 U.S. 479, 486-7 (1951)). Answers are incriminating not only when they "would in themselves support a conviction," but also when they would "furnish a link in the chain of evidence" necessary to prosecute a person for a crime. *Id.* at 926 (quoting *Hoffman*, 341 U.S. at 486).

[16] Here, Father was accused of sexually abusing R.W. in several different counties, based on the family's residence at the time of each allegation. All three counties investigated the allegations, with which it is undisputed Father fully cooperated, but ultimately the prosecutors "made the decision not to file criminal charges[.]" (Tr. Vol. II at 128.) Despite the lack of evidence to bring criminal charges, DCS insisted Father complete sex offender treatment, and the trial court agreed. Father objected multiple times to the completion of this requirement. In an order from January 31, 2017, the trial court addressed those concerns:

> [Father], through counsel[,] requests that he not be ordered to participate in the sex offender treatment, especially if the treatment requires that [Father] complete a polygraph as a condition of the continuation of the counseling. [Father] objects to the counseling first because he denies that he sexually abused [R.W.]. Secondly, [Father] objects to counseling if there is a requirement of completing a polygraph because being ordered to

participate in and/or participating in the polygraph waives his right to remain silent as found in the Fifth Amendment to the U.S. Constitution.

The Indiana Department of Child Services requested in its parental participation request as follows: "[Father] will participate in counseling services that will focus on sexual predator discussion due to the CHINS and DCS finding that sexual abuse occurred." The Indiana Department of Child Services requested that [Father] address through counseling his sexual abuse of his step-daughter, [R.W.], and its effect on his parenting of [Children]. . . .

* * * * *

. . . Here the recommendation that [Father] participate in sex offender training is reasonable considering this Court found by a preponderance of the evidence that [Father] had sexually abused [R.W.] over a period of years when she was a minor child.

Certainly, as Indiana courts have stated [Father] does not leave his constitutional rights at the door when he enters sex offender treatment and may refuse to answer questions which he believes might be used against him. Should he invoke his Fifth Amendment right; [sic] however, the Court may also infer what his answer might have been and whether or not he has successfully completed the treatment program. Ultimately, this Court will have to make a determination whether or not the conditions that lead [sic] to the [C]hildren's removal have been remedied. If [Father] refuses to and has not successfully completed the treatment program, it would appear that the conditions that lead [sic] to the [C]hildren's removal have not been remedied.

(Father's App. Vol. II at 76-7.)

[17] The trial court's own statements here illustrate why the Fifth Amendment right is so extremely important. The Court seems to consider Father's exercise of his constitutional right to remain silent to be equivalent to an admission of guilt. The trial court also seemed to suggest Father had a choice – either admit the molestation or take a polygraph. Father argues this is not a constitutionally-permissible choice – it is an impermissible exercise of the trial court's power to force Father to waive his Fifth Amendment right against self-incrimination. (Br. of Father at 15.)

[18] DCS did not respond to the merits of Father's Fifth Amendment argument. Instead, DCS contends the law-of-the-case doctrine applies here and can be used to force Father to make an admission of sexual abuse. (*See* Br. of Appellee at 22.) In support, DCS cites Father's appeal of the underlying CHINS determination, in which our court affirmed the trial court's finding that Father committed sexual abuse against R.W. *See Matter of La.H.*, *slip op.* at 4 (affirming CHINS adjudication based, in part, on R.W.'s testimony of Father's sexual abuse).

[19] The law-of-the-case doctrine provides that an appellate court's determination of a legal issue binds both the trial court and the appellate court in any subsequent appeal involving the same case and substantially the same facts. *Dutchmen Mfg., Inc. v. Reynolds*, 891 N.E.2d 1074, 1082 (Ind. Ct. App. 2008), *trans. denied.* The purpose of the doctrine is to minimize unnecessary re-litigation of legal issues once they have been resolved by an appellate court. *Id.* Accordingly, all issues decided directly or by implication in a prior decision are binding in all further

portions of the same case. *Id.* However, questions not conclusively decided in the earlier appeal do not become the law of the case. *Id.* at 1083. Contrary to DCS's assertion, the law of the case doctrine does not apply here to prohibit Father from invoking the Fifth Amendment.

[20] First of all, while the CHINS and termination proceedings involve the same parties (*i.e.*, DCS and Parents) and the same issue (*i.e.*, whether Father sexually abused R.W.), the burdens of proof in CHINS and termination proceedings are different. The burden of proof in a CHINS case is preponderance of the evidence, Ind. Code § 31-34-12-3, while the burden of proof in a termination of parental rights case is clear and convincing evidence, Ind. Code § 31-37-14-2, which is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain." *Clear and convincing evidence,* Black's Law Dictionary 674 (10th ed. 2014). Clear and convincing "is a greater burden than preponderance of the evidence . . . ." *Id.* Because the second proceeding required a greater level of proof, the first proceeding could not "conclusively decide" issues to be decided in the second proceeding. *See McNabb v. Mason,* 148 Ind. App. 233, 241, 264, N.E.2d 623, 627 (1970):

> [A] trial court upon summary judgment motion cannot, nor can we upon appeal, prejudge a plaintiff's ability to sustain his, or in this instance, her burden of proof upon the factual issues. The existence of factual issues, however, is quite a different question from that concerning the burden of establishing, as a matter of evidentiary proof, the facts alleged by plaintiff. We are here concerned only with the former question. We cannot prejudge that matter.

[21] Second, the admission DCS asserts Father should have to make in treatment is not an admission that he has the luxury of making only by a preponderance of the evidence or by clear and convincing evidence. If Father admits that he sexually abused a child, it will be an admission that meets the burden of proof in criminal proceedings, which is "beyond a reasonable doubt." Ind. Code § 35-41-4-1. *See Everhart v. Scott Cty. Office of Family & Children*, 779 N.E.2d 1225, 1231 (Ind. Ct. App. 2002) (Indiana's privileged communication laws meant "the social worker could have disclosed any information revealed by Everhart which would have indicated his guilt in the abuse of A.E. Therefore, Everhart's only recourse to protect himself was to invoke his Fifth Amendment right against self-incrimination as he did.")

