

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-Child Relationship of:

R.N. (Minor Child),

and

T.M. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child Services,

June 14, 2022

Court of Appeals Case No.  
21A-JT-2558

Appeal from the Madison Circuit Court

The Honorable Stephen Koester,  
Judge

Trial Court Cause No.  
48C02-2101-JT-2

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*Appellee-Petitioner.*

**Altice, Judge.**

### **Case Summary**

- [1] T.M. (Mother) appeals the involuntary termination of her parental rights to her minor child R.N. (Child).<sup>1</sup> She challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

### **Facts & Procedural History**

- [3] Mother has a history of illegal drug use, anger control issues, and relationships involving domestic violence. In November 2012, Mother was arrested and charged with misdemeanor possession of paraphernalia. She pled guilty and received a suspended sentence but later violated probation and was sent to jail

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<sup>1</sup> Child's father, D.N. (Father), was represented at the termination factfinding hearing, but he did not appear. His parental rights were also terminated. Father does not participate in this appeal. Accordingly, the facts set out below will focus on Mother's compliance with court-ordered services.

in September 2013. During this time, Mother lost her home and consented to the adoption of her minor daughter K. by a grandparent because Mother could not care for K.

[4] Thereafter, Child was born to Mother and Father in November 2016. A month before Child's birth, Mother committed misdemeanor battery resulting in injury to her own brother. Mother acknowledged that she "reacted badly" to her brother. *Transcript* at 28. She pled guilty and received a suspended sentence.

[5] About two months after Child's birth, Mother was the victim of domestic violence at the hands of Father. Specifically, on or about January 26, 2017, Father committed Level 6 felony strangulation, to which he later pled guilty and received a sentence of two and one-half years. Father was ordered to have no contact with Child or Mother.

[6] Child's half-sibling P.A. (Sibling) was born to Mother and B.A. in February 2018. Mother and B.A.'s relationship was also affected by domestic violence. Mother described an incident of domestic violence around late 2018:

I feel like I'm a victim of violence, but we went through a duel on the one that I ended up in the hospital.... Uh, the day that it happened, we were pushing and we were shoving and I went to grab the keys. And, when I grabbed the keys, I had slipped on the hardwood floor. I fell back and I busted my head open.

*Id.* at 46-47. According to Mother, both she and B.A. were criminally charged but the charges were later dismissed.

- [7] On March 19, 2019, shortly after B.A. was arrested for invasion of privacy,<sup>2</sup> family case manager Sheila Fakhreddine (FCM Fakhreddine) of the Indiana Department of Child Services (DCS) was called in for a welfare check of Mother's home. Law enforcement also came to the home and discovered marijuana, methamphetamine, and paraphernalia within reach of the children. Mother was arrested, and Child and Sibling were immediately taken into DCS custody.
- [8] The next day, DCS filed a petition alleging that Child and Sibling were children in need of services (CHINS).<sup>3</sup> An initial/detention hearing was held that day, where Mother acknowledged that the children were CHINS due to her current incarceration. The court adjudicated the children CHINS and ordered their continued removal. Thereafter, on April 11, 2019, Child was placed in the care of her maternal aunt and uncle, with whom Sibling has recently been placed.<sup>4</sup>
- [9] A dispositional hearing was held on April 17, 2019. The court ordered Mother to, among other things, participate in family counseling, regularly attend supervised visits, keep appointments with services providers, abstain from illegal drug use, submit to random drug screens, complete a drug assessment and follow all recommendations, obtain and maintain regular income and

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<sup>2</sup> The record is not clear on the details of B.A.'s arrest but it was sometime between March 16 and March 19, 2019.

<sup>3</sup> The CHINS petition is not included in the record.

<sup>4</sup> Sibling was removed in the same CHINS action as Child, but Sibling was not part of the instant termination proceedings. Accordingly, we will, for the most part, refer only to Child throughout this decision.

adequate housing, and “actively participate in, cooperate with, and successfully complete any recommendations as a result of any [] domestic violence assessments(s)/programs.” *Amended Exhibits* at 32.

