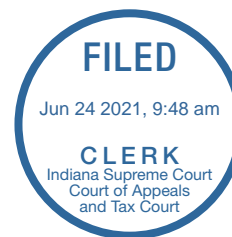


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of: K.F., A.F., and  
Z.B.B. (Minor Children),  
and

B.F. (Mother),

*Appellant-Respondent,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner.*

June 24, 2021

Court of Appeals Case No.  
21A-JT-16

Appeal from the Delaware Circuit  
Court

The Honorable Kimberly Dowling,  
Judge

The Honorable Amanda Yonally,  
Juvenile Magistrate

Trial Court Cause Nos.  
18C02-2002-JT-14  
18C02-2002-JT-15  
18C02-2002-JT-16

**Tavitas, Judge.**

## **Case Summary**

- [1] B.F. (“Mother”) appeals the termination of her parental rights to Z.B., A.F., and K.F. (“Children”). Mother challenges the sufficiency of the evidence to support the termination of her parental rights. We conclude that the Delaware County Department of Child Services (“DCS”) presented sufficient evidence to support the termination of Mother’s parental rights. Accordingly, we affirm.

## **Issue**

- [2] Mother raises one issue, which we restate as whether DCS presented sufficient evidence to support the termination of Mother’s parental rights to the Children.

## **Facts**

- [3] Mother has three children at issue in this appeal: Z.B., who was born in 2012; A.F., who was born in 2014; and K.F., who was born in 2015.<sup>1</sup> J.B. is the father of Z.B., and N.F. is the father of A.F. and K.F.<sup>2</sup>
- [4] On October 2, 2018, DCS received a report alleging caregiver impairment by Mother. Family case manager (“FCM”) Joseph Garrett went to Mother’s

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<sup>1</sup> Mother also gave birth to twins during these proceedings in April 2020. The twins are not at issue in this appeal.

<sup>2</sup> J.B. voluntarily relinquished his parental rights, and the trial court terminated N.F.’s parental rights. J.B. and N.F. are not parties to this appeal.

residence and completed a drug screen of Mother. Mother tested positive for methamphetamine.

[5] On October 18, 2018, FCM Stacy Foltz went to Mother's residence after DCS received a report from Z.B.'s school that Mother failed to pick up Z.B. and could not be reached. The school notified the emergency contact, and when the emergency contact went to Mother's home, Mother was sleeping and left K.F. without supervision. Mother admitted to FCM Foltz that she napped while K.F. was unsupervised. Mother also admitted that she had used methamphetamine four or five times since the end of September and that she used methamphetamine on October 16, 2018.

[6] On October 29, 2018, DCS filed petitions alleging that the Children were children in need of services ("CHINS") pursuant to Indiana Code Section 31-34-1-1, and the Children were placed with K.F.'s and A.F.'s paternal grandmother ("Grandmother"). The trial court adjudicated the Children to be CHINS. On January 7, 2019, after a dispositional hearing, the trial court ordered Mother, in part, to: (1) maintain suitable, safe, and stable housing; (2) secure and maintain a legal and stable source of income; (3) refrain from using any illegal controlled substances; (4) complete a parenting assessment and successfully complete all recommendations; (5) complete a substance abuse assessment and successfully complete all treatment recommendations; (6) submit to random drug screens; (7) complete a psychological evaluation and successfully complete all recommendations; and (8) attend all scheduled visitations with the Children.

[7] Mother's participation in services, however, was sporadic and resulted in little improvement. Mother completed a substance abuse assessment and was recommended for individual therapy, intensive outpatient therapy, and a recovery coach. Mother refused to participate in the intensive outpatient therapy, but Mother did participate in individual therapy. Mother's participation in random drug screening was inconsistent, and she tested positive for methamphetamine, amphetamine, or marijuana in nearly sixty drug screens. Although Mother claims to have stopped using methamphetamine in May 2019, she consistently tested positive for marijuana throughout the CHINS proceedings. In fact, Mother's twins were born exposed to marijuana in April 2020. Mother tested positive for marijuana several times after the birth of the twins.

[8] Mother was referred for home-based case work services in December 2018, but the services were discontinued due to missed appointments. Mother was given a second referral in February 2019. The goals of the services were to obtain employment, housing, and financial budgeting. Later, goals of gaining parenting skills and using community resources were added. When the CHINS proceedings commenced, Mother's housing was unstable. With DCS's assistance, Mother obtained an apartment in October 2019 and moved to new housing in August 2020. Mother's employment, however, remained unstable. Mother was unemployed for the majority of the CHINS proceedings and had only brief periods of employment. At the time of the termination of parental rights hearing, Mother had only been employed at her most recent job for three

weeks. Mother's attendance at supervised visitations was also sporadic. When she did attend the visitations, Mother struggled with consistency and following through on discipline.

