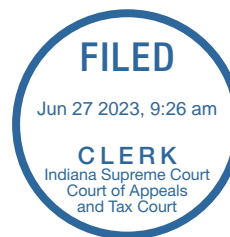


## MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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: M.A. and My.A. (Minor Children), and S.J. (Mother),  
*Appellant-Defendant,*

v.

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

June 27, 2023

Court of Appeals Case No.  
23A-JT-255

Appeal from the St. Joseph Probate Court

The Honorable Ashley Mills  
Colborn, Magistrate

Trial Court Cause Nos.  
71J01-2201-JT-09  
71J01-2201-JT-10

**Memorandum Decision by Judge Brown**  
Judge Crone and Senior Judge Robb concur.

## **Brown, Judge.**

- [1] S.J. (“Mother”) appeals the involuntary termination of her parental rights with respect to her children, M.A. and My.A. (the “Children”). We affirm.

### ***Facts and Procedural History***

- [2] Mother and M.D.A. (“Father”) are the parents of M.A., who was born in March 2013 and has autism and ADHD, and My.A., who was born in August 2014.<sup>1</sup> On January 31, 2020, the Indiana Department of Child Services (“DCS”) filed a verified petition alleging the Children were children in need of services (“CHINS”). DCS alleged that: it received a report in September 2019 alleging the Children had been neglected, Mother and Father were involved in an altercation, and Mother abuses alcohol and often smells of alcohol; it received a second report on October 1, 2019, regarding concerns about Mother’s alcohol use; and it received a third report on October 14, 2019, alleging Mother and Father were involved in an altercation at a liquor store while My.A. was present. It asserted that DCS and Mother had agreed to participate in a Program of Informal Adjustment on November 14, 2019, and DCS received a report on January 29, 2020, that My.A. had been physically abused. DCS asserted that Mother was observed on camera slapping My.A. on the back while leaving the school where My.A. had defecated in his pants, and that a staff member observed her strike My.A. three times while loading him

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<sup>1</sup> Father signed consents to adoption.

into the car resulting in a large laceration on the child's face. It asserted My.A. disclosed that Mother struck him and had pushed him and M.A. into a wall causing their noses to bleed.

[3] In May 2020, Mother pled guilty under cause number 71D03-2001-F5-32 ("Cause No. 32") to battery resulting in bodily injury to a person under fourteen years of age as a level 5 felony related to the incident on January 29, 2020, and was sentenced to three years suspended.

[4] On June 29, 2020, Mother admitted to the allegations in the CHINS petition. On July 13, 2020, the court entered a CHINS Dispositional Order requiring Mother to participate in assessments, visit the Children, refrain from using any illegal controlled substances, submit to random drug screens, and meet all personal mental health needs. In October 2021, the court entered an Order on Modification of Dispositional Decree ordering Mother to complete parenting education services with a focus on parenting an autistic child and a psychological evaluation and follow all recommendations. On January 12, 2022, the court entered an Order on Modification of Dispositional Decree which suspended Mother's visitations with the Children and indicated the permanency plan was adoption.

[5] In February 2022, DCS filed petitions for the involuntary termination of the parent-child relationship between Mother and the Children. On October 7, 2022, the court held a hearing. DCS presented the testimony of Family Case Manager Traniesha Payne ("FCM Payne") and Court Appointed Special

Advocate Katie Hibbs (“CASA Hibbs”). DCS also introduced and the court admitted records related to prior CHINS cases involving Mother and the Children and criminal cases involving Mother including Cause No. 32, cause number 71D07-1909-CM-3372 in which Mother was convicted in June 2020 of battery as a class B misdemeanor against another woman, cause number 71D07-1911-CM-4030 in which Mother was convicted of intimidation as a class A misdemeanor in June 2020, and cause number 71D06-1612-CM-6117 in which Mother was convicted of intimidation as a class A misdemeanor in 2017.

[6] Mother testified that she had post-traumatic stress disorder and bipolar disorder but was not on any medications. She stated: “I’m narcissistic. I don’t care about none of y’all. I don’t care about me and mines.” Transcript Volume II at 25. When asked about the services she was ordered to complete, Mother stated in part: “I don’t like being told what to do. I move on my own pace.” *Id.* at 34. She admitted she did not complete a substance abuse assessment. She testified that the one random drug screen she completed tested positive for marijuana, if she were to take an instant drug screen it would test positive for marijuana, and she was aware of the order to not use controlled substances. She testified the Children did not see her use marijuana. When asked if the Children were present when she used marijuana, she answered: “They be asleep.” *Id.* at 50. She also stated: “And when I do smoke it, they’re not even at home, either they at school or they sleep . . . or they outside.” *Id.* When asked about the order that she complete parenting education services, she said “y’all stopped that and

sent my autism son to Nap<sup>[2]</sup> and told me when I get there to work with a woman that's working with autism kids, but y'all stopped my visits so I didn't get a chance to do that." *Id.* at 41. She also stated that "they took my . . . Medicaid and all that, I'm just now getting back . . . on Medicaid . . . ." *Id.* at 57.

- [7] On January 9, 2023, the court entered a fifteen-page order terminating Mother's parental rights. The court concluded there is a reasonable probability that the conditions that resulted in the removal of the Children and their continued placement outside of the home would not be remedied, the Children had been adjudicated CHINS on two separate occasions, termination of the parent-child relationship was in the best interests of the Children, and there was a satisfactory plan for the care and treatment of the Children.