[10] At the CHINS review hearing on September 17, 2019, the court determined that Mother had not complied with the case plan or cooperated with DCS. Specifically, services providers had experienced difficulty reaching Mother, and although she completed an intake with Aspire for a substance abuse assessment on June 10, Mother did not follow through thereafter. Drug screens had also been suspended since June after Mother was a no-show or refused twenty-six screens. Additionally, in August, Mother was discharged from supervised visits due to her “not complying and being combative with the visit supervisor.” *Id.* at 26.

[11] Similarly, at the permanency review hearing in March 2020, the trial court determined that Mother had not substantially complied with the dispositional order. The court explained in its order: “Many services have been discharged unsuccessfully, referrals have expired, or services have not been engaged. Mother has regularly no-showed random drug screens or tested positive for THC.” *Id.* at 23. Despite this, the court ordered the permanency plan for Child (and Sibling) to remain reunification with Mother.

[12] On July 15, 2020, the court held another case review hearing in the CHINS matter. Mother had secured appropriate housing at the time and had been engaging in supervised visits. However, she remained financially unstable with

inconsistent employment, had regularly tested positive for THC, and had not made consistent progress with services. According to the court, “Mother has struggled to become fully engaged in all of the court ordered services throughout the life of this case” and had “only partially engaged in some of the referred services and not engaged in others.” *Id.* at 18.

[13] On August 13, 2020, DCS asked the trial court to schedule a permanency hearing due to the length of time Child had been out of Mother’s home and due to her failure to consistently engage in services. The court granted the request and held a hearing on September 24, 2020, at which it adopted a concurrent plan of adoption as part of Child’s permanency plan.

[14] Thereafter, on January 11, 2021, DCS filed a petition for the involuntary termination of the parent-child relationship between Child and Mother (as well as Father). On February 17, the court held an initial hearing in the termination case and a permanency hearing in the CHINS case. The court then issued the following relevant findings in the CHINS order from that hearing:

[Mother, B.A, and Father] have not complied with the children’s case plan. [Mother] has not been consistent with employment, has not shown financial stability and has not made consistent progress in her services. [Mother] has struggled to become fully engaged in all of the court ordered services throughout the life of this case and since the most recent referrals were made in January of 2021. [Mother] has been unsuccessfully discharged from Domestic Violence Services, Individual Therapy, and Substance Use Outpatient Treatment, multiple times during this reporting period. Initially at the beginning of 2020 [Mother] was only partially engaged in some of the DCS referred services and

not engaged in others due [to] unsuccessfully closed referrals or referrals that needed to be made, however DCS has made new service referrals since that time on multiple occasions in an attempt to remedy compliance and make progress. [Mother's] engagement in services is necessary to remedy safety concerns surrounding [Mother's] mental health needs, concerns with managing parenting skills and her ability to consistently parent and provide stability, ongoing illicit substance use and concerns with domestic violence and aggression towards others.

Mother reports that [B.A.] is now residing with her. [B.A.] has not been compliant with services, especially when it comes to the Domestic Violence occurring between himself and mother.

*Id.* at 10.

[15] The termination factfinding hearing was continued several times. In the meantime, the court held a review hearing in the CHINS case on August 11, 2021. Mother did not appear at the hearing but was represented by counsel. At the conclusion of the CHINS hearing, the court determined that Mother had not complied with the case plan and had not increased her ability to parent. Mother had not consistently engaged in substance abuse treatment and, between February and July 2021, had tested positive for THC eleven times and been a refusal/no-show for drug testing fourteen times. During this time, Mother had also not been consistent with supervised visits, had not attended domestic violence courses, and had been closed out of group therapy for substance abuse classes.

[16] The termination factfinding hearing was held September 28, 2021. The trial court took judicial notice of the underlying CHINS orders and their specific findings as set out above.

