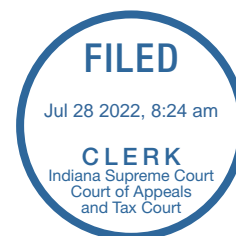


## MEMORANDUM DECISION

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 Involuntary Termination  
of the Parent-Child Relationship  
of: K.H., A.H., W.M., IV, A.M.  
(Minor Children), and H.S.  
(Mother)

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

July 28, 2022

Court of Appeals Case No.  
22A-JT-291

Appeal from the Delaware Circuit  
Court

The Honorable Kimberly S.  
Dowling, Judge

The Honorable Amanda Yonally,  
Juvenile Magistrate

Trial Court Cause Nos.  
18C02-2107-JT-67  
18C02-2107-JT-68  
18C02-2107-JT-69  
18C02-2107-JT-70

## **Brown, Judge.**

- [1] H.S. (“Mother”) appeals the involuntary termination of her parental rights to her children, K.H., A.H., W.M., IV, and A.M.<sup>1</sup> We affirm.

### *Facts and Procedural History*

- [2] Mother and D.H. are the parents of A.H., born in 2005, and K.H., born in 2006.<sup>2</sup> Mother and W.M., III, are the parents of W.M., IV, born in 2008, and A.M., born in 2011.
- [3] On January 22, 2020, DCS filed petitions alleging that A.H., K.H., W.M., IV, and A.M. were children in need of services (“CHINS”). DCS alleged that the children resided in a home with Mother and W.M., III, and it received a report that “one of the children heard [Mother] and [W.M., III,] fighting from down the road, [W.M., III,] was pushing mother down on the bed and throwing water with vinegar on her, two of the children were present for the dispute, . . . and [W.M., III,] was being arrested.” Exhibits Volume I at 53-54. DCS alleged

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<sup>1</sup> Without citation to the record, Mother asserts that she is the mother of “four children in this matter” and lists K.H. under cause number 18C02-2103-JT-67, A.H. under cause number 18C02-2103-JT-68, W.M., IV, under cause number 18C02-2103-JT-69, and G.M. under cause number 18C02-2103-JT-70. Appellant’s Brief at 7. The cause numbers referenced by Mother appear to contain typographical errors as the appealed cause numbers include 18C02-2107-JT-67 (“Cause No. 67”), 18C02-2107-JT-68 (“Cause No. 68”), 18C02-2107-JT-69 (“Cause No. 69”), and 18C02-2107-JT-70 (“Cause No. 70”). Cause No. 67 relates to K.H., Cause No. 68 relates to A.H., Cause No. 69 relates to W.M., IV, and Cause No. 70 relates to A.M. and not G.M. as suggested by Mother. While Mother does not include A.M. in the list of the four children in this matter, she later mentions A.M. in her statement of facts and in her summary of the argument. The State asserts that G.M. is “not a child in this case.” Appellee’s Brief at 11.

<sup>2</sup> In its order terminating Mother’s parental rights with respect to K.H. and A.H, the court found that D.H. executed a consent to adoption for A.H. and K.H.

that W.M., III, was arrested and subsequently incarcerated for a preliminary charge of domestic battery, he remained incarcerated, and the children reported that Mother and W.M., III, had engaged in fights and similar instances in the past. DCS also alleged the home was without heat and running water and that the Delaware County Health Department had an active order to enter and inspect the family residence stemming from allegations the home was unfit for human habitation.

- [4] On February 26, 2020, DCS filed amended petitions and alleged, between the end of October 2019 to January 2020, W.M., IV, had ten unexcused school absences, A.M. had thirty unexcused absences, A.H. had twenty unexcused absences, and K.H. had twenty absences.
- [5] On July 27, 2020, the court entered orders finding the children to be CHINS. On August 17, 2020, the court entered a dispositional order which required Mother to maintain suitable and safe housing, allow the family case manager or other service providers to make visits to the home, complete a parenting assessment, and participate in a domestic violence assessment/program.
- [6] Mother and W.M., III, appealed the trial court's adjudication of W.M., IV, A.M., A.H., and K.H. as CHINS, and this Court affirmed. *See Matter of W.M.*, No. 20A-JC-1697, slip op. at 2 (Ind. Ct. App. March 22, 2021).
- [7] In July 2021, DCS filed petitions for the involuntary termination of the parent-child relationships with respect to Mother and K.H. and A.H. and with respect to Mother and W.M., III, and W.M., IV, and A.M.

[8] In October and November 2021, the court held a hearing. It heard testimony from multiple witnesses including W.M., IV, Mother, Permanency Family Case Manager Samantha Winans, Jeremy Pettigrew, an environmental health specialist employed by the Delaware County Health Department, Stephen Selvey, an employee of the Muncie Building Commissioner’s Office, Mariah Goad, a therapist referred to provide supervised visitation for therapeutic services, Ashlea Gernand, a mental health professional referred to provide therapeutic family visits, Samantha Murphy, a behavior clinician, Family Case Manager Tammy Helton (“FCM Helton”), and Court Appointed Special Advocate Miles Hill (“CASA Hill”).

