

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Don R. Hostetler
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

INDIANA DEPARTMENT OF
CHILD SERVICES

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE
KIDS' VOICE OF INDIANA

Katherine Meger Kelsey
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of H.D.
(Minor Child)

M.C. (Mother),
Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner,

August 23, 2023

Court of Appeals Case No.
23A-JT-389

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge
The Honorable Scott B. Stowers,
Magistrate

Trial Court Cause No.
49D09-2112-JT-10482

and

Kids' Voice of Indiana,
Appellee-Guardian Ad Litem

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] M.C. (Mother) left her young daughter, H.D. (Child), with Child's paternal aunt, H.C. (Aunt), when Mother was facing imminent homelessness. A few months later, Child was still living with Aunt when Child was found to be a child in need of services (CHINS) based on Mother's failure to care for Child. Mother later failed to keep stable housing, engaged in substance abuse, inconsistently visited with Child, and failed to complete court-ordered services. Ultimately, the juvenile court terminated Mother's parental rights, a judgment she now appeals. We affirm, concluding that clear and convincing evidence supported the juvenile court's determination.

Facts

[2] Before Mother became homeless in early 2020, she left Child, then almost five years old, with Aunt. Child had head lice and needed dental treatment at the time. Although the arrangement was to be temporary, Mother never retrieved

Child. She also failed to provide Child's birth certificate to Aunt, who needed it to obtain medical insurance and care for Child. Child later was diagnosed with ADHD, for which she takes medication and undergoes therapy.

[3] Several months after Child began living with Aunt, DCS petitioned to find Child to be a CHINS based on Mother's abandonment of Child. Mother admitted Child was a CHINS because Mother "needs assistance maintaining sobriety." Exhs., p. 31. The CHINS court approved an agreement between Mother and DCS that required Mother to complete a Volunteers of America (VOA) Drug Treatment Program followed by an intensive outpatient program, random drug screens, home-based case management, and home-based therapy. Child continued to reside with Aunt.

[4] Mother completed the VOA inpatient program and lived in a sober living house for two months afterward. But she was not successful in other court-ordered services. Mother's supervised visits with Child were irregular due to Mother's transportation problems, illness, and work schedule. Mother and Child appeared bonded during the visits. Child, however, suffered a broken arm during one visit. Mother also sent Child home from a visit with a bag of candy, which Child was not to have due to her dental problems and ADHD diagnosis. Additionally, Mother had to be instructed to refrain from asking Child to favor placement at Child's maternal grandfather's home, where Mother had lived, over placement at Aunt's home. In response, Mother complained that she could not speak freely to Child.

- [5] From June 2021 through mid-December 2022, Mother failed 250 times to call the drug testing company as required. She missed 96 tests without excuse and tested positive at least 16 times for illicit substances, mainly marijuana.
- [6] DCS petitioned to terminate Mother’s parental rights about 15 months after the CHINS determination.¹ At the time of the termination hearing, Mother was attending Narcotics Anonymous meetings monthly and was on a waiting list for an intensive outpatient treatment program for her substance abuse issues. But Mother did not undergo a substance abuse evaluation until after the first day of the evidentiary hearing on the termination petition.
- [7] The juvenile court ultimately terminated Mother’s parental rights in January 2023. Its findings of fact and conclusions of law include the following uncontested findings:

29. [Mother] claims to have stable housing in Anderson.

However, a recent document from DCS mailed to that address was returned as “not deliverable.”

30. . . . Since the CHINS case originated in early 2020, she has had approximately ten (10) different residences.

31. Melissa Reid of Firefly was referred to provide family therapy and supervised parenting time to [Mother] in December 2021.

32. [Mother] cancelled the first session with Ms. Reid.

¹ Child’s father reached an agreement with DCS and was dismissed from the termination proceedings.

33. Ms. Reid established goals for [Mother] as working on coping skills and sobriety.

34. Ms. Reid set a schedule to meet with [Mother] weekly at [Mother's] father's home in Pendleton.

35. [Mother] initially participated, but by April 2022, she stopped participating entirely.

36. Ms. Reid appeared at the home and no one was there. Ms. Reid left a door tag with contact information, but [Mother] never called her back.

37. Ms. Reid never saw [Mother] again and on April 25, 2022, closed the referral unsuccessfully.

38. FCM Mundala was assigned this case on or about July 8, 2021.

39. When FCM Mundala first received this case, [Mother] had been unsuccessfully discharged from home based therapy and substance use assessment and random drug screen referrals were already in place.

40. FCM Mundala has organized eleven Child and Family Team Meetings ("CFTM") since receiving the case in July 2021.

41. [Mother] only attended approximately five (5) CFTMs even though Ms. Mundala specifically considered [Mother's] work schedule when arranging the CFTM.

42. The most recent CFTM occurred on December 16, 2022, [Mother] did attend. However, she left early when the service providers voiced their concerns.

43. [Mother] would often indicate that she was open to reengaging in services. However, she never followed through.

44. FCM Mundala has referred home based case work for [Mother] four (4) different times since she received the case in July 2021.
45. [Mother] has expressed to the FCM that she is unwilling to participate in home based case management.
46. FCM Mundala has referred home based therapy for [Mother] at least three (3) different times.
47. FCM Mundala arranged for random drug screens to occur in [Mother's] home.
48. [Mother] should have submitted approximately 117 drug screens since June 2021. She has missed approximately 80 of these screens, including missed screens as recently as December 8 and December 9, 2022.
49. [Mother] has been advised that missed drug screens would be considered as positive drug screens.
50. Of the 37 drug screens that [Mother] did submit to since June 2021, every single one tested positive for THC including positive tests as recently as November 28, 2022. Some screens were positive for other substances including fentanyl; norfentanyl; and amphetamines.
51. [Mother] advised the FCM that she was going to start drug treatment on her own. She has not provided verification of said treatment nor has she signed any releases.

