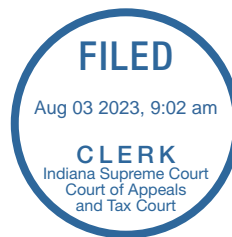


## MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-Child Relationship of:

L.G., N.G., and I.G. (Minor Children),

and

D.G. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child Services,

*Appellee-Petitioner*

August 3, 2023

Court of Appeals Case No.  
23A-JT-562

Appeal from the Lake Superior Court

The Honorable Thomas P. Stefaniak, Jr., Judge

Trial Court Cause Nos.  
45D06-2207-JT-114, 45D06-2207-JT-115, 45D06-2207-JT-116

**Memorandum Decision by Chief Judge Altice**  
Judges May and Foley concur.

**Altice, Chief Judge.**

**Case Summary**

- [1] D.G. (Mother) appeals from the involuntary termination of her parental rights to her minor children, L.G.,<sup>1</sup> N.G.,<sup>2</sup> and I.G.<sup>3</sup> (collectively, Children).<sup>4</sup> She challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

**Facts & Procedural History**

- [3] The Indiana Department of Child Services (DCS) has a long history of involvement with the family resulting in multiple CHINS cases since 2016. This most-recent case began with a DCS investigation on September 25, 2019, based on reports that Mother was abusing drugs and might be having a psychotic break. Mother admitted to using cocaine, and she continued to use cocaine and other drugs while Children remained in her home during the subsequent assessment period.

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<sup>1</sup> Born September 20, 2015, when Mother was seventeen years old.

<sup>2</sup> Born March 12, 2017.

<sup>3</sup> Born March 30, 2018.

<sup>4</sup> The parental rights of Children's alleged father, J.H., were also terminated. He does not participate in this appeal. Thus, we will focus on the facts as they relate to Mother, Children's custodial parent.

[4] On October 8, 2019, DCS filed a petition alleging that Children were CHINS due to Mother's continued drug abuse and her inability to find appropriate coping mechanisms to handle her depression and personal stress issues. Then on October 16, Mother asked DCS to remove Children from her home because she felt overwhelmed when caring for them. DCS caseworkers personally observed Mother yelling and cursing at Children and hitting them. As a result, Children were removed from Mother's home that day and placed together in foster care. They have never been returned to Mother's care. Aside from two months in relative placement, Children have been in the care of their current foster parents since November 2019.

[5] At a hearing on December 16, 2019, Mother made a general admission that Children were CHINS. The trial court accepted Mother's admission and adjudicated Children CHINS on January 13, 2020. That same day, the court ordered Mother to participate in and follow all recommendations resulting from an initial clinical assessment, a substance abuse assessment, a parenting assessment, a medical evaluation, and individual therapy. The court also ordered Mother to participate in homebased services, supervised visitation with Children, and random drug screens.

[6] DCS family case manager (FCM) Twyla Johnson worked with the family through March 2021. Mother was "fairly consistent with services" during this period, but she did not regularly submit to required random drug screens and, when she did, she continued to test positive for drugs, including cocaine, opioids, codeine, morphine, hydrocodone, and Xanax. *Transcript* at 51.

Mother also did not complete recommended parenting education, and she began overmedicating herself and falling asleep during supervised visits. By the time FCM Johnson transitioned off in March 2021, “[Mother] was never able to achieve or maintain sobriety. She was never able to maintain safe and stable housing . . . , and if she did it was for a short period of time.” *Id.* at 53. Further, FCM Johnson did not observe a strong bond between Mother and Children, believing that Mother treated them more as “her property.” *Id.* at 54.

