

## 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 Termination of the  
Parent-Child Relationship of  
M.M. (Minor Child) and

S.D.(Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

October 18, 2021

Court of Appeals Case No.  
21A-JT-840

Appeal from the Monroe Circuit  
Court

The Honorable Stephen R. Galvin,  
Judge

Trial Court Cause No.  
53C07-2009-JT-497

**Mathias, Judge.**

[1] S.D. (“Mother”) appeals the Monroe Circuit Court’s order terminating her parental rights to her daughter, M.M. Mother raises two arguments: (1) the trial court violated her due process rights by conducting the termination hearing via Zoom; and (2) the court clearly erred in concluding that terminating Mother’s parental rights was in M.M.’s best interests.

[2] We affirm.

### **Facts and Procedural History**

[3] M.M. was born to Mother and A.M. (“Father”) on March 30, 2008.<sup>1</sup> Throughout much of M.M.’s life, Mother struggled with drug addiction and mental health issues. *See Ex. Vol.* at 90, 102, 106. The Department of Child Services (“DCS”) first became involved with M.M. in October 2019 when DCS filed a petition alleging M.M. was a child in need of services (“CHINS”) based on Mother’s (1) continued methamphetamine use, (2) failure to take prescribed anti-psychotic medication, and (3) aggressive behavior with her husband, M.M.’s stepfather, B.D. (“Stepfather”). *See id.* at 64.

[4] A few weeks after DCS filed the CHINS petition, Stepfather filed for a protective order against Mother due to her violent behavior. On one occasion, Mother “punched him in the face and bit him on the cheek while he was driving.” *Id.* at 124. And another time, Mother “ripped [a] TV off the wall,

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<sup>1</sup> Father consented to M.M.’s adoption and does not participate in this appeal.

scratched him, and shoved her thumb in his eye.” *Id.* The trial court issued the protective order against Mother; and DCS subsequently removed M.M. from Mother’s care on an emergency basis, placing the child in Stepfather’s care “pending further hearing.” *Id.* at 122.

[5] On January 30, 2020, the trial court held a factfinding hearing on the petition and issued an order finding M.M. to be a CHINS. In that order, the court recognized Mother’s ongoing use of amphetamine, methamphetamine, and buprenorphine. *Id.* at 123–24. The court also noted that Mother had been “diagnosed with schizophrenia and schizoaffective disorder” which resulted in her “suffering from psychosis, auditory hallucinations, paranoia, and disorganized thinking.” *Id.* at 124. Mother, however, had declined recommended treatment and “stopped taking her medications.” *Id.* In fact, at the time of the hearing and order, Mother could not be located. *Id.*

[6] About ten days later, the court held a dispositional hearing, which Mother also did not attend, and issued an order imposing several requirements on Mother aimed at reuniting her with M.M. *See id.* at 129–30, 133–34. For example, Mother was required to timely submit to random drug screens, refrain from using illegal substances, obey the law, keep all appointments with service providers, address her mental health needs by following directions of medical professionals, take appropriate doses of prescribed medications, and maintain communication with the family case manager (“FCM”). *Id.* at 133–34. M.M., meanwhile, remained placed with Stepfather.

[7] During the four months following the court’s dispositional order, DCS provided Mother several services, including substance abuse treatment, parenting assistance, supervised visitation, mental health treatment, therapy, and homebased case management. *Id.* at 138–39. Mother, however, failed to participate in any services; she instead continued using illegal drugs, violated the protective order, and was arrested three times. *Id.* at 4, 16, 18, 27, 40, 46, 139. Mother was ultimately incarcerated in June 2020.

[8] While incarcerated, Mother worked with a recovery coach in a program that “focuse[d] on addiction.” Tr. pp. 42, 46. And Mother did “really well in the program” while in jail. *Id.* at 42. When she was released in August, the recovery coach believed that Mother “had more of [a] mental health need than an addiction need.” *Id.* But in the subsequent months, Mother started using methamphetamine and did not adequately address her mental health needs. She did not consistently take her medications, she requested medications that would exacerbate her diagnoses, she missed several appointments with various service providers, she did not complete regular drug screens, and she did not maintain regular communication with the FCM. *See id.* at 21, 23–26, 42, 44–45, 68–69, 71, 78, 81, 84, 88–89, 98–99; Ex. Vol. at 143, 148.

[9] Meanwhile, twelve-year-old M.M. was placed with the Stewart family, where she “really started thriving.” Tr. pp. 55–56. She excelled academically and engaged in extracurricular activities. Further, M.M. developed good relationships with the other children in the home and expressed a desire “to be with the Stewart family” permanently. *Id.* at 58, 95, *see also* Ex. Vol. at 145.

