

# 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:

O.W. and K.W. (Minor Children),

And

C.J. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child Services,

*Appellee-Petitioner.*

September 29, 2023

Court of Appeals Case No.  
23A-JT-574

Appeal from the St. Joseph Probate Court

The Honorable Jason A. Cichowicz, Judge

The Honorable Ashley Mills Colborn, Magistrate

Trial Court Cause Nos.  
71J01-2206-JT-69 & 71J01-2206-JT-70

**Memorandum Decision by Judge Riley.**  
Judges Mathias and Crone concur.

**Riley, Judge.**

## **STATEMENT OF THE CASE**

[1] Appellant-Respondent, C.J. (Mother), appeals the trial court's Order terminating her parental rights to her minor children, K.W. and O.W. (collectively, Children).

[2] We affirm.

## **ISSUE**

[3] Mother presents this court with one issue, which we state as: Whether the trial court's Order terminating her parental rights to Children was clearly erroneous.

## **FACTS AND PROCEDURAL HISTORY**

[4] Mother and J.W. (Father)<sup>1</sup> are the biological parents of K.W., born in September 2013, and O.W., born in August 2015. Mother also has three older children, none of whom lived with her. In 2016, Mother married W.J., with whom she had a child, E.J. Mother remained married to W.J. throughout the instant proceedings. In 2018, Mother gave birth to Z.S., who has another father than her half-siblings. Although Mother has an average I.Q., she has a learning disability and receives disability benefits.

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<sup>1</sup> Father consented to Children's adoption. Father does not participate in this appeal.

[5] In August 2020, Mother, who was then twenty-nine years old, had been dating twenty-year-old Kenneth Lottes (Lottes) for two months. On August 7, 2020, Mother left then six-year-old K.W., five-year-old O.W., and two-year-old Z.S. alone with Lottes in a hotel room in South Bend, Indiana, while Mother stayed at a different hotel in South Bend with Lotte’s fourteen-year-old brother. That day, Lottes placed Z.S. in a bathtub of scalding water, resulting in second and third degree burns to Z.S.’s lower body.<sup>2</sup> Lottes took Z.S. to Mother’s hotel, and Mother then sought emergency care for Z.S. During the ensuing investigation of Z.S.’s injuries, K.W. was forensically interviewed and reported that the family lived outside, in cars, and, when they had money, in hotels. K.W. also reported that sometimes she and Mother went “trick or treating” and asked people for money. (Appellant’s App. Vol. II, p. 23).

[6] That same day, DCS removed Children from Mother’s care. On August 11, 2020, DCS filed a petition seeking to have Children adjudicated as Children in Need of Services (CHINS) based on concerns that Mother was homeless, Mother was not providing for Children’s basic needs, and that K.W. was not in school.<sup>3</sup> At the initial hearing on the CHINS petition which also took place on August 11, 2020, Mother admitted the allegations of the petition, and the trial court ordered Children’s continued detention outside of her care. On

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<sup>2</sup> Lottes was subsequently prosecuted for injuring Z.S. Mother did not face prosecution for this incident.

<sup>3</sup> DCS filed a joint CHINS petition as to K.W., O.W., and Z.S. However, only K.W. and O.W. are the subjects of the instant termination proceedings. At the time of the termination hearing, Z.S. was living with her father.

September 30, 2020, the trial court adjudicated Children as CHINS. On October 28, 2020, the trial court issued its CHINS dispositional decree ordering Mother to, among other things, maintain weekly contact with DCS' family case manager (FCM); procure and maintain safe and stable housing; assist in the formation of a plan to protect Children from abuse or neglect from any person; ensure that Children were enrolled in and attended school; complete a parenting assessment and all resulting recommended services; attend all scheduled supervised parenting time with Children; and to follow all the parenting time supervisor's rules and procedures.

