

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Termination  
of the Parent-Child Relationship  
of O.R. and O.B. (Minor  
Children)

and

B.B. (Mother),  
*Appellant-Respondent*,

v.

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

July 24, 2023

Court of Appeals Case No.  
23A-JT-304

Appeal from the Floyd Circuit  
Court

The Honorable Justin B. Brown,  
Judge

Trial Court Cause Nos.  
22C01-2206-JT-304  
22C01-2206-JT-305

**Memorandum Decision by Judge Bradford**  
Judges Riley and Weissmann concur.

**Bradford, Judge.**

## Case Summary

[1] B.B. (“Mother”) is the biological mother of O.R. and O.B. (collectively, “the Children”).<sup>1</sup> The Department of Child Services (“DCS”) became involved with the Children in October of 2019, after Mother had reported that the family would soon be homeless, she suffered from untreated mental illness, and she was afraid she might harm the Children. On October 24, 2019, DCS filed petitions alleging that the Children were children in need of services (“CHINS”). After Mother admitted that the Children were CHINS, the juvenile court adjudicated them as such and ordered Mother to complete certain services. DCS eventually petitioned to terminate Mother’s parental rights to the Children after she had failed to successfully complete the court-ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petitions. On appeal, Mother contends that DCS failed to present sufficient evidence to support the termination of her parental rights. We affirm.

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<sup>1</sup> The identities of the Children’s biological fathers are unknown and no one alleging to be either child’s father participates in this appeal.

## Facts and Procedural History

- [2] Mother is the biological mother of O.R., who was born on February 20, 2017, and O.B., who was born on July 12, 2019. On October 22, 2019, Mother contacted DCS and “requested DCS to remove [the Children] from her due to not having stable housing after October 25, 2019.” Ex. Vol. p. 22. At the time, Mother indicated that she was worried that she might harm the Children.<sup>2</sup> It was also believed that Mother was suffering from untreated mental illness, “the degree and significance of which, while untreated, pose[d] a threat to the health and safety of [the Children].” Ex. Vol. p. 22. On that date, the Children were removed from Mother’s care as “DCS was unable to provide efforts to prevent removal as a result of the emergency nature of the situation, in that the family was homeless and [M]other requested DCS take custody of her children because of mental health reasons.” Ex. Vol. p. 22. The juvenile court issued emergency custody orders on October 24, 2019, granting DCS custody of the Children.
- [3] During a hearing on November 12, 2019, Mother admitted that the Children were CHINS, and the juvenile court accepted Mother’s admission and adjudicated the Children to be CHINS. The juvenile court conducted a dispositional hearing on December 3, 2019, during which it ordered Mother to

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<sup>2</sup> Mother subsequently claimed that she had not really believed that she would harm the Children but that she had been told “to say some things” by maternal grandmother “so they would get taken away.” Tr. Vol. II p. 29.

complete certain services aimed at reunification. Mother failed to successfully complete the court-ordered services. Specifically, Mother did not maintain regular contact with DCS or provide any releases that would allow DCS to access her information. Mother did not complete case-management services, a parenting assessment, home-based services, or a psychological evaluation. Mother did not adequately address her mental-health issues. While Mother claimed to have been receiving independent counseling at “Seven Counties,” she did not allow DCS to access any records relating to her counseling and she only attended therapy for two weeks. Tr. Vol. II p. 35. Mother did not consistently attend visits with the Children, and when she did attend, she was often unprepared.

- [4] On June 17, 2022, DCS petitioned to terminate Mother’s parental rights to the Children. On February 8, 2023, following a two-day evidentiary hearing, the juvenile court terminated Mother’s parental rights to the Children.

## Discussion and Decision

- [5] “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. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be

subordinated to the best interests of the children. *Id.* Termination of parental rights is proper where the children’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[6] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[7] In deference to the juvenile court’s unique position to assess the evidence, we set aside the juvenile court’s findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* “A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it.” *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[8] Mother contends that the evidence is insufficient to support the termination of her parental rights to the Children. In order to support the termination of Mother's parental rights to the Children, DCS was required to prove the following:

- (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 ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services....
- (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). Mother argues that the evidence is insufficient to prove subsections (B) and (C).

## I. Subsection (B)

[9] It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions

listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court’s determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

When determining whether a reasonable probability exists that the conditions justifying a child’s removal and continued placement outside the home will not be remedied, the trial court must judge a parent’s fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In so doing, the trial court may consider the parent’s response to the services offered through [DCS]. 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. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability that the parent’s behavior will not change.

*In re B.J.*, 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008) (internal citations and quotations omitted), *trans. denied*.