[10] On September 15, DCS filed a petition to terminate Mother’s parental rights to M.M. The trial court held an evidentiary hearing on the petition on March 29, 2021. At the outset of the hearing, which was conducted via Zoom due to the COVID-19 pandemic, Mother participated “on someone else’s phone.” Tr. p. 3. Concerned with Mother’s inability to see the parties, the court arranged for DCS to pick up Mother and transport her to the DCS offices where she could use a computer. DCS complied, and the court reconvened the hearing later that afternoon. Then, before DCS called any witnesses, Mother’s counsel objected to the trial court “holding [the hearing] via Zoom” and identified several concerns. *Id.* at 11. In response, the trial court addressed each concern and concluded that Mother would “not be prejudiced by the use [of] Zoom.” *Id.* at 12–13. Ultimately, the court found “good cause” for conducting the hearing remotely and overruled the objection. *Id.* at 13.

[11] During the hearing, the trial court heard testimony from Mother, several service providers, the FCM, and M.M.’s Court Appointed Special Advocate (“CASA”). At the conclusion of the hearing, the court took the matter under advisement. Then, about ten days later, the court entered a detailed order terminating Mother’s parental rights. She now appeals.

### **Standard of Review**

[12] Mother raises two arguments on appeal, each of which implicates a different standard of review. Mother first argues that the trial court’s decision to conduct the termination hearing via Zoom violated her due process rights. This

argument presents a question of law that we review de novo. *See, e.g., P.S. v. T.W.*, 80 N.E.3d 253, 255 (Ind. Ct. App. 2017).

[13] Second, Mother contends that the trial court erred in terminating her parental rights, arguing that DCS failed to present sufficient evidence to support the court's conclusion that termination was in M.M.'s best interests. In addressing this claim, we neither reweigh the evidence nor assess witness credibility, and we consider only the evidence and reasonable inferences favorable to the trial court's judgment. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* To make that determination we apply a two-tiered standard of review to the 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, and 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 decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[14] With this guidance in mind, we address Mother's arguments in turn.

***I. Conducting the termination hearing via Zoom did not violate Mother's due process rights.***

[15] It is well settled that termination of parental rights is a “unique kind of deprivation,” and thus, when DCS seeks to terminate parental rights, it must do so in a manner that comports with due process. *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981)).

Though the phrase “due process” lacks a precise definition, it “embodies a requirement of fundamental fairness.” *Id.* (quotation omitted). This requirement includes “the opportunity to be heard at a meaningful time and in a meaningful manner.” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Whether a termination hearing comports with due process hinges primarily on “the risk of error created by” the challenged action. *C.G.*, 954 N.E.2d at 918.

[16] As noted above, Mother's due process challenge is centered on the trial court's decision to conduct the termination hearing via Zoom. Mother maintains that “[t]ermination of parental rights is a very serious matter that must be handled with the utmost care and respect for the parents' rights.” Appellant's Br. at 8. We wholeheartedly agree. But Mother has failed to show that the court's decision to conduct the hearing via Zoom was fundamentally unfair.

[17] It is undisputed that the trial court held the termination hearing remotely in compliance with applicable administrative orders issued by our supreme court as a result of the COVID-19 pandemic. See *In re Admin. Rule 17 Emergency Relief for Ind. Trial Cts. Relating to the 2019 Novel Coronavirus (Covid-19)*, 155 N.E.3d

1191 (Ind. 2020).<sup>2</sup> And while we acknowledge that the nature of virtual proceedings is unavoidably different than that of in-person hearings, the trial court aptly observed that “utilizing Zoom has been established as a practice that ensures due process while minimizing the dangers [of] infection.” Tr. p. 12. Mother has presented no evidence disputing the court’s informed observation. She does not specify how the Zoom hearing affected the assistance provided by her counsel or her ability to present evidence or question witnesses. To be sure, Mother’s counsel raised hypothetical concerns when she objected below, but the court thoroughly addressed each of those concerns. *Id.* at 12–13.

