

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Termination of Parent-Child  
Relationship of:

M.M. (Minor Child),

and

E.M. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 3, 2023

Court of Appeals Case No.  
23A-JT-139

Appeal from the Jasper Circuit  
Court

The Honorable John D. Potter,  
Judge

Trial Court Cause No.  
37C01-2205-JT-76

**Memorandum Decision by Chief Judge Altice**  
Judges May and Foley concur.

**Altice, Chief Judge.**

### **Case Summary**

[1] E.M. (Mother) appeals the involuntary termination of her parental rights to her daughter, M.M. (Child), contending that the evidence was not sufficient to support the termination. Specifically, we resolve the following issue: Was the judgment terminating Mother’s parental rights clearly erroneous where she complied with services, exercised visits, and was bonded with Child but continued to regularly test positive for methamphetamine throughout the two-year duration of the case.

[2] We affirm.

### **Facts & Procedural History**

[3] As the trial court aptly observed, “Sadly, this case is about the power of methamphetamine addiction.” *Appendix* at 46. Mother and C.J. (Father) are the parents of Child, born on October 9, 2020.<sup>1</sup> The Indiana Department of Child Services (DCS) first became involved with Mother in January 2020 when Mother was arrested and charged with Level 6 felony possession of

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<sup>1</sup> Although Mother’s now-husband, Michael Patrick Day (Day), signed a paternity affidavit, Father subsequently was determined to be Child’s biological father in February 2021 after DNA testing. Father’s paternity was subsequently established by court order in May 2022. His parental rights were terminated at the same time as Mother’s but he does not participate in this appeal.

methamphetamine and Level C misdemeanor possession of paraphernalia. A Child in Need of Services (CHINS) case was opened as to Mother's two minor children (Siblings).

[4] Between March 2020 and Child's birth in October, Mother tested positive for methamphetamine thirteen times, including on October 1, eight days before Child was born. DCS removed Child from Mother's care shortly after her birth, and on October 14, DCS filed a petition alleging that Child was a CHINS. The allegations included that Mother had been ordered to participate in services in Siblings' CHINS case, had failed to comply with substance abuse treatment, tested positive for methamphetamine on October 1, 2020, Day had pending charges for possession of methamphetamine and marijuana, Child's paternity was unknown,<sup>2</sup> and Mother's home was at minimal standards. *Exhibits Vol. 3* at 9. Child was removed from Mother's care on October 15 on an emergency basis and placed in foster care.

[5] On November 16, 2020, Mother admitted that Child was a CHINS and the court adjudicated her as such, ordering Mother to participate in services, including substance abuse treatment. The court's order released Child to Mother's care for a trial home visit (THV) and ordered Mother to remain cooperative with DCS and recommended services.

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<sup>2</sup> The petition stated that the Child's father was unknown and listed three men that Mother identified as possibilities.

- [6] Following a December 14, 2020 hearing, the court entered a dispositional decree, ordering Mother to, among other things, cooperate with DCS, enroll in any recommended programs and counseling, keep appointments, maintain suitable and safe housing, secure and maintain a legal source of income, not use illegal substances, not permit the possession, use, or consumption of any illegal substance in the home or in the presence of Child, and submit to random drug screens.
- [7] About one month later, on January 13, 2021, DCS filed a motion to modify the dispositional decree, seeking an emergency change in Child’s placement from the THV to foster care as “Mother has continued to test positive for Methamphetamine” on December 18, 2020 and January 6, 2021, and her use of methamphetamine was inhibiting her ability to provide a safe environment for Child. *Id.* at 62.
- [8] At the hearing on said motion, DCS family case manager (FCM) Kaitlyn Smolenski testified that Mother also had tested positive for methamphetamine on January 8, 2021. Mother testified that she had not used methamphetamine since August 2020 and explained her multiple positive screens as resulting from exposure to methamphetamine residue while cleaning her old house. The court modified the dispositional decree on January 25, 2021, and placed Child back in her original foster home.
- [9] The county probation department filed a report with the court on February 9, 2021, indicating that Mother had tested positive for methamphetamine and

amphetamine on January 15 and positive for ETG, a metabolite of alcohol, on January 25.

