

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-  
Child Relationship of:

A.M. (Minor Child)

and

B.M. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

January 27, 2023

Court of Appeals Case No.  
22A-JT-1893

Appeal from the Howard Circuit  
Court

The Honorable Lynn Murray,  
Judge

Trial Court Cause No.  
34C01-2203-JT-90

**Mathias, Judge.**

[1] B.M. (“Mother”) appeals the Howard Circuit Court’s termination of her parental rights over her minor child, A.M. (“Child”).<sup>1</sup> Mother raises a single issue for our review, which we restate as the following three issues:

1. Whether the conditions that resulted in Child’s removal from Mother’s care were likely to be remedied.

2. Whether termination of Mother’s parental rights was in Child’s best interests.

3. Whether the Indiana Department of Child Services (“DCS”) established a satisfactory plan for Child’s care and treatment.

[2] We affirm.

## **Facts and Procedural History**

[3] On March 17, 2021, Mother gave birth to Child at her home. The next day, she took Child to a nearby hospital, where providers observed Child to be exhibiting apparent withdrawal symptoms. While at the hospital, Child’s cord blood tested positive for amphetamine, methamphetamine, cocaine-benzoyllecgonine, fentanyl, morphine, codeine, and a distillate of heroin. Mother checked out of the hospital against medical advice the next day. She did not take Child with her.

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<sup>1</sup> Child’s father is deceased.

- [4] DCS filed a petition alleging Child to be a Child in Need of Services (“CHINS”) based on Mother “heavily using drugs for the past five or six years and . . . daily throughout her pregnancy.” Appellant’s App. Vol. 2, p. 84. DCS also alleged Mother’s residence, a camper that “may or may not have [had] running water” and was “so cluttered that you [could] barely walk through it,” was unsuitable for Child. *Id.* Mother stipulated Child to be a CHINS, and the court ordered her to participate in numerous services, including inpatient addiction treatment, not using illicit substances, obtaining mental health treatment, and maintaining suitable housing.
- [5] Following a dispositional hearing about one month later, the court authorized Child to be placed with Mother at Volunteers of America (“VOA”), an inpatient addiction treatment center. However, two days later, DCS learned that Mother had left her placement at VOA against medical advice. She left Child with care providers at VOA. At DCS’s request, the court ordered Child placed in foster care.
- [6] Mother failed to appear at the next two dispositional hearings, made “minimal progress with providers,” and “was not participating in any mental health or substance abuse treatment.” *Id.* at 150. Further, although Mother had participated in fully supervised visits with Child, Mother “demonstrated great difficulty in understanding the Child’s special needs and developmental delays[.]” *Id.* Mother’s “treatment team expressed great concern regarding any unsupervised contact . . . due to [Mother’s] untreated mental health issues,” which included “auditory and visual hallucinations” and a struggle with

maintaining focus. *Id.* at 150-51. Mother was also largely “non-compliant” with obtaining substance abuse and mental health treatment. *Id.* at 151. Child, meanwhile, “was doing well in her foster home where all of her needs were being well met.” *Id.* at 150.

[7] Thereafter, DCS filed its petition to terminate Mother’s parental rights over Child. At the fact-finding hearing on that petition, two family case managers testified to Mother’s history of substance abuse, her mental health, and her noncompliance with treatment. Family Case Manager (“FCM”) James Shelton and Child’s Court-Appointed Special Advocate (“CASA”) Madison Reed both testified that termination of Mother’s parental rights was in Child’s best interests. Mother testified that she was living in the home of her ex-husband, that she had regularly participated in visitation with Child, and that she had repeatedly passed drug screens during the CHINS proceedings.

[8] Following the fact-finding hearing, the court found in relevant part as follows:

32. While [Mother] has been able to maintain her sobriety . . . , [she] has been wholly unwilling to engage in mental health treatment and has only recently become partially, and very minimally[,] compliant with her recommended substance abuse treatment. [Mother] did complete her initial mental health intake, but [she] was unwilling to follow through with the recommendations of the same. Further, [Mother] has acknowledged a significant and long history of illegal substance use and trauma in her life, but [she] has wholly refused to address either through therapeutic services to ensure that the sobriety she has achieve[d] can be maintained long term. Further, for the majority of the case, [Mother] has been suffering from auditory and visual hallucinations and has not only failed to address

these[] but[,] at the time of the hearing on this matter, denied them occurring while showing signs of auditory hallucinations.

