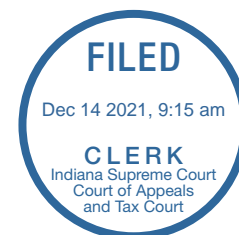


## MEMORANDUM DECISION

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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### ATTORNEY FOR APPELLANT

David W. Stone  
Anderson, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General for Indiana  
Monika Prekopa Talbot  
Deputy Attorney General  
Robert John Henke  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In re the Termination of the  
Parent-Child Relationship of:  
A.J.D., J.A., and A.D.  
(Minor Children),  
and  
A.A. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

December 14, 2021

Court of Appeals Case No.  
21A-JT-1394

Appeal from the Madison  
Circuit Court

The Honorable Stephen  
Koester, Judge

Trial Court Cause No.  
48C02-2008-JT-132  
48C02-2008-JT-133  
48C02-2008-JT-134

**Bailey, Judge.**

## Case Summary

- [1] A.A. (“Mother”)<sup>1</sup> appeals the trial court judgment terminating her parental rights to her children, J.D., J.A., and A.D (collectively, “Children”). She raises one issue on appeal which we restate as whether the termination of parental rights (“TPR”) order was clearly erroneous.
- [2] We affirm.

## Facts and Procedural History

- [3] J.D. was born on December 15, 2011, J.A. was born on February 19, 2013, and A.D. was born on February 16, 2017. On January 31, 2019, the Indiana Department of Child Services (“DCS”) filed a Child in Need of Services (“CHINS”) petition as to Children in which it alleged Mother, Father, and Children were being evicted from the home they shared, Children suffered educational neglect, Mother abused substances, and Father had been arrested and incarcerated. DCS removed Children from the parents’ home on February 1, 2019, pursuant to an emergency order on initial/detention hearing.

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<sup>1</sup> The parental rights of J.D., the putative father of Children (“Father”), were also terminated but he does not actively participate in this appeal.

[4] Following an April 24, 2019, fact-finding hearing, the trial court adjudicated Children to be CHINS due to the “unstable and inconsistent and inappropriate housing and living situation,” and the educational neglect of J.D. Ex. at 39. Following the May 20, 2019, dispositional hearing, the court entered a disposition order<sup>2</sup> in which it ordered Mother to, among other things, obey the law, visit with Children “on a regular basis as outlined by DCS,” engage in home-based services, enroll and participate in DCS-recommended programs, complete a drug/alcohol assessment and follow recommendations, successfully complete parenting classes, obtain and maintain regular income and adequate housing, abstain from illegal drug use, maintain contact with DCS, and engage in family therapy as needed.

[5] In June 2019, Mother pled guilty to misdemeanor theft and operating a vehicle without a license,<sup>3</sup> and she was sentenced to a total of one year of incarceration suspended to probation. In October 2019, Mother was charged with Level 6 felony possession of a narcotic drug, Level 6 felony unlawful possession of a syringe, and misdemeanor criminal trespass. Mother pled guilty to the misdemeanor, the felony charges were dismissed, and Mother was sentenced to ninety-four days of incarceration with credit for time served. In February 2020,

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<sup>2</sup> The appealed order in this cause mistakenly states that “[t]he Dispositional Order on the underlying CHINS Petitions was issued on *March* 20, 2019,” rather than May 20, 2019. Appealed Order at 2 (emphasis added). The dispositional order, Ex. at 34-38, is dated May 20, 2019.

<sup>3</sup> Thus, both parties are incorrect when they assert that Mother was not convicted of “Knowingly and Intentionally Operating a Motor Vehicle [without] Ever Receiving a License” as a Class C misdemeanor. Ex. at 112.

Mother was charged with Level 6 felony auto theft, Level 6 felony resisting law enforcement, and misdemeanor reckless driving. Mother pled guilty to the two felony charges, the misdemeanor charge was dismissed, and Mother was sentenced to 730 days incarceration with credit for time served and one year suspended to probation. In June 2020, Mother was charged with failure to return to lawful detention as a Level 6 felony,<sup>4</sup> to which she pled guilty, and she was sentenced to 910 days of incarceration with credit for time served.

Mother's criminal history also includes convictions of: misdemeanor theft in September 2017; Level 6 felony possession of methamphetamine in April 2017; misdemeanor battery in August 2016.

