

## 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.



---

### ATTORNEY FOR APPELLANT

Chris M. Teagle  
Albany, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Robert J. Henke  
Natalie F. Weiss  
Deputy Attorneys General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

In the Matter of the Termination  
of the Parent-Child Relationship  
of J.B. (minor child) and A.S.  
and L.J.B. (parents),

A.S.,

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

May 12, 2021

Court of Appeals Case No.  
20A-JT-2131

Appeal from the Jay Circuit Court

The Honorable Brian D.  
Hutchison, Judge

Trial Court Cause No.  
38C01-2004-JT-8

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Respondent, A.S. (Mother), appeals the trial court's termination of her parental rights to the minor child, J.B. (Child).

[2] We affirm.

## ISSUE

[3] Mother raises one issue on appeal, which we restate as follows: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

## FACTS AND PROCEDURAL HISTORY

[4] Mother and L.B. (Father)<sup>1</sup> are the biological parents to Child, born on May 9, 2013. In September of 2018, parents were participating in an informal adjustment "where parents had tested positive several times for methamphetamine use and opiate use." (State's Exh. p. 15). On September 28, 2018, DCS responded to a request by the Jay County Hospital where Child, who was five years old at the time, was being examined for largely dilated pupils, erratic behavior, and hallucinations, referring to "hospital staff as mommy and daddy and talking to the walls." (State's Exh, p. 14). Child tested positive for methamphetamine and amphetamine and she was transported to

---

<sup>1</sup> Father's parental rights to the Child were terminated on August 10, 2020, and he does not appeal the termination of his parental rights. Facts pertaining to Father will be included insofar as these are relevant to Mother's appeal.

Riley Hospital for treatment. DCS removed Child from Mother's care and filed its child in need of services (CHINS) petition. On October 16, 2018, the trial court adjudicated Child as a CHINS after Mother admitted to the allegations contained in the CHINS petition.

[5] On November 27, 2018, the trial court entered a dispositional decree, ordering Mother to participate in reunification services, including but not limited to, weekly contact with the family case worker (FCM), maintain stable housing and employment, no consumption of illegal substances, complete a substance abuse assessment and follow its recommendations, attend scheduled visitations with Child, and submit to random drug screens. On December 21, 2019, the trial court changed the permanency plan to termination of parental rights and adoption.

[6] On April 17, 2020, DCS filed its petition to terminate Mother's parental rights. On August 5, 2020, the trial court conducted a factfinding hearing, at which Mother appeared via telephone as she was in voluntary inpatient treatment at Harbor Lights. During the hearing, DCS presented evidence indicating that Mother had active referrals for substance abuse assessment, individual counseling, family counseling, home-based case management, and supervised visitation. There were "minimal to no appointments with any of these services other than the supervised visitations." (Transcript p. 10). Although Mother completed the substance abuse assessment, she did not participate in the recommended treatment.

- [7] During the pendency of these proceedings, Mother incurred additional arrests. She was incarcerated from March 26 through September 24, 2019, after being convicted for dealing in methamphetamine and again from March 18 through July 1, 2020, for violating her probation by testing positive on a drug screen and not being employed. Throughout the proceedings, Mother consistently tested positive for illegal substances and failed to address her substance abuse issues. Even though she submitted negative screens between September and December 2019, she sometimes refused to test. At no point did Mother obtain stable housing or employment.
- [8] DCS presented evidence that during visitations with the Child, Mother did not always show up or, if she attended, left early. When visitation did occur, Child experienced negative behavioral issues afterwards, including bed wetting and nightmares. Mother was inconsistent with maintaining contact with the FCM. Testifying that she did not believe Mother's behavior would change, FCM advised that termination would be in the Child's best interest. Testimony revealed that Child had improved significantly in school since her removal from Mother, was involved in the community, and was thriving in her foster placement. Child's guardian ad litem (GAL) affirmed FCM's assessment that termination of parental rights would be in Child's best interest. Child's current foster parents testified that they would adopt Child.
- [9] On August 10, 2020, the trial court issued its findings of fact and conclusions thereon, terminating Mother's parental rights to Child. The trial court concluded, in pertinent part, that

6. DCS has established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the [C]hild's removal or the reasons for placement outside the home of the parents will not be remedied in that:

- a. Both parents have previously engaged in an Informal Adjustment due to drug-related domestic violence in the home with the [C]hild present;
- b. There have been four petitions alleging CHINS filed for [Child];
- c. Both parents have failed to participate meaningfully in any services offered by DCS;
- d. Mother incurred additional arrests during the pendency of the CHINS action;
- e. Mother has been convicted of another controlled substance offense and a subsequent probation violation during the pendency of the CHINS action;
- f. Mother was jailed from 3/26/2019 until 9/24/2019 and again from 3/18/2020 until 7/1/2020;
- g. Both parents have consistently tested positive for the use of illicit drugs during the pendency of the CHINS action;
- h. Both parents have been found in contempt for their continued drug use;
- i. Both have failed to obtain/ maintain stable appropriate housing or employment during the pendency of the CHINS action;
- J. Mother has not exercised any meaningful parenting time with the [C]hild;
- k. Father has been inconsistent in exercising parenting time, although he has been more consistent than [M]other; and
- I. Both have failed to appropriately address their substance abuse and mental health issues.