[7] Following a CHINS hearing on June 14, 2021, the trial court issued an order changing the permanency plan to adoption. The court explained in its order:

Court notes Mother has very recently made a more concerted effort to comply with case plan services, including parenting education, therapy, case management services, and visitation. Mother also appeared more focused on her role in pursuit of potential reunification with the children. However, to date, the two most prominent obstacles to reunification, substance abuse and unstable housing, remain unaddressed. Although Mother testified that she has secured housing that will be in place by the end of June 2021, there is a significant history of housing instability. Mother has been unable to maintain adequate housing for more than a nominal period of time, during the life of the case. Additionally, Mother has been unable to maintain sobriety or provide evidence of substance abuse treatment programs on multiple occasions.

*Appendix* at 38.

[8] Mother completed a detox treatment program at Edgewater on October 25, 2021, and then began consistently participating in supervised visits and

obtained Section 8 housing. At a review hearing on December 6, 2021, Mother requested that the permanency plan be changed to also include reunification. Over DCS's objection, on December 14, the court granted Mother's request for concurrent permanency plans because Mother was addressing her issues of substance abuse and housing instability and visiting with Children.

[9] After a "small window of compliance," Mother became inconsistent with random drug screens, follow-up treatment at Edgewater, and individual therapy. *Transcript* at 73. In March 2022, she relapsed and, according to Luvanika Stanley (the FCM between December 2021 and October 2022), Mother "kind of disappeared on all services" and maintained no contact with DCS throughout the month. *Id.* at 69. Subsequently, in April, May, and early June, Mother had six positive drug screens for ecstasy, fentanyl, and/or cocaine. Mother's behavior became erratic and increasingly aggressive toward service providers after her relapse.

[10] On June 27, 2022, after a hearing, the trial court changed the permanency plan to adoption and ordered DCS to file a petition to terminate parental rights within thirty days. DCS filed the petition on July 13, 2022.

[11] Through all but the last month of the CHINS case, Mother had been dealing with a criminal matter that began in May 2018 when police officers found her high and intoxicated in a parked car with Children, ages one month to two years old. Mother was arrested and charged with three counts of neglect of a dependent, illegal consumption of alcohol, possession of marijuana, visiting a

common nuisance, battery on a law enforcement officer, and resisting law enforcement. In March 2019, she pleaded guilty to the misdemeanor counts of visiting a common nuisance and resisting law enforcement and was sentenced to one year suspended to probation. Mother violated probation and then failed to appear for a probation revocation hearing, resulting in an arrest warrant being issued in September 2020. The arrest warrant was served on June 27, 2022. Mother admitted to the violations and, by agreement of the parties on September 13, 2022, her probation was extended for another year. As a condition of her probation, Mother was ordered to participate in Therapeutic Intervention Court (TIC) through Lake County Community Corrections (LCCC).

[12] Mother completed a twenty-one-day inpatient treatment program through Regional Recovery Matters on October 11, 2022. She had a supervised visit there on October 3, during which Mother is alleged to have inappropriately touched L.G. while alone in the bathroom with her. As a result, Mother's visits with Children were suspended by the trial court, and October 3 was the last time Mother had visitation with Children.

[13] On October 25, 2022, LCCC filed a petition to expel Mother from TIC based on several allegations: Mother became verbally aggressive with staff on October 12; LCCC had received "credible information concerning other criminal activity"; and, Mother had failed to pay required fees. *Exhibits Vol. 3* at 15. An arrest warrant was issued that same day and served on October 31. Mother was

subsequently sentenced to 180 days in jail and later unsatisfactorily discharged from probation and released from jail on December 12, 2022.

[14] The factfinding hearing in the termination proceedings was held on January 25, 2023. Mother had been out of jail for about six weeks, but she testified that she had just started a week before the hearing with drug screening, therapy, and staying on medications for her depression and opiate addiction. Mother testified that she began “doing opiates” around age thirteen and thus had been battling her addiction for eleven years. *Transcript* at 15. She acknowledged testing positive for fentanyl and ecstasy as recently as June 2022 despite “multiple rehab programs throughout the life of the CHINS case,” and testified that if she had submitted to a drug screen a week before the hearing, she probably would have tested positive for alcohol and codeine. *Id.* at 19. When asked why her parental rights should not be terminated, Mother responded:

Because the only thing that I’m struggling with right now is a drug addiction, but everything else I do for my kids. I can provide for my kids.... I got a whole three bedroom house. I got a job. I’ve done everything that I needed to do. It’s just my drug addiction.

