

## 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.



---

### ATTORNEY FOR APPELLANT

Justin R. Wall  
Wall Legal Services  
Huntington, Indiana

### ATTORNEYS FOR APPELLEE INDIANA DEPARTMENT OF CHILD SERVICES

Theodore E. Rokita  
Attorney General of Indiana

Katherine A. Cornelius  
Deputy Attorney General  
Indianapolis, Indiana

### ATTORNEY FOR APPELLEE Sp.C. (FATHER)

Lierin A. Rossman  
Stucky, Lauer & Young, LLP  
Fort Wayne, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

In the Matter of: So.C., Child in  
Need of Services:

K.C. (Mother),  
*Appellant-Respondent*,

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner*

and

Sp.C. (Father)

*Appellee-Petitioner.*

May 5, 2021

Court of Appeals Case No.  
20A-JC-2189

Appeal from the Wells Circuit  
Court

The Honorable Kenton W.  
Kiracofe, Judge

Trial Court Cause No.  
90C01-2002-JC-2

**Bradford, Chief Judge.**

## Case Summary

- [1] After K.C. (“Mother”) was arrested for operating a vehicle while under the influence, the Department of Child Services (“DCS”) initiated proceedings, alleging that So.C. (“Child”) was a child in need of services (“CHINS”). Child was removed from Mother’s care and placed with Sp.C. (“Father”). Father is a member of the United States Army, currently stationed in Texas. After learning of allegations of drug use by Mother, Father filed a petition in the CHINS proceedings for a modification of custody. Over the course of a number of days, the juvenile court conducted an evidentiary hearing. Following the conclusion of the evidentiary hearing, the juvenile court granted Father’s

petition, awarding custody of Child to Father. DCS subsequently moved to dismiss the CHINS proceedings. Mother challenges the modification of custody on appeal. We affirm.

## Facts and Procedural History

- [2] Child was born out of wedlock to Mother and Father on June 18, 2010. Father's paternity was established by the Allen Circuit Court. Mother was granted sole physical and legal custody and Father was granted parenting time consistent with the Indiana parenting Time Guidelines and his military obligation.
- [3] At approximately 5:30 a.m. on December 20, 2019, Deputy Quinton Greer of the Wells County Sheriff's office stopped Mother's vehicle because the vehicle's license plate had expired.<sup>1</sup> Instead of pulling over to the side of the road, Mother stopped in a turn lane, which Deputy Greer found "unusual." Appellant's App. Vol. II p. 24. As he approached Mother's vehicle, Deputy Greer noticed what he believed to be the odor of burnt marijuana emanating from the vehicle. Mother subsequently informed Deputy Greer that she had smoked marijuana at about 10:00 p.m. the previous evening. Mother consented to submit to a blood test, which subsequently returned a positive result for

---

<sup>1</sup> Mother does not challenge the accuracy of the juvenile court's findings regarding her arrest or DCS's initial involvement in the case. Given that these findings stand as proven, *see Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020), we rely on said findings in crafting our factual overview regarding Mother's arrest and the initial DCS involvement.

THC, amphetamines, methamphetamine, and methadone. The State then charged Mother with operating a vehicle while under the influence and operating with expired plates.

- [4] Meanwhile, on February 5, 2020, DCS Family Case Manager (“FCM”) Wendelene Garrett visited Mother’s home to assess allegations that Mother was both operating an unlicensed childcare facility out of her home and using drugs. Mother refused to submit to a drug screen but signed a safety plan in which she agreed to refrain from using illegal substances while caring for Child or other children. Following the assessment, DCS obtained a court order requiring Mother to submit to a drug screen based on probable cause that she was using illegal substances while acting as the sole caregiver for Child.
- [5] On February 14, 2020, DCS arrived to serve the order that Mother submit to a drug screen at the same time as law enforcement arrived to arrest Mother in connection with the December 20, 2019 traffic stop. The drug screen demonstrated a positive result for amphetamine and Oxycodone. DCS removed Child from the home on an emergency basis due to Mother’s arrest and placed her with paternal grandparents.
- [6] On February 19, 2020, DCS filed a petition alleging Child to be a CHINS. The juvenile court conducted an initial hearing, at the conclusion of which the juvenile court continued Child’s placement outside of Mother’s care and placed Child with Father. On March 2, 2020, Father filed a verified petition to modify custody of Child. On April 8, 2020, Father filed a verified petition for the

juvenile court to exercise jurisdiction of custody and parenting time matters pursuant to Indiana Code section 31-30-1-13, in which he again requested that the juvenile court modify the prior custody order and grant him physical and legal custody of Child. The juvenile court subsequently granted Father's petition for the court to exercise jurisdiction over the custody issues.