[10] In challenging the juvenile court’s determination that the evidence is sufficient to show that it is unlikely that the conditions leading to removal would not be remedied, Mother does not specifically challenge any of the juvenile court’s findings on appeal, so they “must be accepted as correct.” *Madlem v. Arko*, 592

N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). Mother merely argues that the juvenile court’s findings “focus almost exclusively on [Mother’s] historical failures during the course of the CHINS and termination proceedings” and did not consider evidence of changed conditions that was allegedly presented during the termination hearing. Appellant’s Br. p. 16. We cannot agree, as we do not read the juvenile court’s order as focusing only on Mother’s historical failures rather than the totality of Mother’s actions throughout the CHINS and termination proceedings, up to and including the time of the evidentiary hearing.

[11] The Children were removed from Mother’s care in October of 2019, after Mother had reported to DCS that the family was about to be evicted from their home, she suffered from untreated mental illness, and she was concerned that she would harm the Children. The juvenile court ordered services and Mother’s participation in these services was sporadic, at best, with Mother “never substantially compl[y]ing with court-ordered and/or DCS referred services.” Appellant’s App. Vol. II pp. 73, 90.<sup>3</sup> In concluding that there was not a reasonable probability that the conditions that had resulted in the Children’s removal from Mother’s care would be remedied, the juvenile court found as follows:

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<sup>3</sup> The juvenile court issued nearly identical orders for the termination of Mother’s parental rights to each of the Children. The direct quote is found on the aforementioned pages of both orders. In quoting or citing the juvenile court’s orders, we will include the page number where the information can be found in both orders.



[Family Case Manager (“FCM”) Peyton Combs] managed [the Children’s] case[s] from April 2022 to the present. During her time on the case[s], Mother never substantially complied with court-ordered and/or DCS referred services. Specifically:

- a. Father remains unknown and has been uninvolved throughout the life of the CHINS case.
- b. Mother’s contact with FCM was sporadic at best.
- c. Mother did not substantially comply with the terms of the dispositional order.
- d. Mother’s housing situation has been unstable at least insofar as FCM Combs testified that Mother reported being evicted from her apartment at one time, and Mother testified at the [evidentiary hearing] that, since 2019, she had been at risk of eviction twice.
- e. Mother’s ability to maintain stable, legal income is unclear at best. FCM Combs testified that, through the life of the CHINS case, Mother has reported being hired by and/or working for various employers, including McDonald’s, Family Dollar, White Castle (or perhaps Walgreen’s), and at an airport. Mother testified at the [evidentiary hearing] that, since October 2019, she has held “three or four” jobs, and was never terminated from any of them, but rather that she “quit” them.
- f. Mother demonstrated a severe inconsistency with parenting time. She made fourteen (14) visits out of a scheduled thirty-two (32) over the life of the CHINS case. When her parenting time was formally suspended by the CHINS court, she made no serious effort to have them re-instated.

g. Mental health concerns remain ongoing and unaddressed. Mother never completed a psychological evaluation or parenting assessment, or regularly participated in therapy.

h. FCM Combs testified that Mother has indicated to DCS through an FCM on two separate occasions that she was interested in re-engaging with services, only to fail to do so afterwards.

i. More recently, Mother has suggested to FCM Combs that she is participating in therapy or counseling. However, when FCM Combs requested that Mother sign an appropriate release to allow FCM Combs to confirm this, Mother never did so.

j. Based on the above, [Mother was] unlikely to remedy the reasons for removal. The court finds that this testimony is credible and adopts the same as a finding of fact.

Appellant's App. Vol. II pp. 74–75, 90–91. The juvenile court further found that Mother had “demonstrated a serious lack of motivation to visit and spend parenting time with” the Children, even after having been made aware that her “lack of consistency was having a harmful effect on [O.B.]” Appellant's App. Vol. II pp. 75, 91.

[12] Again, in considering whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for her children at the time of the termination hearing and take into consideration

evidence of changed conditions. *In re D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. However, the juvenile court “must also evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Id.* (internal quotation omitted). Furthermore, DCS “is not required to provide evidence ruling out all possibilities of change; rather, it need only establish that there is a reasonable probability the parent’s behavior will not change.” *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013) (internal quotation omitted), *trans. denied*.

[13] The juvenile court’s findings support its conclusion that there was not a reasonable probability that the conditions that resulted in the Children’s removal from Mother’s care would be remedied. The Children were removed from Mother’s care due to a lack of stable housing and Mother’s untreated mental illness. While Mother claims that, as of the date of the evidentiary hearing, she had secured stable housing, Mother admitted that she had been at risk of eviction twice during the pendency of the proceedings. In addition, while Mother claimed to have sought treatment for her mental-health issues, she did not allow DCS access to verify her claims. As far as the evidence shows, Mother’s mental-health issues remained untreated as of the date of the evidentiary hearing. In making its findings, the juvenile court specifically found that FCM Combs’s testimony was credible and adopted it into its factual findings.

[14] The evidence is sufficient to support the juvenile court’s determination that there is a reasonable probability that the conditions resulting in the Children’s removal from Mother’s care will not be remedied. Mother’s claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879. Furthermore, to the extent that Mother argues that the juvenile court’s findings that the Children are in a more stable, better placement and that the Children lack a bond with Mother cannot form the basis of the juvenile court’s decision to terminate her parental rights to the Children, the record makes clear that the juvenile court did not base its decision on these findings but rather on the totality of the evidence, which sufficiently showed that Mother had not taken the necessary steps to remedy the conditions that led to the Children’s removal from her care and, based on Mother’s demonstrated pattern of behavior, the conditions were unlikely to be remedied.