[6] Mother only engaged in supervised visitation with Children between February and July of 2019; visitation was suspended in July 2019 because Mother's "whereabouts [were] unknown." Ex. at 120. Mother was unsuccessfully discharged from home-based services in July of 2019 "due to lack of communication, missed appointments, and her whereabouts being unknown." *Id.* Mother failed to complete a drug/alcohol assessment and did not complete random drug screens. Mother was not referred to therapy due to her "whereabouts being unknown." *Id.*

[7] On January 8, 2020, the trial court changed Children's permanency plan from reunification to reunification with a concurrent plan of adoption. In so doing,

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<sup>4</sup> See Ind. Code § 35-44.1-3-4(c).

the court noted that DCS had offered Mother the following services: supervised visitation, home-based casework, substance abuse assessment, random drug screens, in-patient substance abuse treatment, and Couples/Family Therapy. However, the court noted that Mother had not successfully participated in and/or completed those services.

[8] On August 3, 2020, DCS filed petitions to terminate parents' parental rights as to Children. Following the May 6, 2021, fact-finding TPR hearing, on June 15, 2021, the trial court entered an order terminating Mother's parental rights. The court entered findings which stated in part, in addition to the above, that:

13. ... On or about January 31, 2019, a Child in Need of Services ("CHINS") Petition was filed ... due to allegations of being evicted from their home, education neglect, mother's substance abuse, alleged father was incarcerated, and/or neglect. ...

\* \* \*

17. Throughout the underlying CHINS proceeding, Mother ... had no meaningful participation in services and did not comply with services or the Court's dispositional orders.

18. [Mother] has failed to obey the law, having been convicted of Criminal Trespass, Theft, Operating a Vehicle without a License, Escape, Theft, and Resisting Law Enforcement.

19. Throughout the majority of the Children's Child in Need of Services actions, [Mother] was incarcerated. When she was not incarcerated, she did not stay in contact with

[DCS], engage in services, or solicit contact with the Children.

20. [Mother] did not participate in formal services during her incarceration.
21. Throughout the pendency of the Children's Child in Need of Services action, [Mother] had only little contact or interaction with the Children from the date of the fact-finding hearing on the termination petition. [Mother] most recently visited the Children from February through July, 2019.
22. [Mother] has not enhanced her abilities to fulfill their [sic] parental obligations to the Children, knowing there was a CHINS proceeding involving the Children.
23. [Mother] has another Child, who is now in the custody of her Father.
24. The Children's Family Case Manager, Moriah Coons, believes it would be in the Children's best interests for the Court to grant the Petition and to terminate the parent-child relationship between the Children and [Mother], at this time. This opinion is based, in part, on [Mother's] lack of participation and engagement in any reunification efforts in the Children's lives. In addition, there is a satisfactory plan for the Children's permanency -- adoption by current placement. The Court finds these opinions to be accurate and adopts them as its own for purposes of these proceedings.
25. The Children's Court Appointed Special Advocate, Natalie Began, believes it would be in the Children's best interests for the Court to grant the Petition and to

terminate the parent-child relationship between the children and Mother. ...

26. [Mother's] lack of interest in this child's [sic] life, as demonstrated by the lack of participation in reunification services, lack of contact with the Children, and lack of participation in these proceedings, constitutes clear and convincing evidence of the reasonable probability that the conditions which resulted in the removal of the Children and reasons for the continued placement of the Children outside [Mother's] home will not be remedied, and that continuation of the parent-child relationship poses a threat to the Children's well-being.

Appealed Order at 2-5.

- [9] The trial court concluded that Mother's parental rights as to Children were terminated because there is a reasonable probability that the conditions which resulted in Children's removal will not be remedied, continuation of the parent-child relationships pose a threat to the well-being of Children, and termination of parental rights is in Children's best interests. This appeal ensued.

## Discussion and Decision

### Standard of Review

- [10] Mother maintains that the trial court's order terminating her parental rights is clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution.

*See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[11] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(A) that one (1) of the following is true:

\* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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) [and] that termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[12] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[13] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court’s judgment

contains special findings and conclusions, we apply a two-tiered standard of

review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.*

“Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

## Challenge to Trial Court’s Factual Findings

[14] Mother challenges the sufficiency of the evidence to support some of the court’s factual findings. Mother alleges that finding of fact number 13 is not supported by the evidence to the extent it states that Children were removed from her care due to her substance abuse.<sup>5</sup> However, DCS family case manager Moriah Coons (“FCM Coons”) testified that the reasons for Children’s removal included “drug use by mother and grandmother.” Tr. at 8. Mother points out that the CHINS petitions, themselves, are not contained in the record, and the April 24, 2019, order on the fact-finding hearing only notes the CHINS allegations of “unstable and inconsistent and inappropriate housing and living situation,” and the educational neglect of J.D. Ex. at 39. However, an unstable and inconsistent living situation may include a custodial parent’s illegal drug use. Moreover, Mother is requesting that we reweigh the evidence and/or

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<sup>5</sup> DCS inaccurately states in its brief that Mother challenged the part of finding 13 regarding eviction from the home.

judge witness credibility, which we may not do. *See In re D.D.*, 804 N.E.2d at 265. There is adequate support in the record for finding of fact 13.

