

## 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  
R.W. (Minor Child) and A.P.  
(Mother)

A.P. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

December 5, 2022

Court of Appeals Case No.  
22A-JT-1537

Appeal from the  
Knox Superior Court

The Honorable Gregory A. Smith,  
Special Judge

Trial Court Cause No.  
42D01-2101-JT-1

**Vaidik, Judge.**

## Case Summary

- [1] A.P. (“Mother”) appeals the termination of her parental rights to her son, R.W. (“Child”). We affirm.

## Facts and Procedural History

- [2] Mother is the biological mother of Child, born in 2014. P.W. (“Father”) is Child’s biological father, and his rights were also terminated, but he does not participate in this appeal, so we limit our facts to Mother.
- [3] In October 2017, the Department of Child Services (DCS) in Knox County received a report Mother was verbally abusing three-year-old Child and using methamphetamine. Family Case Manager (FCM) Ashley Coffey investigated, and Mother and Father submitted to drug tests, both of which were positive for methamphetamine. Child was removed from the home and placed with a family friend, where he has since remained. That month, DCS filed a petition alleging Child was in need of services (CHINS). In December, Mother and Father “entered a stipulation to the [CHINS] pleadings filed by [DCS],” and Child was adjudicated a CHINS. Appellant’s App. Vol. II p. 144. Mother was ordered to, among other things, complete a substance-abuse assessment and any recommended treatment and submit to drug screens.
- [4] In January 2018, Mother was arrested for Class C misdemeanor driving while suspended. At the time, she was already on probation for a 2017 Level 6 felony forgery conviction. She admitted to driving while suspended and was sentenced

to further probation. However, in April she tested positive for hydrocodone, methamphetamine, and THC and admitted to violating her probation. As a result, she was ordered to participate in Knox County Drug Court. Mother participated in drug court for almost two years. During this time, she was discharged unsuccessfully from a sober-living facility, had positive drug tests—in January 2019 (THC), November 2019 (opiates), and April 2020 (methamphetamine)—and failed to submit to several drug screens. She was briefly incarcerated several times for these violations of the drug-court program. Finally, in July 2020, the court terminated Mother unsuccessfully from the drug-court program and ordered her to serve her suspended sentence for the driving-while-suspended conviction. Mother was released from incarceration in November.

[5] Before Mother’s incarceration, she participated in DCS services, including a substance-abuse assessment and supervised visitation, and was making “progress.” Tr. Vol. II p. 117. However, following her release, she failed to comply with the case plan. She did not submit drug screens to DCS or participate in other DCS services. She was referred to home-based therapy to address her “sobriety” and to help in “rebuilding a bond with [Child],” but met with the therapist only once. *Id.* at 83. Her attendance at supervised visitation with Child was inconsistent. In January 2021, DCS petitioned to terminate Mother’s parental rights. In November, Child, now seven years old, refused to attend visitation and visits were suspended.

- [6] The termination hearing occurred in January and May 2022.<sup>1</sup> Mother testified she refused to participate in DCS services or drug testing after her 2020 incarceration because she felt her rights had “already been terminated” and she “ha[d] somewhat given up.” *Id.* at 68. FCM Lesia Showalter testified termination was in Child’s best interests, citing his need for permanency. Daisy Mata, Child’s Court Appointed Special Advocate (CASA), also testified termination was in Child’s best interests, noting the “longevity” of the four-year CHINS case “affected [Child] in his mental and emotional well-being” and that the bond between he and Mother was not “significant” and “needed work.” *Id.* at 90.
- [7] Following the hearing, the trial court issued an order terminating Mother’s parental rights.
- [8] Mother now appeals.