[22] Additionally, while the State characterizes the sex offender treatment as one that gives Father the option to admit to the allegations OR take the polygraph, in reality, after taking and failing the polygraph, the sex offender treatment continued to hinge on Father's admission of the allegations, as evidenced in the trial court's findings:

> 93. Due to [Father's] denial of the allegations, Michael, Phoenix Associates' service provider, suggested that [Father] take a polygraph. If the polygraph showed that [Father] was telling the truth, then [Father] would be released from the program. *If the polygraph showed that [Father] was deceptive, then [Father] would have to admit to the allegations.*

* * * * *

> 97. [Father] completed his polygraph examination on May 15, 2017.
>
> 98. The polygraph results indicated that [Father] was deceptive to the main issue, which was the sexual abuse that occurred by [Father] on his step-daughter, [R.W.].
>
> 99. Based on the polygraph examination, Phoenix recommended that [Father] *complete its Sex Offender Management and Monitoring program, which would require [Father] to admit and take ownership of the sexual abuse against his step-daughter, [R.W.].*

(Father's App. Vol. II at 118) (emphases added).

[23] Our Indiana Supreme Court addressed the Fifth Amendment implications of admitting a sexual offense as part of sex offender treatment in *Bleeke.* In that case, Bleeke was on parole following his conviction of residential entry and attempted criminal deviate conduct. *Bleeke,* 6 N.E.3d at 912. As part of his parole, Bleeke was required to participate in and successfully complete a court-approved sex offender treatment program. *Id.* As part of the program, Bleeke "was required to admit guilt for his offense; refusal to do so, or to otherwise deny responsibility for the offense, would result in him being unsuccessful in his treatment[.]" *Id.*

[24] Our Indiana Supreme Court held this requirement, that Bleeke admit to his offense, which he denied, had the potential to violate Bleeke's Fifth Amendment right against self-incrimination because "from the implications of the question, in the setting in which it is asked, a responsive answer to the

question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Id.* at 927 (quoting *Hoffman*, 341 U.S. at 486-7). Our Indiana Supreme Court then examined whether Bleeke was compelled to "to provide self-incriminating testimony because of the SOMM[5] program requirements that he admit his guilt to the underlying conviction and answer questions about his prior sexual history." *Id.* at 925 (footnote added). Our Indiana Supreme Court concluded Bleeke's Fifth Amendment rights were not implicated:

> Here, Bleeke's compliance with the SOMM program and performance of polygraphs is an express condition of his parole and is highly relevant to his successful reintegration into society. And this is not a circumstance where the trial court is setting a more lenient sentence for Bleeke, and then threatening to increase that sentence if Bleeke fails to admit his guilt for the underlying offense.
>
> * * * * *
>
> Bleeke's early release from imprisonment to parole is a matter of executive and legislative grace and clemency. It is a privilege afforded to him - a lower grade of punishment - for his compliance with prison rules and policies, including the SOMM program, as well as any number of other behavioral or rehabilitative programs that the DOC and General Assembly might endorse. It neither excuses, nor waives, nor vitiates the remainder of his fixed term of his imprisonment. And the

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[5] "SOMM" refers to Indiana's Sex Offender Management and Monitoring Program, which is program available to sex offenders while incarcerated. *Indiana Sex Offender Management and Monitoring*, https://www.in.gov/idoc/3512.htm (last visited January 9, 2019).

> revocation of his parole does not mean he goes from being at full liberty to being fully detained, as he portrays it - instead it means he goes from being detained at a comparatively low level back to being fully detained. In that way it is little different, in the pure legal sense, than him being reassigned from a minimum-security facility, or a community transition program, to a medium- or maximum-security facility for violating prison rules and policies.

Id. at 937-38.

[25] The case before us is distinguishable, as the liberty interest Father has at stake here is significant – his right to remain free of incarceration without the State proving his guilt beyond a reasonable doubt based on his coerced admission. *Contra id.* at 938 ("the revocation of [Bleeke's] parole does not mean he goes from being at full liberty to being fully detained"). Because Father has not been convicted of crimes based on R.W.'s allegations, we agree the requirement that he admit committing those crimes implicates his Fifth Amendment right against self-incrimination. *See McCarthy v. Arndstein*, 266 U.S. 34, 41 (1924) (holding the privilege "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it").

Father's Due Process Rights

[26] Because Father's Fifth Amendment right was implicated, we turn to whether his assertion of that right resulted in a deprivation of his due process rights. In a termination of parental rights proceeding, parents have certain due process rights:

> When a State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982). Although due process has never been precisely defined, the phrase embodies a requirement of "fundamental fairness." *E.P. v. Marion County Office of Family & Children*, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995) (quoting *Lassiter v. Dep't of Social Servs.*, 452 U.S. 18, 26, 101 S. Ct. 2153, 68 L.Ed.2d 640 (1981)). Citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976), this court has recently acknowledged that the nature of the process due in parental rights termination proceedings turns on a balancing of three factors: (1) the private interests affected by the proceeding, (2) the risk of error created by the State's chosen procedure, and (3) the countervailing governmental interest supporting use of the challenged procedure. *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107 (Ind. Ct. App. 2000)[, *reh'g denied*].

J.T. v. Marion Cty. Office of Family & Children, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *reh'g denied, trans. denied, abrogated on other grounds by Baker v. Marion Cty. Office of Family & Children*, 810 N.E.2d 1035, 1041 (Ind. 2004) (abrogating *J.T.*'s holding regarding sufficiency of counsel).

[27] Father acknowledges that both DCS and Parents have substantial interests affected by the termination proceedings, and he argues there is an insurmountable risk of error created by DCS's and the trial court's actions. Specifically, Father contends:

> [N]umerous due process violations occurred which culminated in the termination of his parental rights, and further led to a lack of evidence to support the Trial Court's determination. Specifically, the allegations that a child (now adult) was sexually abused by

> Father, and that victim is not a party to the action and there were no allegations of similar abuse on any of the six (6) biological children of this action. Further, Father argues that he was given an impossible decision and was compelled to testify against himself and forfeit his Fifth Amendment Constitutional right, or lose his constitutional right to the care, custody and control of his children by himself and his wife. Said another way, Father argues the only path made available to him in order to maintain his right to raise his children with his Wife, was to admit to a crime he maintains he did not commit, or to use a polygraph test to prove his innocence, even though polygraph tests have been long-held as inadmissible due to their unreliability.

(Br. of Father at 28-9.)