### ***Discussion***

- [8] Mother argues the termination was not supported by sufficient evidence. She asserts that she maintained a home with no indication it was not appropriately provisioned, gained full-time employment, was able to support the Children, participated in home-based case management, and sought individual therapy on her own. She contends she participated in parenting classes and her failure to complete the service was not attributable to her refusal to complete the classes. She argues she completed a substance abuse evaluation and, while she

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<sup>2</sup> Mother indicated that Nap means Indianapolis.

acknowledged that she would have tested positive for marijuana at the termination hearing, she did not use marijuana in front of the Children. She argues the court incorrectly implied she made no progress. She contends that she was unable to complete her psychological assessment because the provider stopped it due to a disruption she was alleged to have committed. She argues termination of the parent-child relationship is not in the Children's best interest and that "[a] guardianship or some other plan that would allow the [Children] to maintain a familial bond would be more appropriate than an obliteration of the relationship." Appellant's Brief at 17.

[9] 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).

[10] 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.

[11] As noted by DCS, Mother does not challenge the trial court’s conclusion that the Children had been adjudicated CHINS on two separate occasions. For the sake of a complete analysis, we will address her additional argument. To the extent Mother argues that the evidence does not support the conclusion that there is a reasonable probability that the conditions that resulted in the removal of the Children and their continued placement outside of the home would not be remedied, we note that, 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.*

[12] 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*.

[13] The trial court found that the Children had been previously adjudicated as CHINS, Mother failed to successfully complete any of the services that were ordered under the July 13, 2020 Dispositional Decree or the Modification, and Mother’s visitation with the Children was “equally as dismal.” Appellant’s Appendix Volume II at 30. It also found:

21. Mother began working with [FCM Payne] in August 2021 who referred Mother for services to remedy the reasons for DCS’ involvement.

22. FCM Payne referred Mother for a psychological evaluation. FCM Payne credibly testified that Mother attended an appointment, but had an outburst during the appointment that resulted in the appointment ending. Dr. Burnett, who was the psychologist for the evaluation, recommended that Mother receive help for her mental health issues.

23. Mother has struggled with her mental health throughout the course of the CHINS matter.

24. Mother testified that she is diagnosed with Post-Traumatic Stress Disorder, Bipolar Disorder, and [is] Narcissistic.

25. Mother made several threats of harm against FCM Payne. FCM Payne credibly testified that Mother left her a voicemail on September 13, 2022 in which Mother was screaming “if today happened, she would hurt” FCM Payne. FCM Payne further testified that Mother reported during her psychological assessment that Mother wanted to kill FCM Payne but had not done so because [she] did not want to go to jail.

\* \* \* \* \*

27. Mother failed to complete a Family Functioning Assessment.

28. Mother completed a substance abuse assessment which recommended Mother comply with drug screens and mental health treatment. FCM Payne credibly testified that Mother complied with two (2) drug screens, both of which were positive for marijuana.

29. Mother was referred to take random drug screens through Cordant. At one random screening, Cordant attempted to drug screen Mother during a visitation, which led to Mother having an outburst. FCM Payne credibly testified that Mother quit calling Cordant for random screening after that incident. The screen collected the day of Mother's outburst was positive for marijuana.

\* \* \* \* \*

31. Mother was referred to complete individual therapy. FCM Payne credibly testified that Mother was discharged from individual therapy because Mother was unable to process emotions and needed more mental health treatment.

32. Mother testified that she was engaging in counseling, but had only attended two (2) sessions at the request of her probation officer.

33. Finally, Mother was referred to complete home-based case management. FCM Payne credibly testified that Mother was unsuccessfully discharged due to Mother's aggression with the assigned worker and Mother's failure to attend appointments.

34. When asked about the services Mother was required to do, Mother responded, "I don't like being told what to do."

*Id.* at 28-30.

[14] FCM Payne testified that she did not believe Mother had remedied the issues that resulted in the Children being placed outside of Mother's care. When asked if she thought Mother should be given more time to prove her ability to parent the Children, FCM Payne answered in the negative and explained:

Because there have been several attempts – several attempts, several different meetings, so many different service providers. We haven't just went through one service provider and one agency. There have been several different service providers with several different agencies, and she has been unsuccessfully discharged from every single one. And also, just – just the resistance. [Mother] just sat up here herself and said what she wasn't willing to do and that she doesn't want anyone to tell her what to do.

Transcript Volume II at 76.

[15] CASA Hibbs indicated she had ongoing concerns for Mother's ability to appropriately parent the Children including:

The fact that [Mother has] been discharged from every single provider that DCS has referred her to, to be able to manage her mental health, home-based case work, her parenting, the visits, all those sorts of things and I can't confidently say that she has learned from any of the partial services that she has completed to be able to say yes, you know, we don't need to terminate the rights to be able to move forward with the adoption.

*Id.* at 85.

[16] 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 the Children's removal and the reasons for placement outside Mother's care will not be remedied.

[17] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 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*.

[18] When asked if she believed it is in the Children's best interest to be adopted, FCM Payne answered affirmatively. She stated that "it's just all about what's in the best interest of the children at this point" and that she was asking the court to terminate Mother's parental rights. Transcript Volume II at 76. CASA Hibbs testified that her recommendation was for the Children to be adopted and that she was in support of terminating Mother's parental rights. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the Children's best interests is supported by clear and convincing evidence.

[19] To the extent Mother argues that DCS does not have a satisfactory plan for the care and treatment of the Children, we note that adoption is a “satisfactory plan” for the care and treatment of a child under the termination of parental rights statute. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied*. FCM Payne testified that the plan of care for My.A. is to be adopted by his current placement. She also testified that the plan of care for M.A. is also adoption, DCS is working with an adoption specialist who had sought out family members and prior foster placements, and a previous placement with extensive knowledge of children with autism is “willing to get onboard for adoption.” Transcript Volume II at 75. We conclude that clear and convincing evidence supports the trial court’s determination that there is a satisfactory plan for the care and treatment of the Children.

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

[21] Affirmed.

Crone, J., and Robb, Sr.J., concur.