[17] Mother testified at the hearing and acknowledged that Child had been out of her care for approximately two and a half years. Mother conceded that she had recently become homeless and that she had worked in four different cities at “[w]ay too many” different jobs over the last nine months. *Transcript* at 30. Mother testified that she had “quit marijuana about two (2) weeks ago.” *Id.* at 31. While Mother did not dispute having a history of domestic violence, she claimed that it was not the original reason for Child’s removal from her care. Mother blamed her employment instability and failure to complete domestic violence classes on her health, noting that she had been sick from February 2020 through April 2021, when she finally had her gall bladder removed.<sup>5</sup> Mother later admitted, however, “My health isn’t everything that this is. I messed up. I made mistakes in it. I’ve not went to some things that I should have went to because of my stubbornness.” *Id.* at 125. Mother asked the court for another opportunity and indicated that she was now going to do “whatever it takes.” *Id.*

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<sup>5</sup> Mother was referred to a domestic violence program in August 2020. Harry Heyer, the director of the program, testified that Mother attended only nine of the twenty-six classes needed to complete the program. She last attended on March 18, 2021. He communicated with her on April 28, 2021, about two weeks after her surgery, and indicated that she could come back to class that week but not to push herself too fast. Mother never returned to the program because, according to Mother, she decided to focus on work and her substance abuse instead.



[18] During her testimony, FCM Fakhreddine disputed Mother's claim that domestic violence was not one of the original bases of Child's detention. FCM Fakhreddine indicated that "there was a DV incident that occurred earlier that day with B.A." and then drugs were found "in reach of the children" during a welfare check at the home. *Id.* at 56. She then detailed how Mother had not been compliant with services,<sup>6</sup> had not maintained stable housing or employment, and had continued to use illegal drugs, testing positive for marijuana the prior month. Additionally, FCM Fakhreddine testified that Mother had made death threats against her on two occasions, which resulted in the filing of police reports. FCM Fakhreddine opined that continuation of the parent-child relationship between Mother and Child would be a danger to Child's well-being, that there was no reasonable probability that Mother would remedy the conditions causing Child's removal because Mother had already had 647 days to make the needed changes, and that termination of parental rights was in Child's best interests. Regarding Child's relative placement, where Child had been since April 2019, she testified, "[Child] is in a safe, stable home that is conducive to her well-being. Her safety. And, that will provide her permanency that she deserves." *Id.* at 65.

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<sup>6</sup> FCM Fakhreddine explained that throughout the life of the CHINS, she put in four referrals for domestic violence services, eight referrals for substance abuse services, at least ten referrals for drug screens, five outpatient referrals for counseling, several referrals for group therapy and intensive outpatient treatment, one referral for family counseling, and thirteen referrals for supervised visits. All were closed out due to Mother's noncompliance or relocation. FCM Fakhreddine acknowledged that Mother had more consistent compliance with her home-based service providers, who worked with her on housing, employment, and stress management/coping skills.

[19] The CASA similarly testified that termination of parental rights was in Child’s best interests. She explained, “there has been little to no headway throughout the life of the case” despite “multiple attempts to engage Mother with services” even before her gall bladder surgery. *Id.* at 83. The CASA also noted that Child had been out of Mother’s care for longer than she was ever with Mother and that Child has “stable security” in her current placement, which Mother had yet to be able to offer. *Id.* at 84.

[20] At the conclusion of the hearing, the trial court made a number of observations. It noted that Child had been in “limbo” for two and a half years and that during this time Mother never had stable employment, had not maintained stable housing (in fact, Mother was “homeless again”), and had “inexcusabl[y]” been closed out from visit supervisors thirteen times. *Id.* at 141-42. The court continued, “You have completed a couple of services and that’s commendable, but overall, it’s not a good picture.” *Id.* at 142. The trial court acknowledged Mother’s health issues but found that they were not significant enough to justify the degree of her noncompliance with services over the life of the case. Mother had not resolved her drug use<sup>7</sup> or domestic violence issues, which the court described as “the main focuses” of the CHINS case. *Id.* at 143. The court stated to Mother, “You’ve had opportunity after opportunity and after opportunity to resolve these issues. I think everybody has worked harder to

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<sup>7</sup> The court did acknowledge that Mother was no longer using methamphetamine and commended her on that but indicated that she was still using marijuana, which the court did not believe was for self-medicating as claimed by Mother.

maintain your relationship with your daughter than you have.” *Id.* at 144.