- [7] After their removal from Mother's care, Children were initially placed in a relative's care. After the entry of the CHINS dispositional decree, Children were placed with Father for approximately one month. On November 30, 2020, Children were placed together in the care of their foster family, where they have remained since.
- [8] In December 2020, Mother completed a parenting assessment at Oaklawn. The resulting recommendations were that Mother was to participate in parenting education and case management services and that Mother undergo a psychological assessment to determine if she was capable of parenting Children. FCM entered a referral for parenting education with Family First, but Mother immediately informed FCM that she would not participate because she did not need parenting education. Mother also failed to participate in case management services, despite the fact that FCM and the service provider

reached out to Mother several times to initiate the service. Case management services were closed out for non-engagement.

[9] At the beginning of the CHINS proceedings, Mother participated regularly in supervised parenting time with Children. However, in January 2021, Mother became enraged during a visit when she was informed that she had brought the wrong type of diaper for Z.S., who still needed a special diaper because of her burn injuries. Because of Mother's conduct, the parenting time supervisor called law enforcement to the scene. Thereafter, Mother's participation in supervised parenting time waned. Mother missed three sessions with Children in June 2021, and her parenting time with Children was closed out by the provider in July 2021 after she missed four sessions. Mother did not have parenting time with Children after July 13, 2021.

[10] On February 9, 2022, the trial court approved a permanency plan of adoption for Children. On June 1, 2022, DCS filed its petition seeking to terminate Mother's parental rights to Children. In August 2022, the trial court ordered Mother's parenting time suspended until she completed the psychological evaluation that had been recommended as a result of the parenting assessment that she had completed at the beginning of the CHINS proceedings.

[11] In August and September 2022, psychologist Dr. Alan Wax (Dr. Wax) assessed Mother in three sessions. During the first session, Mother was despondent and lapsed into a "non[-]parenting state," after which she recuperated and was able to continue with the evaluation. (Transcript p. 48). During her sessions with

Dr. Wax, Mother expressed her belief that she was not at fault for Children's removal because she had not been the person who burned Z.W. with hot water. Dr. Wax observed that Mother's beliefs were not always consistent with reality, Mother experienced paranoia that DCS conspired to remove Children, and that Mother tended to see herself as a victim who was never at fault, all of which prevented her from accepting responsibility for her role in the removal of Children from her care. Dr. Wax also concluded that Mother had a dependent personality and a deep-seated need to be in a relationship. As a result, Mother had a pattern of staying in relationships with men he characterized as cheaters, mental and physical abusers, and child molesters. Dr. Wax determined that Mother suffered from clinical depression and PTSD. Dr. Wax also assessed Mother's parenting knowledge and attitudes in two separate assessments. Mother's parenting knowledge was "very, very low" meaning she lacked "basic parenting knowledge." (Tr. p. 52).

[12] On November 4, 2022, the trial court held a hearing on DCS' termination petition. By the time of the hearing, Mother had informed FCM that she was taking parenting education from a non-DCS provider, but she had never submitted any documentation regarding the substance of those classes or that she had completed them. FCM related that, after Mother's supervised parenting time had been closed out by the provider in July 2021, he resubmitted referrals for supervised parenting time in September 2021 and in January 2022, but that Mother did not engage or contact him about restarting parenting time. While Mother had FCM's contact information and she regularly attended court

hearings and DCS family/team meetings throughout the CHINS proceedings where her need to engage in services had been discussed, Mother's contact with FCM stopped after her supervised parenting time had been closed out by the provider in July 2021.

[13] Dr. Wax testified at the hearing that Mother's instability during her first session with him was concerning because it meant that she could easily become dysfunctional again if stressed. Dr. Wax opined that, if Mother was highly motivated to engage in treatment and services, she might be able to reunify with Children in approximately two years but that such a long timeframe for reunification could be "devastating" for Children. (Tr. p. 53). Dr. Wax acknowledged that if Mother was already demonstrating non-compliance with services, her prognosis was extremely poor.

