

## 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 the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of M.D. and T.D.  
(Minor Children), and  
N.W. (Mother) and T.D.  
(Father),

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

March 25, 2022

Court of Appeals Case No.  
21A-JT-2312

Appeal from the Delaware Circuit  
Court

The Honorable Amanda L.  
Yonally, Magistrate

Trial Court Cause Nos.  
18C02-2102-JT-20, - 21

**Crone, Judge.**

## **Case Summary**

- [1] N.W. (Mother) and T.D. (Father) (the Parents) each appeal the involuntary termination of their parental rights to their minor children M.D. and T.D. (the Children). We affirm.

## **Facts and Procedural History**

- [2] Mother and Father are the biological parents of M.D., born on November 26, 2009, and T.D., born on September 29, 2017. In November 2018, the Indiana Department of Child Services (DCS) became involved with the family after receiving a report that Mother and Father had engaged in domestic violence in the presence of the Children. Then-eight-year-old M.D. fled from the home to get help after witnessing the physical altercation. Both Parents were arrested and subsequently incarcerated on charges of neglect of a dependent and domestic battery. DCS filed a petition alleging that the Children were children in need of services (CHINS) due to domestic violence and the Parents' failure to provide medical and dental care to the Children. The Parents admitted the allegations of the petition. The Children were adjudicated CHINS, removed from the Parents' care, and placed in relative care with their maternal grandmother. The trial court held a dispositional hearing on December 4, 2018. In relevant part, the Parents were ordered to do the following: maintain suitable, safe, and stable housing with adequate bedding, functional utilities, adequate supplies of food preparation facilities, submit to random drug screens,

and engage in counseling services. Mother, who was no longer incarcerated, was also ordered to participate in home-based case work.

[3] Following a May 2019 review hearing, the trial court found that neither Parent had complied with the case plan or cooperated with DCS. However, as of November 2019, Mother had begun complying with the plan, had participated in services, was producing clean drug screens, and was consistent with her visitation. Although Father was incarcerated at the Jay County Jail, he was participating in substance abuse services and visitation, and he was remaining free of drugs. Accordingly, the trial court approved a permanency plan of reunification and ordered a trial home visit with Mother beginning on February 13, 2020.

[4] Mother was living with her father when the home visit was approved. Mother's father was her sober support system, and she was doing fine with the home visit until Father was released from incarceration. Father resumed residing with Mother and both began testing positive for methamphetamine and became noncompliant with services. The trial home visit was terminated in July 2020 because the Parents were producing consistent positive drug screens and had ceased participating in services.

[5] A review hearing was held in February 2021. The trial court determined that the Parents were noncompliant with services. Father refused to submit to drug screens, and Mother was producing positive screens for methamphetamine. Accordingly, the permanency plan changed from reunification to adoption.

Another review hearing was held in May 2021. The trial court concluded that the Parents had not complied with the case plan and that both Mother and Father were refusing to submit to drug screens and/or submitting positive screens for methamphetamine.

[6] DCS filed its petition to terminate both Mother's and Father's parental rights to the Children on February 22, 2021. A factfinding hearing was held on August 19, 2021.<sup>1</sup> On September 23, 2021, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside the home will not be remedied by Mother or Father; (2) there is a reasonable probability that continuation of the parent-child relationship between both Parents and the Children poses a threat to the Children's well-being; (3) termination of the parent-child relationship between both Parents and the Children is in the Children's best interests; and (4) DCS has a satisfactory plan for the Children's care and treatment, which is adoption by their maternal grandmother.

[7] Accordingly, the trial court determined that DCS had proven the allegations of the petition to terminate by clear and convincing evidence and therefore terminated Mother's and Father's parental rights. Both Parents now appeal.

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<sup>1</sup> Mother revealed at the factfinding hearing that she had given birth to another child of both Parents on August 5, 2021. That child was detained by court order due to Mother's continuous illegal drug use during her pregnancy. Mother agreed to submit to a drug screen following the termination hearing. That drug screen was positive for both methamphetamine and amphetamine.

