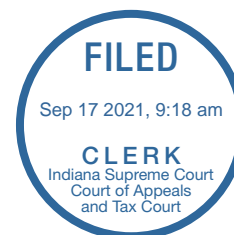


MEMORANDUM DECISION

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.



ATTORNEYS FOR APPELLANTS

Heather L. George Myers
Greenwood, Indiana

Carlos I. Carrillo
Greenwood, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Supervising Deputy Attorney
General

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

M.R. (Minor Child),

and

S.T. (Mother) & M.R. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,

September 17, 2021

Court of Appeals Case No.
21A-JT-379

Appeal from the Johnson Circuit
Court

The Honorable Andrew Roesener,
Judge

The Honorable Michael T. Bohn,
Magistrate

Trial Court Cause No.
41C01-2005-JT-24

Appellee-Petitioner.

Altice, Judge.

Case Summary

- [1] Mother and Father (collectively, Parents) each separately appeal from the involuntary termination of their parental rights to their child, M.R. (Child). Parents challenge the sufficiency of the evidence supporting the termination. Additionally, Mother contends that the trial court abused its discretion by denying her request for a continuance, which she made orally on the third day of the factfinding hearing. Mother also challenges the trial court magistrate's authority to enter the termination order.
- [2] We affirm.

Facts & Procedural History

- [3] During her pregnancy with Child, the Indiana Department of Child Services (DCS) was involved with Mother due to an open CHINS case concerning one of her older children, who was removed from her care. Mother tested positive for methamphetamine several times during her pregnancy, and Child was born

with methamphetamine in his system on August 12, 2018. As a result, Child was removed from Mother's care, and DCS filed a CHINS petition on August 16, 2018. Child was initially placed with Father, but Father tested positive for methamphetamine shortly thereafter. On August 24, 2018, the trial court ordered Child to be placed with his paternal grandmother (Grandmother) and Father to immediately vacate Grandmother's residence. Mother and Father were each granted supervised parenting time with Child. Additionally, DCS filed an amended CHINS petition, adding allegations related to Father's drug use.

[4] On September 4, 2018, Mother and Father entered into an Agreed Order on Facilitation (the Agreed Order) and admitted that Child was a CHINS as defined by Ind. Code § 31-34-1-1. Specifically, Parents admitted that

the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with the necessary food, clothing, shelter, medical care, education or supervision, and:

the child needs care, treatment or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court in that Mother and Father have substance abuse issues which need to be addressed.

Exhibit Log Vol. 3 at 29. The Agreed Order enumerated dispositional goals that included, among other things, maintaining safe, appropriate housing, remaining in weekly contact with the DCS family case manager (FCM), participating in

homebased case management, submitting to random drug screens, substance abuse assessments and recommended treatment, and refraining from using or distributing controlled substances.

[5] Dispositional services and programming for Parents were generally directed toward two principal goals: 1) obtaining and maintain appropriate housing and employment and 2) living a life free from addiction to illicit substances. To this end, DCS immediately and consistently referred case management services and substance abuse treatment services for both Mother and Father.

[6] Over the next two years of the CHINS case, Mother and Father each participated, to varying degrees, in several substance abuse programs but neither was able to fully complete treatment or maintain long-term sobriety. We will address each of their ongoing struggles with methamphetamine below.

[7] After Child's removal, Mother continued to test positive for methamphetamine through October 2018. She entered inpatient treatment at Centerstone on November 13, 2018, and began a brief period of sobriety, eventually transitioning to a treatment program with Volunteers of America (VOA) the following month. Mother, however, left VOA before completing the program and tested positive for methamphetamine on February 11, 2019.

[8] Following a period of relapse, Mother completed another intake at Centerstone in May 2019 but then relapsed again the next month. From June through September 2019, Mother failed to maintain contact with DCS, to participate in services, or to regularly submit to drug screens. She then tested positive for

methamphetamine on October 10, October 15, November 18, and November 27, 2019, and she missed other screens during this time.