[28] We addressed a similar issue in *Everhart*, in which a father's rights were terminated in part because he invoked his Fifth Amendment right against self-incrimination and would not admit as part of court-ordered therapy that he had abused a child. In *Everhart*, we set forth a series of factors, based on those used in a criminal context, to be used to determine whether the trial court's decision to terminate parental rights was prejudicially impacted by the parent's Fifth Amendment silence: "(1) the use to which the fact of the invocation of the right against self-incrimination is used, (2) who elected to pursue the line of questioning, (3) the amount of other evidence supporting the termination of parental rights, and (4) the intensity and frequency of the reference." *Everhart*, 779 N.E.2d at 1231. We held that Everhart was not denied due process because significant other evidence supported the termination of his parental rights. *Id.* at 1235.

[29] Here, Father's refusal to admit he sexually abused R.W., which precluded his completion of sex offender treatment, was a large part of the trial court's reason for terminating his parental rights. Mother also denied Father's abuse of R.W., and her failure to acknowledge the alleged abuse and create a safety plan to address any risk was the only reason her parental rights were terminated, because she successfully completed all available services. The trial court also found that Father refused to participate in individual counseling and minimally participated in substance abuse treatment, which would be sufficient to terminate Father's parental rights under circumstances where the entire process is not tainted with the violation of Father's constitutional rights.

[30] While we acknowledge DCS is not required to offer every possible type of service, we believe the services here, considering the special circumstances of the case, were not offered in a way that was conducive to reunification of the family. Father has been denied access to Children for the pendency of the proceedings based on a substantiated but unproven allegation. The requirements of this treatment, we have concluded, violate Father's Fifth Amendment right against self-incrimination.

[31] There is also conflicting evidence regarding Father's participation in substance abuse treatment. Father's therapist from Dockside testified Father participated in the required number of meetings, but did not seem to be engaged in the

treatment or to be receiving benefit therefrom.[6] However, Father's therapist from Dockside also testified he had not witnessed Father under the influence of alcohol and Father consistently tested negative for alcohol. Father's therapist from Dockside also indicated DCS's referral was based in part on an incident in which Father was arrested for driving under the influence of alcohol over ten years prior to DCS involvement. Finally, the trial court found Father did not complete individualized therapy because he did not attend the scheduled sessions, however, Father testified at the termination hearing that, absent those services related to the sexual abuse allegations, he believed he was compliant with the services ordered by the trial court in its dispositional decree.

[32] Therefore, we conclude the use of Father's silence and subsequent results of the polygraph violated Father's due process rights because, based on the totality of

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[6] We also note that it is troubling that, at the oral argument, DCS asserted the termination of parental rights could be supported by speculation.

> Judge Robb: When there is nothing in the record, can we terminate parental rights based on a supposition? Just a simple yes or no would be sufficient.
>
> DCS: Yes.
>
> Judge Robb: We can terminate parental rights on a supposition without evidence in the record to support that supposition?
>
> DCS: Well, I guess I disagree that there's no evidence in the record, your honor.
>
> Judge Robb: Well you haven't shown it to us yet. Thank you.

Indiana Court of Appeals Oral Arguments Online, *R.H. (Mother) and M.H. (Father) v. Indiana Department of Child Services*, (November 28, 2018, 43:09 - 43:31), https://mycourts.in.gov/arguments/default.aspx?&id=2274&view=detail&yr=&when=&page=1&court=app&search=&direction=%20ASC&future=False&sort=&judge=&county=&admin=False&pageSize=20 (last accessed January 11, 2019). This is an incorrect statement of law. *See, e.g., In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016) ("the constitutional guarantees of the Fourteenth Amendment and the heightened burden requirements of our state statutes dictate that such determination must be founded on factually-based occurrences as documented in the record - not simply speculation or *possible* future harms.") (emphasis in original).

the circumstances, the violation of Father's Fifth Amendment right unfairly influenced his participation and completion of other required services.[7] *See Matter of C.M.S.T.*, 111 N.E.3d 207 (Ind. Ct. App. 2018) (unique, cumulative circumstances existing during CHINS proceedings which affected parents' ability to engage in and complete services warranted reversal of termination of parents' rights to their respective children). Accordingly, we disregard any findings related to Parents' failure to complete any requirement of the dispositional decree related to the allegations of sexual abuse made by R.W. *See In re B.J.*, 879 N.E.2d 7, 21 (Ind. Ct. App. 2008) ("This Court is to disregard any special finding that is not proper or competent to be considered."), *trans. denied.*

[33] Regarding Mother, it is undisputed between the parties that Mother completed all services as ordered except those that addressed the sexual abuse allegations against Father. As those findings were in error, there were no other findings to support the termination of Mother's parental rights to Children. Therefore, we reverse the termination of Mother's parental rights to Children. *See Bester,* 839 N.E.2d at 153 (reversal of termination of parental rights appropriate when there are no findings to support the trial court's conclusions regarding termination).

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[7] We note DCS did not attempt to locate a sex offender treatment program that did not require Father to admit to the allegations against him. While DCS certainly is not required to exhaustively search for relevant rehabilitative treatment programs that suit parents' preferences, *see, e.g., Steward v. Randolph Cty. Office of Family & Children*, 804 N.E.2d 1207, 1214 (Ind. Ct. App. 2004) (DCS is not required to offer alternative programs to parents to ensure compliance with dispositional order), *trans. denied*, the services required by DCS ought not violate parents' constitutional rights.

Conclusion

[34] The requirement that Father admit to sexually abusing R.W. as part of sex offender treatment violated Father's Fifth Amendment rights. Because of this unusual situation, we reverse the termination of Mother's and Father's parental rights to Children. We remand to the trial court for reinstatement of the CHINS cases, a re-examination of the requirements for reunification, and a revised dispositional order outlining the services consistent with the holdings in this opinion that Parents must complete to reunify with Children.

[35] Reversed and remanded.

Baker, J., concurs.

Robb, J. dissents with separate opinion.

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Parent-Child Relationship of Ma.H., Le.H., Lo.H., W.H., La.H., Me.H., and S.W. (Children) and M.H. (Father) and R.H. (Mother); M.H. (Father) and R.H. (Mother), *Appellants-Respondents,* v. The Indiana Department of Child Services, *Appellee-Petitioner.*	Court of Appeals Case No. 18A-JT-1296

Robb, Judge, dissenting.