[18] Yet, Mother contends that there were “multiple instances of various difficulties in using Zoom” throughout the hearing. Appellant’s Br. at 8. Our review of the record, however, belies Mother’s assertion. Each of the identified “difficulties” was quickly rectified and none of them affected Mother’s ability to meaningfully participate in the termination hearing: the trial court arranged for Mother to be picked up and transported to the DCS offices so she could participate in the hearing on a computer; video-feed issues with two witnesses were fixed before either witness testified; and the court briefly stopped the proceedings when Mother lost video and did not continue the hearing until her video-feed was restored. *See* Tr. pp. 4–9, 40–41, 54, 75–76. Notably, there is no indication that the trial court had difficulty in hearing or understanding any of

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<sup>2</sup> This order was extended on May 7, 2021, and remains in effect “until further order of the Court.” *In re Admin. Rule 17 Emergency Relief for Ind. Trial Cts. Relating to the 2019 Novel Coronavirus (Covid-19)*, 167 N.E.3d 289 (Ind. 2021).

the testifying witnesses. *Cf. K.D.H. v. Cabinet for Health and Fam. Servs.*, --- S.W.3d ----, 2021 WL 3008765, at \*8 (Ky. Ct. App. July 9, 2021) (finding a due process violation in conducting a termination hearing via Zoom “[g]iven the family court’s stated inability to hear and understand [the mother’s] testimony”).

[19] In short, the trial court’s decision to conduct the termination hearing remotely resulted in minimal risk of error, and Mother has failed to show that the court’s decision was fundamentally unfair. Accordingly, Mother has not persuaded us that the court violated her due process rights by conducting the termination hearing via Zoom. We now turn to Mother’s claim that the trial court clearly erred in concluding that termination of her parental rights was in M.M.’s best interests.

***II. The trial court’s best-interests conclusion is not clearly erroneous.***

[20] DCS was required to prove four elements by clear and convincing evidence before the court could terminate Mother’s parental rights. *Ind. Code § 31-35-2-4(b)(2)*. One of those elements, and the only inquiry relevant to Mother’s claim, is whether termination is in a child’s best interests. *I.C. § 31-35-2-4(b)(2)(C)*.<sup>3</sup>

[21] Deciding whether DCS has satisfied its burden on this element is “[p]erhaps the most difficult determination” a trial court must make in a termination

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<sup>3</sup> Mother does not argue that DCS failed to meet its burden on the other elements. *See* Appellant’s Br. at 8–12.

proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). 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. And, in doing so, the trial court must subordinate the interests of the parent to those of the child. *Id.* at 1155.

[22] Mother contends that “[t]he totality of the evidence does not support termination,” asserting that “the mere fact that [she] hasn’t fully participated in services is insufficient to find that the termination of the parent-child relationship is in the best interests of [M.M.]” Appellant’s Br. at 12.<sup>4</sup> The trial court, however, did not base its best-interests conclusion solely on Mother’s failure to fully participate in services. Rather, the court found that: (1) Mother has repeatedly demonstrated an inability to “provide a safe and stable home” for M.M.; (2) M.M. “wants to be adopted by” the Stewarts, a placement where she “is thriving”; and (3) M.M.’s therapist and CASA “believe that termination of parental rights and adoption” is in the child’s best interests. Conf. App. Vol. II, p. 27. Ample evidence supports those findings, which in turn supports the court’s best-interests conclusion.

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<sup>4</sup> Mother also supports this argument by challenging the trial court’s following finding: “[Mother] has been offered extensive services to address her mental health needs and substance abuse needs since 2016. She has failed to participate in the services.” Conf. App. Vol. II, p. 27. There are two problems with Mother’s challenge to this finding. First, it supported the court’s conclusion that “[t]here is a reasonable probability that the conditions which resulted in [M.M.’s] removal will not be remedied.” *Id.* And Mother does not dispute that conclusion on appeal. Second, though it is true that Mother partially complied with some services, substantial evidence identified in this opinion reveals that Mother has not meaningfully engaged in the “extensive services” offered to “address her mental health needs and substance abuse needs.” *Id.*

- [23] We turn first to the evidence supporting the trial court’s finding regarding Mother’s inability to provide a safe and stable home for M.M. Mother’s inability is tied directly to her habitual drug use and inconsistent treatment of her serious mental health issues. From the time M.M. was removed from the home until Mother’s June 2020 incarceration, Mother did not participate in services, used illegal drugs, and was arrested three times. Two of those arrests were for drug-related offenses. While Mother did well in an addiction-focused program when she was incarcerated, her conduct upon release in August 2020 further demonstrates her inability to provide M.M. with a safe and stable home.
- [24] Within two weeks of being released, Mother reported to her recovery coach that she had used methamphetamine. Tr. p. 42. Around the same time, Mother also stopped taking “her medications consistently” resulting in “increased paranoia.” *Id.* She expressed to her recovery coach “a fear of negative entities.” *Id.* at 44. In the following months, Mother missed seven scheduled meetings with her recovery coach and stopped all attendance about two months prior to the termination hearing.
- [25] During this same time, Mother attended three of six scheduled meetings with a psychiatrist. In the first meeting, October 2020, the psychiatrist recommended that Mother “be involved in [] weekly therapy and addiction services,” that she have regular “drug screens,” that she avoid methamphetamine and other illegal drugs, and that she “take anti-psychotic medication.” *Id.* at 77. Mother did not comply with these recommendations. When she returned for a second appointment a month later, Mother was “continuing to struggle” and “had