[9] Mother entered an inpatient treatment program at Tara Treatment Center (Tara) on December 9, 2019, but left after nine days, against the advice of treatment providers. Mother then started an outpatient treatment program through Columbus Regional Hospital. She experienced her longest period of sobriety during this time but ultimately did not complete treatment and relapsed again in April 2020. Thereafter, Mother did not regain sobriety and tested positive for methamphetamine on May 11, June 16, June 18, June 23, July 14, August 20, September 16, October 8, and October 30, 2020. During this time, DCS referred Mother to VOA in July – at Mother’s request – but she did not complete the intake. She started a twenty-eight-day inpatient treatment program at Centerstone in August 2020 but left after a week.

[10] Father similarly engaged in various drug treatment programs but was unable to maintain more than about seventy consecutive days of sobriety. At the beginning of the CHINS case, he completed a detoxification program at Harbor Lights. He did not participate in the recommended aftercare program and quickly relapsed. He then entered inpatient treatment at Tara in December 2018 and, despite testing positive for methamphetamine on January 14, 2019, Father successfully completed the program on February 28, 2019. Father did not follow through with the recommended transitional living program, but he did complete the POPS program through Centerstone, which is a fatherhood

engagement program that assists fathers in treatment with housing, employment, and parenting skills.

[11] In March 2019, Father returned to using methamphetamine, testing positive on March 18, April 12, April 16, April 18, and May 13. Thereafter, he failed to maintain contact with DCS, participate in services, or submit to random drug screens for several months. Father was later criminally charged with dealing in methamphetamine, which allegedly occurred in April 2019. When Father again submitted to testing during this period of relapse, he tested positive for methamphetamine on September 19, 2019.

[12] On December 5, 2019, Father entered into Tara's inpatient treatment program and was successfully discharged on January 1, 2020. He then entered Serenity House, a recovery center, but was discharged after he relapsed and tested positive for methamphetamine at the end of March.

[13] On May 6, 2020, he entered another detoxification program at Wooded Glenn Recovery Center (Wooded Glen) but left after six days. He then tested positive for methamphetamine in June and July before reentering Wooded Glen in August 2020. Father was successfully discharged from Wooded Glen on September 7, 2020, but he immediately relapsed and tested positive for methamphetamine three days later. Although he completed an intake at Centerstone that same month, he did not follow through with the recommended substance abuse treatment. Rather, he moved into Oxford House, a halfway house for people with addictions that does not provide

treatment. Father tested positive for methamphetamine on October 8 and October 30, 2020.

[14] While Parents struggled with substance abuse issues throughout the CHINS case, which lasted more than two years, they were generally consistent with participating in parenting time and were loving, affectionate, and appropriate with Child. Father's parenting time, however, was never relaxed to unsupervised parenting time, and Mother had only a short period of unsupervised parenting time in June 2019 until a drug relapse resulted in the trial court switching it back to supervised parenting time, where it has since remained. Additionally, in November 2019, the trial court suspended parenting time for both Mother and Father until they tested negative for illicit substances for thirty days, which they were eventually able to do by early 2020.

[15] Parents' attendance at case management sessions was inconsistent over the life of the CHINS case. They also had a pattern of participating in services for a period of time followed by a period of failure to participate, which generally corresponded with each of their various relapses. Further, they each demonstrated the ability to obtain employment and "somewhat stable housing." *Appellants' Joint Appendix Vol. 2* at 92.

[16] In August 2019, during another period of limited compliance and repeated failed or missed drug screens, the trial court changed the permanency plan in the CHINS case from reunification to concurrent plans of reunification and adoption. Shortly thereafter, in October 2019, Child's placement changed from

Grandmother to a foster family, with whom Child continues to reside. Child's foster family wishes to adopt him.

- [17] On May 13, 2020, DCS filed the instant petition for the involuntary termination of the parent-child relationship between Parents and Child. The factfinding hearing commenced on July 23, 2020, at which Father appeared but Mother did not, ostensibly because she had entered an inpatient program at VOA that morning. After brief testimony, the trial court continued the hearing to October 30, 2020. In doing so, the court explained to Father:

There's been testimony that you have previously been in treatment, there have been relapses, those treatments have not worked out. I'm giving you basically three months, that's a little over ninety days to get your act together. If we show up October 30th and you know what, you were in treatment, you dropped out, it didn't [work] and you signed up for another one, you understand, I've given you all of the time you're going to get on this case? Understand?

