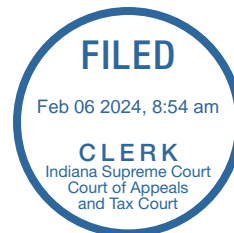


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

In re the Involuntary
Termination of the Parent-Child
Relationship of My.J. (Minor
Child)

and

T.H. (Mother) and M.J. (Father),
Appellants-Respondents,

February 6, 2024

Court of Appeals Case No.
23A-JT-1660

Appeal from the Marion Superior
Court

The Honorable Stephen Creason,
Judge

<p style="text-align: center;">v.</p> <p>Indiana Department of Child Services, <i>Appellee-Petitioner</i></p> <p>And</p> <p>Kids' Voice of Indiana, <i>Appellee-Guardian ad Litem.</i></p>	<p>The Honorable Pauline Beeson, Magistrate</p> <p>Trial Court Cause No. 49D16-2210-JT-7748</p>
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Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

[1] T.H. (“Mother”) and M.J. (“Father”),¹ collectively “Parents,” appeal the termination of their parental rights to My.J. (“Child”), challenging the trial court’s findings and conclusions. Determining the trial court did not clearly err, we affirm.

Facts and Procedural History

[2] Mother and Father are the biological parents of Child, who was born on May 31, 2018. In March 2020, the Marion County Department of Child Services

¹ Father’s appeal was filed under cause 23A-JT-1661. We granted DCS’ motion to file a consolidated brief under Indiana Appellate Rules 34 and 38. We also consolidated the cases under this cause number.

(“DCS”) removed Child from Parents’ care and placed her in foster care. DCS alleged Child was a Child in Need of Services (“CHINS”).

[3] Leading up to Child’s removal, Parents lived with Father’s sister (“Aunt”) until Aunt noticed behavioral changes in Parents. Father was “intoxicated on some kind of substance. He would be on the floor, pass out, or standing straight up in the hallway asleep. His appearance changed[.] Personality changed. At those times [Aunt] was fearful for [Child’s] safety.” *Tr. Vol. 2* at 157–58. Mother was “intoxicated on a substance.” *Id.* at 159. Sometimes, Aunt would knock on the door to Parents’ room because Child was crying in the room. Mother would not answer the door and Child would continue crying. Once, Aunt “observed [Parents] passed out in their car” behind Aunt’s house. *Id.* The car’s engine was running, and the door was open. Once they were no longer living with Aunt, Parents were homeless and “had nowhere to go.” *Id.* at 69. DCS placed Child with Aunt in November 2020.

[4] On December 3, 2020, Father admitted Child was a CHINS because Father was unable to obtain a living environment free from substance abuse. Mother waived her right to a factfinding. The trial court adjudicated Child a CHINS and issued dispositional and parental participation orders on December 10, 2020. The court ordered Mother to complete a parenting assessment and follow all recommendations; complete a substance abuse assessment and follow all

recommendations; complete random drug screens;² and sign a release of information (“ROI”) regarding her individual therapy through Volunteers of America. The court ordered Father to complete a parenting assessment/education and follow all recommendations; participate in home-based case management and follow all recommendations; complete random drug screens;³ and offer ROIs as requested by DCS.

[5] Parents’ participation in services was inconsistent. Mother completed the parenting assessment but did not complete the recommended services from the assessment: parent education, home-based therapy, and home-based case work. Mother met with her home-based case manager inconsistently, and her participation in parent education was “not consistent at all.” *Tr. Vol. 2* at 88.

[6] Parents missed many child and family team meetings, and Mother sometimes missed the meetings because she was sleeping. In a team meeting with the GAL, Parents “question[ed] the necessity” of random drug screens and “refus[ed] to participate” in the drug screens. *Id.* at 173.

[7] Parents did not complete the substance abuse assessments, nor did they complete drug screens. From August 2021 to February 2023, Father missed 290 calls from the drug screen provider and missed forty-nine scheduled drug

² The order states “[Mother] must submit to random drug/alcohol screens. Any request for drug screen that is not completed in a timely manner will result in a positive result indication.” *Ex. Vol. 1* at 53.

