

## MEMORANDUM DECISION

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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  
R.M. (Minor Child) and A.M.  
(Mother)

A.M. (Mother)

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

April 30, 2021

Court of Appeals Case No.  
20A-JT-2220

Appeal from the  
Huntington Superior Court

The Honorable  
Jennifer E. Newton, Judge

Trial Court Cause No.  
35D01-1912-JT-37

**Vaidik, Judge.**

## Case Summary

- [1] A.M. (“Mother”) appeals the termination of her parental rights to R.M. (“Child”). We affirm.

## Facts and Procedural History

- [2] Mother and J.M. (“Father”) (collectively, “Parents”) are the biological parents of Child, born in December 2017. Father has consented to Child’s adoption by her paternal grandparents (“Grandparents”) and does not participate in this appeal, so we limit our narrative to the facts relevant to Mother.
- [3] On December 20, 2017, the day after Child was born, the Department of Child Services (DCS) in Huntington County received a report Mother told hospital workers she had used meth, heroin, and other drugs during her pregnancy with Child. Child tested positive for THC at birth. At the time, Father was incarcerated. Family Case Manager (FCM) Cora Kennedy investigated the report and offered Mother an Informal Adjustment to provide services to her. Mother agreed to participate in the Informal Adjustment services but never did so. On February 3, 2018, Mother left Child with Grandparents for an overnight visit, but she did not return the next day to retrieve Child, instead calling and asking Grandparents to keep Child until Mother could get housing and stop using illegal substances.
- [4] On March 21, FCM Kennedy met with Mother, and Mother admitted she was using drugs, did not have a place to live, and had left Child with Grandparents.

DCS then submitted a request to the trial court asking for Child to be formally removed from Mother's care, which the court granted. Child remained in Grandparents' home. DCS also submitted a petition alleging Child was a child in need of services (CHINS) due to Father's incarceration and Mother's inability to care for Child due to drug use and lack of housing. In June, Parents admitted Child was a CHINS. A dispositional hearing was held, wherein Mother was ordered to, among other things, complete a substance-abuse assessment, follow any recommended treatment, and maintain weekly contact with her FCM. That same day, Mother attended her first visit with Child since leaving Child with Grandparents in February. Mother did not visit Child for the rest of 2018 or the entirety of 2019. Review hearings in the CHINS case occurred in October 2018, April 2019, and September 2019. At each, Mother failed to appear and DCS reported she had not kept in regular contact with her FCM, her location was unknown, and she had not participated in services. On December 16, 2019, DCS filed a petition to terminate Parents' rights, which alleged there is a reasonable probability the conditions leading to Child's removal will not be remedied, the continuation of the parent-child relationship poses a threat to Child's well-being, termination is in Child's best interest, and "there is a satisfactory plan for the care and treatment of the child, which is Adoption." Ex. 3, p. 9. Another review hearing occurred in the CHINS case in February 2020, and again Mother did not appear.

[5] In April 2020, Mother gave birth to another child ("Sibling") in Delaware County. Sibling tested positive for THC at birth, and DCS in Delaware County

began an Informal Adjustment with Mother for Sibling. Before Sibling's birth, Mother either was homeless or stayed with relatives. After Sibling's birth, Mother moved into a friend's house, where she and Sibling lived rent-free. She remained unemployed. Mother engaged in home-based therapy with DCS in Delaware County and took regular drug screens. That same month, she tested positive for hydrocodone twice.<sup>1</sup> In May, Mother had two more positive drug screens—one for hydrocodone and one for THC. Around this time, Mother contacted FCM Kennedy and asked about visiting Child, now two. Because of the COVID-19 pandemic, FCM Kennedy only arranged virtual visits. From June to July 31, FCM Kennedy scheduled seven virtual visits, but Mother attended only three. Three others were canceled because Mother tested positive for amphetamine and methamphetamine—once in June and twice in July. Mother missed another visit due to a miscommunication regarding scheduling. Tr. Vol. II p. 79.