[9] In January 2022, the court entered a thirteen-page order terminating Mother’s parental rights with respect to K.H. and A.H. and a thirteen-page order terminating Mother’s parental rights with respect to Mother and A.M. and W.M., IV.<sup>3</sup> It found reasonable probability that the conditions which resulted in the removal of the children from Mother’s home and the reasons for their continued placement outside of Mother’s care and custody would not be remedied. It also found that the continuation of the parent-child relationship posed a threat to the well-being of the children and termination of the parent-child relationship was in the children’s best interest.

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<sup>3</sup> This order also terminated the parental rights of W.M., III, with respect to W.M., IV, and A.M.

## *Discussion*

[10] The issue is whether the trial court erred in terminating Mother’s parental rights. Mother argues that DCS did not present evidence that she was unable to provide housing. Without citation to the record, she asserts that she attempted to move out of the home she shared with W.M., III, and attempted to acquire Section 8 housing but DCS did not provide her with the required documentation. She contends DCS did not provide assistance to obtain housing or demonstrate that her home was unsuitable for the children. She also argues that she was attentive and affectionate to the children and there was no evidence presented that termination was in the children’s best interests.<sup>4</sup>

[11] In order to terminate a parent-child relationship, 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.

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<sup>4</sup> Mother does not cite to the record in her statement of case, statement of facts, or argument section of her brief. *See* Ind. Appellate Rule 46(A)(5) (governing the Statement of Case and providing that “[p]age references to the Record on Appeal or Appendix are required in accordance with Rule 22(C)”; Ind. Appellate Rule 46(A)(6) (providing that the Statement of Facts “shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)”; and Ind. Appellate Rule 46(A)(8) (governing the Argument and providing that “[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22”).

(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.

Ind. Code § 31-35-2-4(b)(2). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[12] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[13] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. 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.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* 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 a parent's past behavior is the best predictor of future behavior. *Id.* 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). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where 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. *Id.*

[14] Mother does not cite to the trial court's order in her argument or specifically challenge any of its findings. To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[15] The trial court's order related to K.H. and A.H. found:

50. [FCM Helton] first met the family in December 2019 and observed the poor home conditions. Immediately prior to the hearing, FCM Helton returned to the home in an effort to determine the condition and found the home to be in worsened condition as evidenced by her photographs (Exhibit 29).

51. The photographs depict extreme trash and debris outside the home which make the yard inaccessible. There are electrical cords and tools obstructing the front porch. There is a piece of carpet or rug serving as siding for the home.

52. There is a camper/trailer in the yard filled with trash and debris. The home is missing roof shingles[,] siding and has a boarded window on the roof which would prevent emergency egress in case of fire.

53. Building Commissioner Steve Selvey has an extensive history with [W.M., III,] and the home and described it as "abhorrent" and that no progress had been made to improve the conditions.

54. There were neighborhood complaints of feces being discarded from a window on the property, either from the home or camper/trailer, and such excessive trash and debris that attracted rodents. Jeremy Pettigrew of the Delaware County Health Department described the history of a "lack of a



functioning bath/shower in the home, clutter, refuse and debris” in his efforts to work with [W.M., III] (Exhibit 33).

55. At no time during the history of the case, could it be confirmed or verified that there was a functioning bath or shower or adequate heat in the home occupied by parents due to [] continuing refusal [by W.M., III,] to allow DCS or any service provider to enter the home.

56. Mother did not have independent housing that was appropriate for the Children despite ongoing contact with her throughout the case. Mother refused to allow admittance into the home she shared with [W.M., III,] at [the] direction [of W.M., III].

57. Mother never obtained a source of income. Mother reported that she supported herself by selling plasma. [W.M., III,] had no reported source of income.

58. [W.M., III,] appeared in person in open court at the TPR Fact Finding Hearing with an extensive open, uncovered wound on the back of his head that he claimed came from “platinum” that caused a “mutation of his genes”. [He] appeared at the hearing disheveled and unkempt.

59. The home conditions can best be described as the living environment of a “hoarder.” This type of living environment has significant health and safety consequences for the occupants.

60. When the children were removed, sibling [A.H.’s] hair was so tangled, dirty and matted that it took extensive professional efforts to restore her hair to a healthy condition (Exhibits 44, 45).

61. Parents’ efforts to support [A.H.’s] hygiene regarding her hair were dismal and inadequate. Both the FCM and CASA described [A.H.] as a neat and well-kempt child who took pride in her appearance and who would not have resisted efforts to maintain her hair’s appearance.

62. [W.M., III,] has a history of methamphetamine use (Exhibit 25), as evidenced from the certified drug screen from his prior case and involvement with DCS.