³ The order states “[Father] will submit to random drug screens as requested by DCS and/or provider.” *Id.* at 68.

screens. *Ex. Vol. 1* at 226–40. Mother missed 289 calls and forty-nine scheduled drug screens. *Ex. Vol. 2* at 6–20.

- [8] Parents’ housing situation remained unstable throughout the CHINS proceeding. Parents were homeless when the CHINS case first opened and were “still . . . looking for a home” three weeks later. *Tr. Vol. 2* at 106. Parents lived together,⁴ often in hotels. They briefly rented an apartment in Castleton. Parents later rented an apartment in Carmel but lost the apartment when they were arrested for possession of methamphetamine and heroin.
- [9] DCS petitioned to terminate Parents’ parental rights, and a termination hearing was held in February 2023. The trial court heard testimony from Mother, Aunt, the family case manager (“FCM”), the visitation facilitator, and the guardian ad litem (“GAL”). Father did not appear at the hearing.
- [10] Mother was incarcerated at the time of the hearing. She described her prior participation in a group recovery program and claimed it required her to complete drug screens at home. Besides her own testimony, Mother did not provide evidence of the drug screens or participation in the program. The FCM who was assigned to the case from the start contacted the program and asked about Mother’s participation. Mother had not provided an ROI, so the

⁴ Mother, the FCM, and the visitation facilitator testified Parents lived “together.” *Id.* at 42, 96, 147.

program would not disclose anything about Mother's participation. The FCM asked Mother to give an ROI for the program, but Mother never provided it.

[11] Mother claimed she would live at her mother's residence when she was released from jail. She noted she did not get along with her mother but said her mother did not live at the residence. Instead, Mother's grandfather lived at the residence. Mother had a job as a manager of a laundry service that would remain available when she was released from jail.

[12] Parents have criminal histories predating the CHINS case. In 2015, Mother pleaded guilty to Level 3 dealing in methamphetamine and Class A misdemeanor possession of paraphernalia. During the year leading up to the CHINS case, Father was twice charged with drug-related crimes.

[13] Mother was incarcerated from February to May 2022, and she was incarcerated again in February 2023 during the termination factfinding, set to be released in April 2023. Father was incarcerated several times throughout the CHINS proceeding. According to Aunt, Father was incarcerated thirteen or fourteen times. The trial court admitted into evidence booking information from the Marion County jail showing Father was incarcerated there December 2020 to February 2021; July 2021; August to September 2021; February to April 2022; April to June 2022; and January 2023. *See Ex. Vol. 1* at 104–09. In two separate cases, Father pleaded guilty to Level 6 felony possession of a narcotic drug. Father was placed in community corrections in April 2022, but he violated the terms of community corrections in April 2022 and February 2023.

- [14] The visitation facilitator testified Mother’s consistency visiting Child “started off a little . . . rocky, but toward the end, she did not miss a visit at all.” *Tr. Vol. 2* at 133. Father attended around seventy-five percent of visits with Child when he was not incarcerated but did not visit with Child while he was incarcerated. When visits took place at an agency, Parents would not come on time. Then, when visits began taking place at Parents’ residence, Parents’ punctuality was no longer an issue.
- [15] The visitation facilitator observed Child’s bond with Parents. During parenting sessions, Mother “was very nurturing, caring, bonding . . . with her . . . daughter[.] [S]he loves her daughter.” *Id.* at 142. Mother provided redirection as needed and Child was “ninety nine percent” receptive—“as receptive as a toddler gets.” *Id.* at 143. Father and Child’s relationship was “very affectionate.” *Id.* at 132. As of the termination hearing, neither parent had seen Child since December 2022.
- [16] The FCM testified it was difficult to contact Parents because they constantly changed their phone numbers. Neither parent provided the FCM with an ROI after the FCM requested it. The FCM mailed one letter to Father while he was incarcerated but otherwise had no contact with him. No one knew where Father was at the time of the termination hearing, but Father had been sent a ten-day notice of the hearing.
- [17] The FCM recommended the court terminate Parents’ parental rights. The FCM had safety concerns if Child returned to Parents’ care because Parents

could not provide permanency for Child. The FCM said continuation of the parent-child relationship would pose a threat to Child's well-being because Mother, who was in and out of jail, could not take care of Child's basic needs. The FCM did not believe Parents would remedy the conditions that led to Child's removal because they had not shown that they would not abuse substances.