## 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).

**Section 1 – Clear and convincing evidence supports the trial court’s conclusion that there is a reasonable probability of unchanged conditions.**

- [10] The Parents each challenge the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in the Children’s removal from and

continued placement outside the home will not be remedied.<sup>2</sup> In determining whether there is a reasonable probability that the conditions that led to the Children’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 their 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), *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

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<sup>2</sup> Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Thus, although each Parent challenges the sufficiency of the evidence as to all three requirements, we address only the evidence pertaining to 4(b)(2)(B)(ii).

that the parent's behavior will not change." *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, the Children were initially removed from the Parents' care due to domestic violence and the Parents' failure to provide medical and dental care to the Children. However, the focus quickly turned to the Parents' lack of stable housing and their illegal drug use as the reason for the Children's continued placement outside of Parents' care.<sup>3</sup> As for Mother, other than a brief period of compliance with services and sobriety while Father remained incarcerated, she has been generally noncompliant with services and consistently abused methamphetamine throughout the three-year pendency of this action. Indeed, although Mother denied at the factfinding hearing that she was using drugs, she tested positive for methamphetamine on that date, demonstrating that she was still actively using illegal substances despite the risk of losing her parental rights. As for Father, other than the sobriety and participation in limited services he achieved during his incarceration, he has been wholly noncompliant with services and either refused to submit to drug screens or submitted screens that were positive for methamphetamine. Father's last positive drug screen was just one month prior to the termination factfinding hearing. Moreover, despite DCS's best efforts with providing housing vouchers, the Parents have never

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<sup>3</sup> Both Parents claim that there was no evidence that domestic violence, the reason for the Children's initial removal from the home, remained unchanged at the time of termination. However, when considering changed circumstances, we look not only to the reasons for initial removal, but also to whether there is a reasonable probability that the conditions that led to the Children's continued placement outside the home will not be remedied. In this case, those conditions were the Parents' lack of housing stability and illegal drug use.



made the effort to secure stable housing. Throughout the pendency of this case, when not incarcerated, they have simply moved between relatives' homes, "couch surfed," or resided temporarily in hotels. Appealed Order at 6.

- [12] In short, clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that led to the Children's removal and continued placement outside both Mother's and Father's care will not be remedied. Both Parents have demonstrated an inability to stay clean and provide proper stability for their Children throughout the pendency of these proceedings. The Parents' habitual patterns of conduct justified termination of their parental rights. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (holding parent's historical inability to provide housing, stability, and supervision coupled with current inability to do so supported termination of parental rights), *trans. denied*.

**Section 2 – Clear and convincing evidence supports the trial court's conclusion that termination of Father's parental rights is in the Children's best interests.**

- [13] Father alone challenges the trial court's conclusion that termination of the parent-child relationship is in the best interests of the Children. We note that in determining the best interests of a child, the trial court is required to look beyond the factors identified by DCS and to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child, and the court need not wait until a child is irreversibly harmed before

terminating the parent-child relationship. *Id.* Moreover, the recommendations of both the case manager and child 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 a child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[14] Here, DCS Family Case Manager Shelby Levritt<sup>4</sup> opined that termination of Father's parental rights was in the Children's best interests. The Children had already been outside of both Parents' care for almost three years, and Father was continuing to test positive for illegal substances and making no progress toward obtaining stable housing or solving his parenting deficiencies. Levritt emphasized that the Children were quite bonded with maternal grandmother, and that adoption by her would provide them with the safety and stability that they need. Similarly, court-appointed special advocate Michael Kinnett testified that termination of Father's parental rights was in the Children's best interests. Kinnett acknowledged that, although Father loves the Children, he was unable to provide the safety and stability the Children need due to his continued drug use. This evidence is more than sufficient to support the trial court's conclusion that termination of Father's parental rights is in the Children's best interests. We affirm the trial court's termination orders.

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<sup>4</sup> We note that while the court reporter spells this name as "Leveritt," the witness spelled her name "Levritt" in open court. Tr. Vol. 2 at 41.

[15] Affirmed.

Bradford, C.J., and Tavitas, J., concur.