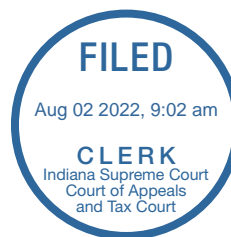


## MEMORANDUM DECISION

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 re the Termination of the  
Parent-Child Relationship of:  
Me.B. (Minor Child) and M.B.  
(Mother),

M.B. (Mother)

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 2, 2022

Court of Appeals Case No.  
22A-JT-190

Appeal from the  
Daviness Circuit Court

The Honorable  
Gregory A. Smith, Special Judge

Trial Court Cause No.  
14C01-2101-JT-18

**Vaidik, Judge.**

## Case Summary

- [1] M.B. (“Mother”) appeals the termination of her parental rights to her daughter. We affirm.

## Facts and Procedural History

- [2] Mother is the biological mother of Me.B. (“Child”), born in December 2017. In September 2019, when Child was twenty months old, the Indiana Department of Child Services (DCS) filed a petition alleging Child was a child in need of services (CHINS) because of Mother’s methamphetamine use. Child was removed from Mother (and has never been returned to her since). Mother later admitted Child was a CHINS because of her substance-abuse issues and the fact that she was “currently enrolled in an in-patient treatment program to address illicit substance use and is unable to provide care for the Child.” Ex. p. 30. The trial court issued a dispositional order requiring Mother to, among other things, maintain contact with her Family Case Manager (FCM), not use drugs, complete parenting and substance-abuse assessments and follow all recommendations, submit to random drug screens, complete a psychological evaluation and follow all recommendations, maintain safe, suitable, and stable housing, secure and maintain a legal source of income, and attend all scheduled visits with Child.
- [3] DCS petitioned to terminate Mother’s parental rights in January 2021. A termination hearing was held on July 6 and November 4. FCM Jessica Rhoads

testified Mother was supposed to call every Monday, Wednesday, and Friday and DCS would tell her if she had to take a drug screen that day. Mother, however, didn't consistently call in or submit to screens. Mother tested positive for methamphetamine and amphetamine several times throughout the case, including a couple of days after the first day of the termination hearing. Mother also admitted using meth two days before the first day of the termination hearing and about two weeks before the second day of the termination hearing. FCM Rhoads said Mother's longest period of sobriety was about two months, but she added the caveat that Mother "was not consistently coming in to screen." Tr. Vol. II p. 248.

[4] FCM Rhoads discussed with Mother "at least 25 to 30 times" that she needed to complete an inpatient drug program. *Id.* at 225. Mother started an inpatient program at Grace House in October 2019 as a condition of probation for a possession-of-methamphetamine conviction but left the program in December "against her court order." *Id.* at 226. Mother subsequently violated her probation and served six months in jail. Mother then went to Stepping Stones on September 22, 2020, but checked herself out "within five to six hours." *Id.* Then, five days after the termination petition was filed, Mother went to House of Victory, but she stayed only "four or five days" before leaving. *Id.*

[5] FCM Rhoads testified that despite Mother being ordered to maintain stable housing, FCM Rhoads "documented[] 30 times" that Mother had moved. *Id.* at 229. Mother was also homeless for a brief period. FCM Rhoads sometimes didn't hear from Mother "for two months or longer" and had no idea where she

was. *Id.* This made it difficult to provide services to Mother. *See id.* at 230. Mother also didn't maintain employment.

[6] Mother last visited with Child in December 2019, when she was at Grace House. After Mother left Grace House against court order, she hadn't seen Child in "691 days"; as a result, Mother had no bond with Child and Child didn't even know who she was. *Id.* at 234, 237, 238. While Mother's visits were suspended six months after she had last seen Child at Grace House, she was told she had to have "30 days of compliance" to get her visits restored. *Id.* at 235. Mother, however, failed to achieve that and never got her visits restored.

[7] According to FCM Rhoads, neither did Mother comply with her home-based and mental-health services, and both services were closed in 2020. After the termination petition was filed, DCS made a new referral for home-based services. Mother, however, stopped participating approximately five months later. DCS also made a new referral for mental-health services; Mother attended twice but then stopped. Mother had a session scheduled the week before the first day of the termination hearing but didn't show up. Mother also had recurring domestic-violence issues with her boyfriend D.H. and husband B.O. (whom she had married two months after the termination petition was filed). FCM Rhoads believed termination of Mother's parental rights was in Child's best interests.

[8] Court Appointed Special Advocate (CASA) Anne Tillie testified she had been Child's CASA ever since Child was removed from Mother in September 2019.

Her major concerns with Mother were her drug use and mental health, neither of which Mother had successfully addressed. CASA Tillie talked to Mother many times about getting clean. But as CASA Tillie put it, Mother “talks a good game, but when it comes down to it, she runs every time she goes.” *Id.* at 199 (cleaned up). She also said Mother was good at telling her what she wanted to hear. CASA Tillie explained Child had been with the same foster family essentially since she was removed from Mother, that Child was “happy,” “loved,” and “taken care of” by the foster family, and that the foster family wanted to adopt her. *Id.* CASA Tillie believed termination of Mother’s parental rights was in Child’s best interests.