I respectfully dissent.

[36] I agree with the majority that it is a bedrock principle of our criminal justice system that the Fifth Amendment protects a person from being involuntarily called as a witness against himself in a criminal case and also protects a person from having the refusal to testify in a civil case used against him in subsequent criminal proceedings. *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973); *see* slip op. at

¶¶ 14-15. As a practical matter, I believe the majority opinion is written with too broad a brush: if a parent in a future CHINS/termination case says he or she did not do the act which precipitated DCS involvement in the family and refuses to participate in treatment designed to address the issue for fear of criminal reprisals, then DCS could not prove a termination case. It would encourage refusal to participate in treatment.

[37] Moreover, in focusing on the possible criminal repercussions of an admission, the majority fails to acknowledge that a civil defendant who chooses to avail himself of the Fifth Amendment privilege "does so at his peril" because the Fifth Amendment does *not* forbid adverse inferences against a party to a civil proceeding who refuses to testify in that proceeding. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *see also Hardiman v. Cozmanoff*, 4 N.E.3d 1148, 1152 (Ind. 2014). In its January 31, 2017, Order on Matters Taken Under Advisement; Parental Participation and Visitation, the trial court noted as much:

> Certainly, as Indiana courts have stated, [Father] does not leave his constitutional rights at the door when he enters sex offender treatment and may refuse to answer questions which he believes might be used against him. Should he invoke his Fifth Amendment right; however, the Court may also infer what his answer might have been and whether or not he has successfully completed the treatment program.

[38] Appendix of Appellant/Father, Volume II at 76-77. In other words, the Fifth Amendment shields Father from being compelled to give possibly incriminating statements but it does not shield him from the consequences of asserting that

right. Here, the consequences included the possibility of termination of his parental rights for failing to participate in meaningful therapy.[8]

[39] R.W. testified at the CHINS fact-finding hearing and again at the termination fact-finding hearing that she was sexually abused by Father when she was a minor living in the home. Father denied the abuse and despite polygraph results that indicated he was being deceptive regarding this issue, refused to participate in sex offender treatment as a part of the family reunification plan. The trial court was in the position of determining the credibility of the witnesses and specifically found R.W.'s testimony about sexual abuse by Father to be credible. App. of Appellant/Father, Vol. II at 112. In addition, the trial court was entitled to draw an adverse inference from Father's invocation of the Fifth Amendment to avoid the requirements of the treatment program.

[40] However, even accepting Father's position that he should not have been required to take a polygraph test or admit to wrongdoing and making no negative inference from his invocation of the Fifth Amendment, the essence of

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[8] The trial court found during the CHINS proceeding that the DCS recommendation that Father participate in sex offender treatment was reasonable because the court had determined by a preponderance of the evidence that Father had sexually abused R.W. when she was a minor. *See id.* at 76. DCS was required to provide options for sex offender treatment programs within sixty miles of Father's residence and to make a referral to Father's chosen program. *See id.* at 77. The trial court's order did not require Father to admit to the truth of the sexual abuse allegations and it did not require Father to participate in a specific therapy program that would mandate an admission of guilt; rather, it required him to participate in a sex offender treatment program of his own choosing. Several states have concluded that there is a distinction between a court-ordered case plan that mandates admission of guilt either through a direct admission or participation in a treatment program that specifically mandates an admission for family reunification and one that requires meaningful therapy. *See Matter of A.D.L.*, 402 P.3d 1280, 1285-86 (Nev. 2017) (citing cases from other jurisdictions).

this case is that which we often encounter: Father says he did nothing wrong and R.W. says otherwise. The trial court found R.W. to be a more credible witness than Father and again, determining credibility and weighing conflicting evidence is the trial court's province. *In re E.M.L.*, 103 N.E.3d 1110, 1115 (Ind. Ct. App. 2018), *trans. denied.* Conceding to Father the Fifth Amendment issue, we are left with Father's denial, R.W.'s testimony, a court order that did not specifically require an admission of wrongdoing as a requirement for reunification, Father's failure to participate in treatment in even a limited way, and the trial court's credibility determination. There are safety concerns that have not yet been addressed due to Father's minimal compliance and lack of engagement and Mother's unwillingness to acknowledge and implement a plan to address the safety concerns. Therefore, the trial court's determination there has not been substantial progress towards reunification is not clearly erroneous and I would affirm the trial court's judgment.

APPENDIX C

STATE OF INDIANA	)	IN THE WELLS CIRCUIT COURT
	) SS:	
COUNTY OF WELLS	)	CASE NOS. 90C01-1707-JT-000022 90C01-1708-JT-000029 90CO1-1708-JT-000030 90C01-1708-JT-000031 90C01-1708-JT-000032 90C01-1708-JT-000034 90C01-1708-JT-000035

IN RE: THE TERMINATION OF **THE** PARENT-CHILD RELATIONSHIP OF: SUSANNA R. WICKEY, MARTIN HILTY, LEANDER HILTY, LORENE HILTY, WALTER HILTY, MELISSA HILTY, and LAVERNE HILTY, Minor Children

and

REBECCA HILTY, Children's Mother and MARTIN HILTY, Hilty Children's Father.

FILED
MAY 15 2018
WELLS CIRCUIT COURT

Order of Involuntary Termination of Parental Rights, Findings of Fact and Conclusions of Law, and Judgment as to Children's Mother, Rebecca Hilty, and Hilty Children's Father, Martin Hilty

These matters came before the Court on November 15, 2017, November 21, 2017, November 22, 2017, and November 2017, for fact-finding hearing on the Department of Child Services' Petitions for the Involuntary Termination of the Parent-Child Relationship. Parties in appearance: Indiana Department of Child Ser;vices (DCS) by counsel, Grace Vitatoe, and Holly Kaup, family case manager (FCM); Beth Webber, guardian ad litem (GAL); Rebecca Hilty (hereinafter referred to as "Mother"), in person with counsel, Allison Sprunger; and Martin Hilty, father to the Hilty Children and step-father to Susanna Wickey (hereinafter referred to as "Martin"), in person with counsel, Jeremy Nix.