- [6] The termination hearing occurred on July 31, 2020. Before the presentation of evidence, Mother asked the court to continue the hearing, noting she had “been consistently participating in services as of recently” and wanted “additional time to participate in those services.” *Id.* at 32. DCS objected to the continuance, arguing Mother had an opportunity to participate in services for

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<sup>1</sup> There is no evidence in the record as to whether Mother had a valid prescription for hydrocodone. While the dispositional order required her to not consume illegal substances, it did allow for the consumption of medications for which she had a valid prescription. *See* Appellant's App. Vol. II p. 17.

over two years and chose not to do so. The court denied Mother's motion and proceeded with the hearing.

- [7] Father then told the court he wished to consent to the adoption of Child "by [Grandparents]." *Id.* at 37. The court accepted Father's consent and excused him from the hearing. The hearing proceeded on the termination of Mother's rights. Mother testified she did not visit Child from June 2018 to June 2020 because she "was on drugs." *Id.* at 48. She also stated she had started counseling for her substance-abuse issue "yesterday." *Id.* at 51. At the time of the termination hearing, Mother was still living with friends, did not pay rent, and did not have a job, but she testified she could care for both Child and Sibling.
- [8] FCM Kennedy testified Child "doesn't have a relationship with [Mother]" but has a "strong relationship" with Grandparents and is "thriving" in their care. *Id.* at 71. She stated Child's placement with Grandparents is "pre-adoptive" and it is in Child's best interests for the parental rights of Mother to be terminated. *Id.* Child's guardian ad litem (GAL), Kathryn Garrett, also testified she believed it in Child's best interests for the parent-child relationship to be terminated because Mother's substance abuse has not "been rectified." *Id.* at 136. Tammy Helton, Mother's FCM for Sibling's Informal Adjustment in Delaware County, testified Mother had been participating in services for Sibling since April and that DCS had not removed Sibling because they felt Mother's care for her was safe and appropriate. However, she acknowledged Mother could not "maintain [] her sobriety." *Id.* at 114. Finally, Child's grandmother

testified Child is doing well in her care and that she and her husband want to adopt Child. After the hearing, the trial court issued an order terminating Mother's rights.

[9] Mother now appeals.

## Discussion and Decision

### I. Denial of Continuance

[10] Mother challenges the trial court's denial of her motion to continue the termination hearing. The decision to grant or deny a motion for continuance is within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *J.P. v. G.M.*, 14 N.E.3d 786, 789 (Ind. Ct. App. 2014). An abuse of discretion occurs where the trial court reaches a conclusion that is clearly against the logic and effect of the facts or the reasonable and probable deductions that may be drawn therefrom. *Id.* at 790. When a trial court denies a motion for continuance, an abuse of discretion will be found if the moving party has demonstrated good cause for granting the motion. *In re J.E.*, 45 N.E.3d 1243, 1246 (Ind. Ct. App. 2015), *trans. denied*.

[11] Mother argues she should have been granted additional time to participate in services so she could "demonstrate even further compliance and success," which would have "supported and bolstered [her] argument at a future termination hearing[.]" Appellant's Br. pp. 29-30. However, Mother was given more than two years to participate in services and chose not to do so. She did

not visit Child or remain in contact with DCS in those two years. When Mother finally showed a willingness to participate in services and visit Child, three of the visits were canceled due to her positive drug tests. Additionally, when considering a motion to continue, the trial court may consider Mother's "patterns with respect to attendance, communication, and participation" in the CHINS case. *In re J.E.*, 45 N.E.3d at 1247. And as noted above, Mother did not attend any of the CHINS review hearings, keep in contact with her FCM, visit Child, or participate in services for over two years. Mother has failed to show good cause for why the motion should have been granted. *See J.M. v. Marion Cnty. Office of Family & Children*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004) (upholding trial court's denial of a mother's motion to continue where her child had been out of her custody for almost two years and the mother failed to participate in services during that time), *trans. denied*.

- [12] Under these circumstances, we cannot say the trial court abused its discretion in denying Mother's motion to continue.

## II. Sufficiency of Evidence

- [13] Mother next argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of

fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).<sup>2</sup>

[14] A petition to terminate parental rights must allege, 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.

