

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Involuntary Termination  
of the Parent-Child Relationship  
of: Ka.C., L.E., P.E., and C.C.  
(Minor Children),  
and  
K.C. (Mother)  
*Appellant-Respondent,*

v.

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

December 27, 2023

Court of Appeals Case No.  
23A-JT-1688

Appeal from the Allen Superior  
Court

The Honorable Lori K. Morgan,  
Judge

The Honorable Beth A. Webber,  
Magistrate

Trial Court Cause Nos.  
02D08-2208-JT-195  
02D08-2208-JT-196  
02D08-2208-JT-197  
02D08-2208-JT-198

**Memorandum Decision by Judge Brown**  
Judges Vaidik and Bradford concur.

**Brown, Judge.**

- [1] K.C. (“Mother”) appeals the involuntary termination of her parental rights with respect to her children, Ka.C., L.E., P.E., and C.C.<sup>1</sup> We affirm.

***Facts and Procedural History***

- [2] In May 2010, Mother gave birth to Ka.C. In 2013, the Department of Child Services (“DCS”) alleged Ka.C. was a child in need of services (“CHINS”) due to Mother’s substance abuse issues. That case ended in July 2014 with a change of custody to the paternal grandmother. In 2016, Ka.C. was returned to Mother’s care. In December 2017, Mother gave birth to L.E.
- [3] On October 22, 2019, DCS filed a petition alleging Ka.C. and L.E. were CHINS. On November 20, 2019, DCS filed an amended petition alleging that Mother had a considerable criminal history suggestive of long-term drug use; Ka.C. had been previously removed in a prior CHINS case and placed in foster care due to neglect; L.E. was born with galactosemia, a condition requiring intensive medical treatment; Mother missed medically necessary appointments for L.E.; on December 14, 2018, Mother was intoxicated while driving with her children, caused a severe head-on crash with another driver, and tested positive

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<sup>1</sup> D.M., II, the father of Ka.C., signed a consent for adoption. J.E. is the father of L.E. and P.E. and the alleged father of C.C.

for methamphetamine, amphetamine, fentanyl, and alcohol greater than 0.15%; and Mother had active warrants in Steuben County and DeKalb County.

- [4] On November 21, 2019, the court found Ka.C. was a CHINS. In January 2020, the court found L.E. to be a CHINS and entered an Order on Dispositional Hearing with a parent participation plan requiring Mother to refrain from all criminal activity, complete a drug and alcohol assessment, and complete all recommendations.
- [5] In March 2020, Mother gave birth to P.E. In September 2020, Mother was convicted of operating a vehicle while intoxicated causing serious bodily injury as a level 5 felony. On September 20, 2020, Mother was convicted of possession of methamphetamine as a level 6 felony.
- [6] On January 25, 2021, DCS filed an amended petition alleging P.E. to be a CHINS and alleging in part that P.E.'s umbilical cord blood tested positive for methamphetamine. In January 2021, the court entered an Order on Dispositional Hearing with respect to P.E. which included a parent participation plan for Mother. In March 2021, the court entered an Order on Dispositional Hearing with respect to Ka.C. which included a parent participation plan.
- [7] In March 2021, Mother gave birth to C.C. In May 2021, DCS filed an amended verified petition alleging C.C. was a CHINS and that C.C.'s umbilical cord blood test returned positive for methamphetamine, opiates, codeine, and THC. In May 2021, the court found that C.C. was a CHINS and entered

Orders on Dispositional Hearing in May and June 2021 with a parent participation plan.

- [8] On August 9, 2021, Mother violated her probation and her probation was revoked. That same day, she was convicted of failure to return to lawful detention as a level 6 felony.
- [9] On October 13, 2022, DCS filed petitions for the involuntary termination of the parent-child relationship between Mother and the children. On March 28, 2023, the court held a hearing. The State presented the testimony of multiple witnesses including Mother, Amy Miller, a family consultant who was assigned a referral for visits and casework, Tabitha Kyburz, an employee at Quality Counseling and Psychological Services, Family Case Manager Jedidiah Davis (“FCM Davis”), Family Case Manager Starr Herndon (“FCM Herndon”), and Guardian ad litem Catherine Christoff (“GAL Christoff”).
- [10] Mother testified that she was incarcerated, expected to be released in May or June 2023, had reduced her time by about a year, and expected to then serve forty-five days in DeKalb County followed by 180 days of probation. She testified that she had never received a formal conduct report in the three years she had been at the Indiana Women’s Prison. She stated she had housing arranged at her grandfather’s home upon her release, which is where she had been staying before she was incarcerated. She acknowledged there would be seven people living in the three-bedroom residence if her children were returned. She indicated she had employment arranged as well. She testified

that she completed the Recovery While Incarcerated program, had taken self-esteem classes, participated in Narcotics Anonymous sessions, and was a recovery assistant at the prison. She acknowledged that she had never completed any drug and alcohol counseling outside of the Department of Correction (“DOC”).

- [11] On June 22, 2023, the court entered a thirty-one-page order finding: there is a reasonable probability that the reasons that brought about the children’s placement outside the home would not be remedied; continuation of the parent-child relationship posed a threat to the well-being of the children; and termination of the parent-child relationships was in the best interests of the children.

