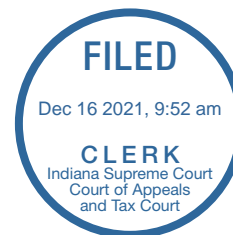


## MEMORANDUM DECISION

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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Termination of Parent-Child  
Relationship of L.A. (Minor  
Child),

D.P. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services, et al.,

December 16, 2021

Court of Appeals Case No.  
21A-JT-985

Appeal from the Marion Superior  
Court Juvenile Division

The Honorable Geoffrey A.  
Gaither, Judge

The Honorable Scott B. Stowers,  
Magistrate

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*Appellees-Petitioners.*

Trial Court Cause No.  
49D09-1904-JT-419

**Altice, Judge.**

### **Case Summary**

- [1] D.P. (Mother) appeals the involuntary termination of her parental rights to her minor child, L.A. Mother contends that the evidence was not sufficient to support the termination.
- [2] We affirm.

### **Facts & Procedural History**

- [3] Mother has two children (Children), L.A. (Child), born in April 2014, and A.P (Sister), who is nine years older.<sup>1</sup> On or around June 29, 2017, Indiana Department of Child Services (DCS) received a report of drug usage in Mother’s home, and the ensuing assessment revealed not enough food in the residence, Children were unsupervised, and “Mother was not taking her mental

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<sup>1</sup> Child and Sister have different fathers. Child’s father is deceased; Sister was eventually dismissed from the proceedings when she began residing with her father, and she is not part of this appeal.

health medication.” *Exhibits Vol.* at 25. Mother submitted to a drug screen and tested positive for methamphetamine, amphetamine, and marijuana. She admitted that she had used ecstasy but denied knowingly using methamphetamine. Children were removed from Mother’s care and placed in relative care. On July 3, 2017, DCS filed a petition alleging that Children were children in need of services (CHINS).

[4] At the July 5 initial/detention hearing, Mother stated that her substance use on June 29 had been “a one time only use” on her birthday. *Id.* at 9. The court ordered Mother to submit to random drug screens. At the July 19 pretrial hearing, the court directed that Child remain in kinship care but authorized Mother to have increased parenting time upon positive recommendations from service providers.

[5] The court held factfinding hearings on October 27 and November 8, 2017, and Mother did not appear in person at either hearing. On November 8, the trial court issued an order finding, among other things, that Mother had unstable housing, including having no power in the home and facing eviction, and that home-based case management had been put in place to assist with housing and other goals but “that service is about to close unsuccessfully because Mother has not maintained contact.” *Id.* at 25. Finding that “[t]here is no parent available to provide shelter, care and supervision for these children,” the court adjudicated Children to be CHINS. *Id.*

- [6] On November 29, 2017, the court held a dispositional hearing at which Mother did not appear and issued an order directing that Children remain in kinship care. That same day, the court issued a parental participation order that required Mother to (1) participate in home-based therapy and follow all recommendations, (2) participate in home-based case management and follow all recommendations, (3) complete a substance abuse assessment and follow all treatments and complete treatment recommendations, and (4) submit to random drug/alcohol screens.
- [7] Mother appeared by phone on March 7, 2018, for a review hearing. The court admonished Mother about having “lost contact with her public defender who withdrew her appearance, . . . not [] appearing in court, [and] not [] participating with service providers” and advised Mother “that she is missing parenting time and that if she wants her children back she needs to participate in services, attend the next team meeting, screen [for drugs and alcohol,] and participate in parenting time.” *Id.* at 42.
- [8] DCS family case manager (FCM) Kindal Johnson was assigned to Mother’s case in June 2018. At that time, Child was in emergency shelter care because the current placement could no longer care for Children, and Child was placed in a foster home. DCS made referrals for a home-based case manager to help with basic life skills, such as housing, coping skills, employment, and health insurance. After a substance abuse assessment, FCM Johnson made referrals for outpatient treatment and psychiatric evaluation; Mother did not participate in substance abuse treatment but did participate in a psychological evaluation.

- [9] Mother attended a June 27, 2018 permanency hearing, at which the court again admonished Mother to participate in services. The order reflected that the court “print[ed] off a copy of the parental participation order and hand[ed] it to Mother” at the hearing. *Id.* at 47.
- [10] Keisha Walden, a visitation facilitator and home-based case manager with Seeds of Life, worked with Mother from late 2018 to December 2019 on various “life related” issues, such as assisting Mother with finding and keeping housing and employment, solving transportation issues, and accessing computer resources. *Transcript* at 23. To assist Mother with mental health issues/medication, Walden took her to an appointment with a psychiatrist. Walden was also supervising visits, and because the “visits had become inconsistent” or were missed, Walden instituted what she called an attendance contract with Mother. *Id.* at 27. In terms of communication, there were “issues” many times because Mother’s phone was not on or not working. *Id.* at 30. Mother’s employment was unstable, and transportation was “a huge issue” for Mother. *Id.*
- [11] By November 2018, Mother still did not have suitable, stable housing and was staying in motels. At the November 28, 2018, permanency hearing, the court told Mother that if she did not make significant progress – meaning obtain stable housing, comply with services, and attend parenting time sessions – within ninety days, the plan for Child’s permanency would change to adoption.