[18] The GAL testified it would be in Child's best interest for Aunt to adopt Child. The GAL said the reasons for removal have not been remedied, and Parents should not have more time to reunify with Child because Parents would be unable to provide Child with the stability Child enjoyed living with Aunt.

[19] Child has been placed with Aunt since November 2020 and has bonded with Aunt. Aunt is willing to adopt Child. Aunt's home is free of substance abuse, and Aunt can provide for all of Child's needs.

[20] The trial court terminated Parents' parental rights to Child, determining there was a reasonable probability that (1) conditions resulting in removal of Child from Parents' care would not be remedied and (2) continuation of the parent-child relationship posed a threat to the well-being of Child. These conclusions were stated as:

6. Due to [Mother] and [Father's] inability and lack of willingness to participate in Court-ordered services, lack of demonstrated sobriety, continued instability, inconsistent exercise of parenting time, and ongoing criminal matters and incarcerations, the Court finds DCS has shown by clear and convincing evidence that there is a reasonable probability that the

conditions that resulted in [Child's] removal and for continued placement outside [Mother] and [Father's] home will not be remedied. I.C. § 31-35-2-4(b)(2)(B)(i).

7. The Court finds DCS has shown by clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship between [Child] and [Mother] poses a threat to her well-being due to their inability to remedy the circumstances that led to removal by obtaining and maintaining sobriety and providing the child with a safe and stable environment. The child needs permanency and stability, which she has with her current placement. I.C. § 31-35-2-4(b)(2)(B)(ii).

* * *

9. There is clear and convincing evidence the conditions which led to continued removal of [Child] from [Mother] and [Father's] care are unlikely to be remedied. [Mother] and [Father] have not completed any of their services and have not shown any willingness to adequately care for the child. DCS has made efforts to provide necessary services to [Mother] and [Father], to no avail. The Child needs permanency and stability, which neither [Mother] nor [Father] have provided and are not poised to provide.

Appellant's App. Vol. 2 at 38–39.

Standard of Review

[21] “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); see *Pierce v.*

Soc’y of Sisters, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). “[T]he interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests[.]” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). But parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester*, 839 N.E.2d at 147. “Thus, ‘[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.’” *Id.* (quoting *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004)).

[22] When reviewing the termination of parental rights, “we do not reweigh the evidence or judge witness credibility.” *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016) (quoting *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010)). We consider only evidence and reasonable inferences most favorable to the judgment and give due regard to the trial court’s opportunity to judge the credibility of witnesses. *Id.* We will set aside the trial court’s judgment only if it is clearly erroneous. *In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). A judgment is clearly erroneous “if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *Bester*, 839 N.E.2d at 147.

No Clear Error in Determining There Is a Reasonable Probability the Conditions Resulting in Child’s Removal or the Reasons for Placement Outside Parents’ Home Will Not Be Remedied.

[23] A petition for termination of parental rights must allege, 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). The petition must also allege termination is in the child’s best interests and there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C) & (D).⁵ If the trial court finds the allegations in the petition are true, the court “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a). In determining whether allegations under Indiana Code Subsection 31-35-2-4(b)(2)(B)(i) are true, courts must “ascertain what conditions led to [the child’s] placement and retention in foster

⁵ Parents challenge the trial court’s findings of facts and conclusions of law only as they relate to Indiana Code Subsections 31-35-2-4(b)(2)(B)(i) and (ii).

care.” *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). Then, courts “determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* (quoting *In re I.A.*, 934 N.E.2d at 1134). In this second inquiry, the court must judge a parent’s fitness at the time of the termination factfinding, considering evidence of changed conditions or habitual patterns of conduct. *D.D.*, 804 N.E.2d at 266.