When the court indicated that DCS had met its burden by clear and convincing evidence and that termination was in Child’s best interests, Mother “stormed out of the Courtroom.” *Id.* at 145.

[21] Thereafter, on November 3, 2021, the trial court issued its written termination order. The court made findings consistent with the facts as set out herein and concluded, among other things, that there is no reasonable probability that the conditions that resulted in Child’s removal from and continued placement outside Mother’s care and custody will be remedied. Mother now appeals. Additional information will be provided below as needed.

## **Discussion & Decision**

[22] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[23] We recognize that the traditional right of parents to “establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[24] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, 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); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the

child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

- [25] We begin by addressing Mother’s argument that two of the court’s findings are unsupported by the record. Finding 26(qq) provides: “[Mother] admitted that she did not complete substance abuse services or domestic violence services when that is the reason the case was opened.” *Appellant’s Appendix Vol. II* at 23. Finding 27(g) provides in relevant part: “The case opened due to allegations of a domestic violence incident occurring in the home between [Mother] and [B.A.] Law enforcement was sent to do a welfare check. Law enforcement found marijuana and other drug paraphernalia in the home ....” *Id.* at 24.
- [26] Mother’s complaint with these findings is that they both indicate or imply that Child was originally removed from Mother’s home due to allegations of illegal drug usage *and* domestic violence. In challenging the findings, Mother notes that she was not charged with domestic battery in March 2019 and that she only admitted to the CHINS allegation related to her incarceration on drug charges.
- [27] The challenged findings are not clearly erroneous. *See D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (“Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.”). There is evidence in the record that B.A. and Mother had a history of domestic violence prior to the instant CHINS case. Indeed, Mother testified that they had both been arrested following a domestic violence incident in late 2018 and that within a few days of Child’s removal B.A. was arrested for invasion of

privacy. Further, when asked about the original basis of Child's detention, FCM Fakhreddine testified that "[t]here was a DV incident that occurred earlier that day with the stepfather" and a welfare check followed resulting in the discovery of drugs in the home. *Transcript* at 56. The findings are adequately supported by the record, and we reject Mother's invitation to reweigh the evidence.

[28] In a related argument, Mother argues that DCS failed to establish that domestic violence classes, which she acknowledges she did not complete, were "reasonably necessary" in this case. *Appellant's Brief* at 11. She relies on the following language from *Matter of K.T.*, 137 N.E.3d 317 (Ind. Ct. App. 2019):

The evidence supports the trial court's conclusions that Father failed to fully participate in and complete court-ordered services such as individual therapy and failed to participate in some scheduled visitations. However, Father's failure to fully participate in services, alone, cannot sustain the TPR order. A termination of parental rights must be based on some showing of parental unfitness, and that showing "must be established on the basis of individualized proof." *Although a trial court may consider the services offered by DCS and Father's response to those services as evidence regarding whether problematic conditions will be remedied, there must be some proof of the underlying problematic conditions for which services were required to begin with.* The State may not remove a child from a biological parent without proof of a reason for the removal (or, in this case, proof of the reason for failure to place Child with Father after removal from Mother), order the parent to participate in services to remedy some unsubstantiated reason for removal, and then terminate the parent's rights to the child solely because the parent did not comply with those services.

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We do not condone or excuse a parent's failure to fully comply with court-ordered services. However, here, the trial court's findings that Father failed to fully participate in services and all visitations are not, alone, sufficient to support its conclusion that there is a reasonable probability that the conditions that resulted in Child's removal will not be remedied by Father.

*Id.* at 328-29 (internal citations omitted) (emphasis supplied).

