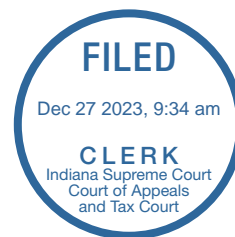


## MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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 the Matter of the Termination  
of the Parent–Child Relationship  
of: L.T. (Minor Child)

and

T.D. (Mother) and R.T. (Father),  
*Appellants-Respondents,*

*v.*

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

December 27, 2023

Court of Appeals Case No.  
23A-JT-1338

Appeal from the Vigo Circuit  
Court

The Honorable Daniel W. Kelly,  
Magistrate

Trial Court Cause No.  
84C01-2210-JT-1087

**Memorandum Decision by Judge Bradford**  
Judges Vaidik and Brown concur.

## **Bradford, Judge.**

### **Case Summary**

- [1] L.T. (“Child”) was born to T.D. (“Mother”) and R.T. (“Father”) (collectively, “Parents”) in 2021 and was removed from their care in October of that year following an incident of domestic violence. The juvenile court found Child to be a child in need of services (“CHINS”) and ordered Parents to participate in reunification services, with which they were largely noncompliant. In October of 2022, the Indiana Department of Child Services (“DCS”) petitioned to terminate Parents’ parental rights to Child (“the TPR Petition”), which petition the juvenile court granted. Father contends that the juvenile court lacks jurisdiction over him because he was not properly served with the TPR Petition, while Mother contends that the juvenile court’s termination of her parental rights was unsupported by sufficient evidence. Because we disagree with both contentions, we affirm.

### **Facts and Procedural History**

- [2] Child was born to Parents on May 23, 2021. DCS became involved with the family on October 1, 2021, after it had received a report that Parents had physically assaulted each other while Mother was visibly intoxicated and pushing Child in a stroller. DCS removed Child that day and petitioned to have him found to be a CHINS four days later. On December 15, 2021, after an evidentiary hearing, the juvenile court adjudicated Child a CHINS after finding that

- b. Mother and Father appeared to be intoxicated or under the influence and entered into an altercation in the middle of the day.
- c. Mother attempted to hit Father while holding the child without supporting its head.
- d. After the child was removed on 10/1/21, later that day about 6.00 p.m., Mother allegedly stabbed Father with a knife and was arrested; Father attempted to show the wound to [a family case manager (“FCM”)].
- e. After the child was removed, Father was arrested for violating a no contact order between he and mother out of Marion County. Father chewed the [drug-]screening device so that no screen could be submitted.
- f. Both parents agreed to screen for DCS, but Father chewed the [drug-]screening device so that no screen could be submitted.
- g. Mother failed a breathalyzer test and displayed violent and erratic behavior.
- h. Parents have open CHINS cases in Marion County on other children for domestic violence and substance abuse in Cause nos. 49015-1807-JC 1756, 1757, and 1758.
- i. Father currently has a pending TPR case in Marion County.
- j. The parents have a lengthy documented history of domestic violence and violating no contact orders between them.
- k. The coercive intervention of the Court is necessary to protect the child and provide sober caregivers and a home free of domestic violence.

Father’s App. Vol. II pp. 144–45.

- [3] After a dispositional hearing in December of 2021, the juvenile court ordered Parents into reunification services, ordering them to, among other requirements, maintain weekly contact with the DCS FCM; notify the FCM of changes in address and any new criminal charges; enroll in recommended

programs and services; not use or consume illegal, controlled substances; submit to random drug screens; obey the law; complete parenting, psychological, and substance-abuse assessments and complete all resulting recommendations; and not commit any acts of domestic violence. Since Child's removal in October of 2021, he has never been returned to either Mother's or Father's care.

[4] On October 28, 2022, DCS filed the TPR Petition. At the November 15, 2022, initial hearing, the juvenile court noted that service on Parents had not yet occurred, and it set a "publication fact finding" hearing for February 14, 2023. Tr. Vol. II p. 6. On November 17, 2022, DCS filed its praecipe for summons by publication for Father with an affidavit of diligent inquiry and, eleven days later, filed the same two documents in relation to Mother.