[24] Mother and Father argue DCS failed to show by clear and convincing evidence there was a reasonable probability that the conditions that resulted in Child’s removal would not be remedied.⁶ Mother argues there was no finding in the trial court’s order that at the time of Child’s removal Mother was using drugs or had a substance abuse problem; nor was there a finding she was unable to appropriately parent her daughter. Mother also claims she had secured housing and a steady job, and the trial court gave no weight to her negative drug tests.

[25] Mother argues the trial court’s conclusion about Indiana Code Subsection 31-35-2-4(b)(2)(B)(i) refers to factors—such as lack of participation in services—that could have only arisen *after* the CHINS was filed and Child was removed. She says the factors identified by the trial court as conditions that will not be remedied are relevant only if those conditions were factors in DCS’ decision to

⁶ Parents also challenge the trial court’s conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Child’s well-being. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, “the court is required to find that only one prong of subsection 2(B) has been established by clear and convincing evidence.” *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. Therefore, we address only whether DCS proved there was a reasonable probability that the conditions that resulted in Child’s removal would not be remedied.

place Child in foster care. *See Mother's Br.* at 9 (citing *In re A.A.*, 51 N.E.3d 1140, 1148 (Ind. 2016)).

[26] Contrary to Mother's argument, the trial court *did* make findings about the conditions resulting in Child's removal.⁷ And it did not clearly err when making such findings. Aunt testified Mother was "intoxicated on a substance" before Child's removal. *Tr. Vol. 2* at 159. Aunt saw Mother passed out in her car with the car's engine running and the door open. Once Aunt kicked Parents out of her house, they were homeless and "had nowhere to go." *Id.* at 69. The FCM testified Parents were homeless and looking for a place to live when the CHINS case was initially filed. Mother's insistence that we accept her explanations for her behavior is a request for us to determine her credibility and reweigh the evidence, which we will not do. *See V.A.*, 51 N.E.3d at 1143.

[27] Further, we disagree with Mother's characterization of the trial court's references to Parents' lack of participation in services, inconsistent visits with Child, or ongoing criminal matters and incarcerations as reasons for Child's placement in foster care. Rather, these references were the trial court's considerations of Parents' fitness at the time of the termination hearing when determining whether "the reasons for placement outside the home of the

⁷ In its findings of fact, the trial court states "[n]either [Mother] nor [Father] have obtained stable and appropriate housing since DCS' involvement[,]" and "[n]either [Mother] nor [Father] have remedied the conditions that led to referrals for parenting education, home-based therapy, home-based case work, a substance abuse assessment and random drug screens." *Appellant's App. Vol. 2* at 34.

parents will not be remedied,” as explicitly allowed in the statute. I.C. § 31-35-2-4(b)(2)(B)(i).

[28] As for the probability the conditions resulting in Child’s removal will not be remedied, Mother claims there is insufficient evidence she was abusing substances. As described above, Aunt observed Mother exhibiting behaviors consistent with substance abuse. During the CHINS case, Mother was arrested for possession of methamphetamine and heroin. Mother refused to participate in drug screens in a child and family team meeting and missed forty-nine scheduled drug screens. And Mother acknowledged at the termination hearing her missed drug screens count against her as positive screen results. *Tr. Vol. 2* at 30.

[29] Mother also claims she had secured housing at her mother’s residence for when she would be released from jail. But Mother admitted she does not get along with her mother. Mother was kicked out of Aunt’s house because of substance abuse and lost her Carmel apartment when she was arrested for possession of methamphetamine and heroin. Mother was incarcerated twice during the CHINS proceeding—including during the termination hearing. We again decline Mother’s request to reweigh the evidence.

