

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-Child Relationship of: I.Z. (Minor Child), and M.J. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child Services,

*Appellee-Petitioner.*

October 17, 2023

Court of Appeals Case No.  
23A-JT-1198

Appeal from the Lake Superior Court

The Honorable Thomas P. Stefaniak, Jr., Judge

Trial Court Cause No.  
45D06-2207-JT-119

**Memorandum Decision by Judge Brown**  
Judges Vaidik and Bradford concur.

**Brown, Judge.**

- [1] M.J. (“Mother”) appeals the involuntary termination of her parental rights with respect to her child, I.Z. We affirm.

***Facts and Procedural History***

- [2] Mother is the parent of I.Z., who was born in February 2020.<sup>1</sup> In July 2020, the police were called to a hotel where Mother was living with I.Z. The police discovered guns, marijuana, and methamphetamine. On July 22, 2020, I.Z. was removed from Mother’s care and placed in a foster home. Mother admitted to using methamphetamine. On July 23, 2020, the Department of Child Services (“DCS”) filed a verified petition alleging I.Z. was a child in need of services (“CHINS”). In September 2020, the court entered an order and dispositional decree adjudicating I.Z. to be a CHINS and ordering Mother to participate in parental education, individual therapy, home-based casework services, and random drug screens.
- [3] On July 20, 2022, DCS filed a verified petition for the involuntary termination of the parent-child relationship. On March 22, 2023, the court held a hearing. DCS presented the testimony of Mother, Natalie Boring, a permanency case

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<sup>1</sup> I.Z.’s father committed suicide in November 2020.

manager, Jackie Higdon, a therapist, Family Case Manager LaShawn Davis (“FCM Davis”), and Rosa Cortez, a therapist.

[4] The court stated that it would take the matter under advisement for thirty days, ordered DCS to provide a progress report by April 20th, indicated it would allow Mother’s counsel to file a progress report, and stated that if there were multiple submissions and it needed further evidence or clarification then it would set the matter for a hearing. On April 20, 2023, Mother’s counsel submitted a Filing of Additional Evidence which attached a letter dated April 18, 2023, from Marissa ODonley-Borchert, a therapist at Porter Starke Services, who asserted that Mother presented on March 30, 2023, for an initial evaluation, she had completed three out of twenty-four recommended sessions, and she appeared to be gaining some insight into her addiction. That same day, DCS filed a Notice of Filing Objection to Reopening Evidence and Progress Report.

[5] On May 25, 2023, the court entered an order finding: there was a reasonable probability that the conditions resulting in I.Z.’s removal from the home would not be remedied; there was a reasonable probability that the continuation of the parent-child relationship posed a threat to I.Z.’s well-being; and termination of the parent-child relationship was in I.Z.’s best interests.

### ***Discussion***

[6] Mother argues the evidence was insufficient to show that there was a reasonable probability that the conditions that resulted in the child’s removal or

reasons for placement outside her home would not be remedied or that termination was in I.Z.'s best interest. She asserts she completed a parenting assessment, substance abuse assessment, and an intensive outpatient program. She contends that the visits with I.Z. went well, she was bonded with I.Z., and I.Z. could remain in foster care while she completes additional services.

[7] In order to terminate a parent-child relationship, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[9] In determining whether the conditions that resulted in a child’s removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which 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 a parent's past behavior is the best predictor of future behavior. *Id.* 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 N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's prior criminal history, drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[10] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[11] The court's order found that Mother has an extensive criminal record including a recent criminal case in February 2023 for felony possession of methamphetamine. It found Mother continued to test positive on her drug screens, was sporadic with her participation in therapy, and "ample time and opportunities and treatments were offered to [Mother] and [she] has not obtained sobriety." Appellant's Appendix Volume II at 42. It also stated that, "[w]hile [Mother's] post trial submission is favorable to [Mother], even

considering the evidence, DCS has proven by clear and convincing evidence that [Mother's] rights should be terminated” and, “[a]t this point in the proceedings the child’s right to permanency outweighs [Mother’s] late progress with the case plan.” *Id.* at 43.