[5] On December 29, 2022, DCS filed its notice of service by publication on Parents notifying them of the initial/factfinding hearing on February 14, 2023. On January 3, 2023, DCS filed its notice of summons on Mother showing personal service. At the February 14, 2023, hearing, the juvenile court found that Father had failed to appear after being served notice by publication. The juvenile court granted DCS's request to continue and set factfinding for April 24, 2023. On April 23, 2023, Father's counsel objected to notice by publication, moving to dismiss for lack of personal jurisdiction. The next day, the juvenile court held the termination factfinding; Father and Mother failed to appear but were represented by counsel. The juvenile court addressed Father's motion at the hearing and denied it.

[6] FCM Heidi Santagata, who had started managing the case in July of 2022, testified, characterizing Mother’s engagement with DCS as “not really compliant at all.” Tr. Vol. II p. 43. Mother’s participation in home-based case work had been inconsistent, and, in May of 2022, Mother had cancelled all of her sessions. DCS had referred Mother to a new provider the next month, but that provider had “closed out” Mother in July of 2022 due to Mother’s noncompliance. Tr. Vol. II p. 43. DCS had referred her again to either the same or a different provider, and between August and October of 2022, Mother had participated inconsistently, often cancelling or failing to attend sessions. By August of 2022, Mother had been discharged from abuse counseling and education because she had failed to attend.

[7] According to FCM Santagata, Mother has had a history of abusing Suboxone. Although Mother has had a valid prescription for Suboxone, she had tested at “high levels” on her drug screens and had also tested positive for Oxycodone on occasion. Tr. Vol. II p. 69. Moreover, Mother had “missed the vast majority of” the court-ordered drug screens, having missed 198 screens between November of 2021 and March of 2023. Father’s App. Vol. II p. 79. Mother had been “kicked out” of Bethany House in Terre Haute in September of 2022 for not following the rules and overdosing on Suboxone, which had occurred when Mother was pregnant with another child and had caused the staff to administer two doses of Narcan. Tr. Vol. II p. 49. Mother had not submitted to any screens between November 4, 2022, and January 2, 2023. Mother had

told FCM Santagata that she had forgotten to screen, had forgotten to call in, and had not had a way to get to the facility.

[8] In November of 2022, Mother had been closed out of the substance-abuse treatment that had been recommended by Mother’s substance-abuse-disorder assessment at Hamilton Center. Mother had “kind of [gone] off the grid” from November to December of 2022, and the provider and FCM Santagata had not had any contact with her. Tr. Vol. II p. 43. In December of 2022, DCS had filed another CHINS petition in Madison County after Mother and Father’s latest child had been born with six narcotics in its system. Mother had resumed home-based services in January of 2023, but the provider had terminated Mother in April after she had threatened to kill her home-based case worker.

[9] FCM Santagata testified that DCS had requested termination because of Mother’s and Father’s respective failures to comply with services.<sup>1</sup> FCM Santagata opined that termination was in Child’s best interests because Child was flourishing in his foster home, where he had consistency and permanency. Court-appointed special advocate (“CASA”) Brittany Smith agreed that termination was in Child’s best interests due to Parents’ incidents of domestic violence. DCS’s plan for Child for placement if the juvenile court granted

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<sup>1</sup> FCM Santagata never had any contact with Father despite attempts to reach him. When FCM Santagata would call, Father’s phone would ring once and then “hang[] up.” Tr. Vol. II p. 50. FCM Santagata talked to Mother about Father, and Mother had said that she had had no contact with him and had not even known where he was. By July of 2022, Father had been closed out of home-based case work for noncompliance. Father never completed a substance-abuse assessment and only attended one substance-abuse counseling session, in January of 2022. After July of 2022, Father has not had any contact with Child and has not participated in any services.

termination was adoption, which the foster parents were willing to do. On June 1, 2023, the juvenile court terminated Parents' parental rights to Child.