The Court, having heard the evidence and arguments presented, took these matters under advisement, and now being duly advised in the premises, enters its Findings of Facts and Conclusions of Law as follows:

Findings of Fact

1. The child, Susanna Wickey, was born on May 14, 2001, and she is seventeen (17) years old.

2. The child, Martin Hilty, was born on November 26, 2005, and he is twelve (12) years old.

3. The child, Leander Hilty, was born on September 8, 2007, and he is ten (10) years old.

4. The child, Lorene Hilty, was born on July 6, 2009, and she is eight (8) years old.

5. The child, Walter Hilty, was born on September 16, 2010, and he is seven (7) years old.

6. The child, Laverne Hilty, was born on February 5, 2013, and she is five (5) years old.

7. The child, Melissa Hilty, was born on September 23, 2014, and she is three (3) years old.

8. Rebecca Wickey was born May 19, 1998.

9. Rebecca J. Hilty is the mother of Rebecca Wickey and Susanna Wickey.

10. Rebecca J. Hilty is the mother of Martin, Leander, Lorene, Walter, Laverne, and Melissa Hilty.

11. Martin E. Hilty is the stepfather of Rebecca Wickey and Susanna Wickey.

12. William Wickey is the father of Rebecca Wickey and Susanna Wickey. He died in 2003.

13. Martin E. Hilty and Rebecca J. Hilty married in 2005.

14. Since their marriage, Martin E. and Rebecca J. Hilty have lived in Berne, Portland, and Geneva, Indiana. At the time of the fact-finding hearing, they lived at 7425 East 1000 South - 90, Geneva, Indiana 46989.

15. The Hilty residence is located in rural Wells County, Indiana. The residence is a two-story farm home with outbuildings.

16. On March 28, 2016, the Department of Child Services received a report alleging that physical and sexual abuse had occurred at the residence of Martin E. and Rebecca J. Hilty.

17. On March 28, 2016, the six Hilty children and Susanna Wickey lived with Martin E. and Rebecca J. Hilty at 7425 East 1000 South -90, Geneva, Indiana 46989.

18. Approximately one (1) week prior to March 28, 2016, Rebecca Wickey (then age 17) left that home without permission. She left the home due to the abuse that she had endured.

19. A law enforcement officer interviewed Rebecca Wickey, who was then seventeen (17) years old. Rebecca Wickey disclosed allegations of sexual abuse by her stepfather, Martin Hilty.

20. Martin and Rebecca Hilty became involved with DCS when DCS investigated a report that Rebecca Wickey was the victim of sexual abuse and Susanna Wickey was a victim of physical abuse and possible sexual abuse.

21. In response to the report made, the Indiana Department of Child Services Family Case Manager Wendelene Garrett and Detective Lieutenant Diane Betz of the Wells County Sheriffs Department visited the Hilty residence in Geneva.

22. Martin E. and Rebecca J. Hilty were home at the time along with all of their children and Susanna Wickey.

23. Martin E. Hilty answered the door and would not permit FCM Garrett and Detective Lieutenant Betz to enter. He commented that the Department had been to the home previously; that he did not want them to come in; and that his stepdaughter, Rebecca Wickey, was probably behind the report.

24. Rebecca J. Hilty appeared at the door. FCM Garrett was permitted to step across the threshold to observe then fourteen-year-old Susanna in her wheelchair. Susanna appeared to be clean and well-groomed. She is confined to a wheelchair as a result of cerebral palsy.

25. Martin E. Hilty and Rebecca J. Hilty were not willing to cooperate further with the investigation at that time.

26. Martin E. Hilty and Rebecca J. Hilty did provide the names of the minor children residing in the home as well as that of then seventeen-year-old Rebecca Wickey, who had left their home about a week prior.

27. DCS filed Petitions Alleging Child in Need of Services on March 31, 2016, for each of the Hilty Children and Susanna Wickey. The cases were assigned the following case numbers:

    a. 90C01-1603-JC-000015: Laverne Hilty
    b. 90C01-1603-JC-000016: Leander Hilty
    c. 90C01-1603-JC-000017: Lorene Hilty
    d. 90C01-1603-JC-000018: Martin Hilty
    e. 90C01-1603-JC-000020: Susanna Wickey
    f. 90CO1-1603-JC-000021: Walter Hilty
    g. 90C01-1603-JC-000022: Melissa Hilty

28. Rebecca Wickey turned eighteen (18) years of age on the day the petitions were filed.

29. On April 1, 2016, the Court, in the CHINS proceedings, held a detention and initial hearing and authorized the children's continued detention.

30. On June 10, 2016, the Court, in the CHINS proceedings, held a fact-finding hearing on the CHINS petitions.

31. After hearing evidence, the Court found that the Hilty Children were children in need of services as defined by Indiana Code §31-34-1-1. In addition, the Court found Susanna Wickey was a child in need of services as defined by Indiana Code §31-34-1-1 and §31-34-1-2.

32. The Court found the home to be in deplorable condition with debris throughout the living area including dirty dishes, piles of soiled clothing, food products, and trash found in the home.

33. The Court found that the Hilty Children and Susanna Wickey's physical or mental condition was also impaired or seriously endangered due to the alleged long-term sexual abuse of Rebecca Wickey, the older sister, by Martin E. Hilty, who remained in the home.

34. The Court further found that the step-father, Martin E. Hilty, used excessive physical discipline of Susanna in the presence of her mother and older sister, despite the child being disabled and non-verbal as a result of cerebral palsy.

35. Rebecca Wickey testified at the CHINS fact-finding that she was sexually abused by her step-father, Martin E. Hilty, on a number of occasions when the family lived in Berne, Portland, and Geneva, Indiana.

36. During Rebecca's testimony, Mother and Martin laughed on occasion.

37. Rebecca did not feel comfortable being in the same room with Mother.

38. The trial court found Rebecca's testimony credible and informed the parties at the conclusion of the fact-finding hearing.

39. Martin E. Hilty appealed the trial court's decision.

40. On May 31, 2017, the Indiana Court of Appeals, under cause numbered 90A02-1609-JC-2135, affirmed the trial court's decision.

41. The Court, in the CHINS proceedings, held a dispositional hearing on August 18, 2016. The Court ordered that Susanna and the Hilty Children remain placed

outside their mother's and Martin's care and granted wardship of Susanna Wickey and the Hilty Children to the DCS.

42. At removal and disposition, Susanna Wickey and the Hilty Children were placed in relative care with Joseph and Rachel Wickey.

43. After continued removal authorized by the dispositional order, Susanna Wickey and the Hilty Children were never returned to Mother's or Martin Hilly's care and custody.