[10] DCS filed a progress report later in February indicating that Mother had completed parent education, was working with a therapist to address mental health concerns, and usually maintained contact with the FCM, but was not consistent with meeting caseworkers for services and had a positive oral screen for methamphetamine on February 9, 2021. DCS also reported that Mother had been participating in an intensive outpatient program (IOP) from November 2020 to early January 2021 but, due to the positive screens in January, was required to “restart.” *Id.* at 91. As of February 11, Mother had not reached out to the IOP coordinator. March and April 2021 review hearings were continued because Mother had voluntarily entered inpatient treatment, which she completed in May 2021.

[11] CASA Dianne Hollerman<sup>3</sup> filed a report on May 24, indicating that Child was receiving therapy through First Steps, was doing well, and was loved by both the foster family and by Mother. Hollerman reported that Mother’s supervised visits had gone very well, describing that she was patient, prepared for visits, and at ease with Child. Noting that Mother had been discharged from inpatient rehab about two weeks prior, Hollerman recommended that Child remain with

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<sup>3</sup> We note that the transcript and the parties’ briefs spell the surname as “Holleman.” *See Transcript Vol. 2* at 136. However, the CASA reports submitted to the court reflect her name as “Hollerman.” *See e.g., Exhibits Vol. 3* at 102, 174. We will use the latter spelling.

foster parents “until it is determined that [Mother] can maintain a drug free lifestyle.” *Id.* at 102.

[12] That same month, DCS reported to the court that Mother was maintaining weekly contact with her FCM and had reached out to IOP in order to restart it but was not compliant with her therapy services or the services recommended to help Mother organize and maintain her home. Mother also had not provided the FCM with documentation from her recent stay and release from inpatient rehab.

[13] Following a June 2021 review hearing, the court issued an order reflecting that Mother had complied with the case plan, made arrangements to restart IOP, and regularly visited Child. DCS requested, and the court ordered, that Mother’s supervised visits occur in Mother’s home.

[14] A few months later, in September, Mother was continuing to make progress, as she was participating in individual therapy, had “not had a positive screen since March 5, 2021,” and visited with Child on a consistent basis, with visits expected to increase to overnights that month. *Id.* at 133. DCS advised that, if no concerns arose during the visits, a THV would begin on November 5, 2021. CASA Hollerman reported that Mother and Day “have bonded well” with Child, each is employed, Mother is prepared for visits, but because Mother and Day “have not had a lengthy sobriety,” Hollerman recommended that Child remain in foster care with increased visits for Mother. *Id.* at 148.

- [15] In October 2021, the court’s order on permanency plan found that Mother had partially complied with the case plan in that she had been “largely compliant” with case services but had missed half of her drug screens since July and had missed a probation appointment and a court hearing on October 4, 2021. *Id.* at 149. The court did not approve the proposed overnight visits or the THV suggested to begin November 5, 2021.
- [16] Following a November 8, 2021 review hearing, the court issued an order indicating that Mother had tested positive for methamphetamine on September 23 and October 14, 2021. The court changed Child’s permanency plan to reunification with a concurrent plan of adoption.
- [17] DCS’s January 25, 2022 progress report indicated that Mother was maintaining contact with her FCM, was employed, had a residence, had completed case management services, was compliant with individual therapy, and was compliant and appropriate at visits with Child, noting that Mother and Child “are very well bonded.” *Id.* at 165. However, since the last report period, Mother missed two drug screens, cocaine “was detected” on January 4, 2022, and a 30-day hair follicle screen on November 1, 2021 was positive for methamphetamine. *Id.* at 164, 171. FCM Smolenski also reported that she had learned from Mother’s therapist that Mother was “in active labor” on January 18, although Mother had not told FCM Smolenski that she was pregnant. *Id.* at 167.