## Discussion and Decision

### I. Father's Argument

[10] Father does not argue that the juvenile court's termination of his parental rights to Child was clearly erroneous, contending only that the termination is void for lack of personal jurisdiction. Specifically, Father argues that the juvenile court lacked personal jurisdiction because it had not authorized DCS to serve Father by publication pursuant to Trial Rule 4.13(A). Ineffective service of process prohibits a juvenile court from having personal jurisdiction over a defendant. *Grabowski v. Waters*, 901 N.E.2d 560, 563 (Ind. Ct. App. 2009), *trans. denied*. A judgment rendered without personal jurisdiction over a defendant violates due process and is void. *Id.* "Personal jurisdiction presents a question of law" that is reviewed *de novo*. *Yursa v. Frontier Pro. Baseball, Inc.*, 151 N.E.3d 275, 279 (Ind. 2020) (citation omitted). The question of whether process was sufficient to permit a juvenile court to exercise jurisdiction over a party involves two issues: whether there was compliance with the Indiana Trial Rules regarding service, and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. *In re Adoption of D.C.*, 887 N.E.2d 950, 955–56 (Ind. Ct. App. 2008).

[11] Father does not argue that DCS's attempts at service were insufficient, only that DCS's service by publication did not comply with Trial Rule 4.13(A) because the juvenile court had not authorized it. Trial Rule 4.13(A) provides as follows:

In any action where notice by publication is permitted by these rules or by statute, service may be made by publication. Summons by publication may name all the persons to be served, and separate publications with respect to each party shall not be required. The person seeking such service, or his attorney, shall submit his request therefor upon the praecipe for summons along with supporting affidavits that diligent search has been made that the defendant cannot be found, has concealed his whereabouts, or has left the state, and shall prepare the contents of the summons to be published. The summons shall be signed by the clerk of the court or the sheriff in such manner as to indicate that it is made by his authority.

So, in order to conduct service by publication on Father, DCS was required to request it in a praecipe for summons along with a supporting affidavit that a diligent search had been made but that he could not be found and that the summons be signed by the clerk of the court, all of which occurred in this case. Father's argument concerning juvenile-court authorization is misplaced, because Trial Rule 4.13(A) contains no such requirement. The juvenile court's termination of Father's parental rights to Child is not void for lack of personal jurisdiction.

## II. Mother's Argument



## A. Standard of Review

[12] Mother contends that the juvenile court’s termination of her parental rights to Child was clearly erroneous. 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, 145 (Ind. 2005). Moreover, we acknowledge that the parent-child relationship is “one of the most valued relationships of our culture.” *Id.* However, 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 responsibilities as parents. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the child’s interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id.* The Indiana Supreme Court has made clear that the “purpose of terminating parental rights is not to punish parents, but to protect the children.” *Egly v. Blackford Cnty. Dep’t. of Pub. Welfare*, 592 N.E.2d 1232, 1234–35 (Ind. 1992). The *Egly* Court also explained that “[a]lthough 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 responsibilities as parents.” *Id.* at 1234. Termination of parental rights is proper where the child’s emotional and physical development is threatened. *In re T.F.*, 743 N.E.2d at 773. The juvenile court need not wait until the child is irreversibly harmed such that their

physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[13] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Invol. Term. 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.* 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.*

[14] Indiana Code section 31-35-2-4(b)(2) governs what DCS must allege and establish to support the termination of parental rights, and, for purposes of our disposition of this case, that was:

(A) that [t]he child has been removed from the parent for at least six (6) months under a dispositional decree[;]

[...]

(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 [or]

(ii) There is a reasonable probability that the continuation of the parent–child relationship poses a threat to the well-being of the child.

[....]

(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). Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS need only establish one of the circumstances described in the subsection, two of which are listed above. Mother contends that DCS failed to establish that (1) there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside Mother’s home will not be remedied, (2) there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of Child, and (3) termination is in Child’s best interests.

## **B. Indiana Code Section 31-35-2-4(b)(2)(B)(i)**

[15] Mother argues that DCS has failed to establish that there is a reasonable probability that the reasons for Child’s continued removal would not be remedied. In making such a determination, a juvenile court engages in a two-step inquiry. First, the juvenile court must “ascertain what conditions led to their placement and retention in foster care.” *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). After identifying these initial conditions,

the juvenile court must determine whether a reasonable probability exists that the conditions justifying the child’s continued “placement outside the home will not be remedied.” *In re D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004) (citation omitted), *trans. denied*. The statute focuses not only on the initial reasons for removal “but also those bases resulting in continued placement outside the home.” *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. In making this second determination, the juvenile court must judge a parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.D.*, 804 N.E.2d at 266. DCS need not rule out all possibilities of change; rather, it must establish 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), *trans. denied*.