### ***Discussion***

- [12] Mother argues that DCS failed to present evidence that there was a reasonable probability that the conditions that resulted in the children’s removal or the reasons for placement outside the home of the parents will not be remedied or that she was a threat to the well-being of the children. She asserts she completed the Recovery While Incarcerated program, participated in programs while incarcerated to learn how to maintain sobriety, took part in parenting classes while incarcerated, and “has a Work Release program already lined up” and planned to work during that time. Appellant’s Brief at 17. She also asserts she was due to be released in May 2023.

[13] 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).

[14] 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.

[15] 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.*

[16] 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*.

[17] The court found that Ka.C. was involved in a CHINS case in 2013 due to Mother's substance abuse issues, that case ended in July 2014 with a change of custody to the paternal grandmother, and Ka.C. was returned to Mother's care in 2016. It noted that, after CHINS petitions were filed in 2019 and a dispositional order was entered in January 2020, the court had found, after a May 2020 hearing, that Mother failed to obtain a drug and alcohol assessment, was not regularly visiting with her children, and tested positive for methamphetamine and amphetamine. It found that Mother admitted to using methamphetamine during her pregnancy with P.E. It found Mother admitted that she tested positive for THC and had ongoing substance abuse issues resulting in the finding in June 2021 that C.C. was a CHINS. It noted Mother "did not meet her goals set for home based casework as she only attended 3 sessions and never followed through with the home based program" and that



she scheduled two orientations for treatment at Quality Counseling but failed to attend and did not participate in substance use treatment. Appellant's Appendix Volume II at 112. It determined that C.C. "has no relationship with [Mother] as she has not had physical contact with her since shortly after her birth in March of 2021, or for about two years" and P.E. "was only a few months old when she last visited with" Mother. *Id.* at 114. The court found that DCS reached out to service providers to determine if they could arrange supervised visitation between Mother and children while she was incarcerated but the agencies could not provide those services. It found that Ka.C. and L.E. had been removed from Mother's care in 2019, P.E. had been removed in March 2020, and C.C. had been removed in March 2021, and none of the children had ever been returned. It found Mother would not give her address or place of residence to DCS at times prior to her incarceration. It found she entered into a plea agreement and was sentenced in September 2020 for operating a vehicle while intoxicated as a level 5 felony and possession of methamphetamine as a level 6 felony, she violated her probation, and she was sentenced on August 9, 2021 to an additional 180 days for failure to return to lawful detention. It found she tested positive for methamphetamine and amphetamine on January 7, 2020, February 7, 2020, and April 1, 2020; she did not complete random drug screens for DCS as ordered; and she used methamphetamine in 2019, 2020, and 2021. The court observed that Mother planned to live with her grandfather and that there was testimony regarding substance use history and criminal history of the people living in grandfather's home. It stated that "even though referrals were in place prior to her

incarceration, [Mother] did not participate in substance abuse treatment or twelve step meetings prior to her incarceration in September of 2021.” *Id.* at 118. The court acknowledged that Mother had participated in substance abuse treatment while incarcerated but also found “that some of [Mother’s] testimony was self-serving and not credible.” *Id.* at 116. The court’s order states:

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170. The Court finds based on the totality of the testimony that [Mother] did not participate in most of the services offered by the Allen County Department of Child Services that were available to remedy the issues causing DCS involvement.

*Id.* at 123.

[18] The record reveals that Miller, the family consultant who was assigned a referral for visits and casework in March 2020, testified that she met Mother three times and did not believe “we progressed at all on any of the goals.” Transcript Volume I at 18. Kyburz, an employee at Quality Counseling and Psychological Services, testified that Quality Counseling received a substance abuse treatment referral from DCS for Mother in 2020 and Mother had not engaged in any drug and alcohol counseling at Quality Counseling.

[19] When asked if it was accurate that she was using methamphetamine when the CHINS case for her two older children was initiated in 2019, Mother answered: “Um, not when it happened, but you know, afterwards then, I had.” *Id.* at 78. When asked if she used methamphetamine during the time period between L.E. and Ka.C. being removed in November 2019 until September 2020, she

answered: “I-, I had in the time period not it wasn’t like all the time.” *Id.* She acknowledged that her conviction for criminal failure to return to lawful detention was opened in January 2021 and stemmed from her failure to turn herself in in December 2020, which occurred after the opening of the CHINS cases related to Ka.C. and L.E.