[12] The record reveals that, while Mother testified at the March 22, 2023 hearing that she was going to an assessment the following day to again attend intensive outpatient services, she admitted she tested positive for methamphetamine during the life of the CHINS case. She indicated that the last time she used methamphetamine was “a little bit over a month ago” in February 2023. Transcript Volume II at 10. She acknowledged she was arrested in September 2020 based on a charge of carrying a handgun without a license as a misdemeanor. The prosecutor asked: “You were sentenced in March 2022 on that matter of six months of probation and spent 14 days in the Porter County Jail?” *Id.* at 12. Mother answered affirmatively. She also acknowledged that another criminal case for criminal mischief was opened in October 2020 and that she was arrested in July 2021, pled guilty in December 2021, was sentenced to six months which was suspended to probation, and violated that probation. She acknowledged a case for invasion of privacy was opened in December 2020 and “before it was resolved” she was arrested in that cause in April 2021. *Id.* at 13. She acknowledged that she was charged with criminal mischief in August 2021 related to breaking a window but asserted that she “did not physically commit the crime.” *Id.* She indicated that she was charged in May 2022 with possession of methamphetamine and two counts of dealing in

methamphetamine as felonies and pled guilty to possession of methamphetamine as a level 6 felony and the other charges were dismissed. She further acknowledged that she was charged with possession of methamphetamine as a level 6 felony, unlawful possession of a syringe, and visiting a common nuisance. On cross-examination, CASA’s counsel asked: “It’s true . . . that you’ve effectively continued to use methamphetamine throughout the life of this case, at least up until a few weeks ago in February?” *Id.* at 18. Mother answered affirmatively. She indicated that her use of methamphetamine resulted in her being jailed on multiple occasions and she was not able to visit I.Z. while she was incarcerated. She also acknowledged that the termination case had been continued on multiple occasions to provide her additional opportunities including continuances in October 2022 and January 2023. DCS’s counsel asked Mother: “And again, with the inpatient treatment that was ordered in September 2021, you’ve not engaged in inpatient, only the outpatient, correct?” *Id.* at 74. Mother answered: “Only the outpatient.” *Id.*

[13] Boring, the permanency case manager assigned to the case between June 2021 and September 2022, testified that Mother completed an intensive outpatient portion of a program but failed to complete the aftercare portion of the program. She indicated Mother had periods of compliance and noncompliance with drug screen testing and tested positive for methamphetamine and THC. She testified that Mother was appropriate during the visits with I.Z. but visits were stopped when Mother was incarcerated.



- [14] Higdon, the therapist who provided therapy to Mother from November 2021 to April 2022, testified that Mother was “intermittently consistent.” *Id.* at 44. When asked if Mother “made progress with [her] therapeutically or lacked in progress,” she answered: “Lacked in progress.” *Id.* at 44-45. She also testified that Mother did not acknowledge that she had a substance use addiction during the time she provided therapy and “failed to complete any of her treatment goals.” *Id.* at 45.
- [15] FCM Davis, who was assigned the case in September 2022, testified that Mother tested positive for methamphetamine on January 4, 2023, and she had missed visitations in 2023 when she was incarcerated. She testified that Mother had been inconsistent with weekly drug screens and had never completed an inpatient treatment program.
- [16] Cortez, a therapist who was assigned the case in December 2022, testified that Mother was inconsistent in meeting with her and had attended less than half of the sessions. When asked what level of therapeutic progress Mother had made since December 2022, she answered: “Minimal.” *Id.* at 68. She also indicated that Mother had not demonstrated an ability to achieve or maintain sobriety.
- [17] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in I.Z.’s removal and the reasons for placement outside Mother’s care will not be remedied.

[18] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the children’s best interests. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[19] Boring testified:

I believe that termination is in the best interest of the child as [I.Z.] deserves permanency. She’s in a loving, safe, stable home, which is drug free. She’s been in her current foster placement for two years. She does very well and from my knowledge they are willing and able to care for the child. And it is also unlikely that mother would be successful at completing services. As she’s had many chances and has not been successful, so.

Transcript Volume II at 39. FCM Davis testified that she believed termination of Mother’s parental rights was in I.Z.’s best interest because Mother “continues to struggle with substance use,” has had frequent arrests which leave the child with no sober caregiver, and I.Z. deserves permanency. *Id.* at 58.

[20] Based on the totality of the evidence, we conclude the trial court's determination that termination is in I.Z.'s best interests is supported by clear and convincing evidence.

[21] For the foregoing reasons, we affirm the trial court.

[22] Affirmed.

Vaidik, J., and Bradford, J., concur.