[14] As of the termination hearing, none of Mother's seven children were in her care. Mother testified at the hearing and denied that the family was homeless at the time DCS became involved, and she maintained that their primary residence had been at the home of E.J.'s father in South Bend. Mother related that, while she was still married to W.J., she was engaged to another man who lived in Niles, Michigan. Although she had always told DCS that she lived in South Bend, Mother maintained that she had lived in Niles for almost a year at her fiancé's home, which she asserted was a suitable home for Children. W.J.'s brother testified on Mother's behalf that she and Children could live in the rented home he shared with W.J. and their father in South Bend. As of the hearing, Mother was in the process of divorcing W.J.

[15] On December 1, 2023, the trial court issued its Order terminating Mother's parental rights and entering detailed findings of fact and conclusions thereon in support. The trial court concluded that there was a reasonable probability that Mother would not remedy the reasons for Children's removal and/or continued placement outside of her home; there was a reasonable probability that Mother's continued relationship with Children posed a threat to Children's well-being; termination was in Children's best interests; and that DCS' plan for Children, adoption, was satisfactory.

[16] Mother now appeals. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

### *I. Standard of Review*

[17] Mother challenges the evidence supporting the trial court's termination Order. Our standard of review in such matters is well-settled: We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom, giving due regard to the trial court's opportunity to judge the credibility of witnesses firsthand. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In doing so, we neither reweigh the evidence nor determine the credibility of witnesses. *Id.* Where, as here, a trial court has entered findings of fact and conclusions thereon, we will not set aside its findings or judgment unless they are clearly erroneous. *Matter of D.C.*, 149 N.E.3d 1222, 1228 (Ind. Ct. App. 2020), *trans. denied*. In the context of a termination proceeding, wherein DCS is charged with proving the grounds for termination through clear and convincing



evidence, we assess whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* (citing Ind. Code § 31-37-14-2). We accept any unchallenged factual findings as true. *Matter of C.C.*, 170 N.E.3d 669, 675 (Ind. Ct. App. 2021).

## II. *Involuntary Termination of the Parent-Child Relationship*

[18] The Indiana courts have recognized that the relationship between a parent and his or her child is “one of the most valued relationships in our culture” and that the parental interest in a child is “perhaps the oldest of the fundamental liberty interests.” *Matter of M.I.*, 127 N.E.3d 1168, 1171 (Ind. 2019); *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental interests are not absolute. *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019). “[C]hildren have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships.” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). As a result, parental rights and interests must be subordinated to those of the child, and a parent’s rights may be terminated where he or she is unable or unwilling to meet the responsibility of providing for the child’s immediate and long-term needs. *K.T.K. v. Ind. Dept. of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[19] Given the weighty interests at stake, in order to terminate the parent-child relationship, DCS is required to prove a number of facts by clear and convincing evidence, including the following:

(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). The factors of subsection (B) of the involuntary termination statute are written in the subjunctive, such that DCS may allege and prove any of the three separate elements. *See id.*

### III. *Sufficiency of the Evidence*

#### A. *Factual Finding*

[20] Mother briefly argues that the trial court's factual finding that she failed to exercise supervised parenting time was unsupported by the evidence. The trial court found that Mother had "discontinu[ed]" her supervised parenting time with Children. (Appellant's App. Vol. II, p. 138). DCS presented evidence that, although Mother initially consistently engaged in supervised parenting time with Children, after January 2021, her participation waned. In June 2021, Mother missed three visits with Children, and in July 2021, she missed four visits, after which the service provider closed out the service. Mother

acknowledged at the November 4, 2022, termination hearing that she had not had parenting time with Children since July 2021, despite the fact that FCM had entered two additional referrals for the service.

[21] This evidence clearly and convincingly established that Mother had discontinued her parenting time with Children. Therefore, we conclude that the challenged finding is not clearly erroneous. *See Matter of D.C.*, 149 N.E.3d at 1228. In addition, as Mother does not challenge the evidence supporting any other relevant findings of fact, we accept the remainder of the trial court's findings as true. *See Matter of C.C.*, 170 N.E.3d at 675.