*Id.* at 30. Later Mother stated, “I do admit that I have to get help for my mental health and my drug addiction.” *Id.* at 130.

[15] DCS witnesses provided testimony, along with documentary evidence, detailing Mother’s history with substance abuse and mental illness and the family’s current and past CHINS proceedings. FCM Stanley, who had worked with the

family between December 2021 and October 2022, opined that termination was in Children’s best interests because Children are very bonded with their foster parents who wish to adopt and have provided Children, over the last three years, with consistency, a safe environment, and “the things that they need in regard to their growth and well-being.” *Id.* at 78. FCM Stanley also noted that L.G. “is an advocate for herself even though she’s just a little kid” and “has always stated that she wanted to live with [the foster parents] and nowhere else.” *Id.* While Mother “always communicated that she wanted to do her services and be compliant,” FCM Stanley explained, “the follow through just wasn’t there” and her mental health needs and substance abuse were never resolved. *Id.* at 79.

[16] Similarly, Tangela Parker, the FCM since November 1, 2022, testified that she believed termination was appropriate because Mother was not “able to provide a safe and nurturing home” for Children and had not remedied the reasons for removal. *Id.* at 119. Although Mother had maintained contact with FCM Parker, she was “just not consistent with participating in the case plan.” *Id.* at 120. FCM Parker explained that Mother had not remedied her addiction issues after years of services and opined that Children’s permanency should not remain on hold for her to continue to address those issues.

[17] On February 3, 2023, the trial court entered its order terminating Mother’s parental rights. Mother now appeals, challenging the sufficiency of the evidence. Additional information will be provided below as needed.



## Discussion & Decision

[18] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. Due to the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[19] We recognize that 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 J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[20] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[21] Mother first challenges the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Children's removal or continued placement outside her home would not be remedied. In determining the probability that conditions will change,

the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future

neglect or deprivation of the child. The statute does not simply focus on the initial basis for a 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.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cnty. Off. of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)].

*In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[22] In support of its determination that there is a reasonable probability that the conditions resulting in removal or continued placement outside Mother's home will not be remedied, the trial court made findings, including:

Mother testified she has had an 11 year addiction that she has not been able to overcome. [Her] substance use includes cocaine, Xanax, fentanyl, codeine, morphine, oxycodone and ecstasy. Mother has been testing positive throughout the three year CHINS case ....

Mother entered inpatient rehabilitation on multiple occasions in an attempt to overcome her substance abuse issues. Mother entered inpatient in January 2021 which mother failed to complete. Mother entered a second inpatient in February 2021 which mother failed to complete. A third inpatient was attempted in August 2021 again mother failed to complete. A fourth inpatient was completed in October of 2021, but mother was not successful in maintaining sobriety. Mother's fifth attempt at inpatient treatment was conducted in September 2022

which mother completed and was arrested shortly thereafter for violating the rules of her criminal case. Mother has admitted that she has currently used Tylenol 4 (codeine) and alcohol. Mother is also on methadone for approximately one week in an attempt to overcome her opiate addiction. Mother was offered multiple services over the past three years and mother has not overcome her substance abuse issues. Mother has not been able to maintain sobriety for any significant amount of time.

Mother's participation in the services offered through the case plan for reunification was fairly consistent. Mother did not participate in the medication evaluation that was offered. Mother participated in the parenting assessment but appeared under the influence. Mother did not participate in parenting education. Mother completed the substance abuse assessment which indicated that mother suffered from alcohol abuse, cocaine abuse and opiate abuse. Mother participated in the supervised visitations with the children, but mother would become very frustrated with the children. Mother would often be under the influence when visiting the children and would fall asleep during the visits. Mother did not show genuine love and affection for the children. Often times the service providers had to care for the children. Mother was not engaging with the children and would become frustrated with the children. Often times the visits were cut short due to the interaction of mother with the children. Mother was very sporadic with the therapy offered through the case plan. Mother only attended approximately five meetings of the weekly [therapy] visits offered. Mother was not consistent with submitting to drug screens. Mother would not avail herself to the services. All efforts to engage mother have failed.