## Discussion and Decision

### I. CHINS Determination

- [9] Mother first challenges the trial court’s initial determination that Child is a CHINS, arguing there was insufficient evidence to show “governmental

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<sup>1</sup> The termination hearing was originally scheduled for March 2021, in accordance with Indiana Code section 31-35-2-6, which requires the termination hearing to be completed within 180 days of the petition being filed. However, Mother sought a continuance, which was granted, and the hearing was rescheduled. The hearing was subsequently rescheduled three other times, twice at Mother’s request and once at DCS’s request with no objection from Mother.

interference in the parent-child relationship was . . . warranted” and that this error rises to the level of a due-process issue. Appellant’s Br. p. 18. Specifically, Mother argues the CHINS adjudication was based solely on her drug use without any evidence of corresponding harm to Child or need for government intrusion. “[A] CHINS adjudication requires three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *Matter of D.C.*, 164 N.E.3d 834, 836 (Ind. Ct. App. 2021) (citation omitted), *trans. denied*; *see also* Ind. Code § 31-34-1-1.

[10] The State does not respond to this argument on the merits and instead argues Mother has waived this issue by failing to raise it in the trial court. We agree. While a parent may challenge aspects of the CHINS adjudication at the termination hearing, *Matter of C.M.*, 675 N.E.2d 1134, 1138 (Ind. Ct. App. 1997), she cannot do so for the first time on appeal, *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 195 (Ind. Ct. App. 2003). Here, Mother stipulated to the pleadings alleging Child was a CHINS, which included the allegations that her “illegal drug use places [Child] at risk” and that Child needs “care . . . [he] is not receiving and is unlikely to receive absent the coercive intervention of the Court.” Ex. Vol. I p. 249. She never moved to withdraw this stipulation, nor did she raise this issue in the CHINS or termination proceedings. Thus, she has waived this issue for our review. *See McBride*, 798 N.E.2d at 195 (declining to address alleged deficiencies in CHINS

proceedings where parent did not challenge the alleged deficiencies in either the CHINS or termination proceedings).

## II. Sufficiency

[11] Mother also argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not 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).

[12] 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.

I.C. § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

### **A. Conditions Remedied**

[13] Mother first challenges the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[14] Child was removed from Mother's care due to her substance abuse. Mother argues she made "considerable progress" on her substance-abuse issue during

the first two years of the CHINS proceedings. Appellant's Br. p. 29. But as Mother herself acknowledges, even during this time she had "intermittent" positive drug tests, which eventually led to her unsuccessful termination from drug court and her incarceration. *Id.* After her release, Mother refused to submit to drug screens or participate in DCS services to address her sobriety. Thus, it does not appear that, in the four years since Child's removal, Mother is any closer to addressing her substance-abuse issue. *See In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014) (trial court did not err in determining there was a reasonable probability the parents would not remedy their substance-abuse issues that led to the children's removal where parents completed no services relating to their substance abuse), *trans. denied.*

[15] The trial court did not err when it concluded there is a reasonable probability the conditions leading to Child's removal will not be remedied.<sup>2</sup>

## **B. Best Interests**

[16] Mother also challenges the trial court's conclusion termination is in Child's best interests. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App.

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<sup>2</sup> Mother also challenges the trial court's conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child's well-being. But because we affirm the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the three requirements of subsection (B) has been established by clear and convincing evidence), *trans. denied.*

2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.* We have held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied.*

[17] Here, both FCM Showalter and CASA Mata recommended termination, believing it to be in Child’s best interests. And as noted above, Mother has not shown an ability to provide a stable, drug-free environment to Child. Permanency is also a central consideration. Child has been removed from Mother’s care for over four years, and CASA Mata testified the longevity of this case has harmed Child and that he and Mother no longer have a significant bond. Mother’s participation in supervised visitation with Child throughout the case was inconsistent, and in the months leading up to the termination hearing Child refused to visit with her at all. The record does not show Mother is a stable presence in Child’s life. In contrast, Child currently resides with a family friend, who has raised him since he was three and wishes to adopt him.

[18] For all these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in Child's best interests.

[19] Affirmed.

Riley, J., and Bailey, J., concur.