(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

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<sup>2</sup> Mother says she is challenging Findings of Fact 25, 29, and 30 as not being supported by the evidence. However, she fails to provide any argument for this assertion. As such, she has waived this issue. *See Pasha v. State*, 524 N.E.2d 310, 314 (Ind. 1988) ("Bald assertions of error unsupported by either cogent argument or citation to authority result in waiver of any error on review."). Waiver notwithstanding, Findings 29 and 30 are legal conclusions. Finding 25 is a lengthy summary of the findings before it, none of which Mother challenges. As such, we find no error in the trial court's findings of fact.



(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

### **A. Conditions Remedied**

[15] Mother challenges the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[16] Here, Child was removed from Mother's care due to Mother's housing instability and substance abuse. Mother's housing instability continued until just a few months before the termination hearing, when she began living rent-free in a friend's house. At the time of the termination hearing, she was not employed. Furthermore, at no point in the two-and-a-half years Child was

removed did Mother show an ability to remedy the primary reason for Child's removal—her substance abuse. Child was born with THC in her system, and Mother left Child with Grandparents in part to address her substance-abuse issue. Mother did not visit Child for almost two years and admitted at the hearing this was because she was on drugs.

[17] However, Mother argues she “still maintains the care and custody of [Sibling],” which shows she “has corrected the issues that led to the removal of Child[.]” Appellant’s Br. p. 21. We disagree. Sibling, who was born only four months before the termination hearing, tested positive for THC at birth. And in those four months, Mother had seven positive drug screens—three for hydrocodone, one for THC, and three for amphetamine and methamphetamine. Three of these positive screens led to DCS canceling scheduled visits between Mother and Child. And while Mother did begin substance-abuse counseling, she did so only one day before the termination hearing. The trial court was within its discretion to “disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother’s history of conduct prior to those efforts.” *In re K.T.K.*, 989 N.E.2d at 1234 (quotation omitted).

[18] As such, the trial court did not err when it concluded there is a reasonable probability the conditions leading to Child’s removal will not be remedied.<sup>3</sup>

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<sup>3</sup> Because we affirm the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal will not be remedied, we need not address its alternate conclusion there is a reasonable

## B. Best Interests

[19] Mother next challenges the trial court's conclusion termination is in the best interests of Child. In determining the best interests of a child, the trial court must look at the totality of the evidence. *See In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or 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.* We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*.

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probability the continuation of the parent-child relationship poses a threat to the well-being of Child. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the two requirements of subsection (b) has been established by clear and convincing evidence), *trans. denied*.

[20] Here, both FCM Kennedy and Kathryn Garrett, Child's GAL, support the termination of Mother's parental rights, believing it to be in Child's best interests. Moreover, as we noted above, Mother's issues with substance abuse have not been remedied and pose a safety risk to Child if she was returned to Mother's care. While this evidence alone is sufficient to support the trial court's conclusion, permanency is a central consideration in determining best interests. Child resides in a loving and stable home with Grandparents, whom she is bonded to. Child, now three, has been with Grandparents since she was six weeks old, and they plan to adopt her. In contrast, she has no bond with Mother, having visited with her only four times in the last two years.

[21] For all these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in Child's best interests.

### **C. Satisfactory Plan**

[22] Last, Mother argues "DCS did not present, nor does it have, a satisfactory plan for Child's care and treatment." Appellant's Br. p. 13. Specifically, Mother contends DCS did not present any evidence of a plan for Child's care, let alone a satisfactory one. We disagree. The trial court found, "There is a satisfactory plan for the care and treatment of Child, that being adoption by the paternal grandparents." Appellant's App. Vol. II p. 63. Adoption is a satisfactory plan for the care and treatment of a child under the termination-of-parental-rights statute. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009).

[23] The trial court's finding was supported by ample evidence presented at the hearing. The petition to terminate filed by DCS, and admitted as Exhibit 3 at the termination hearing, states DCS's plan for the care and treatment of Child is "Adoption." Ex. 3, p. 9. Additionally, to begin the hearing, Father testified and agreed to give his consent to the adoption of Child by Grandparents. FCM Kennedy testified Child's placement with Grandparents was "pre-adoptive." Tr. Vol. II p. 71. Finally, Child's grandmother testified she and her husband wanted to adopt Child.

[24] There is sufficient evidence supporting the trial court's conclusion that a satisfactory plan exists for the care and treatment of Child.

[25] Affirmed.

Bradford, C.J., and Brown, J., concur.