[12] At the next hearing on March 20, 2019, the court changed the permanency plan to adoption, finding that Mother had failed to participate consistently “in services, screens, or parenting time” and “has made no progress toward reunification.” *Exhibits Vol.* at 63. Sometime in March or April 2019, Child was placed with a foster parent (Foster Mother), where she has remained throughout the remainder of the case. On April 5, 2019, DCS filed a petition for involuntary termination of Mother’s parental rights to Child.

[13] Beginning in early 2019, Mother engaged in home-based individual therapy with provider Cathy Jackson and was successfully discharged in August 2019 with the understanding that Mother would transition to and engage in community-based mental health treatment. To that end, Sherry Butler of Community Behavioral Health/Gallahue made contact with Mother in September 2019, pursuant to DCS referral, for an intake assessment. Mother told Butler that she had been diagnosed with Bipolar I, depression, and anxiety and “may possibly be schizophrenic as there is a family history.” *Transcript* at 65. However, Mother was not taking prescribed medication because she believed she “was fine” and did not need it. *Id.* Mother told Butler she drank alcohol daily and did not believe it was inappropriate.

[14] Butler recommended home-based therapy focused on substance use concerns, and she recommended a life skills clinician to teach coping skills for self-usage triggers and depression and anxiety. Butler also recommended a medication assessment with a medication provider to determine the correct medications. Butler was going to provide the home-based individual therapy but was “only []

able to meet with [Mother] two additional [occasions] because of a lot of no-shows.” *Id.* at 66. Butler closed Mother’s file in or around November 2019 for lack of participation.

- [15] Mother’s communication with DCS at end the of 2019 and early 2020 was sporadic. A permanency hearing was held on January 29, 2020, at which Mother agreed that the permanency plan remain as adoption, and Mother provided DCS with possible placement with a family friend, but after further meetings, DCS recommended Child stay in her current placement.
- [16] Home-based caseworker, Linda Matthews, also of Seeds of Life, began working with Mother in February 2020. At that time, Mother was employed but living in a motel, and Matthews’s goals were to help Mother obtain stable housing and maintain her employment. On the housing issue, Matthews met Mother to look at some apartments in March 2020, but Mother did not maintain contact with Matthews after that occasion. Matthews discharged her in April 2020.
- [17] From March 2020 to September 2020, Mother had no contact with DCS. She also did not see Child for about six months, although Mother would call Foster Mother and speak with Child once or twice per month. During those calls, Foster Mother would try to arrange visits – which remained supervised such that someone from DCS would transport Child to the visits – because Child would ask to see Mother. Mother would tell Foster Mother that she would “get back with” her once she had her work schedule, but then would fail to follow up. *Id.* at 46.

[18] As of August 2020, Children were both staying with Foster Mother but Sister was leaving soon to live with her father out of state. A visit occurred in August 2020 between Mother and Children, but after that, when arrangements were made for visits between Mother and Child, Foster Mother would not hear back from Mother “maybe fifty percent of the time,” and Mother would fail to follow through with the visit. *Id.* at 47.

[19] In September 2020, Mother reported to FCM Johnson that, on her own, she was engaged in mental health treatment through Eskenazi Hospital. To monitor that treatment, DCS asked Mother for a release of information, which Mother never provided.

[20] The termination fact-finding hearing was held on February 2 and 23, 2021 and March 18, 2021. In February 2021, Mother was living with her aunt. Prior to that, she had been living with an acquaintance for a few months. Before that, she resided with another friend for about a year, and before that, in a Motel 8. Mother acknowledged that her housing was “unstable.” *Id.* at 10, 16. With regard to employment, she explained that she generally was able to get jobs through “temp services” but those did not always turn into anything permanent. *Id.* at 162. She also explained that, prior to the COVID-19 pandemic, she had done primarily computer-related work but that work shifted to work-from-home, which was not possible for her, so she had to take lower-paying food service jobs. At the time of the February 2 hearing, Mother had been working at a Hardees for about two weeks. As of the March 18, 2021 hearing, Mother was employed at a CVS warehouse.