7. As pertains to [Mother], DCS has established by clear and convincing evidence that termination of the parent-child relationship is in [Child's] best interests in that;

- a. Parents are unable to care for her;

- b. The child has demonstrated behavioral problems after parents exercised parenting time;
- c. She is thriving in h[er] present placement;
- d. She has developed a strong bond with the foster parents;
- e. She is improving in her school work;
- f. Her foster parents desire to adopt her and they share an affectionate relationship.

8. DCS has established by clear and convincing evidence that the plan for adoption of [Child] by the foster placement is a satisfactory plan for her care and treatment in the event of termination.

(Appellant's App. Vol. II, p. 21).

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

## DISCUSSION AND DECISION

[11] Mother challenges the trial court's termination of her parental rights to her Child. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights "are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Id.* If "parents are unable or unwilling to meet their parental responsibilities," termination of parental

rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

- [12] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment, and we accord deference to the trial court’s “opportunity to judge the credibility of the witnesses firsthand.” *Id.*

#### I. Termination of Parental Rights Statute

- [13] In order to terminate a parent’s rights to his or her child, DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

\* \* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of

the child being alleged to be a [CHINS] . . . ;

(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 [CHINS];

(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). DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[14] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Co. OFC*, 798



N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent's failure to respond to services. *Lang v. Starke Co. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

- [15] In adjudicating Child as a CHINS, the trial court determined that Child was removed from Mother’s care after ingesting methamphetamine. Throughout the proceedings, Mother consistently tested positive for illegal substances and failed to address her substance abuse issues. Even though she participated in the substance abuse assessment, she did not follow up on its recommendations. At the time of the termination proceedings, Mother had active referrals for individual and family counseling, home-based case management, and supervised visitation. Although Mother did submit some clean screens from September through December 2019, she, at times, refused to submit to testing during that time. *See, e.g., In re A.R.*, 924 N.E.2d 666, 671 (Ind. Ct. App. 2010)

(a parent whose drug use led to a child's removal cannot be permitted to refuse to submit to drug testing and then later challenge there was no proof of continued drug use). In addition to her continued use, Mother incurred additional arrests. She was incarcerated from March 26 through September 24, 2019, after being convicted for dealing in methamphetamine and again from March 18 through July 1, 2020, for violating her probation by testing positive on a drug screen and not being employed.

[16] Besides failing to maintain employment, obtain suitable housing, and maintain contact with the FCM, Mother did not always show up for her scheduled visitations with Child. Even if she attended, Mother often left early. When visitation did occur, Child experienced negative behavioral issues afterwards, including bed wetting and nightmares. Mother was inconsistent with maintaining contact with the FCM, who testified that she did not believe Mother's behavior would change.

[17] "Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Mindful of this guideline, we note that the evidence presented clearly and convincingly shows that a reasonable probability exists that the conditions that led to the Child's removal from Mother's care will not be remedied. At no point during the proceedings did Mother exhibit a turnaround in her behavior or commence participation in DCS's services. Although Mother insists that she was compliant and pursued many services throughout the case and therefore "any

period of incarceration should not receive the weight which DCS asserts it should,” this is merely a request to reweigh the evidence which we are not allowed to do. (Appellant’s Br. p. 10). While we applaud Mother for taking the initiative by checking into voluntary inpatient substance abuse services at the time of the termination hearing, in the totality of the evidence, this effort is too little and comes too late. A parent’s habitual unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that the removal conditions will not change. *In re G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017). Accordingly, the trial court was entitled to weigh the evidence as it found appropriate in the context of this case, and we conclude that the trial court’s findings support the judgment.

## II. *Best Interest of the Child*

[18] Mother also challenges the trial court’s conclusion that termination is in the Child’s best interest. To determine whether termination is in a child’s best interest, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* We have previously held that the recommendation by both the 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 child's best interest. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

[19] The evidence supports that Child is thriving in her foster placement. Child has improved significantly in school since her removal and she is involved in the community. Testimony revealed that she is bonded with the foster family and the foster family's child, who is of similar age. The foster parents testified that they wish to adopt Child. Child's GAL affirmed FCM's assessment that termination of parental rights would be in Child's best interest.

[20] Here, Mother failed to avail herself of the opportunities and services offered by DCS to reunite with the Child and made no progress nor commitment during the proceedings of the case. "[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification." *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014). Even though "the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Mother's historical inability to provide a suitable and safe environment for the Child, together with her current inability to do the same, supports the trial court's conclusion that termination of her parental rights is in the best interests of the Child. Accordingly, we affirm the trial court's decision.

## **CONCLUSION**

- [21] Based on the foregoing, we conclude that DCS presented sufficient evidence to support the trial court's Order terminating Mother's parental rights to the Child.
- [22] Affirmed.
- [23] Mathias, J. and Crone, J. concur