App. Vol. II, pp. 15-16.

Discussion and Decision

- [8] Mother contends the juvenile court's termination of her parental rights is clearly erroneous. Parents have a constitutionally protected interest in the care,

custody, and control of their children. *K.S. v. Ind. Dept. of Child Servs.*, 190 N.E.3d 434, 438 (Ind. Ct. App. 2022). This interest is not absolute, however. *Id.* Parents unable or unwilling to meet their parental responsibilities may face termination of their parental rights. *Id.*

[9] When seeking termination of a parent’s rights, DCS has the burden of proving these statutory elements by clear and convincing evidence:

(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); *see also* Ind. Code §§ 31-35-2-8, -37-14-2.

[10] When reviewing a termination of parental rights, we apply a two-tiered standard of review. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). First, we determine whether the evidence supports the findings. *Id.* Second, we decide whether the findings support the judgment. *Id.* We do not reweigh evidence or

judge witness credibility and will set aside the judgment only if clearly erroneous. *Id.*

[11] Mother argues that the juvenile court erred in concluding: 1) there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside the parents’ home will not be remedied; 2) there is a reasonable probability that the continuation of the parent-child relationship threatens Child’s well-being; and 3) termination of Mother’s parental rights is in Child’s best interests. We find no error.

I. Remediating Conditions

[12] Mother contends the evidence shows that she had remedied some conditions that resulted in Child’s removal and was working on the remainder. She therefore concludes that DCS did not meet its burden of proving a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside her home will not be remedied.

[13] When determining the likelihood that a parent will remedy such conditions, the juvenile court must judge a parent’s fitness to care for the child at the time of the termination hearing, considering any changed circumstances and the parent’s habitual patterns of conduct. *In re A. W.*, 62 N.E.3d 1267, 1273 (Ind. Ct. App. 2016). In reaching this conclusion, the juvenile court noted that Mother “has had well over two (2) years to put forth an effort and ha[s] not done so.” App. Vol. II, p. 16. The court also noted that Mother “has not completed any

services despite multiple referrals” and “has consistently tested positive for THC and other illicit substances, even after participating in rehab.” *Id.*

[14] Mother asserts that this conclusion was incorrect because DCS did not prove her drug use harmed Child. But Mother specifically admitted that Child was a CHINS due to Mother’s need for “assistance maintaining sobriety.” Exhs., p. 31. Mother’s documented drug use after her CHINS admission and throughout the termination proceedings justified the juvenile court’s determination that Mother would not remedy the substance abuse issues that prompted both Child’s initial removal and Child’s continuing placement outside Mother’s home. *A.J. v. Marion Cty. Off. of Fam. & Child.*, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008) (ruling that juvenile court’s conclusion that parent likely would not remedy conditions underlying removal was justified, although parent had recently engaged in services and was addressing substance abuse issues).

II. Threat

[15] As the juvenile court’s remedying conditions determination was supported by the evidence, we need not address Mother’s related claim that continuation of the parent-child relationship threatened Child’s well-being. *See Matter of J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019) (“Indiana Code § 31-35-2-4(b)(2)(B) is written in the subjunctive, and therefore the court need only to find that one of the three requirements of subsection (b)(2)(B) was established by clear and convincing evidence.”).

III. Child's Best Interests

- [16] Mother's final claim is that the juvenile court erroneously determined termination of her parental rights was in Child's best interests. When making that determination, the juvenile court needed to review the totality of the evidence and subordinate Mother's interests to those of Child. *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022), *reh. denied*. Child's need for permanency is among the chief factors that the juvenile court must consider. *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014).
- [17] The juvenile court concluded that terminating Mother's parental rights was in Child's best interests based on its finding that "[t]ermination would allow [Child] to be adopted into a stable and permanent home where her needs will be safely met." App. Vol. II, p. 16. Mother contends the juvenile court's view was too narrow and disregarded the totality of the evidence. But Mother herself only considers a portion of the evidence presented.
- [18] Mother repeats her unsuccessful claim that her drug use did not impact Child and argues again that her care for Child during their visits was appropriate. Mother, however, ignores the wealth of evidence showing that she abandoned Child to Aunt's care when Child needed medical attention, did not provide a document necessary for Aunt to obtain treatment for Child, continued to use illicit substances after completing an inpatient rehabilitation program, failed to complete most court-ordered services, and failed to document either her employment or her addresses, of which there had been many. While some aspects of Mother's visits with Child were positive, the evidence also showed

that Child was sometimes distraught afterward and that Mother pressured Child to reject placement at Aunt's home.

[19] Although Mother is correct that “a parent’s constitutional right to raise his or her own child may not be terminated solely because there is a better home available for the child,” the availability of a loving and stable adoptive home was not the sole reason for the juvenile court’s termination of Mother’s rights. The guardian ad litem, CASA volunteer, and DCS family case manager all testified that termination was in Child’s best interests. This evidence, when combined with the evidence that Mother was unlikely to remedy the conditions resulting in removal, is sufficient to show that termination is in the child’s best interests. *In re P.B.*, 199 N.E.3d at 799.

[20] Regardless, the totality of the evidence establishes that Mother is unable or unwilling to provide the stable home and care that Child needs and that Child’s best interests dictated termination of Mother’s parental rights. *See In re A.S.*, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014) (finding termination of parental rights was in children’s best interests when their parents did not address their substance abuse issues or complete recommended services during the two-year case); *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001) (ruling that parental rights may be terminated when parents are unable or unwilling to meet their parental responsibilities).

[21] We affirm the juvenile court's judgment terminating Mother's parental rights.

Riley, J., and Bradford, J., concur.