[7] Over the course of a number of days, the juvenile court conducted an evidentiary hearing on both the CHINS petition and Father's petition to modify custody. On October 26, 2020, the juvenile court found, in relevant part, as follows:

12. On December 20, 2019, at approximately 5:30 AM, Mother was driving a vehicle and stopped by [Deputy Greer]. Deputy Greer initiated the stop due to the license plate on the vehicle being expired. Instead of stopping her vehicle on the side of the road, Mother stopped her vehicle in the middle of the turn lane. Deputy Greer thought that to be unusual. Deputy Greer noticed what he believed the odor of burnt marijuana as he approached the vehicle.

13. During a traffic stop, Deputy Greer questioned Mother, and she admitted that she had smoked marijuana at approximately 10:00 PM the previous evening. Due to her admission of using marijuana, Deputy Greer offered her a chemical test for intoxication, to which she consented.

\*\*\*\*

16. On February 5, 2020, FCM Garrett performed an assessment at Mother's home on an allegation that Mother was operating an unlicensed childcare in her home[,] using illegal substances in the home, and users of illegal drugs were frequenting the home. Mother refused to submit to a drug screen. Mother did sign a safety plan with DCS, wherein she

agreed to not use illegal substances while caring for her child or other children.

17. The blood test administered on December 20, 2019, tested positive for THC, amphetamine, methamphetamine, and methadone. Consequently, [the State] charged Mother with Operating a Vehicle w/ Schedule I or II Controlled Substance (or its Metabolite) in Person's Body and Operating with Expired Plates under Cause Numbered 90D01-2002-CM-71. A warrant for Mother's arrest was issued by the Wells Superior Court. The Court takes judicial notice of this case from Wells Superior Court.

18. Mother was arrested on the warrant at her home on February 14, 2020.

19. When Mother was at the jail for booking, she admitted to the officer that she had been using marijuana.

20. On February 14, 2020, [DCS] obtained a Court Order compelling Mother to complete a drug screen based on probable cause that she was using illegal substances and was the sole caregiver of the child.

\*\*\*\*

22. The result of the drug screen on February 14, 2020, was positive for amphetamine and oxycodone.

23. Mother consistently asserted her Fifth Amendment rights under the United States and Indiana Constitutions regarding her drug use and her relationships with persons known to have substance abuse problems.

\*\*\*\*

25. During the investigation, Mother advised FCM Garrett that Heather Pearson had been staying at the home, which required Mother and the child to share a room. Pearson was known to FCM Garrett to be an illegal drug user.

26. During the investigation, it was discovered that another woman, Megan Eisaman, was staying in the garage of the home.

[Eisaman's] belongings were stored in the garage, and there was a space heater in the garage.

\*\*\*\*

28. [DCS] initiate[d] an emergency detention of the child on February 14, 2020, because Mother was being arrested for driving under the influence, and there was no appropriate parent available. There was not sufficient time to obtain a court order.

29. DCS initially placed the child with her paternal grandparents with whom she had a relationship.

30. On February 19, 2020, [DCS] filed a petition alleging the child was a [CHINS] under Cause Number[] 90C01-2002-JC-2. On the same day, the Wells Circuit Court held a detention and initial hearing.

31. At that detention hearing, the Court found probable cause for the continued detention of the child.

32. The child was placed with her father in San Antonio, Texas after the Court heard evidence regarding the child's placement options.

33. [Father] filed his Verified Motion to Modify Custody, Request for Abatement of Parenting Time, and Motion to Modify Child Support, on March 2, 2020.

34. [Father] filed, into the pending CHINS matter under cause number 90C01-2002-JC-[2], his Verified Motion for CHINS Court to Exercise Jurisdiction Over Custody and Parenting Time Matters Pursuant to I.C. 31-30-1-13.