44. Mother's visitation with Susanna Wickey and the Hilty Children was ordered to be supervised by a service provider, and Martin was ordered not to have visitation with Susanna Wickey or the Hilty Children.

45. At no point during the underlying CHINS proceedings did Mother receive unsupervised visits.

46. At no point during the underlying CHINS proceedings did Martin receive visitation.

47. At disposition, the following orders were entered specifically to address Mother's and Martin E. Hilly's home conditions as well as the physical and sexual abuse:

> e. (Mother and Martin] shall allow the Family Case Manager or other service provider to make announced or unannounced visits to their home and permit entrance to the home to monitor progress toward compliance with any court order.
> j. [Mother and Martin] shall maintain suitable, safe and stable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities.
> t. [Mother and Martin] shall complete a parenting assessment and successfully complete all recommendations developed as a result of the parenting assessment.
> u.' [Martin] shall complete a substance abuse assessment and follow all treatments and successfully complete all treatment recommendations developed as a result of the substance abuse assessment.
> w. (Mother and Martin] shall complete a psychological evaluation as referred and approved by DCS and successfully complete any recommendations that results from the evaluation.

z. [Mother and Martin] shall not commit any acts of domestic violence on anyone including the children, and agree that if an instance of domestic violence occurs they will immediately report it to the Family Case Manager.

aa. [Martin] shall refrain from using any form of physical discipline on the step-child while subject to the Court's jurisdiction. [Martin] shall complete a course of sex offender treatment.

48. On March 13, 2017, the Court converted the review hearing scheduled on March 16, 2017 to a permanency hearing.

49. On March 16, 2017, the Court, in the CHINS proceedings, held its first permanency hearing and entered its Order thereon. The Court accepted DCS' recommendation to change the children's permanency plan to reunification with a concurrent plan of termination of parental rights.

50. DCS Family Case Manager Alyssa Justice (FCM Justice) made referrals for services, which Mother and Martin were ordered to complete under the Court's Dispositional Order.

51. FCM Justice made referrals for services, which Mother and Martin were ordered to complete under the Court's Dispositional Order.

52. On May 6, 2016, a referral was completed for the Youth Service Bureau (YSB) for homemaker and parent aid services. YSB was referred to work on the home conditions, organization, and a budget as well.

53. On May 9, 2016, a referral was completed for Dr. Cates to cornpleit§ a psychological eviil1Jatio11.-lhal.eferral.ws1s made to help determine the underlylrl9. needs for Mother and M

54. On May 18, 2016, a referral was completed for the Youth Service Bureau (YSB) to provide supervised visits between the mother and the children. The referral was made under the homemaker service so the worker could transport Mother to the visits.

55. On July 7, 2016, a referral was completed for Park Center. A referral was completed to help both Mother and Martin with counseling and address underlying needs, coping skills, and the reasons for DCS involvement.

56. On October 6, 2016, another referral was completed for the Youth Service Bureau (YSB) for home-based casework to help Mother and Martin with the home, budgeting, and organization. A new YSB referral was completed because the DCS felt that the former homemaker service provider that was working with the parents had crossed boundaries; therefore, it was not beneficial for the case, the parents, or the children.

57. On November 14, 2016, a referral was completed for Fatherhood Engagement. Fatherhood Engagement was referred to do home-based case work services for Martin and was supposed to help him engage in services.

58. On November 14, 2016, a referral was completed for Dockside. The referral was completed to help Martin with a substance abuse assessment since there were claims of alcoholism from the victim and family.

59. On October 24, 2016, December 19, 2017, and January 26, 2017, child and family team meetings were held to discuss services.

60. On all three of those dates, DCS discussed Martin completing a course of sex offender treatment.

61. At that time, Martin refused to participate in the sex offender program.

62. Martin was hesitant to fully participate in services.

63. On August 16, 2016, Martin completed his counseling assessment at Park Center with Jinny Broderick.

64. Based on that assessment, Ms. Broderick recommended that Martin complete individual counseling with her.

65. Appointments for individual counseling were made, but Martin never attended those appointments.

66. At the time of the termination of parental rights trial, Martin still had not completed individual counseling.

67. In November 2016, Martin completed his substance abuse assessment, which recommended individual and group therapy.

68. On December 22, 2016, Martin started his substance abuse counseling with Paul Bruns from Dockside.

69. Paul stated that group would not work for Martin due to Martin's inability to understand that his background is a part ofwho he is now.

70. Due to this, Paul, DCS, and the GAL agreed that Martin could attend an Amish Alcoholics Anonymous and report to his substance abuse counselor (SAC) for updates on that service.

71. Amish AA was intended to replace the group aspect of the substance abuse treatment; however, it never came close.

72. Paul was unable to get confirmation of Martin's attendance at Amish AA.

73. Martin only had two signatures of occurrences where he had gone and one of those signatures was of a relative of Rebecca's.

74. Paul explained to Martin that the signatures could not be from relatives and that "a handshake was not sufficient for this."

75. Paul never received any other verification that Martin attended more than the two Amish AA meetings for which he provided signatures.

76. Paul felt that Martin had contempt for the whole process.

77. In May 2017, Paul reached an impasse with Martin and felt that he could not go any further with him.

78. Paul would work with Martin on worksheets; however, Martin would either not fill them out or was sarcastic when filling them out.

79. Paul tried to address this with Martin, but Paul stated that, as a therapist, he could only do so much.

80. Paul stated that he could not make Martin see something that he doesn't want to see about himself or that he feels is not much of a problem.

81. Paul reported that although Martin was compliant in services, he was not entirely engaged in the services, and Martin stated that he did not believe he should have to do the service.

82. Paul testified that Martin completed eighteen (18) individual sessions with him.

83. Paul testified that since he did not see any compliance with the Amish AA meetings; he had to pick up the slack and keep meeting with Martin.

84. Paul testified that physically, Martin was there, but a part of counseling was to make a change and that didn't happen.

85. The substance abuse referral was eventually closed out.

86. At the time of the termination of parental rights trial, Martin had still not successfully completed substance abuse treatment.

87. During the pendency of the CHINS proceedings, DCS continued to receive reports from the community and family members that Martin often drank daily to the point of intoxication.

