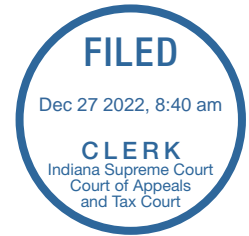


## MEMORANDUM DECISION

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



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## IN THE COURT OF APPEALS OF INDIANA

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

K.H. (Minor Child)  
and  
S.K. (Mother),  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

December 27, 2022

Court of Appeals Case No.  
22A-JT-1835

Appeal from the Allen Superior  
Court

The Honorable Lori Morgan,  
Judge

Trial Court Cause No.  
02D08-2101-JT-14

**Bailey, Judge.**

## Case Summary

- [1] S.K. (“Mother”) appeals the termination of her parental rights to K.H. (“Child”) upon the petition of the Allen County Department of Child Services (“DCS”). Mother presents the sole issue of whether the judgment is clearly erroneous because DCS failed to present clear and convincing evidence to establish the requisite statutory elements. We affirm.

## Facts and Procedural History

- [2] In August of 2014, Mother gave birth to Child. Child is autistic and non-verbal. At times, he engages in self-injurious behavior, such as biting himself or hitting his head with the palm of his hand. Child will sometimes throw himself onto the floor and scream. He is prone to elopement and requires constant supervision.
- [3] During Child’s first two years of life, Mother and Child lived with maternal relatives, in shelters, or in hotels.<sup>1</sup> On January 31, 2017, Child was removed from Mother’s care, due to reports that Mother was homeless, was not taking her prescribed medication for bipolar disorder, and had used a street drug known as Spice. In February of 2017, Mother entered a residential drug treatment program and Child was returned to her care. Child was again

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<sup>1</sup> Child’s biological father was also living with Child. Father’s parental rights were terminated, and he is not an active party to this appeal.

removed from Mother's care on February 22, 2017, because Mother was unsuccessfully discharged from that treatment program.

- [4] On February 27, 2017, Child was adjudicated a Child in Need of Services ("CHINS"), based in part upon parental admissions. Mother was ordered to, among other things: maintain contact with DCS; attend case conferences; obtain a drug and alcohol assessment and follow recommendations; enroll in home-based services; enroll in individual mental health counseling; obtain a psychological evaluation; submit to random drug screens; attend scheduled visitation with Child; and obtain independent housing.
- [5] DCS made various referrals for services to Mother, including individual counseling, home-based caseworker services, homemaker aide services, and group therapy. Mother's attendance was minimal, and she did not successfully complete any of the programs offered to her individually. However, she attended more than half of the scheduled visits with Child. Mother did not place any call to initiate random drug screens, but she provided in-home drug screens administered by family caseworkers. Such testing produced several results that were positive for methamphetamines and cocaine. In light of Mother's noncompliance with services and continued use of methamphetamine, the CHINS court changed Child's permanency plan to termination of parental rights.
- [6] On March 1, 2021, DCS petitioned to terminate Mother's parental rights. A factfinding hearing was conducted on August 3 and August 5, 2021. DCS

caseworkers and service providers testified that Mother had not adequately participated in services addressed to remedying the conditions that led to Child's removal. Mother testified that she had independently obtained services appropriate for her drug addiction and that she and Child's father were living in a hotel that she considered appropriate for Child. On November 1, 2021, the trial court entered its findings of fact, conclusions thereon, and order terminating Mother's parental rights. Mother now appeals.

## Discussion and Decision

- [7] In conducting our review, we acknowledge that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.
- [8] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(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) (2022). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R. Y. v. Ind. Dep't of Child Servs.*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a

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

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

[11] Mother challenges the sufficiency of the evidence DCS presented to satisfy the elements of Indiana Code Section 31-35-2-4(b)(2), focusing upon subsection (B) (remediation of conditions or posing of threat to child). We note that the foregoing statutory provision is written in the disjunctive, such that the trial court need find only one of the three elements to be true. *See In re L.S.*, 717 N.E.2d at 209 (recognizing that, because the statute is written in disjunctive terms, the court needs to find only one requirement to establish the particular element supporting termination of parental rights).

[12] Relative to remediation of conditions, Mother insists that she was partially compliant with services and that her full participation was thwarted by her medical condition and surgeries. According to Mother, she has obtained

appropriate services to battle her long-term addiction. Mother observes that she had been residing in the same room in an extended stay hotel for six months prior to the termination hearing. Looking toward the future, Mother anticipates that more suitable housing will be found.

[13] An argument as to remediation of conditions invokes a “two-step analysis.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we must identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* (citing *Bester*, 839 N.E.2d at 152). The trial court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct. *Id.* The trial court has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.* Habitual conduct may include parents’ prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by DCS and the parent’s response to those services as evidence of whether conditions will be remedied. *Id.*

[14] Child was initially removed from Mother's care due to her untreated mental health issues, substance abuse, and inability to provide a safe and stable residence. In the four and one-half years of CHINS proceedings, Mother had not been fully compliant with any service. Other than visitation, each DCS referral lapsed, or Mother was discharged for lack of participation. She tested positive for methamphetamine as recently as two months prior to the termination hearing. Mother had been unable to provide custodial care for Child apart from one short placement in a residential treatment facility.

[15] After a history of housing instability, Mother had resided in the same hotel room, with Child's father, for six months. But DCS considered the single room to be unsuitable housing for Child. According to Child's caseworker, Child would "not enjoy [being in] small confined spaces for long periods of time." (Tr. Vol. II, pg. 166.) Because Child at times threw himself onto the floor and had a tendency to run, clutter was particularly inadvisable. Mother had explored the option of public housing but was ineligible due to a history of evictions. The trial court's determination of a reasonable probability that the conditions leading to removal and continued placement outside the parental home are unlikely to be remedied is not clearly erroneous. Because DCS established this prong, we need not address whether DCS established that continuation of the parent-child relationship would pose a threat to Child.

## Conclusion



[16] DCS presented sufficient evidence to establish the requisite statutory elements. Accordingly, the order terminating Mother's parental rights to Child is not clearly erroneous.

[17] Affirmed.

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