

## 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. (Minor Child),  
and

A.F. (Mother)

*Appellant-Respondent,*

v.

August 30, 2022

Court of Appeals Case No.  
22A-JT-936

Appeal from the Marshall Circuit  
Court

The Honorable Curtis D. Palmer,  
Judge

Trial Court Cause No.  
50C01-2105-JT-7

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

**Bailey, Judge.**

## Case Summary

- [1] A.F. (“Mother”) appeals the termination of her parental rights to K.F. (“Child”), upon the petition of the Marshall County Department of Child Services (“DCS”).<sup>1</sup> Mother presents the sole issue of whether the judgment is clearly erroneous because DCS failed to present clear and convincing evidence to establish the requisite statutory elements. We affirm.

## Facts and Procedural History

- [2] The Elkhart County DCS became involved with Mother, Father, and Child in 2016, when Child was two years old. Because of Child’s exposure to methamphetamine, he was removed from his parents’ care. On June 23, 2016,

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<sup>1</sup> S.O. (“Father”) is not an active party to this appeal.

Child was found to be a Child in Need of Services (“CHINS”). Mother and Father completed services and Child was returned to their care.

[3] On August 28, 2019, the Marshall County DCS removed Child. At that time, Mother was being arrested for a probation violation after having tested positive for methamphetamine. DCS contacted Father, who was at that time barred from visiting Mother and Child’s residential hotel room. Father could not take custody of Child because he also tested positive for methamphetamine.

[4] On November 8, 2019, Child was again adjudicated a CHINS. In a dispositional order entered on the same day, Mother was ordered to, among other things, maintain suitable housing, complete a substance abuse assessment and follow treatment recommendations, submit to random drug screens, and attend scheduled visits with Child.

[5] Mother attended the majority of scheduled visits. She did not complete a substance abuse assessment but entered a YWCA recovery program. She was discharged for possession of prescription medication in violation of the program rules. However, Mother was readmitted to the program and completed Phase 1. Mother declined to follow the recommendation that she complete Phase 2 of the program, which was to include transitional housing. At times during the CHINS proceedings, Mother tested positive for methamphetamine. At other times, she did not return DCS caseworker messages sent in an effort to set up drug screens. She never reported verifiable housing to DCS. On July 17, 2020, Child’s permanency plan was changed from reunification to adoption, with a

concurrent plan of appointment of a legal guardian. On May 27, 2021, DCS filed a petition to terminate Mother’s and Father’s parental rights.

[6] The trial court conducted a factfinding hearing on January 21, 2022, at which Mother, Child’s therapists, service providers, Child’s former foster mother, and the Court Appointed Special Advocate (“CASA”) testified. On February 9, 2022, the court entered an order terminating the parents’ parental rights. With respect to Mother, the court found in relevant part: “Mother has never completed a substance abuse assessment ... she has been unable to show she has ever attended any sort of aftercare ‘meeting,’ ...her last random drug screen for the DCS was in June of 2020 and she failed for methamphetamine, ... in March of 2021, her random drug screens were moved to Elkhart [at] her request, but she never appeared for any, ... she has also advised the DCS she is ‘living in Culver’ but was unable to give a specific address.” Appealed Order at 9-10. Mother now appeals.

## Discussion and Decision

[7] In conducting our review, we acknowledge that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* 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.

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

(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. . . .

(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). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R. Y. v. Ind. Dep't of Child Servs.*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child.*, 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*.

[10] Where, as here, 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.

[11] Mother does not challenge any of the factual findings made by the trial court. Rather, she argues that the trial court committed clear error in concluding that there is a reasonable probability that conditions that resulted in Child's removal will not be remedied, that continuation of the parent-child relationship poses a threat to the well-being of Child, and that termination of parental rights is in Child's best interests.

## Remediation of Conditions

- [12] With respect to a trial court's conclusion that there exists a reasonable probability that conditions leading to removal will not be remedied, the reviewing court engages in a "two-step analysis." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we must identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* (citing *Bester*, 839 N.E.2d at 152). The trial court is entrusted with balancing a parent's recent improvements against habitual patterns of conduct. *Id.* The trial court 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.*
- [13] Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

[14] Child was initially removed from Mother's care primarily due to her substance abuse and secondarily due to her inability to provide a safe and stable residence. Mother has participated in some treatment services but has not been able to complete those services or to achieve sobriety. Family case manager Scott Lewis testified that, after Mother provided several drug screens that were positive for methamphetamine, she stopped responding to any of his messages in which he attempted to arrange drug screens.

[15] Child has been removed from Mother's care for the majority of his life. While in Mother's care, Child lived in a storage unit, in a residential hotel, and with extended relatives. Mother has not provided DCS with a verifiable residence to date. Mother points to her testimony that "she was no longer in transitional housing and felt that her current home was a safe environment," and she alleges that DCS "failed to obtain any type of report of progress from YWCA." Appellant's Brief at 9. This is simply a request to reweigh the evidence. The trial court's determination of a reasonable probability that the conditions leading to removal and continued placement outside the parental home are unlikely to be remedied is not clearly erroneous.

[16] Mother also argues that she presents no danger to Child, she was without "fault," and "DCS manufactured a situation in which the child had a positive relationship with Mother but this began to lessen due to the constraints DCS placed upon Mother and [Child]." *Id.* We need not address this argument, because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, the court is required to find that only one prong of subsection



(2)(B) has been established by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d at 209.

## Best Interests

- [17] Mother argues that it was the actions of DCS that led to a “negative relationship between [Child] and Mother” and the best interests of Child “would be served by continuing services and allowing Mother a realistic chance in re-forming her bond with [Child].” Appellant’s Brief at 11.
- [18] To determine what is in a child’s best interests, the court must look to the totality of the circumstances. *In re A.W.*, 62 N.E.3d 1267, 1275 (Ind. Ct. App. 2016). This includes a child’s need for permanency. *A.D.S.*, 987 N.E.2d at 1158. “[T]he testimony of the service providers may support a finding that termination is in the child’s best interests.” *In re S.K.*, 124 N.E.3d 1224, 1234 (Ind. Ct. App. 2019), *trans. denied*.
- [19] Child has spent most of his life outside parental care. Despite the provision of services, Mother has not obtained verifiable appropriate housing, nor has she completed a drug treatment program. According to her family case manager, Mother was a “no-show” when offered transitional housing. (Tr. Vol. II, pg. 106.) Child’s therapist testified that Child was emotionally “disconnected” from his biological parents. (*Id.* at 82.) The CASA testified that Child was bonded with his foster parents. Child’s family case manager and CASA opined that termination of parental rights and adoption was in Child’s best interests. This evidence supports the trial court’s findings relative to Child’s best interests

and the conclusion that Child's best interests are served by termination of parental rights is not clearly erroneous.

## Conclusion

[20] DCS presented sufficient evidence to establish the requisite statutory elements to terminate Mother's parental rights to Child. The termination order is not clearly erroneous.

[21] Affirmed.

Riley, J., and Vaidik, J., concur.