[21] With regard to substance use, Mother admitted to taking an ecstasy pill on her birthday and to sometimes consuming alcohol and marijuana, but denied ever knowingly having taken methamphetamine. When she was asked about participating in “classes or therapy” following two drug assessments, Mother said, “[T]hey never told me that I had to go to into any type of class. They told me medicine, I’m supposed to go and take medicine.” *Id.* at 12; *see also id.* at 19 (same).

[22] Butler testified about Mother’s missed appointments and that Mother’s reasons for the no-shows mostly “centered around [her] cellphone,” i.e., not working, turned off, or out of battery. *Id.* at 77. She also testified that Mother “continued to disagree that DCS should be involved in her affairs simply because she’s using alcohol,” “felt it was not fair that DCS was attempting to set her up for failure” and “[was] not willing to understand that alcohol, although legal, was considered [a] substance and was not appropriate in order to get her children back.” *Id.* at 68. Butler opined that “all the screens were coming back positive for alcohol,” and Mother “chose not to comply.” *Id.* at 69. Butler testified that Mother made no progress toward achieving the goals set out for her.

[23] Walden testified that Mother had trouble finding stable housing because she could not come up with a deposit due to lack of stable employment and income. Walden noted that Mother “has a degree and customer service experience” so getting a job was “not hard.” *Id.* at 31. In Walden’s opinion, Mother’s mental health played a part in her lack of stability.

[24] Foster Mother testified about the missed visits. While she viewed it as “a positive” that Mother spent some time with Child, she stated that when planned visits would fall through, it was difficult for Child, describing, “[Child] cries, she cries, she wants to see her mom.” *Id.* at 48.

[25] FCM Johnson testified that the permanency plan had been changed in March 2019 to adoption and, two years later, Mother was not any closer to reunification. She noted that the home-based referrals were intended to be workable for Mother, who lacked stable housing or transportation, as it allowed her to meet the provider at a location convenient to her, such as at a library along her bus route. FCM Johnson testified that DCS was not concerned with “hard drugs” but that alcohol was a concern and “[a]ll of [Mother’s] screens were positive for alcohol” such that “there was no cessation of the alcohol.” *Id.* at 108, 114. She also noted that Mother never progressed beyond supervised parenting time for three and one-half years.

[26] FCM Johnson stated that Mother’s failure to maintain contact affected her participation in services because providers could not reach her. She also testified that each time she would successfully re-initiate contact with Mother, she had to explain why DCS was involved and that Mother had “a general disbelief that DCS would proceed with this case.” *Id.* at 97. FCM Johnson believed that termination of Mother’s parental rights was in Child’s best interests. The Guardian ad litem (GAL) also testified that termination was in Child’s best interests as it would allow her to “be adopted by her current

caregiver who has demonstrated the ability to care for all her needs, there's a bond there, she can [] have a permanent home with stability.” *Id.* at 131.

[27] On May 5, 2021, the trial court issued findings and conclusions terminating Mother’s parental rights, concluding that the conditions that led to removal and continued placement outside the home would not be remedied and the continuation of the parent-child relationship posed a threat to Child’s well-being. Among other things, the court found:

[Mother] went to disposition on November 29, 2017, and has had well over three years to put forth an effort and has not done so. Sobriety, stability, and untreated mental health issues all remain major concerns. After over three years, [Mother] has not progressed to unsupervised parenting time. Even prior to the COVID-19 pandemic, [Mother] had made no progress in obtaining suitable housing and mental health treatment.

*Appellant’s Appendix* at 22. It also determined that termination was in Child’s best interests and that DCS had a satisfactory plan of adoption for Child. Mother now appeals.

## **Discussion & Decision**

[28] When reviewing the termination of parental rights, we consider the evidence in the light most favorable to the prevailing party, and we will not reweigh the evidence or judge the credibility of the witnesses. *Matter of M.I.*, 127 N.E.3d 1168, 1170 (Ind. 2019). To prevail, the challenging party must show that the court’s decision is contrary to law, meaning that the probative evidence and reasonable inferences point unerringly to the opposite conclusion. *Id.*

[29] 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 K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.*

[30] 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:

(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[.]

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.

[31] On appeal, Mother’s general position is that her parental rights were terminated “because she was poor, low income, and homeless with an admitted diagnosis for mental health issues.” *Appellant’s Brief* at 6. She challenges Finding 37, and she challenges the court’s conclusions that (1) the conditions resulting in Child’s removal or the reasons for placement outside the home would not be remedied, (2) the continuation of the parent-child relationship posed a threat to Child’s well-being, and (3) termination is in Child’s best interests.