missed a number of therapy sessions.” *Id.* at 78. At that appointment, Mother “wanted [] amphetamine,” which concerned the psychiatrist because stimulants are “likely to worsen [Mother’s] schizophrenia.” *Id.* at 82. The psychiatrist prescribed other medication instead, and also offered Mother “a monthly anti-psychotic medication.” *Id.* at 88. But Mother “was opposed” to the monthly medication, and she missed her next three appointments. *Id.* Mother returned in March 2021, about a week before the termination hearing, where she reported that “she saw things that could happen” and “heard some[]things.” *Id.* at 90. Ultimately, the psychiatrist opined that Mother is not “committed to treatment” for either her mental health or addiction issues. *Id.* at 82–83.

[26] Mother’s testimony further supports the court’s finding that she is unable to provide a safe and stable home for M.M. Mother reported that she does not have “any of my medicine right now” and that, recently, she “accidentally” threw away an entire bottle of her schizophrenia medication. *Id.* at 111–12. At one point, DCS asked about a “guy” that Mother had referred to previously as “like a demon” who reportedly “hack[ed] [her] phone” and sent a message to her recovery coach. *Id.* at 27–28. Mother indicated that she did not know whether this “guy” is “a demon” but noted there’s “something about him” that makes her “feel crazy.” *Id.* at 28. Though Mother conveyed that she was currently sober, *id.* at 113, she also revealed that she had used methamphetamine within the month, *id.* at 28. And Mother opined, “[E]ven if I was getting high, as long as it was supervised[,] I should still see my kids.” *Id.* at 113.

[27] The evidence also supports the trial court’s finding that M.M. wants to be adopted by the Stewarts, her foster placement, and that she has thrived while in their care. Several witnesses explained the transformation in M.M. since being placed with the Stewarts. Specifically, M.M.’s therapist, who has seen the child weekly since September 2019, indicated that M.M. is “excelling academically” and “engaging in extracurricular activities and pro-social activities that are reinforcing that [] therapeutic growth that she’s working so hard on.” *Id.* at 56. The therapist also noted that M.M. has accepted that she is “not going to be able to be with” Mother, *id.* at 55, and M.M. “has expressed that she [] would like to be with” the Stewarts permanently, *id.* at 58. The FCM and CASA made similar observations. The CASA testified that M.M. is “really thriving” with the Stewarts, where “she’s able to really just be happy and carefree and act like a kid.” *Id.* at 94. The FCM observed that M.M. “seems like a completely different child now than when [the FCM] first took over this case.” *Id.* at 105. She elaborated that M.M. is now “happy and content and excited about things.” *Id.*

[28] Finally, the evidence supports the trial court’s finding that M.M.’s therapist and CASA believed that termination would be in the child’s best interests. The therapist explained that she had been treating M.M.’s “traumatic stress,” which stems from “negative experiences in her life,” including Mother’s “mental health and substance abuse.” *Id.* at 57. One of “the barriers” that keeps M.M. “stuck in the past” is when Mother relapses “in behaviors that prevent [M.M.] from being able to see [Mother].” *Id.* at 55. And, as explained above, Mother has continued those behaviors. M.M. also told the therapist that she wants to be

adopted by the Stewarts, where the therapist has seen the child appear comfortable, happy, and safe. *Id.* at 58, 60. The CASA likewise remarked that the Stewarts are “very loving and very accepting” but also provide necessary “parental direction.” *Id.* at 95. And she recommended termination of the parent-child relationship based on “knowing [M.M.’s] wishes” as well as Mother’s failure to make “any progress towards . . . ordered services or providing a stable and safe home.” *Id.* at 96. The FCM made the same recommendation. *Id.* at 100.

[29] In sum, although the trial court certainly considered Mother’s failure to “fully participate[] in services,” the court also looked to other circumstances supported by the evidence in concluding that DCS clearly and convincingly showed that terminating Mother’s parental rights would be in M.M.’s best interests. Mother has therefore not established that the trial court’s best-interests conclusion is clearly erroneous.

## **Conclusion**

[30] Mother has failed to show that conducting the termination hearing via Zoom violated her due process rights or that the trial court clearly erred in terminating her parental rights to M.M. We affirm.

[31] Affirmed.

Tavitas, J., and Weissmann, J., concur.