*B. Remedy of Conditions Necessitating Removal or Continued Placement*

[22] Mother argues that the evidence does not support the trial court's determination that there was a reasonable probability that the conditions that merited Children's removal and continued placement outside the home will not be remedied. When reviewing a trial court's determination on this factor, we engage in a two-step analysis. *E.M.*, 4 N.E.3d at 642-43. First, we must identify the conditions that led to removal; second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. When engaging in the second step of this analysis, a trial court must judge a parent's fitness as of the time of the termination hearings, taking into account evidence of changed conditions, and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

[23] The trial court entered the following findings in support of its conclusion regarding this factor:

Mother's failure to substantially comply with her services, her failure to complete home based case management and age appropriate parenting classes, her history of abusive relationships and diagnosis of dependent personality features, lack of custody or care of any of her seven (7) children, and her failure to even exercise visitation with [K.W.] and [O.W.] demonstrates by clear and convincing evidence that there is reasonable probability that the conditions that resulted in the removal and continued placement of [K.W.] and [O.W.] outside of Mother's home will not be remedied.

(Appellant's App. Vol. II, p. 143). This court has "often noted that evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services demonstrates the requisite reasonable probability that the conditions will not change." *S.S.*, 120 N.E.3d 605, 611 (Ind. Ct. App. 2019) (citing *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*). In addition, we have observed that a parent's failure to exercise her right to parenting time demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." *Lang*, 861 N.E.2d at 372 (quoting *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002)). The trial court's findings on these circumstances, in addition to its findings based on Dr. Wax's testimony about Mother's relationships, her dependent personality, and Mother's poor prognosis of addressing these issues, all support the trial court's determination on this factor.

[24] On appeal, Mother argues that she was not the person who was directly responsible for burning Z.S. and that, by the time of the hearing, she had addressed her housing instability. However, Mother’s arguments miss the mark because they focus solely on the reasons for Children’s initial removal and do not address the reasons for Children’s continued placement outside Mother’s care. *See O.K. v. Ind. Dep’t of Child Servs.*, 968 N.E.2d 792, 798 (Ind. Ct. App. 2012) (“[A] court may consider not only the basis for a child’s initial removal from the parent’s care, but also any reasons for a child’s continued placement away from the parent.”). Indeed, the trial court did not enter findings regarding Mother’s role in the Z.S. incident or her housing stability in support of its determination that there was a reasonable probability that Mother would fail to rectify the reasons why Children were not in her care. Mother does not address the findings supporting the trial court’s conclusion, and her argument is merely a request that we consider evidence that does not support the trial court’s determination, which is contrary to our standard of review.<sup>4</sup> *See E.M.*, 4 N.E.3d at 642. Accordingly, we do not disturb the trial court court’s order terminating Mother’s parental rights to Children.<sup>5</sup>

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<sup>4</sup> Given our conclusion and the disjunctive nature of Indiana Code section 31-35-2-4(b)(2)(B), we do not address Mother’s argument regarding the trial court’s conclusion that her continued relationship with Children posed a threat to Children’s well-being. *See Lang*, 861 N.E.2d at 372 n.2 (declining to address Lang’s argument regarding the trial court’s conclusion that continuation of his relationship with his children posed a threat to their well-being, after having found that the evidence supported the trial court’s ‘conditions’ conclusion pursuant Indiana Code section 31-35-2-4(b)(2)(B)(i)).

<sup>5</sup> Mother does not challenge the trial court’s conclusions that termination is in Children’s best interests or that adoption is a satisfactory plan for Children.

## **CONCLUSION**

[25] Based on the foregoing, we hold that Mother has failed to demonstrate that the trial court's Order terminating her parental rights to Children is clearly erroneous.

[26] Affirmed.

[27] Mathias, J. and Crone, J. concur