Transcript at 25. Father responded affirmatively.

- [18] The factfinding hearing recommenced on October 30, 2020, and both Father and Mother appeared. After a substantial amount of testimony was presented, the hearing was scheduled for additional testimony on November 20, 2020. In the interim, the results of drug tests taken on the October hearing date came back positive for methamphetamine for both Mother and Father.
- [19] At the beginning of the final day of the factfinding hearing on November 20, Mother, by counsel, orally requested a continuance in order to allow her to

begin treatment at VOA on November 30. In denying the request, the trial court noted that there had been “a number of different times where [Mother] has gone inpatient.” *Id.* at 116. The trial court then indicated that the hearing had already been broken up over three days and that it did not want to continue the hearing another month or two. At the conclusion of the evidence, the trial court took the matter under advisement.

[20] On February 4, 2021, the trial court entered an order terminating Mother and Father’s parental rights with respect to Child. The order detailed the facts as set out above and then made, among others, the following factual conclusions:

18. Mother and Father used Methamphetamine at the beginning of the case and both continue to use Methamphetamine as recently as the month before the final fact-finding hearing.

19. The record provides clear evidence demonstrating [DCS’s] commitment in assisting Mother and Father to obtain sobriety.

20. During the life of the case, [DCS] made numerous referrals for substance abuse treatment, both in-patient and out-patient, for Mother and Father.

21. Mother and Father acknowledged their addiction and their failure to maintain long-term sobriety at the termination hearing.

22. Despite Father’s completion of multiple in-patient programs, and both Mother and Father’s plans to obtain and maintain sobriety, the parents continue to test positive for Methamphetamine on a regular basis.

23. As of today, unfortunately, neither Mother nor Father is any closer to completing the necessary substance abuse treatment.

24. Mother and Father also demonstrate a lack of insight into the severity of their addiction.

25. Mother and Father lack the important qualities of judgment and foresight that are integral to successful and responsible parenting.

26. The facts support the conclusion that Mother and Father have a genuine love for the minor child.

27. The Court's conclusion is that Mother and Father have appeared for parenting time at regular intervals during this case because of their love for the minor child.

28. Unfortunately, their love for the child is not enough to sustain the parent-child relationship.

29. While the parents have appeared for services during portions of the case, they have not made progress in those services.

30. Mother and Father continue to receive limited parenting time with the minor child and only on a supervised basis.

31. It is fair to conclude that neither parent is any closer to unsupervised parenting time with the minor child than they were at the beginning of the CHINS case.

32. Father is not actively participating in substance abuse treatment.

33. Mother stated she had a plan to commence treatment in the near future but was unable to articulate why she had not accomplished her dispositional goals up to this point.

34. The Court accords little weight to this belated attempt by Mother to remedy the cause of the child's removal and the principal reason for this case, drug addiction.

35. Returning the minor child to Mother and Father at this point would threaten both the emotional and physical development of the minor child.

36. The continued substance abuse by Mother and Father during the two (2) years since the child's birth demonstrate the parents' unwillingness and inability to meet their parental responsibilities.

37. The best interests of the minor child is served by terminating the parental rights of Mother and Father and allowing [the foster parents] to proceed with the adoption of the minor child.

Appellants' Joint Appendix Vol. 2 at 94-95.

[21] Mother and Father, separately, appeal from the trial court's termination order. Additional facts will be provided below as necessary.

Discussion & Decision

1. Sufficiency of the Evidence

[22] Both Mother and Father challenge the sufficiency of the evidence supporting the termination order. On review, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016).

Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[23] We recognize that the traditional right of parents to “establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. 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.*

[24] 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, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[25] On appeal, Parents contend that DCS failed to prove by clear and convincing evidence that the conditions that resulted in Child's removal were not likely to be remedied, that the continuation of the parent-child relationship posed a threat to Child's well-being, and that termination of parental rights was in Child's best interests. Notably, they do not challenge whether DCS presented sufficient evidence regarding the plan for Child's care and treatment following termination.

[26] Turning first to I.C. § 31-35-2-4(b)(2)(B), we observe that it is written in the disjunctive and, thus, requires the trial court to find only one of the three requirements of the subsection by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d at 209. Though the trial court found two of the requirements

satisfied in this case, we will focus our review on the determination that there is a reasonable probability that the conditions that resulted in Child's removal will not be remedied.

In making such a determination, the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. 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 A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)]. In addition, "[w]here 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." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

In re N.Q., 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[27] Neither Mother nor Father suggest that they were fit to care for Child at the time of the termination hearing or that they had successfully overcome their individual addictions to methamphetamine. Father simply directs us to his

multiple attempts to obtain sobriety through various treatment programs and notes that relapses are a common part of treatment. While he had not succeeded in maintaining sobriety, Father asserts that he had made progress on his other dispositional goals, such as housing¹ and stable employment, had engaged in homebased services, and had completed the POPS fatherhood engagement program.

[28] Similarly, Mother argues that although she was not ready to care for Child, she had made progress and had “not given up on her desire to attain sobriety.” *Mother’s Appellant’s Brief* at 25. She blames “extraneous circumstances” – the COVID-19 pandemic and a miscarriage – for derailing her sobriety in the spring of 2020. *Id.* She claims to have had “every intention” to start her intake at VOA on November 30, 2020, ten days after the final hearing, and claims further that the delay up until that point was “through no fault of her own as she lacked transportation” on the previously scheduled intake date just prior to the final day of the hearing. *Id.* Finally, Mother asserts that at the time of the final hearing, she had stable housing (living with her mother), had a strong, loving bond with Child, and was consistently visiting Child and engaging in homebased services.

¹ It is undisputed that Father lived at Oxford House at the time of the final hearing. The evidence establishes that this is a “halfway house for people struggling with addictions”, “ not a treatment center[.]” *Transcript* at 132. Contrary to his suggestion on appeal, there is no indication in the record that Oxford House offered substance abuse treatment or that Father was engaged in any such treatment at the time of the final hearing. Further, Father does not suggest that he could live with Child at Oxford House.

[29] We reject Parents' invitations to reweigh the evidence. The trial court recognized the repeated attempts Mother and Father made to treat their serious substance abuse issues and acknowledged their genuine love for Child. After two years and a number of treatment opportunities, however, Mother and Father still regularly tested positive for methamphetamine – *including on the second day of the factfinding hearing* – and were not any closer to obtaining long-term sobriety. They each had a pattern of starting treatment, obtaining sobriety for a short period of time, and then relapsing. Further, although they had engaged in homebased services, FCM Harpreet Gill testified that Parents had not made meaningful progress, and two years later, they still only had supervised parenting time with Child due to their inability to maintain sobriety. FCM Gill testified that she believed it unlikely, based on their continued use of illegal substances, that Parents would be able to remedy the reasons for Child's removal. In opining that termination was in Child best interests, the CASA testified that she believed Parents had been given enough time to address their issues with substance abuse. Finally, we observe that it was well within the trial court's discretion to give little weight to Mother's last-minute attempt to, yet again, obtain treatment.

[30] The trial court aptly found that Parents' continued substance abuse in the two years since Child's birth demonstrates their unwillingness or, more likely, inability to meet their parental responsibilities. The sad reality is that love is not always enough. Ample evidence supports the conclusion that there is a

reasonable probability that the conditions that resulted in Child's removal will not be remedied.