[16] As for the juvenile court’s determination that the conditions that justified the continued removal of Child were not likely to be remedied, subsection (B)(i) of the statute focuses not only on the initial reasons for removal, “but also those bases resulting in continued placement outside the home.” *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (citation omitted); *Matter of K.T.*, 137 N.E.3d 317, 327 (Ind. Ct. App. 2019) (“A trial court may consider conditions that emerge subsequent to initial removal and that would justify continued removal.”). In making this second determination, the juvenile court must judge a parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *Matter of G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017). A parent’s habitual patterns of conduct

must also be evaluated to determine the probability of future negative behaviors. *K.T.K.*, 989 N.E.2d at 1234.

[17] Mother's substance abuse and violent relationship with Father were the initial reasons for Child's removal from her care, and the record contains ample evidence that little has improved, at least when it comes to Mother's substance abuse, which seems to be behind her noncompliance with court-ordered services. Mother has had a history of abusing Suboxone, among other substances. Although Mother had a valid prescription for Suboxone (at least at some point), she tested at "high levels" on her drug screens and tested positive for Oxycodone on occasion. Tr. Vol. II p. 69. Mother missed a total of 198 drug screens between November of 2021 and March of 2023 and did not submit to any screens between November 4, 2022, and January 2, 2023. Mother's explanation was that she had forgotten to screen, forgotten to call in, and not had a way to get to the facility. Mother was expelled from Bethany House in Terre Haute in September of 2022 for not following the rules and overdosing on Suboxone, which had occurred when Mother was pregnant.

[18] As for the services provided to Mother, in May of 2022, Mother cancelled all of her home-based case work, and a new provider "closed out" Mother in July of 2022 due to her noncompliance. Tr. Vol. II p. 43. Between August and October of 2022, Mother participated inconsistently with yet another provider, often cancelling or failing to attend sessions. Meanwhile Mother had been discharged from abuse counseling and education in August of 2022 for failing to attend. In November of 2022, Mother was closed out of the substance-abuse

treatment that had been recommended by Mother’s substance-abuse-disorder assessment and “kind of went off the grid” from November to December of 2022. Tr. Vol. II p. 43.

[19] In December of 2022, DCS filed another CHINS petition in Madison County after Mother and Father’s latest child had been born with six types of narcotics in its system. While it is true that Mother had resumed home-based services in January of 2023, the provider had terminated services in April after Mother had threatened to kill her home-based case worker. Even if we assume that Mother is no longer with Father, the record clearly establishes a pattern of continued substance abuse and noncompliance with court-ordered services more than sufficient to establish that the reasons for Child’s removal will not likely be remedied. Mother’s argument in this regard amounts to nothing more than a request to reweigh the evidence, which we will not do. *In re S.P.H.*, 806 N.E.2d at 879. The juvenile court did not clearly err in concluding that the reasons for Child’s removal were not likely to be remedied.<sup>2</sup>

### **C. Indiana Code Section 31-35-2-4(b)(2)(C)**

[20] Mother also argues that the juvenile court erred in concluding that termination of her parental rights was in Child’s best interests. We are mindful that, in determining what is in the best interests of Child, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the

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<sup>2</sup> Because of our disposition of this claim, we need not address Mother’s claim that the juvenile court erred in concluding that there is reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Child. *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii).

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 child involved. *Id.* Furthermore, this court has previously determined that the testimony of a guardian *ad litem* regarding a child's need for permanency supports a finding that termination is in the child's best interests. *Matter of Campbell*, 534 N.E.2d 273, 276 (Ind. Ct. App. 1992). Here, both FCM Santagata and CASA Smith opined that termination was in Child's best interests because of Parents' history of domestic violence and because Child was flourishing in his foster home, where he had consistency and permanency. While this testimony is likely sufficient to support a finding that termination is in the Child's best interests, it does not stand alone. As already discussed, the record contains ample evidence of Mother's substance abuse and her unwillingness to address it, including noncompliance with services, serial refusal to submit to drug-screens, discharge from several services, violent behavior, and overdose while pregnant with another child. Child is currently placed with foster parents who wish to adopt him—a placement in which he is flourishing. This evidence, along the testimony of the FCM and the CASA, is sufficient to support a finding that termination of Mother's parental rights is in Child's best interests.

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

Vaidik, J., and Brown, J., concur.