88. On January 31, 2017, the Court, in its Order on Matters Taken under Advisement: Parental Participation and Visitation, ordered that the step-father, Martin E. Hilty, complete a course of sex offender treatment.

89. In January 2017, Martin finally agreed to participate in the sex offender program at Phoenix Associates.

90. Therefore, on January 26, 2017, a referral was completed for Phoenix Associates for sexual-based counseling for Martin.

91. On February 9, 2017, Martin had his intake appointment at Phoenix Associates.

92. Even during his intake appointment, Martin continued to deny the sexual abuse allegations.

93. Due to Martin's denial of the allegations, Michael, Phoenix Associates' service provider, suggested that Martin complete a polygraph. If the polygraph showed that Martin was telling the truth, then Martin would be released from the program. If the polygraph showed that Martin was deceptive, then Martin would have to admit to the allegations.

94. Martin refused to complete the polygraph under the advisement of his attorney.

95. Phoenix continued to keep Martin on its schedule so they could continue treatment.

96. Martin's attorney finally agreed to allow Martin to complete the polygraph.

97. Martin completed his polygraph examination on May 15, 2017.

98. The polygraph examination results indicated that Martin was deceptive to the main issue, which was the sexual abuse that occurred by Martin on his step-daughter, Rebecca Wickey.

99. Based on the polygraph examination, Phoenix recommended that Martin complete its Sex Offender Management and Monitoring program, which would require Martin to admit and take ownership of the sexual abuse against his step-daughter, Rebecca Wickey.

100. Martin stated that he would never admit to the allegations.

101. On May 23, 2017, Phoenix contacted DCS and reported that Martin was fully informed of what he would be required to do to complete the sex offender program and Martin refused to admit.

102. Therefore, Martin did not complete the sex offender program with Phoenix Associates.

103. In March of 2017, Martin was also informed of an in-patient Amish Sex Offender program in Lancaster, Pennsylvania.

104. Martin did not make any arrangements to attend the Amish program.

105. On August 28, 2017, DCS Family Case Manager Holly Kaup started working with Mother, Martin, and the children.

106. At the time of the termination of parental rights trial, Martin had still not completed a sex offender program.

107. Martin testified at the termination of parental rights trial that he did not need to participate in the sex offender program because he would not really benefit from it.

108. Mother testified at the termination of parental rights trial that she does not believe Martin sexually abused Rebecca Wickey and she does not believe her children are in any danger from her husband.

109. Mother was present at the CHINS fact-finding when Rebecca testified that she was sexually abused by her step-father, Martin E. Hilty, on a number of occasions when the family lived in Berne, Portland, and Geneva, Indiana.

110. Mother did successfully complete services recommended by the DCS; however, Mother had continued to refuse to acknowledge the sexual abuse that occurred to Rebecca by her step-father, Martin E. Hilty.

111. Rebecca Wickey also testified at the termination of parental rights trial regarding her sexual abuse by Martin, her step-father.

112. Rebecca Wickey testified that she told her mother that Martin had touched her private parts after the first time it happened.

113. Rebecca Wickey stated that she also told her mother that it happened again when one of the children was in the hospital. Rebecca stated that she told her mother that "what Martin did was what Andy Eicher did to his children."

114. Andy Eicher was an Amish man who was found guilty of sexually abusing his children.

115. Rebecca Wickey is concerned about her siblings going home if Martin had not changed.

116. Rebecca Wickey is concerned about Martin drinking, the children getting the care they need, and sexual abuse on her younger sister.

117. Rebecca Wickey stated that the sexual abuse occurred every time she was left alone with Martin until the abuse stopped when she was a teenager.

118. Rebecca Wickey stated that her mother basically said Rebecca should forgive and forget.

119. Guardian Ad Litem Beth Webber (GAL) believes that termination of parental rights is in the Hilty Children's and Susanna Wickey's best interests at this time.

120. The DCS' plan for the Hilty Children and Susanna Wickey is to place them for adoption with preference going to their current placement.

Conclusions of Law

1. Indiana Department of Child Services, ,Wells County Office, filed petitions to terminate the parent-child relationship as follows:

    a. Susanna Wickey, Child, and Rebecca Hilty, Mother, on July 25, 2017.
    b. Martin Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 17, 2017.
    c. Leander Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 17, 2017.
    d. Lorene Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 17, 2017.
    e. Walter Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 17, 2017.

f. Melissa Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 22, 2017.
g. Laverne Hilty, Child, and Rebecca Hilty, Mother, and Martin Hilty, Father, on August 23, 2017.

2. In relevant part, the petitions allege as follows:

a. Susanna Wickey is the child of Rebecca Hilty. Susanna Wickey's father is deceased.
b, Martin Hilty is the child of Martin Hilty and Rebecca Hilty.
c. Leander Hilty is the child of Martin Hilty and Rebecca Hilty.
d. Lorene Hilty is the child of Martin Hilty and Rebecca Hilty.
e. Walter Hilty is the child of Martin Hilty and Rebecca Hilty.
f. Melissa Hilty is the child of Martin Hilty and Rebecca Hilty.
g. Laverne Hilty is the child of Martin Hilty and Rebecca Hilty.'
h. The child[ren] have been removed from the parent[s] and have been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months.
i. There is reasonable probability that the conditions that resulted in the child[ren]'s removal or the reasons for placement outside the home will not remedied and/or the continuation of the parent-child relationship poses a threat to the well-being of the child[ren].
j. Termination of the parent-child relationship is in the best intertest of the child[ren].
k. There is a satisfactory plan for the care and t eatment of the child[ren].

3. Indiana Code 31-35-2-8 provides that:"... if the court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship."

4. The Court has jurisdiction of the subject matter and the parties of this action pursuant to Indiana code section 31-35-1 et seq. and 31-35-2 et seq.

5. In *Lassiter v. Department of Social Services,* 452 U.S. 18, 101 S.Ct. 2153 (1981), the United States Supreme Court opined that the purpose of termination of parental rights is not to punish parents but to protect children. See also *In Re* R.A, 19 N.Ed.3d 133,321 (Ind. Ct. App. 2014), trans. Denied. *in Matter of Robinson,* 538 N.E.2d 1385, 1386 (Ind. 1989)., the Indiana Supreme Court reviewed the purpose of CHINS and termination proceedings and stated:

> [t]he desired result would be to resolve the problems in the home which led to the children's distress and return them there. If this cannot be done, the alternative which serves

the best interests of the child or children is terminating parental rights and placing the children where they will receive proper care and protection.