[9] On February 19, 2020, DCS filed petitions to terminate Mother's parental rights with the Children. At the September 2020 hearing on DCS's petitions, DCS presented evidence regarding Mother's sporadic participation in services. DCS also presented evidence that the Children have been placed with Grandmother since their removal from Mother for a period of seven hundred days.

Grandmother testified that, during that time period, Mother had contact with the Children for a total of nine days, seven hours, and fifteen minutes. Mother did not take advantage of offers of additional time with the Children on birthdays and holidays. Grandmother testified that the Children have behavior issues and tantrums when they visit with Mother. Mother testified that she stopped using methamphetamine in May 2019; she has a reliable vehicle; and she considers herself "really just overall a better person." Tr. Vol. II p. 77.

[10] The trial court granted the petition for termination of parental rights and entered findings of fact and conclusions thereon. Mother now appeals.

## **Analysis**

[11] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dep't. of Child Services, Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). "[A] parent's interest in the upbringing of [his or her] child is

‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[12] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.<sup>3</sup> Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous

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<sup>3</sup> Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[13] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

- (B) that one (1) of the following is true:
  - (i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.
  - (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
  - (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
- (C) that termination is in the best interests of the child;  
and
- (D) that there is a satisfactory plan for the care and treatment of the child.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[14] As an initial matter, we note that Mother does not challenge the trial court's findings of fact as clearly erroneous. Mother has, thereby, waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019) (explaining that this Court will accept unchallenged trial court findings as true). Mother, instead, argues that there is insufficient evidence to support the trial court's conclusions regarding: (1) whether a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside the home of the parents will not be remedied;<sup>4</sup> and (2) whether termination of parental rights is in the Children's best interests.

### *A. Remedy of Conditions*

[15] Mother argues that the trial court's finding regarding whether there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside the home of the parents will not

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<sup>4</sup> Mother also contends in her issue statement that the continuation of the parent-child relationship does not pose a threat to the Children's well-being. Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence a reasonable probability exists that either: (1) the conditions that resulted in the Children's removal or the reasons for placement outside the home of the parents will not be remedied; (2) the continuation of the parent-child relationship poses a threat to the well-being of the Children; or (3) the Children have, on two (2) separate occasions, been adjudicated a CHINS. *See, e.g., Ma.H.*, 134 N.E.3d at 46 n.2. The trial court here made no finding that a reasonable probability existed that the continuation of the parent-child relationship posed a threat to the Children's well-being. Moreover, Mother makes no argument regarding the issue after mentioning it in her issue statement. Accordingly, we do not address the issue.



be remedied is clearly erroneous. “In determining whether ‘the conditions that resulted in the [the Children’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “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.* In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

[16] The trial court found that “Mother either failed to participate in or benefit from services ordered in the Dispositional Decree” and that Mother “did not avail herself [ ] fully of services that could have assisted her.” Appellant’s App. Vol. II pp. 130, 227; Appellant’s App. Vol. III p. 76. The trial court further noted:

The court has considered Mother’s limited engagement in services, intermittently negative drug screens, housing and current employment; however, the court must also evaluate Mother’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the [Children]. . . . Accordingly, evidence of Mother’s history of substance abuse, failure to provide support, failure to

demonstrate stable housing or employment, failure to adequately supervise the [Children] and failure to visit with the [Children] consistently are all factors that support termination of Mother's parental rights.

*Id.*

[17] DCS presented evidence that Mother's participation in services was sporadic and resulted in little improvement. FCM Megan Combs testified that Mother "continues to struggle with the follow through on services, [ ] maintaining sobriety, [ ] maintaining employment, and [ ] having a plan to maintain housing." Tr. Vol. II p. 31. The CASA was concerned with the lack of progress by Mother; Mother's missed drug screens; Mother's inability to maintain employment; and Mother's sporadic visitations with the Children. Although Mother made improvements in her housing situation and claims to have stopped using methamphetamine, Mother failed to participate in substance abuse treatment, continued to test positive for marijuana, and has failed to demonstrate stability in her employment. Under these circumstances, the trial court's conclusion is not clearly erroneous.

### ***B. Best Interest***

[18] In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep't of Child Services*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional

and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[19] Mother argues that there was no evidence presented to show that termination of Mother's parental rights was in the Children's best interest. The CASA, however, testified that the Children need a safe and stable home. According to the CASA, the termination of Mother's parental rights is in the Children's best interest and is "the best thing for them mentally and physically and emotionally." Tr. Vol. II p. 62. The Children have struggled with behavioral issues and tantrums after visiting with Mother, and both A.F. and Z.B. expressed to the CASA that they desire to live with Grandmother. Given the totality of the evidence, we cannot say the trial court's conclusion that termination of Mother's parental rights is in the Children's best interest is clearly erroneous.

## **Conclusion**

[20] Sufficient evidence supports the termination of Mother's parental rights to the Children. Accordingly, we affirm.

[21] Affirmed.

Najam, J., and Pyle, J., concur.