[20] FCM Davis, Mother’s family case manager from October 2019 until April 2021, testified that he attempted to meet with Mother on a monthly basis and there were “sometimes when we weren’t able to meet in person . . . each month.” *Id.* at 137. He testified that he asked Mother at one point where she was residing and Mother refused to provide that information. He indicated Mother did not obtain independent housing while he was assigned to the case. He stated Mother was incarcerated for a short time in Angola “but then she was out,” and “then by the time that [he] was out of the case, she wasn’t incarcerated yet . . . .” *Id.* at 138-139. He testified that Mother attended some team meetings but “getting a hold of her was often difficult,” she missed at least one or two meetings, and she was inconsistent in maintaining contact with DCS. *Id.* at 139. He testified that Mother completed a diagnostic and substance abuse assessment in which she was diagnosed with methamphetamine use disorder, marijuana use disorder, and “opiate use disorder and remission.” *Id.* at 141. He indicated that recommendations were made based upon the substance abuse assessment that Mother complete six months of outpatient treatment and an additional six months of meetings such as twelve-step meetings and that he discussed that with Mother. He stated that

he made a referral to Dockside in April 2020 but they were unable to contact Mother and closed the referral. He also testified that he made another referral in June 2020 to Quality Counseling but they closed the referral due to having no contact with Mother. He testified that Mother did not complete drug and alcohol classes by the time he ended his participation in the case. He indicated that Mother never showed him any proof of completing the twelve-step process. He testified that Mother never showed him any proof of employment despite that he asked for proof. He conducted drug screens of Mother on January 7, 2020, February 20, 2020, and April 1, 2020, and all of those screens tested positive for amphetamine and methamphetamine. He testified that Mother never admitted to him that she “had used.” *Id.* at 172. He testified that he attempted to perform drug screens on Mother between September and November 2020 but she did not provide him with her address at that time.

[21] FCM Herndon testified that Mother was incarcerated when she was assigned the case in July 2021 and had been incarcerated during the entire time she was involved with the case. When asked why DCS filed the petition to terminate the parent-child relationships, she answered:

[W]e’ve been involved since . . . October of 2019, the children have never returned home to . . . any of their parents. [C]hildren are thriving in the care of their placements[.] [Ka.C.] has expressed wanting to be adopted by her grandparents . . . and then services . . . not being completed.

*Id.* at 197-198. She acknowledged that she was aware Mother had completed a program for drug and alcohol counseling offered by the DOC and attended

aftercare through Narcotics Anonymous but testified that Mother had not completed any outpatient treatment. When asked “what [DCS] is concerned about which is why you’re seeking” termination, she answered: “[W]e’re concerned about stability . . . safety . . . reaching permanency.” *Id.* at 220.

[22] 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.

[23] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 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*.

[24] When asked what she believed was in the best interest of the children, GAL Christoff answered:

[T]his is I think a difficult case. . . . [T]he struggle I have with this is that for the last two (2) years at least, [Mother] has not even been in the younger two (2) children’s lives at all so . . . she

hasn't even really seen [C.C.], the baby who is now two (2). [A]nd prior to that time, . . . the testimony that I heard today was that [Mother] wasn't compliant with services and things so she's been living in a highly supportive environment, um, is doing by her testimony everything she can to better herself and to . . . get drug free and remain drug free and she has plans upon her release from incarceration. So, my struggle is that I want these children to have permanency and I think this case has been going on since 2019 at least for the oldest child. [M]y feeling is right now that I believe it's in their best interest that rights be terminated because I think the children deserve to have permanency, um, [Mother] is now talking a great talk, but we haven't seen her demonstrate this and I'm just worried . . . that . . . this is not going to be the case when she is released. [S]he's still gotta [sic] serve another one hundred eighty (180) days, another forty-five (45) days, another ten (10) days. I mean there's lots of things plus another eight (8) to ten (10) weeks, or nine (9) weeks. . . . I'm very appreciative of everything [Mother] claims to have done in prison. I haven't seen any documents or evidence, I haven't heard any testimony from her, you know, caseworker in the prison. I have no idea whether or these [sic] services would be comparable to what DCS would require or what Doctor Lombard may require, so it's all speculation. . . . [Mother] has not demonstrated anything, she hasn't had an opportunity to live in the community and live drug free. . . . I believe it's their best interest to terminate parental rights.

Transcript Volume II at 12-14.

[25] 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.<sup>2</sup>

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

[27] Affirmed.

Vaidik, J., and Bradford, J., concur.

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<sup>2</sup> To the extent Mother relies upon *In re G. Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh'g denied*, we find that case distinguishable. In *In re G. Y.*, the mother was her child's sole caretaker for the first twenty months of his life. 904 N.E.2d at 1258. A year before the child's birth, the mother had delivered drugs to a police informant, she was arrested and incarcerated for the offense thirty-two months later when the child was twenty months old, and the trial court later terminated her parental rights. *Id.* at 1258-1259. The Court reversed and observed the mother's offense occurred before she became pregnant, there was no indication that she was anything but a fit parent during the first twenty months of the child's life, and she obtained post-release employment and suitable housing. *Id.* at 1262-1263. It also observed the mother maintained a consistent, positive relationship with her child while incarcerated, she had a lot of interaction with the child during their visits, and there was evidence of her commitment to reunification from the moment of her arrest including her attempt to arrange foster care with her sister and a friend. *Id.* at 1264-1265. Here, unlike in *In re G. Y.*, we cannot say that there was no indication that Mother was anything but a fit parent during the lives of her children or that Mother demonstrated a commitment to reunification when DCS first became involved. We also note that, while the trial court acknowledged that Mother had participated in substance abuse treatment, it also found "that some of [Mother's] testimony was self-serving and not credible." Appellant's Appendix Volume II at 116.