6. The purpose of terminating parental rights is not to punish parents but to protect their children. *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). However, parental rights are not unlimited, and the state has the authority under its *parens patriae* power to intervene when necessary to protect children. *In re* G.Y., at 1259; see also, *In re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). Parental interests "must be subordinated to the child's interests" in determining the proper disposition of a petition to terminate parental rights. *In re* G.Y., at 1259. Therefore, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 1259-60.

7. The termination statute provides that DCS must establish 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 (emphasis added). Ind. Cod Sec. 31-35-2-4(b)(2)(B)(i). Clearly, the statue does not simply focus on the initial basis for the child's removal for purposes of determining whether a parent's rights should be terminated, "but also those bases resulting in the continued placement outside the home". *In re A.I. v Vanderburgh County OFC,* 825 N.E.2d 798, 806 (Ind. Ct. App. 2005) (citing *In re A.A.C.,* 682 N.E.2d 542, 544 (Ind. Ct. App. 1997) (holding that proper inquiry was what conditions lead to the child's placement outside the home and whether there was a reasonable probability that those conditions were likely to be remedied.) Thus, the Court looks at not only the reason for the initial removal, but also the reasons for the continued removal.

8. Martin has a history of substantiated sexual abuse of his stepdaughter, failed to complete court-ordered counseling services and sex offender specific treatment, and has refused to admit he has a problem, *In Re* S.L.H.S., 885 N.E.2d 603 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of Father's parental rights and noted that: (1} Father had a history of substantiated sexual abuse of

his former stepdaughter; (2) Father's niece testified that he had repeatedly rr. olested her as a child; (3) Father had failed to complete court-ordered counseling services and sex offender specific treatment; and (4) Father refused to admit he had a problem. Id. at617-18.

9. Rebecca Wickey testified at the CHINS fact-finding on June 10, 2016. Rebecca testified that she was sexually abused by step-father, Martin E. Hilty, on a number of occasions. The Court found Rebecca's testimony credible. *In Re A.J.*, 877 N.E.2d 805 (Ind. Ct. App. 2007), trans. denied, the Court held that termination of Parents' parental rights to their three children was supported by sufficient evidence. Id. at 816. In affirming the termination judgment, the Court noted: (1) the oldest child's testimony regarding the sexual abuse and neglect she suffered while in the care of her parents was both detailed and credible; (2) the oldest child's testimony was substantiated by the testimony of the child's therapist and another psychologist witness; (3) Mother testified that she did not believe that she had a mental health problem and she continued to deny Father had ever molested the oldest child; (4) at the time of the termination hearing, Father still had not admitted to sexually molesting the child; (5) Fath\lr did not complete any of the sexual offender classes which were necessary for reunification. Id.

10. Mother and Martin Hilty have had two (2) years to accomplish the steps necessary to have the children returned to their care. Children cannot wait indefinitely for their parents to work toward preservation and reunification. *In Re E.M.*, 4 N.E. 3d 636, 649 (Ind. 2014).

11. The Court concludes this Court has jurisdiction over the parties and the subject matter of this case; and that notice has been provided to all persons required by statute in the most effective means under the circumstances. Furthermore, based upon the above and foregoing, the Court also concludes that DCS has met its burden of proof, proving its petition to terminate Mother's and Martin Hilly's parental rights by clear and convincing evidence, to wit:

a, Susanna Wickey and the Hilty Children have been removed from the home and custody of Mother and Martin Hilty and have been under the supervision of the DCS for at least fifteen (15) of the most recent twenty-two (22) months.

b. As to Mother and Martin Hilty, there is a reasonable probability that:
   i. The conditions which resulted in Susanna Wickey's and the Hilty Children's removal and continued placement outside the home will not be remedied by Mother or Martin Hilty; and
   ii. That continuation of the parent-child relationship poses a threat to Susanna Wickey's and the Hilty Children's well-being.
   iii. Termination of parental rights is in Susanna Wickey's and the Hilty Children's best in\erests.
   iv. There is a satisfactory plan for the care and treatment of Susanna Wickey and the Hilty Children; that being adoption.

Judgment

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED: That DCS' petition for termination of Mother's parental rights is granted; and that the parent-child relationship between the child, Susanna Wickey, and the child's mother, Rebecca Hilty, is hereby terminated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED: That DCS' petitions for termination of Mother's and Fathers' parental rights are granted; and that the parent-child relationship between the Hilty Children: Martin Hilty, Leander Hilty, Lorene Hilty, Walter Hilty, Melissa Hilty, and Laverne Hilty, and the children's mother, Rebecca Hilty, and the children's father, Martin Hilty, is hereby terminated.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED AND DECREED: All rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, parenting time, or support, pertaining to the relationships herein are permanently terminated. Neither parents' consent to the adoption of the child is required.

IT IS FURTHER ORDERED that Susanna Wickey and the Hilty Children remain under the supervision of the Indiana Department of Child Services, and subject to the

jurisdiction of the Court in the underlying CHINS proceeding, and that DCS carry out its permanency plans for the children.

Rebecca Hilty and Martin Hilty are advised that they have the right to appeal the Court's decision. If they wish to exercise this right, they must do so within thirty (30) days of the date of this order. If they choose to file a motion to correct error, they must file an appeal within thirty (30) days of an adverse ruling on that motion. Rebecca Hilty and Martin Hilty have the right to be represented by counsel and if they are unable to hire their own counsel, the Court is obligated to appoint counsel to them. Rebecca Hilty and Martin Hilty are further advised that failure to file a notice of appeal within the timeframe set forth above waives their right to an appeal. If Rebecca Hilty and Martin Hilty desire to exercise their right to an appeal, they must notify the Court in writing within the timeframes set forth above.

Counsel of record for Martin Hilty is Holly Daniels; however, Ms. Daniels is no longer able to serve in that capacity. The Court now appoints Attorney Yvonne Spillers to serve as counsel for Martin Hilty in these matters.

So ORDERED: 5/01/15

Honorable Kenton W. Kiracofe
Judge, Wells Circuit Court

102 W. Market Street
Suite 301
Bluffton, IN 46714

Distribution:

Christian Mitchell,
Counsel for the Department of Child Services

Beth Webber
Guardian ad Litem

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