Mother was never able to obtain sobriety. Mother was unable to obtain safe and stable housing, when mother obtained housing it was for a very short period of time. Mother is currently in Section 8 housing. Mother did not obtain employment. Mother

did testify that she was self employed cleaning houses and is on government assistance for her other needs.

Mother has not availed herself of the services offered by [DCS].  
Mother has not completed the case plan for reunification.  
Mother has not progressed in the case plan for reunification.  
Mother had not progressed in her visitations with her children.  
Mother's visitations are currently suspended as of October of 2022 due to the quality of the visits, mother's substance abuse and mother being inappropriate with the children. After three years of services, mother has not been able to overcome her substance abuse issues. After three years of services, mother is not any closer to reunifying with the children. The children deserve permanency....

The children remain outside of the parents' care. The original allegations of neglect have not been remedied by the parents.... Parents have not overcome their substance abuse issues in order to properly and safely parent their children. Parents have not demonstrated an ability to independently parent the children and provide the necessary care, support and supervision. There is no basis for assuming the parents will complete the necessary services and find one or both of themselves in a position to receive the children into the home. Parents have failed to utilize the available services and make the necessary efforts to remedy the conditions which led to intervention by DCS and the Court.

*Appendix at 76-77.*

[23] On appeal, Mother does not challenge any of the trial court's specific findings, and she acknowledges that Children were removed due to her mental illness and drug use. Mother simply asserts that she "has engaged in services and accepted what she needs to do to remedy the reasons why her children were

made CHINS and is actively making improvements.” *Appellant’s Brief* at 9. In this regard, she notes that she completed inpatient treatment in October 2021 and September 2022, has housing, and is self-employed. Mother claims that the trial court failed to consider where she was at the time of the hearing as compared to where she was at the inception of the case.

[24] We reject Mother’s invitation to reweigh the evidence. The trial court’s findings reveal that it considered Mother’s current condition as well as her habitual patterns of conduct. Despite years of treatment and services, Mother has not been able to overcome her serious substance abuse issues, which have directly impacted Children. Indeed, Mother testified that she had just started back with services the week before the factfinding hearing and would have recently tested positive for alcohol and drugs despite completing treatment in September 2022. Mother acknowledged at trial that she still needed to “get help for [her] mental health and [her] drug addiction.” *Transcript* at 130. DCS had been providing such help to Mother for over three years to no avail, as Mother was no closer to reunification with Children. The trial court’s conclusion that there is a reasonable probability that Mother will not remedy the conditions that resulted in Children’s removal and continued placement outside her home is not clearly erroneous.

[25] In passing and without separate argument, Mother asserts that DCS failed to establish by clear and convincing evidence that termination of parental rights is in Children’s best interests. On the contrary, there was ample evidence in this regard: Mother had been unable to overcome her substance abuse that had

plagued her since she was a teenager; Children had developed a very strong bond with their foster parents, who wished to adopt Children and continue to offer them the consistent, nurturing, and safe environment that Mother could not provide; Children deserve permanency after so long; and FCMs Stanley and Parker opined that termination was in Children's best interests. *See Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (holding that trial courts must look to the totality of the evidence in making the best-interest determination and subordinate the parents' interests to those of the children, with the children's need for permanency being a central consideration); *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022) (observing that a child's need for permanency is a central concern in determining best interests and that the recommendation of the FCM and CASA to terminate parental rights, along with evidence that conditions are unlikely to be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests), *trans. denied*. The totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in Children's best interests.

[26] Judgment affirmed.

May, J. and Foley, J., concur.