63. Mother has a history of substance abuse issues beginning with the original Motion to Compel Conduct from December 2016 in Case No. 18C02-1612-JM-00146 (Exhibit 37).

64. In July 2021, the Court ordered parents to submit to random drug screens based upon the therapist recommendation after observing Mother during visits. Ashlea Gernand noted behavior changes and marks on Mother and recommend that a substance abuse assessment be ordered (Exhibit 42).

65. Despite the indicia of substance abuse on the part of both parents, they have each refused to submit to any drug screens to ensure that the children would be in a home with a sober caregiver despite repeated efforts by the FCM (Exhibit 26).

\* \* \* \* \*

72. Ashlea Gernand was Mother's individual therapist from Meridian. She encouraged Mother to allow service providers in the home and clearly explained the need for the visual observation of the home. Mother reported that [W.M., III,] would not allow anyone in the home and Mother did not secure her own housing for her and the children.

73. The DCS was unable to confirm whether parents were still residing together at the time of the TPR hearing as parents provided inconsistent statements in court and to law enforcement (Exhibit 47).

74. Samantha Murphy, the home-based case worker, attempted to engage and work with Mother who made no progress and had continued issues with attendance and compliance with her services. The home-based case work referral was closed for non-compliance.

75. [CASA Hill] has been appointed in prior CHINS proceedings involving these children and has observed the home conditions. She objected to the closure of the prior case because of the home conditions and could never ascertain that the home conditions had been improved to healthy and safe conditions.

76. The CASA volunteer was never able to observe, nor did she become aware of, Mother obtaining and maintaining independent stable and appropriate housing during the life of the CHINS case. . . .

77. CASA reported that the children’s grades and attendance were “abysmal” when they were removed. CASA noted the significant improvement in the attendance, grades, behavior and participation in school activities of the children after removal and placement in foster care (Exhibits 35 and 36).

78. CASA attended all hearings in the CHINS case and participated in Child and Family Team Meetings and Visitations. Parents represented that they had never met or seen the CASA. The Court finds that this claim is not credible.

\* \* \* \* \*

84. Mother never progressed beyond supervised visitation with the children because of her refusal to participate in any other service and her acquiescence to [the] denial of admittance [by W.M., III,] to the home by any provider.

\* \* \* \* \*

90. Mother has not obtained and maintained steady legal employment or obtained another consistent source of income during the underlying CHINS case.

Appellant’s Appendix Volume II at 184-188. The court made similar findings in its order related to W.M., IV, and A.M. *See id.* at 197-201.

[16] The record reveals that Gernand, the mental health professional referred to provide therapeutic family visits, testified that the refusal by Mother and W.M., III, to allow someone into the home to see if it was safe for the children had been a roadblock in this case. When asked why Mother did not allow her in the home, she stated that Mother said “it wasn’t her choice to make.” Transcript Volume II at 101. Counsel for DCS asked: “[W]e’re not at the point after a year and a half this case has been opened, to move this into the home to a less restrictive environment, or expand the visits?” *Id.* at 103. Gernand answered in the negative. She also indicated that her concerns with Mother’s drug use were never resolved.

[17] Murphy, a behavior clinician referred to assist Mother with employment, safe and stable housing, coping skills, and obtaining her driver’s license, testified that Mother did not work with or cooperate with her and the referral had to be closed in April 2021 for non-compliance.

[18] Mother testified that she lived with W.M., III, and that she would honor his request not to allow someone into the home. She testified that she did not complete the domestic violence assessment or the parenting assessment, had not maintained any source of income other than donating plasma, and had not obtained her own home.

[19] FCM Helton testified that Mother has not allowed her in her home, she believed Mother did not have suitable housing, and she was not aware that Mother had any source of income. She testified that Mother did not call for

random drug screens and did not complete domestic violence or parenting assessments.

[20] CASA Hill testified that there has never been a time since removal of the children that she believed a trial home visit should commence. She indicated Mother has not satisfactorily completed services ordered by the court and there was still significant work to be done.

[21] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the children's removal and the reasons for placement outside Mother's care will not be remedied.

[22] To the extent Mother challenges the trial court's finding that termination of the parent-child relationship is in the best interests of the children, we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child 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. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[23] When asked if DCS believed adoption was in the best interests of the children, FCM Helton answered affirmatively. She also indicated that she was asking the court to terminate Mother’s parental rights. When asked if she thought remaining in their current placement was “a satisfactory plan for the children or in the event that parental rights . . . are terminated,” CASA Hill answered affirmatively. Transcript Volume II at 237. When asked if she thought “that’s in their best interest,” she answered affirmatively. *Id.* Based on the totality of the evidence, we conclude the trial court’s determination that termination is in the children’s best interests is supported by clear and convincing evidence.

[24] For the foregoing reasons, we affirm the trial court.

[25] Affirmed.

Mathias, J., and Molter, J., concur.