[29] The circumstances of this case are easily distinguishable from *K. T.*, as there was proof of domestic violence being a problematic condition here. As discussed above, FCM Fakhreddine testified that domestic violence was a factor in Child's removal and that there had been an incident that day involving B.A. Additionally, Mother acknowledged a history of domestic violence both as a victim and as a perpetrator, including her being arrested for incidents involving B.A. in late 2018 and her brother in late 2016 while pregnant with Child. Shortly after Child's birth, Mother was also the victim of strangulation at the hands of Father. There was ample evidence in this case that Mother needed domestic violence services.

[30] Mother next argues that although she regularly used marijuana throughout the CHINS case, there was no nexus between her drug use and her ability to parent. Relying on several cases from other jurisdictions, Mother asserts, "by itself [marijuana use] does not establish a proper basis for termination of her parental rights." *Appellant's Brief* at 12. Mother's argument misses the mark

and ignores the fact that her continued marijuana use was not the only basis for the termination of her parental rights.

[31] Boiled down, Mother's challenge is to the trial court's conclusion, under I.C. § 31-35-2-4(b)(2)(B)(i), that there is no reasonable probability that the conditions that resulted in Child's removal from and continued placement outside of Mother's care and custody will be remedied. She claims that the trial court abused its discretion by not giving her one last opportunity to be a parent to Child.

[32] In making a determination regarding the probability that conditions will change,

the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, "but also those bases resulting in the continued placement outside the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)]. In addition, "[w]here there are only temporary improvements and the pattern of conduct shows no overall progress, the court



might reasonably find that under the circumstances, the problematic situation will not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

*In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[33] The record establishes that Child was removed from Mother’s home and remained out of her care for well over two years. At the time of removal, Mother had been involved in domestic violence, most recently with B.A., and a welfare check of her home led to the discovery of methamphetamine and marijuana within reach of her minor children, who were age two and under. As a result, Mother was arrested and pled guilty to related drug charges. In addition to these conditions, Mother experienced a significant period of “couch surfing” during the CHINS proceedings and had ongoing employment instability. *Transcript* at 104. Mother also had difficulty controlling her anger and had “untreated mental health issues” that included “PTSD, border-line personality disorder and depression and anxiety.” *Id.* at 73-74.

[34] To address Mother’s various challenges, DCS made repeated referrals for domestic violence services, substance abuse services, random drug screens, outpatient counseling, group therapy, family therapy, home-based services, and supervised visits. Mother engaged in home-based services and supervised visits for the most part, but her engagement in other services over the life of the CHINS case was rather dismal. At the time of the final termination hearing, Mother was homeless, had used marijuana throughout the CHINS case and recently tested positive, and had no job stability. She had also failed to follow

through with domestic violence classes, completing only nine out of the required twenty-six classes. She stopped attending classes in order to address health issues, but then, despite the pending termination proceedings, did not return to the program over the next five months after recovering from her gall bladder surgery in April 2021.

[35] The trial court acknowledged Mother’s health issues but aptly observed that they were not significant enough to justify her substantial noncompliance with services over the life of the case. The court also referenced Mother’s continued instability regarding housing and employment and emphasized that “the main focuses” of the CHINS case – drug use and domestic violence – had not been resolved despite being given “opportunity after opportunity.” *Id.* at 143-44.

[36] In sum, Child had been continuously removed from Mother’s care for two and a half years at the time of the termination hearing, yet Mother had made little progress and was generally noncompliant with services. The trial court was not required to believe Mother’s claim that she was now ready to do “whatever it takes” and to give her another chance while Child continued to wait for permanency. *Id.* at 125.

[37] The evidence amply supports the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal or continued placement outside Mother’s home will not be remedied, and Mother does not challenge the trial court’s other determinations, including that

termination is in Child's best interests. Accordingly, Mother has not established that the trial court erred in terminating her parental rights.

[38] Judgment affirmed.

Vaidik, J. and Crone, J., concur.