35. Mother further admitted that she has not been on any prescription medication since January 1, 2020. She also has not been in any counseling, with a licensed counselor, for year [sic]. She did attempt to describe how she has been talking with a pastor, sporadically, about things going on in her life.

36. Mother confirmed that none of the drug screens she submitted to for [DCS] would test positive for any illegal substances.

\*\*\*\*

38. Since the child's detention, seventeen (17) drug screens were requested of Mother by DCS. Mother only screened seven (7) times and did not provide a drug screen ten (10) times.

39. Mother claims DCS never communicated with her that missed tests were considered presumptively positive. The Court finds Mother's testimony on this point dubious. Mother seemed to always have an excuse why she would not or could not submit to a screen when requested and seemed to pick and choose when she would submit. Consequently, the screens are not consistent and do not provide the Court with any assurance that she has addressed her substance abuse issues.

40. Mother's pending criminal matter resulting from her testing positive for multiple substance[s] on December 20, 2019[,] is still pending and remains unresolved. Consequently, her license is suspended, and she is not taking any programs or services to address any substance abuse issues.

\*\*\*\*

42. On March 10, 2020, FCM Garrett met and discussed with Mother a substance abuse assessment, wherein Mother agreed to submit to one; however, she did not sign any requested releases for the FCM that day, as she advised she needed to speak with her attorney prior to signing any releases. On May 14, 2020, FCM Garrett confirmed with Mother that it was her responsibility to call in and follow [up with DCS] to check in on drug screens and encouraged her to follow DCS policies.

43. As of all dates of this pending litigation, Mother had not yet submitted to a substance abuse assessment and was not receiving any services through [DCS] or from any services she voluntarily began.

44. Mother testified that she lives in a home that is paid for by her father, to whom she does not pay any type of regular rent. Mother last [paid] rent in December 2019. She confirmed she is not currently employed, but has had jobs lined up. Her income information provided that she made a minimal amount of money for calendar year 2019 and did not have any income during this

litigation.

45. Based upon records submitted to Mother, it does not appear the child has received regular dental care for substantial periods of time.

\*\*\*\*

48. Since taking custody at the detention hearing, Father has enrolled her in school, enrolled her in counseling, and has taken her to multiple dentist appointments to address concerns with her teeth.

49. Father is an active member of the United States Army and is currently stationed in Texas. He has been stationed in Texas since 2019 and will likely move around because of the current program in which he is enrolled. Father plans on ending his military career in Indiana, close to his parents' home.

50. Father has been a member of the United States Army for thirteen (13) years, and he has had no disciplinary actions during his military career.

51. Father lives in an appropriate home with adequate space for the minor child. Father and his wife have established a routine with the child, which includes attending school, regular counseling, and attending church services.

52. In addition, Father has made arrangements for the child to see a pediatrician.

53. Father has ensured regular telephone communication between the child and Mother. Father and/or his wife monitor the phone calls because there have been concerns that the conversation between Mother and child have caused the child to have a negative reaction. FCM Garrett confirmed the negative conversation, intervened, and place guidelines around the conversation between the child and Mother.

54. Father is randomly drug screened and has not had any positive drug screens during his service in the United States Army.

55. Father is from Bluffton, Indiana and has family in the area

with whom he still maintains a relationship. Since relocating, he has returned to Bluffton to visit with his family.

\*\*\*\*

57. Father confirmed that he has a history of mental health issues, including a previous suicide attempt; however, he [has] not had any mental health issues for many years. Father participated in counseling and a dialectical behavioral therapy (DBT) program to address his mental health issues. Currently, he does not take any medication nor is he enrolled in counseling.

58. Father believes it is in the child's best interest that she remained placed with him, as he lives in a drug-free home, has financial resources to provide for the child, is able to provide her with a healthy routine, and does not subject the child to unhealthy individuals.

59. Father is willing to work with Mother to establish a parenting time schedule for the child and Mother.

\*\*\*\*

64. The guardian ad litem [("GAL")], Beth Webber, believes it is in the child's best interest that the child continue to be placed outside of Mother's home due to Mother's substance use and refusal to/participate in services designed to rehabilitate her and address her substance use.

