

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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In re the Involuntary  
Termination of the Parent-Child  
Relationship of E.R. (Minor  
Child) and K.R. (Mother),  
*Appellant-Respondent*,

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*

October 18, 2022

Court of Appeals Case No.  
22A-JT-941

Appeal from the Howard Circuit  
Court

The Honorable Lynn Murray,  
Judge

Trial Court Cause No.  
34C01-2112-JT-505

**Crone, Judge.**

## Case Summary

- [1] K.R. (Mother) appeals the involuntary termination of her parental rights to her minor child E.R. We affirm.

### Facts and Procedural History

- [2] Mother and R.R. (Father)<sup>1</sup> are the parents of E.R., born on December 18, 2020. On December 22, 2020, the Indiana Department of Child Services (DCS) received a report that E.R. tested positive at birth for methamphetamine and Mother's prescribed Subutex. Mother checked herself out of the hospital against medical advice, and hospital staff reported their concerns that Mother had been using illegal drugs in her hospital room. Mother had a history with DCS involving four of her other children due to her substance abuse and "drug exposed infants." Tr. Vol. 2 at 8.<sup>2</sup> DCS family case manager (FCM) Constance Peterson contacted Mother by phone, but Mother was "largely uncooperative and argumentative" and was not "forthcoming regarding" where she was living. Appellant's App. Vol. 2 at 41. DCS removed E.R. from both parents'

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<sup>1</sup> Although Father's parental rights were also terminated, he does not participate in this appeal.

<sup>2</sup> The record indicates that Mother has had six children and she has never "maintained primary care and custody of these [c]hildren." Appellant's App. Vol. 2 at 47. B.R. and K.F. were adjudicated CHINS in 2014 due to Mother's substance abuse issues. Mother consented to their adoption after the initiation of termination proceedings. Child M.F. was adjudicated a CHINS in 2016 due to medical issues, Mother's noncooperation with medical providers, and Mother's incarceration. Mother's parental rights to M.F. were involuntarily terminated in 2019, and M.F. was adopted. Another of Mother's children, E.F., was adjudicated a CHINS shortly after birth due to significant medical issues and Mother's neglect. E.F. passed away during the pendency of those CHINS proceedings.

care and filed a petition alleging that E.R. was a child in need of services (CHINS).

- [3] On March 1, 2021, the trial court adjudicated E.R. a CHINS. Following a dispositional hearing, the trial court ordered Mother to participate in rehabilitative reunification services. E.R. was placed in the care of her maternal great-grandmother. The trial court approved Mother also residing in the home as long as she complied with court-ordered drug screens and substance abuse treatment. Although Mother initially submitted some drug screens and complied with some case management services, by the end of March 2021, Mother became increasingly noncompliant with services.
- [4] A modification hearing was held in April 2021. DCS demonstrated that Mother had been using illegal substances, refused drug screens, and brought illegal substances into the home where E.R. was residing. The trial court ordered Mother to no longer reside in the home with E.R.
- [5] At a June 2021 review hearing, Mother failed to appear; however, counsel appeared on her behalf. The evidence indicated that Mother had not maintained contact with DCS, engaged in reunification services, submitted drug screens, or visited with E.R. DCS FCM Paula Shelley stated that she was able to contact Mother, but Mother refused to meet with Shelley or provide any information regarding where she was residing. The trial court approved a concurrent permanency plan that included adoption.

[6] Mother again failed to appear for a September 2021 review hearing. Counsel appeared on her behalf. The trial court found that Mother had continued to have little to no contact with DCS, was not participating in services, and had not visited with E.R. Indeed, Mother had not seen E.R. since she had been ordered to move out of the maternal great-grandmother's home in April 2021. At the time of the September hearing, E.R. had transitioned into a new relative placement home with her great-aunt and -uncle. This home was considered a long-term preadoptive placement. At a December 2021 permanency hearing, Mother appeared in custody, and with counsel, via video from the Howard County Jail. The trial court found that Mother had failed to engage in reunification services and visitation. In addition to her current incarceration, she had multiple pending criminal charges and no determinable release date.

[7] DCS filed a termination of parental rights petition on December 8, 2021. The trial court held a factfinding hearing on March 7, 2022. On March 28, 2022, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in E.R.'s removal and continued placement outside Mother's care will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship between Mother and E.R. poses a threat to E.R.'s well-being; (3) termination of the parent-child relationship between Mother and E.R. is in E.R.'s best interests; and (4) DCS has a satisfactory plan for E.R.'s care and treatment, which is adoption by her current placement. Accordingly, the trial court determined that DCS had proven the allegations of the petition to terminate by

clear and convincing evidence, and therefore it terminated Mother's parental rights. This appeal ensued.

## Discussion and Decision

[8] “The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.” *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). “[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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). DCS must prove that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In deference to the trial court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous.

*Id.* at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

[10] Mother’s sole specific challenge on appeal is to the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in E.R.’s

removal from and continued placement outside her care will not be remedied.<sup>3</sup> In determining whether there is a reasonable probability that the conditions that led to E.R.'s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention in foster care." *Id.* Second, "we 'determine whether there is a reasonable probability that those conditions will not be remedied.'" *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted),

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<sup>3</sup> Although Mother states in her brief that she is also challenging the trial court's conclusions that continuation of the parent-child relationship posed a threat to E.R.'s well-being and that termination of her parental rights was in E.R.'s best interests, she offers no argument on these issues. Failure to provide cogent argument results in waiver of the issues on appeal. See *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (noting that where parent fails to raise specific, cogent argument challenging trial court's conclusions, those challenges are waived on appeal), *trans. denied*; see also Ind. Appellate Rule 46(A)(8)(a).

*trans. denied.* The evidence presented by DCS “need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent’s behavior will not change.” *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, E.R. was initially removed from the home “due to her drug exposure at birth,” Mother’s “abandonment of her at the hospital,” Mother’s continued substance abuse, and Mother’s “inability or refusal to provide the necessities and stability needed” for E.R. Appellant’s App. Vol. 2 at 49. The evidence indicates that from the outset of the CHINS case, Mother has failed to consistently participate in offered reunification services. Mother continued to abuse drugs and commit crimes throughout the pendency of the CHINS proceeding. The trial court found that, in addition to Mother’s extensive criminal history, she was involved in four pending criminal matters from December 2020 to August 2021. Indeed, Mother was incarcerated several months before and remained incarcerated at the time of factfinding. Moreover, Mother has had longstanding involvement with DCS regarding her other children and has repeatedly demonstrated the inability to reform her behavior for the benefit of her children despite being offered numerous rehabilitative treatment opportunities. There is no question that Mother’s habitual pattern of substance abuse and criminal conduct has resulted in the continued neglect of E.R. such that “there is a substantial probability of future neglect or deprivation.” *K.T.K.*, 989 N.E.2d at 1234. Clear and convincing evidence supports the trial court’s conclusion that there is a reasonable probability that



the conditions that led to E.R.'s removal and continued placement outside Mother's care will not be remedied. Accordingly, we affirm the trial court's decision to terminate Mother's parental rights.

[12] Affirmed.

May, J., and Weissmann, J., concur.