- [18] The court’s February 2022 review order directed DCS to increase visitation and decrease the level of supervision. On March 17, DCS requested and the court approved a THV beginning that date. On March 23, CASA Hollerman expressed her opinion that it was appropriate “to continue with plans for reunification.” *Id.* at 200.
- [19] On April 6, about twenty days after the THV began, DCS filed an emergency motion to terminate the THV and return Child to foster care because Mother had tested positive for methamphetamine on March 17, 2022, and, on April 4, admitted that she had used additional drugs during the prior weekend. The court granted DCS’s motion that day, returning Child to her previous foster placement.<sup>4</sup> Mother entered Landmark Recovery rehab on April 7, 2022 and provided a certificate of completion to FCM Smolenski on May 2, 2022.
- [20] On May 17, DCS reported that an April 11, 2022 hair follicle screen on Child was positive for methamphetamine and amphetamine. On May 15, 2022, Mother was charged with Level 6 felony neglect of a dependent. CASA Hollerman filed a report with the court on May 19, stating in part:

Day and [Mother] [were] hours away from having the case closed when both [Day] and [Mother] tested positive for methamphetamine. . . . [Day] and [Mother] have shown very good parenting skills. [Child] obviously loves them both. The household is very calm and happy. This makes decisions very

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<sup>4</sup> The court’s order noted that the only other adult caretaker in the home, Day, had tested positive for methamphetamine on March 23, 2022. *Exhibits Vol. 3* at 214.



difficult. . . . [Child] is obviously very happy and comfortable in the foster family home . . . and loves her foster family. . . . While [Mother] and [Day] both exhibit very good parenting skills, I have difficulty at this time recommending [Child] be returned to [them]. When the case was so close to being closed and that was not enough incentive to stay off drugs, what will be the incentive? I am very sad [Child] was also positive for Meth. At this time, I recommend [Child] stay with her foster family and continue with supervised visits only[.]

*Id.* at 238-39. The next day, DCS filed a petition to terminate Mother’s and Father’s parental rights to Child.

[21] On July 8, 2022, Mother tested positive for methamphetamine, and she missed a drug screen on June 28, when she was non-responsive to attempts to contact her. CASA Hollerman reported that she was surprised and disappointed to learn at the July 20, 2022 team meeting that Mother had more positive screens for methamphetamine, and she opined that Child “should undoubtedly remain in [her] foster home” with Mother having “only supervised visits.” *Exhibits Vol. 4* at 16.

[22] Following an August review hearing, the court entered an order finding that, although Mother had participated in services, she “has not enhanced her ability to fulfill her parental obligations.” *Id.* at 19. The court observed:

DCS has provided numerous services to Mother to deal with her addiction. . . . [C]hild cannot be returned to Mother unless she is able to demonstrate a significant period of sobriety. . . .

\* \* \*

The cause of the child's out-of-home placement has not been alleviated. Mother has not remained drug free. . . .

*Id.* at 19-20.

[23] On November 16 and December 8, 2022, the court held a termination factfinding hearing. DCS presented the testimony of a toxicologist and Child's foster parent, and toxicology records were admitted into evidence. CASA Hollerman, who had met with Child monthly for over a year and a half, testified that even though her observations of Mother and Child together reflected a bonded relationship and appropriate care for Child, she had remaining concerns because Mother continued to test positive throughout the case and also had missed drug screens – thirteen between September 2021 to September 2022. Hollerman expressed particular concern about Child having tested positive for methamphetamine. Hollerman stated that she would want to see a full year of clean drug tests before she could feel placement with Mother was safe and appropriate. Hollerman opined that termination was in Child's best interests.

[24] FCM Smolenski, who had been on Child's case for over two years, agreed that Mother was largely compliant with services and made progress, and, therefore, DCS twice attempted THVs – and had requested an interim THV that the court denied – but each THV was terminated due to Mother's methamphetamine use. FCM Smolenski was greatly concerned when Child's April 2022 hair follicle test returned positive for methamphetamine, noting that the long-term effects on Child are unknown. FCM Smolenski testified that, after Mother's second

inpatient rehab ending in May 2022, Mother did begin to test negative but only “briefly,” as she had positive screens for methamphetamine on July 8, July 19, August 29, September 8, September 9, September 21, and November 23, 2022. FCM Smolenski opined that it would be harmful to Child’s well-being to return her to Mother’s care given Mother’s continued methamphetamine use. FCM Smolenski testified that termination of Mother’s parental rights was in Child’s best interests as Child “deserves permanency” and “deserves to have a safe and stable home, free from illegal substances[.]” *Transcript Vol. 2* at 97. DCS’s plan was adoption by the current foster family.