33. Throughout the life of the case, [Mother] has consistently met with home based case management with two of her primary goals being to obtain independent housing and to obtain a stable source of income. While [Mother] has resided with and been financially supported by [her ex-husband] throughout the majority of the case, [Mother] herself indicated on multiple occasions that obtaining independent housing and income would be necessary in order to reunify, yet [she] has made no real effort to do either.

34. While [Mother] has made little progress throughout the case, the Child has been thriving in her foster placement . . . .

*Id.* at 155. The court then terminated Mother's parental rights over Child. This appeal ensued.

## Standard of Review

- [9] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* 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.*

[10] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[11] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code § 31-35-2-4(b)(2)* (2021). We need only discuss three of those elements in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside of Mother’s home will not be remedied;<sup>2</sup> (2) whether termination of Mother’s parental rights

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<sup>2</sup> DCS needed only to prove one of the elements listed in *Indiana Code § 31-35-2-4(b)(2)(B)*. Thus, given our disposition as to the conditions that resulted in Child’s removal under *subsection (B)(i)*, we need not address Mother’s additional argument under the “threat” prong of *subsection (B)(ii)*.

was in Child's best interests; and (3) whether DCS established a satisfactory plan for the care and treatment of Child. I.C. § 31-35-2-4(b)(2)(B)(i), (C), & (D).

[12] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

## 1. Reasons for Child's Removal

[13] We initially address Mother's argument that DCS failed to prove that there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued

placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[14] Here, Child was removed from Mother’s care shortly after birth when Child tested positive for numerous illicit substances and Mother’s home was unsuitable for Child. Throughout the CHINS proceedings, Mother was unwilling to seek therapy to resolve her years-long abuse of controlled substances and to ensure that any progress she had made would be maintained. She also did not take appreciable steps toward obtaining independent housing or becoming financially independent. Further, she failed to obtain adequate mental-health treatment, and, at the time of the fact-finding hearing on the termination petition, she denied suffering from hallucinations.

[15] Still, Mother asserts on appeal that the trial court’s conclusion that the conditions that resulted in Child’s removal will not be remedied is clearly erroneous based on her testimony at the fact-finding hearing. But Mother’s arguments on appeal simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s finding that the conditions that resulted in Child’s removal will not be remedied are supported by the record. We therefore affirm the trial court’s judgment on this issue.

## **2. Child’s Best Interests**

[16] Mother also argues on appeal that termination of her parental rights is not in Child’s best interests. A court’s consideration of whether termination of parental rights is in a child’s best interests is “[p]erhaps the most difficult

determination” a trial court must make in a termination proceeding. *E.M.*, 4 N.E.3d at 647. When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child’s need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648.

- [17] Testimony from both the case manager and an advocate for the child, combined with evidence that there is a reasonable probability that the reasons for a child’s removal are not likely to be remedied, has regularly been found to be sufficient to support a trial court’s determination that termination is in a child’s best interests. *See A.D.S.*, 987 N.E.2d at 1158-59. Here, both FCM Shelton and CASA Reed testified that termination of Mother’s parental rights was in Child’s best interests, and, as explained above, DCS presented sufficient evidence to show that there is a reasonable probability that the reasons for Child’s removal are not likely to be remedied. Mother’s argument to the contrary on this issue again simply seeks to have this Court reweigh the evidence, which we will not do. The trial court’s judgment on this issue is affirmed.

### 3. Satisfactory Plan

- [18] Last, we address Mother’s argument that DCS failed to show a satisfactory plan for the care and treatment of Child. On this issue, DCS is only required to

establish that “there is a satisfactory plan for the care and treatment of the child” in termination proceedings. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009) (citation omitted). And this Court has held that adoption is a “satisfactory plan” for the care and treatment of a child under the termination of parental rights statute. *Id.* (citation omitted). Here, the court found that DCS had a satisfactory plan in place for the care and treatment of Child because DCS intended to have Child be adopted.

- [19] Mother argues that DCS failed to establish a satisfactory plan of adoption because DCS did not show “who would adopt” Child “or even that any person(s) at this time have been identified as willing to adopt” Child. Appellant’s Br. at 15. But Mother’s argument is contrary to law. We have long recognized that DCS is not required to establish at a termination hearing that there is “a specific family in place to adopt” a child. *Lang v. Starke Cnty. Ofc. of Fam. & Child.*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*. We therefore again affirm the trial court’s judgment.

## Conclusion

- [20] For all of the above stated reasons, we affirm the trial court’s termination of Mother’s parental rights.
- [21] Affirmed.

May, J., and Bradford, J., concur.