[31] As set forth above, Parents also challenge the sufficiency of the evidence supporting the trial court's determination that termination of parental rights is in Child's best interests. In making such a determination, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013). The court must subordinate the interest of the parent to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *McBride*, 798 N.E.2d at 199. Our Supreme Court has explained that "[p]ermanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). "Moreover, we have previously held that the recommendations of the case manager and court-appointed 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 interests." *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[32] This is not an instance in which parental rights were terminated solely because there was a better home available. On the contrary, Mother and Father were provided with numerous opportunities for treatment and, time and again, failed to maintain long-term sobriety. Their love for Child cannot be disputed, but that love, unfortunately, has not been enough for them to overcome their addictions – the main barrier to reunification. In fact, after more than two years

of services, they both tested positive for methamphetamine on the second day of the factfinding hearing. As counsel for the CASA observed below, it is not in Child's best interests to be "put into a waiting game forever. Being a sober parent is a lifetime commitment, and not just three to four months." *Transcript* at 194.

[33] Due to Parents' inability, separately or together, to provide a drug-free home, Child has been out of their care since shortly after his birth in August 2018 and has been with his current foster family, in a preadoptive home, since he was about one year old. Under the circumstances, both FCM Gill and the CASA recommended the termination of parental rights and opined that giving Parents more time to seek treatment was not in Child's best interests. The evidence was sufficient to show by clear and convincing evidence that termination was in Child's best interests.

2. Denial of Motion to Continue

[34] Mother also argues that the trial court abused its discretion when it denied her motion to continue the factfinding hearing for another sixty days. Mother contends that the request for a continuance was made for good cause – she was scheduled to enter inpatient treatment at VOA in ten days – and that she was prejudiced by the denial of her request.

[35] The decision whether to grant a motion to continue rests within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *Rowlett v. Vanderburgh Cty. Office of Family & Children*, 841 N.E.2d

615, 619 (Ind. Ct. App. 2006), *trans. denied*; see also *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993) (“Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each case. An abuse of discretion may occur if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court....”). An abuse of discretion may be found in the denial of such a motion when the moving party has shown good cause for granting the motion, but no abuse of discretion will be found when the moving party fails to demonstrate that he or she was prejudiced by the denial. *In re K.W.*, 12 N.E.3d 241, 244 (Ind. 2014).

[36] Mother’s oral request for a continuance was made at the beginning of the third day of the factfinding hearing on November 20, 2020. Counsel informed the court that Mother “had the opportunity beginning on the 30th to go into an additional program for some substance abuse help” and would like a continuance to complete that program. *Transcript* at 115. Additionally, counsel indicated that the only remaining witnesses to be called were Parents, FCM Gill, the CASA, and possibly the foster parents.

[37] We observe that at the time of the request, Child had been out of Parents’ care for over two years, the termination proceedings had been pending for more than six months, and the termination factfinding hearing had been ongoing for nearly four months. After prior failed attempts at treatment and relapses during the CHINS case, Mother had been scheduled to enter inpatient treatment on July 23, 2020, the first day of the hearing, though she did not follow through with said treatment. Nor did she comply with treatment the following month at

Centerstone – leaving after only a week. Thereafter, she then tested positive for methamphetamine on the second day of the hearing on October 30, 2020.

Then, after missing an opportunity in early November to enter inpatient treatment because she allegedly lacked transportation, Mother made an eleventh-hour request at the November 20 hearing for a continuance of sixty days. Under the circumstances of this case, the trial court was well within its discretion to deny Mother’s request to continue the case to give her yet another attempt to treat her addiction to methamphetamine.

3. Authority of Magistrate

[38] Finally, Mother contends, in passing and for the first time on appeal, that the termination order should be vacated because it was signed only by the trial court magistrate, not the trial court judge. In addition to the obvious problem of waiver, Mother’s argument is fatally flawed because it relies on statutory provisions that no longer exist. *See* Ind. Code § 33-23-5-9 (repealed in July 2020 by P.L. 162-2020); I.C. § 33-23-5-8 (amended, as relevant here, in 2018 and 2019). The statutes applicable here provide that “a magistrate has the same powers as a judge” except for “the power of judicial mandate.” I.C. § 33-23-5-8.5 (added by P.L. 162-2020; effective July 1, 2020); I.C. § 33-23-5-8. Mother’s claim that the trial court magistrate lacked authority to enter the termination order is entirely without merit.

[39] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.