[9] Mother testified on the first day of the hearing but didn’t show up for the second day. Specifically, Mother stated that for the past four or five months, she had been living with her husband B.O. (whom Mother admitted had a criminal history and drug problems). Mother said she didn’t have a job but would get one if she got Child back. Mother also admitted to the following: she didn’t consistently stay in contact with her FCM, she didn’t call in three times a week for drug screens, she never completed an inpatient program, she had used meth two days earlier, and she didn’t consistently attend mental-health therapy. Mother claimed, however, that she had attended some NA classes and been accepted into an outpatient program (which she hadn’t started). Finally, Mother admitted she was in no position to take care of Child and would need at least thirteen months. *Id.* at 180. Mother wanted Child to remain with her foster family until she was ready. *Id.*

[10] Following the hearing, the trial court entered an order terminating Mother's parental rights to Child.

[11] Mother now appeals.

## Discussion and Decision

[12] When reviewing the termination of parental rights, we don't reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[13] A petition to terminate parental rights must allege, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

## I. Findings of Fact

[14] Mother first contends one of the trial court’s 203 separate findings is clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them, either directly or by inference. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[15] Mother argues the trial court erred in finding she is “unwilling or unable to act to bring about reunification with her child.” Appellant’s Br. p. 20 (cleaned up). Although Mother doesn’t identify which finding this is, the State says it’s a reference to Finding 155, which provides:

155. In the matter at hand, Mother has not remedied the reasons for initial removal or continued removal, as evidence[d] by her continued use of illegal substances and her inability or unwillingness to address her addiction; her failure to address her mental health; her complete lack of stability; her continued

exposure to domestic violence; **and her unwillingness or inability to participate in services recommended to facilitate reunification.**

Appellant's App. Vol. II pp. 23-24 (emphasis added). Given the evidence that Mother failed to consistently participate in drug rehabilitation, mental-health counseling, and home-based services, Finding 155 is not clearly erroneous.

## II. Sufficiency of the Evidence

[16] Mother next challenges the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied.<sup>1</sup> In making this determination, the trial court engages in a two-step analysis. First, the court must determine what conditions led to the child's placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The court must judge the parent's fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

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<sup>1</sup> Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the three elements. Here, the trial court found two elements: (1) there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied and (2) there is a reasonable probability the continuation of the parent-child relationship poses a threat to the well-being of Child. Mother doesn't challenge the trial court's second conclusion. Although we could affirm on this basis, we address Mother's argument about the first conclusion.



[17] Child was removed from Mother because of her meth use. Nearly two years later, Mother was still struggling with meth, having used just two days before she testified. Mother, however, highlights she didn't "entirely fail to comply with the totality of the recommended steps towards reunification." Appellant's Br. p. 16. She focuses on the progress she made, such as submitting to **some** drug screens, attending **some** inpatient treatment, and attending **some** appointments. While this is true, Mother hasn't **completed** anything. As CASA Tillie put it, Mother "talk[ed] a good game" but never followed through. In fact, Mother couldn't comply long enough to get visits with Child restored and hasn't seen Child since December 2019. Mother herself admitted at the termination hearing that she didn't complete the necessary steps to get Child back, including overcoming her meth addiction, and said she needed at least thirteen more months to do so.

[18] Mother's habitual conduct shows there is a reasonable probability she will not remedy the conditions that resulted in Child's removal and continued placement outside the home. Her arguments to the contrary are simply a request for us to reweigh the evidence, which we don't do. *See K.T.K.*, 989 N.E.2d at 1229. The evidence supports the trial court's conclusion.<sup>2</sup>

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<sup>2</sup> In her "Statement of Issues," Mother says she is challenging the trial court's best-interests conclusion. But Mother doesn't address this issue in the argument section of her brief. The issue is therefore waived. Waiver notwithstanding, FCM Rhoads's and CASA Tillie's recommendations that termination is in Child's best interests, coupled with the evidence that the conditions resulting in removal or the reasons for placement outside the home will not be remedied, support the court's best-interests conclusion. *See A.D.S.*, 987 N.E.2d at 1158.

### III. Failure to Provide Services

[19] Finally, Mother contends DCS didn't afford her "the necessary and reasonable addiction recovery related efforts necessary to move toward successful reunification." Appellant's Br. p. 17. Mother cites Indiana Code section 31-34-21-5.5(b)(2), which provides DCS "shall make reasonable efforts to preserve and reunify families as follows": "If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home as soon as possible." Mother claims DCS failed to provide her services while the case "was in its infancy" and that had DCS done so, she would have succeeded. Appellant's Br. p. 24.

[20] The record doesn't support Mother's claim. As already discussed, Mother attended three inpatient programs but left each time. FCM Rhoads spoke to Mother no less than twenty-five times about going to an inpatient program, and CASA Tillie spoke to Mother several times as well. FCM Rhoads said Mother had told her "[e]leven times" since the first day of the termination hearing that she was checking herself into an inpatient program, but she hadn't done so as of the second day. *See* Tr. Vol. II p. 227. The record shows Mother has had multiple opportunities to overcome her addiction.

[21] Nevertheless, Mother points out she had asked FCM Rhoads for transportation and home-based drug testing. But Mother's housing instability in the "infancy" of the case, including being in jail for six months and homeless for a brief period, made it difficult for DCS to provide services. *See id.* at 230. DCS made

reasonable efforts related to Mother’s “addiction recovery.”<sup>3</sup> We therefore affirm the termination of Mother’s parental rights to Child.

[22] Affirmed.

Crone, J., and Altice, J., concur.

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<sup>3</sup> That said, we note that DCS’s requirement to make reasonable efforts to preserve and reunify families under our CHINS statutes “is not a requisite element of our parental rights termination statute, and a failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009).