[25] Mother testified that she had completed DCS services, including therapy and parenting education, although as to “homemaker services,” Mother described that the program “basically told me stuff that I already knew.” *Id.* at 126. Mother testified that, in addition to DCS’s recommended services, she was seeing a therapist that she arranged on her own, both for individual and family therapy and that, although DCS recommended IOP in 2021, she instead voluntarily entered inpatient rehab and participated in recommended follow-up therapy. Mother testified to also completing the second inpatient rehabilitation program in 2022, although she did not participate in recommended follow-up care, and stated that she was currently attending weekly NA and AA meetings, which she had been doing for several months. As to her relationship with Child, the following exchange occurred:

Q: . . . [H]ow do you feel about [Child]?

A: I -- like during the visits, or in general?

Q: Both. We'll start with in general.

A: In general, she's a very smart little girl. I love her to death. She -- she means a lot to me. She means a lot to my children, my family, [Day].

Q: And during these visits how is it going with [Child]?

A: They're going really well. She is learning how to share, which she doesn't really like too much at the moment.

*Id.* at 126-27. There was no other testimony regarding Mother's interaction with or feelings for Child. Mother asked the court to deny termination of her parental rights, seeking continuation of services.

[26] Mother also presented the testimony of Lisa Huber, who had been supervising Mother's twice-weekly visits with Child since September 2022. Huber testified that the visits went "very well," that she had no concerns during visits, and that Mother was bonded with Child. *Id.* at 118.

[27] On December 16, 2022, the court entered findings of fact and conclusions terminating Mother's parental rights to Child. The court found, in part, that Mother "successfully completed every service" that DCS offered but that her methamphetamine use and inability to stay drug-free continued throughout the CHINS case, despite two stays in inpatient rehab. *Appendix* at 48. The court observed that Mother tested positive for methamphetamine "just two weeks

before the final part of the termination hearing” and her “repeated methamphetamine use is still present and is still a problem thwarting any potential reunification with [Child.]” *Id.* at 47. The court noted that, “but for the approximately 62 days of [THV], [Child] has been removed from the care of [Mother] for her entire lifespan of twenty-six months.” *Id.* at 45.

[28] The court found that Mother’s “continued excuses for methamphetamine drug test failures [] demonstrate her lack of commitment to sobriety and the services” and that Mother appeared to be “doing little more than going through the motions with services to show she complied.” *Id.* at 49, 50. The court concluded that DCS had shown that there is reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside home will not be remedied, that continuation of the parent-child relationship poses a threat to Child, that there was a satisfactory plan for Child, and that termination of parental rights was in her best interests. Mother now appeals.

## **Discussion & Decision**

[29] Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In*

*re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.*

[30] We affirm a trial court's termination decision unless it is clearly erroneous; a termination decision is clearly erroneous when the court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019), *cert. denied* (2020). We consider the evidence in the light most favorable to the prevailing party, and we will not reweigh the evidence or judge the credibility of the witnesses. *Matter of M.I.*, 127 N.E.3d 1168, 1170 (Ind. 2019). To prevail, the challenging party must show that the court's decision is contrary to law, meaning that the probative evidence and reasonable inferences point unerringly to the opposite conclusion. *Id.*

[31] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, 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)(B), (C), (D); Ind. Code § 31-37-14-2. A trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re G.F.*, 135 N.E.3d 654, 661 (Ind. Ct. App. 2019) (quotation omitted).

[32] On appeal, Mother asserts that DCS failed to present clear and convincing evidence that the conditions resulting in Child’s removal or the reasons for placement outside her home would not be remedied, that continuation of the parent-child relationship poses a threat to Child, and that termination was in Child’s best interests.