### ***Finding 37***

[32] Mother asserts Finding 37 is not supported by the evidence. It states: “[Mother] also disclosed to Ms. Butler daily alcohol usage including up to two pints of alcohol per day.” *Appellant’s Appendix* at 22. Mother argues that she “did not tell Ms. Butler this information and the record does not reflect a timeline of when Mother drank that heavily.” *Appellant’s Brief* at 17. We agree. Finding 37 apparently stems from Butler’s answer when asked if at some point she determined that Mother’s alcohol use “was at a level that might be inappropriate.” *Transcript* at 65. She stated:

Part of the assessment that we complete is a complete review of any available medical records. According to the medical records that I was able to view[,] it . . . was documented by Eskenazi that Ms. Piper consumed between two pints and fifth of alcohol per day.

*Id.* at 66. The record reflects that, while Mother disclosed to Butler that she drank alcohol daily, she did not tell her that she drank up to two pints per day. And Butler testified that the medical records were not current records and provided only historical use by Mother. To the extent that Finding 37 suggests otherwise, it is not support by the evidence.

[33] This does not, however, require reversal. We have explained:

A court on review must determine whether the specific findings are adequate to support the trial court’s decision. This Court is to disregard any special finding that is not proper or competent to be considered. Additionally, such a finding cannot form the basis of a conclusion of law. We may reverse a trial court’s judgment, however, only if its findings constitute prejudicial error. A finding of fact is not prejudicial to a party unless it directly supports a conclusion.

*In re B.P.*, 879 N.E.2d 7, 19-20 (Ind. Ct. App. 2008) (citations omitted), *trans. denied*.

[34] In this case, Finding 37 was erroneous because it was not supported by the evidence. It would be cause for reversal, however, only if it were the “sole support for any conclusion of law necessary to sustain the judgment of the court.” *Id.* at 20. Here, it is not. That is, as more fully discussed below, we find the unchallenged findings support the trial court’s conclusions that (1) there was a reasonable probability that the conditions resulting in removal and continued placement of Child outside Mother’s care would not be remedied and (2) termination was in Child’s best interests. Accordingly, the erroneous

finding “was merely harmless surplusage that did not prejudice Mother and, consequently, is not grounds for reversal.” *Id.*

### ***Conditions Not Remedied***

[35] In deciding whether a reasonable probability exists that conditions will not be remedied, the trial court must judge a parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.* “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*. 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 N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). DCS need not provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[36] This case began in late June 2017, when Children were removed from Mother’s home. As of February 2021, almost four years later, Mother had made little to

no progress toward DCS's goals for her, that being maintaining stable employment and housing, remaining free from substance (alcohol) use, and addressing her mental health issues. While Mother would at times make some progress with regard to employment, she never retained her jobs for any sustained period of time. Nor did she obtain suitable and stable housing, often staying with friends or in a motel – generally near her place of employment since she lacked personal transportation – but moving after weeks or months to another location. Mother never completed substance abuse treatment, and she refused to cease drinking alcohol on an admitted daily basis. Her parenting time never progressed past supervised. There was a six-month period in 2020 that Mother did not see Child at all. After August 2020, when visits resumed, Mother would fail to follow through about half of the time, which was devastating to Child. Further, the record indicates that Mother's mental health issues remained untreated. Mother would lose contact with providers and services would be terminated. We have held that “[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).

[37] The trial court's determination that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside Mother's home will not be remedied is supported by clear and convincing evidence. Because I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, we



need not address her challenge to the trial court's determination that continuation of the parent-child relationship posed a threat to Child's well-being. *See K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 646 n.4 (Ind. 2015).

### ***Best Interests***

[38] In making a best-interests determination, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013). The court must subordinate the interests of the parent to those of the children and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). Our Supreme Court has explained that “[p]ermanency is a central consideration in determining the best interests of a child.” *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). “Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that 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.” *J.S.*, 906 N.E.2d at 236.

[39] Considering the totality of the evidence before the court, we find no error in the court's conclusion that termination was in Child's best interest. Mother was never able to retain stable employment, which in turn affected her income and, correspondingly, her ability to obtain and maintain stable housing. At least one provider opined that Mother's failure to manage her mental health needs was a likely contributing factor to her instability. Although Mother asserts that DCS

never told her that she was supposed to complete substance abuse treatment, FCM Johnson testified that she told Mother she needed to attend treatment. We will not reweigh the evidence or judge the credibility of the witnesses. *M.I.*, 127 N.E.3d at 1170. Further, Mother was inconsistent in keeping and/or attending planned visits with Child, right up to the time of the termination hearings, which caused distress to Child. Both the FCM and GAL testified that termination was in Child's best interests given that Mother was no closer to reunification than she was when the permanency plan was changed to adoption in March 2019. Sufficient evidence supports the trial court's determination that termination of Mother's parental rights is in Child's best interests.

[40] The trial court's order terminating Mother's parental rights to Child was not clearly erroneous.

[41] Judgment affirmed.

Bailey, J. and Mathias, J., concur.