## II. Subsection (C)

[15] We are mindful that in considering whether termination of parental rights is in the best interests of the child, the juvenile court is required to look beyond the factors identified by DCS and 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). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* “A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do the same supports a finding that termination of parental rights is in the best interests of

the children.” *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*.

The [juvenile] court need not wait until the [children are] irreversibly harmed such that [their] physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Additionally, [the children’s] need for permanency is an important consideration in determining the best interests of [the children], and the testimony of the service providers may support a finding that termination is in the [children’s] best interests.

*In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). The juvenile court concluded that termination of Mother’s parental rights was in the Children’s best interests. This conclusion was adequately supported by the evidence presented during the evidentiary hearing.

[16] FCM Combs testified that the Children had been removed from Mother’s care for “over three years” and “in the three years that this case has been open, [Mother] has done very little to no work to get the [C]hildren back. She has not put forth the effort, and thus I feel like the kids deserve to have permanency and know where they’re going to be forever.” Tr. Vol. II p. 78. FCM Combs further testified that the Children “don’t know [Mother]. They know [foster parents] as their mom and dad” and foster parents’ home and community as their home and community. Tr. Vol. II p. 78. FCM Combs added that since April of 2022, Mother

has never once asked me about the [C]hildren. She’s never asked to see them. She’s never asked to see a picture of them. She’s

never asked how they're doing. Any conversation that [Mother] and I have had about the [C]hildren has been initiated by me. I showed her a picture when we met face-to-face in June of 2022, but that was because I asked her if she wanted to see a picture of her children.

Tr. Vol. II p. 79.

[17] Furthermore, when asked whether she had “any specific recommendations to the Court as to whether or not it’s in the [C]hildren’s best interest for [Mother’s] parental rights to be terminated,” the Children’s court-appointed special advocate (“CASA”) Kerma Hopewell testified that the Children were “very well bonded” to their foster family, who wished to adopt them, and that she “fervently” believed that the Children would suffer harm in they were to be removed from foster parents’ home. Tr. Vol. II p. 124. CASA Hopewell further testified that given the lack of consistent visitation with Mother, the Children did not have a strong bond with Mother and that the Children were well-behaved and reacted well to correction and direction from their foster parents. The juvenile court specifically found FCM Combs’s and CASA Hopewell’s opinions regarding the best interests of the Children and the Children’s need for stability to be credible and sufficiently supported by the record. Upon reviewing the record, we reach the same conclusion.

[18] Again, to the extent that Mother argues that the juvenile court’s findings that the Children are in a more stable, better placement and that the Children lack a bond with Mother cannot form the basis of the juvenile court’s decision to terminate her parental rights to the Children, the record makes clear that the

juvenile court did not base its decision regarding the Children's best interests on these findings alone but rather on the totality of the evidence, which sufficiently showed that Mother had not adequately addressed her mental-health issues or completed the court-ordered services aimed at reunification and had not demonstrated the ability to provide the Children with adequate care or a stable home.

[19] We also disagree with Mother's assertion that the juvenile court could not consider the lack of a bond between Mother and the Children merely because of the young ages of the Children. In support of this assertion, Mother cites the Indiana Supreme Court's decisions in *In re I.A.*, 934 N.E.2d 1127, 1135–36 (Ind. 2010) and *In re G.Y.*, 904 N.E.2d 1257, 1263–65 (Ind. 2009). However, these cases are easily distinguished from Mother's case because, unlike in *I.A.*, Mother was presented with a clear case plan that included numerous court-ordered services and opportunities for visitation with the Children but Mother, of her own volition, failed to complete said services or to consistently take advantage of opportunities to spend time with the Children, and unlike in *G.Y.*, there is no indication in the record that Mother was denied the opportunity to participate because of her incarceration for an unrelated criminal offense. The record clearly demonstrates that DCS provided Mother with ample opportunities to spend time with and form a bond with the Children but that Mother, by her own actions, failed to take advantage of these opportunities.

[20] Upon review, we conclude that FCM Combs's and CASA Hopewell's testimony and recommendations, coupled with the evidence demonstrating that

Mother has not successfully completed the court-ordered services and the Children's need for permanency, are sufficient to support the juvenile court's determination that termination of Mother's parental rights is in the Children's best interests is supported by sufficient evidence. *See Lang*, 861 N.E.2d at 374 (providing that the testimony of the case worker, GAL, or a CASA regarding the children's best interests supports a finding that termination is in the children's best interests). Mother's claim to the contrary again amounts to nothing more than an invitation for this court to reweigh the evidence, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[21] The judgment of the juvenile court is affirmed.

Riley, J., and Weissmann, J., concur.