### ***Conditions Not Remedied***

[33] In determining whether the conditions resulting in a child’s removal will not be remedied, the trial court engages in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231-32 (Ind. 2013). First, we must ascertain what conditions led to their placement and retention in foster care. *Id.* Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* In making these decisions, “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.* Pursuant to this rule, courts have properly considered evidence of, among other things, a parent’s prior criminal history, drug and alcohol abuse, and history of neglect. *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008). Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Id.*

[34] Mother argues that the court’s finding as to conditions not likely to be remedied was clearly erroneous because the record amply showed that she was “actively and fervently working to remedy her addiction” and that she “would continue to take the steps necessary to get [] the help she needs.” *Appellant’s Brief* at 11, 16. There is no dispute that Mother participated in and completed recommended services, and, in fact, voluntarily entered inpatient rehab – twice – and sought out therapy services beyond that ordered by DCS. Indeed, the court’s termination order recognized that Mother was fully compliant with services. However, the obstacle to reunification was not her participation and completion of services; it was her unwillingness or inability to stay drug free. Her stretches of sobriety were short-lived. THVs were not enough to prevent Mother from using methamphetamine (nor was her pregnancy in 2021 with Day’s child, who was born in or around January 2022). Alarming, Child’s April 2022 hair follicle screen returned positive for methamphetamine and amphetamine. Mother continued to use methamphetamine even after



termination proceedings commenced in May 2022, testing positive just weeks before the November 16 termination hearing, as well as at least once after that hearing and before the last day of the hearing on December 8.

[35] We further note that the trial court is the judge of witness credibility, which we do not reweigh on appeal, and the court was not convinced that Mother was “fervently” working to remedy her addiction, as she now claims. Rather, the court found that Mother’s testimony “show[ed] that she may not have absorbed, internalized and put . . . into practice” what she learned during DCS services and that her testimony “demonstrate[d] to the Court that Mother was doing little more than going through the motions with services to show that she complied.” *Appendix* at 49.

[36] In sum, the record amply supports the trial court’s conclusion that the reason for Child’s removal or continued placement outside the home, *i.e.*, drug use, was not likely to be remedied.<sup>5</sup>

### ***Best Interests***

[37] When determining whether termination of parental rights is in a child’s best interests, courts “must look at the totality of the evidence and, in doing so, subordinate the parent[’s] interest to those of the child[.]” *Ma.H.*, 134 N.E.3d at 49. Central among these interests is a child’s need for permanency because

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<sup>5</sup> As I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not reach the court’s conclusion that continuation of the parent-child relationship posed a threat to Child.

“children cannot wait indefinitely for their parents to work toward preservation or reunification.” *Id.* (quoting *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014)).

[38] FCM Smolenski and CASA Hollerman each testified that termination was in Child’s best interest. FCM Smolenski explained that termination was in Child’s best interests because Child deserved permanency in a safe and stable home free of illegal substances. Other than approximately two months of THVs, Child has been out of Mother’s care due to her repeated drug use. Fortunately for Child, she has been with the same foster family, who meets her needs and provides a loving and stable environment in an appropriate home and who is willing to adopt her. Mother is essentially asking for more time to show that she can maintain sobriety. However, Mother has had two years to demonstrate that she could stay clean for a sustained period; she did not do so, being substance-free for only short stints of time. Giving her additional time to work toward reunification would not give Child a sense of permanency in a substance-free home that FCM Smolenski and CASA Hollerman testified Child needs and deserves.

[39] We note that our Supreme Court has recognized that “[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.” *K.T.K.*, 989 N.E.2d at 1235-36. Here, Mother’s illegal drug use not only caused Child to be removed from her care for most of Child’s life, but also exposed Child to methamphetamine and amphetamine, jeopardizing her health.

[40] Although Mother suggests that termination would interfere with Child's ability to have a relationship with her younger sibling, that child also was removed from Mother's care when the second THV failed and has not been returned to Mother. Child's foster parent testified that she "absolutely" considered it important for Child to maintain her relationship with that sister, that they have had birthday parties together, and that she and the other foster parent desired to have the children interact "every couple weeks or so." *Transcript Vol. 2* at 47. CASA Hollerman testified that she had observed the respective foster placements for Child and her younger sister taking steps toward maintaining a bond between the girls.

[41] For these reasons, we find that sufficient evidence supported the trial court's determination that termination of the parent-child relationship is in Child's best interests. *See Ma.H.*, 134 N.E.3d at 50 (in finding that totality of the evidence supported the trial court's best interest determination, Court acknowledged that parents had completed most of the required services but had not made the needed change such that the children were no closer to being reunified than they were twenty months prior). Accordingly, the trial court's judgment terminating Mother's parental rights was not clearly erroneous.

[42] Judgment affirmed.

May, J. and Foley, J., concur.