[15] Mother challenges finding of fact 18 to the extent it states that she was convicted of operating a vehicle without a license and escape. However, the record contains court documents showing that Mother pled guilty to, and was convicted of, “Knowingly and Intentionally Operating a Motor Vehicle [without] Ever Receiving a License” as a Class C misdemeanor. Ex. at 112. And, while Mother is correct that there is no evidence in the record that she was convicted of “escape,” the record establishes that she was convicted under the criminal statute entitled, “Escape; failure to return to lawful detention following temporary leave.” I.C. § 35-44.1-3-4. Although the crime to which she plead guilty was “failure to return to lawful detention” pursuant to subsection (c) of that statute, rather than “escape” pursuant to subsection (b) of that statute, both crimes are Level 6 felonies. *Id.*; Ex. at 51. Mother has not cited any harm to her from the trial court’s finding number 18 that mislabels the Level 6 felony as “escape” rather than “failure to return to lawful detention.” And, given that the record is replete with other evidence of Mother’s extensive criminal history, any mislabeling of that one particular conviction is harmless error.

## Conditions that Resulted in Child’s Removal/Continued Placement

[16] Mother only challenges the trial court's ultimate finding that continuation of the parent-child relationship posed a threat to Children. She does not challenge the determination that there is a reasonable probability that the conditions that resulted in Children's removal and continued placement outside the home will not be remedied.<sup>6</sup> Because we find that DCS established the latter factor, we need not, and do not, address Mother's claims regarding a reasonable probability that her relationship with Children poses a threat to them. *See* I.C. § 31-35-2-4(b)(2)(B) (providing that DCS must establish only one of the requirements contained in that subsection).

[17] When addressing the likelihood that the reasons for removal and continued placement outside the home will not be remedied, we must determine whether the evidence most favorable to the judgment supports the trial court's determination. *In re D.D.*, 804 N.E.2d at 265; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). "First, we identify the conditions that led to removal; and second, we determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quotations and citations omitted).

[18] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a

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<sup>6</sup> Mother also does not challenge the trial court's ultimate finding that termination of her parental rights is in Children's best interests.

parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the "trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship"). In evaluating the parent's habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent's prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Moore*, 894 N.E.2d at 226.

[19] Here, Children were removed from Mother due to her "unstable and inconsistent and inappropriate housing and living situation," and the educational neglect of J.D. Ex. at 39. While the CHINS action was pending, Mother engaged in additional criminal behavior that resulted in her incarceration throughout most of the CHINS and TPR proceedings. At the date of the termination hearing, Mother was still incarcerated and, therefore, still unable to provide Children with an appropriate living situation or supervision of their educations. And Mother was not expected to be released

from incarceration until March of 2022. *See Castro v. State Off. of Fam. & Child.*, Court of Appeals of Indiana | Memorandum Decision 21A-JT-1394 | December 14, 2021 Page 13 of 15

842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (concluding that the trial court did not commit clear error in finding that conditions leading to the child's removal from father would not be remedied where father, who had been incarcerated throughout the CHINS and termination proceedings, was not expected to be released until after the termination hearing), *trans. denied*.<sup>7</sup>

[20] Moreover, the trial court may consider the services offered to the parent and the parent's response to those services when evaluating whether there is a reasonable probability that the pertinent conditions will be remedied. *E.g.*, *Matter of D.C.*, 149 N.E.2d at 1229. During the brief periods when Mother was not incarcerated, she failed to engage in the offered services which would have assisted her in obtaining an appropriate housing and living situation. Mother also did not engage in such services while incarcerated. And Mother has not visited with Children since July of 2019. Thus, the trial court did not clearly err when it found that Mother is not likely to remedy the reasons for Children's removal. To the extent Mother asserts otherwise, her assertions are requests that we reweigh the evidence and judge witness credibility, which we may not do. *See In re D.D.*, 804 N.E.2d at 265.

## Conclusion

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<sup>7</sup> Thus, the alleged facts that Mother was released from prison after the termination hearing and currently is not incarcerated are irrelevant. The relevant period of time the court must consider is the date of the termination hearing and the time leading up to it. *See, e.g., id.; Matter of D.C.*, 149 N.E.3d 1222, 1229 (Ind. Ct. App. 2020).

[21] There is ample evidence to support the findings and the ultimate conclusion that there is a reasonable probability that the reasons for Children's removal from Mother and continued placement outside Mother's home will not be remedied. The trial court did not clearly err when it ordered that Mother's parental rights be terminated.

[22] Affirmed.

Mathias, J., and Altice, J., concur