[30] Father admitted Child was a CHINS because Father needed assistance obtaining a living environment free of substance abuse. Father does not challenge the trial court’s findings about the initial conditions that resulted in Child’s removal. Rather, Father argues no evidence supported a finding that he

was continuing to engage in substance abuse—or that Father was required to participate in drug screens at all. He says there is no evidence about his housing situation. Father also claims the trial court’s finding Mother and Father failed to exercise parenting time consistently with Child was erroneous, especially because Father “was not offered the opportunity to exercise parenting time during incarceration.” *Father’s Br.* at 8.

[31] Father’s challenges to the trial court’s factual findings are unfounded. Contrary to Father’s assertion, there is evidence Father was required to submit random drug screens: In a child and family team meeting with DCS workers, Parents questioned the need for the drug screens and refused to participate. There was also evidence of Father’s forty-nine missed screens, which further shows DCS requested Father to participate in the drug screens. And the trial court could infer Father was abusing substances from Father’s lack of participation in drug screens and arrest for possession of methamphetamine and heroin. Father also twice pleaded guilty to Level 6 felony possession of a narcotic drug. And although Father claims there was no evidence about his housing, *three* witnesses testified he and Mother lived “together.” *Tr. Vol. 2* at 42, 96, 147.

[32] Father blames DCS for his inconsistent visits with Child, particularly while he was incarcerated. In this, Father challenges not the finding that the visits were inconsistent, but whether the missed visits are his fault. *See Father’s Br.* at 10–11. There is evidence the FCM sent Father one letter while he was incarcerated. Father presents no legal authority to support his argument DCS’ contact with him while he was incarcerated was insufficient. *See Ind. Appellate*

Rule 46(A)(8)(a) (requiring the appellant’s contentions to be supported by citations to the authorities relied on); *see also Berger v. Berger*, 648 N.E.2d 378, 381 (Ind. Ct. App. 1995) (determining an appellant’s failure to cite to any relevant cases or authority in support of appellant’s contention constituted waiver). Further, there is no evidence Father requested visits with Child while incarcerated, even though Father had contact information for both the FCM and the visitation facilitator. Again, Father’s challenge is a request to reweigh the evidence, which we will not do. *See V.A.*, 51 N.E.3d at 1143.

[33] The trial court determined Parents made no progress throughout the CHINS proceeding: Although Mother completed a parenting assessment, she did not complete any of the services recommended as a result of the assessment, claiming even on appeal the services “were not needed or useful.” *Mother’s Br.* at 15.⁸ Parents blame their lack of participation in services and visitation on being incarcerated.⁹ Indeed, Father was booked at the Marion County jail *seven times*—and Aunt testified Father was incarcerated thirteen or fourteen times—during the CHINS proceeding. Mother was incarcerated twice. But Parents’ frequent incarceration is not an excuse for lack of participation in services and

⁸ To the extent Mother challenges recommended services from the CHINS proceeding, she cannot challenge matters relating to the CHINS adjudication for the first time when appealing the termination of her parental rights. *See, e.g., Matter of C.M.*, 675 N.E.2d 1134, 1138 (Ind. Ct. App. 1997) (determining a parent may challenge aspects of the CHINS adjudication at the termination *hearing*); *McBride v. Monroe Cnty. Off. Fam. & Child.*, 798 N.E.2d 185, 195 (Ind. Ct. App. 2003) (determining challenges to procedural irregularities in CHINS proceedings raised at the termination stage were waived for failure to object during the CHINS proceeding).

⁹ *See In re H.L.*, 915 N.E.2d 145, 151 n.3 (Ind. Ct. App. 2009) (“[F]ailure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.”).

visitation. Rather, it is evidence of Parents' habitual patterns of conduct and instability. Ultimately, Parents' inconsistent (and for random drug screens, nonexistent) participation in services demonstrates an unwillingness or lack of commitment to address substance abuse and parenting issues.

[34] The trial did not clearly err when terminating Mother and Father's parental rights to Child.

Conclusion

[35] Detecting no clear error, we affirm.

[36] Affirmed.

Altice, C.J., and Weissmann, J., concur.