65. FCM Garrett also believes it is in the child's best interest for the child to continue to be placed with Father.

Appellant's App. Vol. II pp. 23–30. Based on these findings, the juvenile court concluded, in relevant part, as follows:

**Jurisdiction:**

\*\*\*\*

15. The court finds that had the matter proceeded on the DCS petition, sufficient evidence was presented for the Court to find

the Child was a child in need of services as defined under Ind. Code 31-34-1-1 as to Mother; however, because the child was placed with Father and Father had promptly sought to modify the custody of child a finding on the issue of whether the child is a child in need of services as alleged in the DCS's petition makes the issue irrelevant at this time.

**Custody:**

\*\*\*\*

4. Evidence presented to the Court establishes that Mother has a substance abuse problem which she has not addressed. This is demonstrated by her admissions and positive drug test results for several substances, including methamphetamine, amphetamine, methadone, oxycodone, and THC.

5. Although Mother has only tested positive on three (3) drug screens, she has refused to submit to ten (10) tests.

6. In addition, Mother invoked her Fifth Amendment rights when asked direct questions regarding substance use.

\*\*\*\*

8. After considering Mother's substance abuse and all the other relevant factors [included in] Ind. Code 31-14-13-2 and Ind. Code 31-14-2-3, the Court finds it is in the child's best interest that physical custody be modified, and that Father shall be awarded physical and sole legal custody of the child.

9. The Court's decision is not one taken lightly. Mother and Child are clearly well bonded to each other and to the child's extended family in the community. Unfortunately, Mother is not willing to admit and address her substance abuse issues. Had Mother confronted her problem, resolved her criminal case, and submitted to substance abuse treatment, it could have demonstrated to the Court that, although she did have a substance abuse issue, she was addressing the problem. Instead, Mother's denials, despite the evidence otherwise, suggests she's

not willing to admit there is a problem and not willing to make the necessary changes.

Appellant's App. Vol. II pp. 30–36.

[8] DCS subsequently moved to dismiss the CHINS proceedings. In doing so, DCS stated the following:

2. [DCS] requests dismissal of this petition, in that Pursuant to I.C. 31-30-1-1, [the juvenile court] entered an order changing custody to Father and outlining conditions to Mother's parenting time, in addition to collateral issues. Because Father has sole legal and physical custody of the child and an appropriate parenting time order has been entered, the cause for removal and the petition alleging the child is a [CHINS] have been alleviated and this cause should be dismissed.

3. The circumstances that initially resulted in the filing of the petition alleging the child is a [CHINS] have substantially changed and there is no longer a legally sufficient basis to proceed under this cause.

Appellant's App. Vol. II p. 143.

## Discussion and Decision

### I. Jurisdiction and Standard of Review

#### A. Jurisdiction

[9] Although custody had previously been determined by a different court, Father requested that the juvenile court exercise jurisdiction of custody and parenting time matters pursuant to Indiana Code section 31-30-1-13. Indiana Code

section 31-30-1-13(a) provides that a court having jurisdiction “over establishment or modification of paternity, child custody, parenting time, or child support in a paternity proceeding *has concurrent original jurisdiction* with another juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of the other juvenile court because: (1) the child is the subject of a child in need of services proceeding[.]” (Emphasis added). Further,

If, under this section, a juvenile court:

- (1) establishes or modifies paternity, custody, child support, or parenting time of a child; and
- (2) terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child;

the order establishing or modifying paternity, custody, child support, or parenting time survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding until the court having concurrent original jurisdiction under subsection (a) assumes or reassumes primary jurisdiction of the case to address all other issues.

Ind. Code § 31-30-1-13(c). We have previously concluded that the current version of Indiana Code section 31-30-1-13 evinces that the legislature intended “for a CHINS court to be able to establish or modify custody, child support, or parenting time of a child over whom it exercises jurisdiction.” *M.M. v. Ind. Dep’t of Child Servs.*, 118 N.E.3d 70, 77 (Ind. Ct. App. 2019). Thus, the juvenile court properly exercised jurisdiction of the custody matters.

## B. Standard of Review for Custody Determinations

[10] “A modification of custody is a determination that rests in the sound discretion of the trial court.” *In re Marriage of Sutton*, 16 N.E.3d 481, 484 (Ind. Ct. App. 2014). “When reviewing the trial court’s decision, we may neither reweigh evidence nor judge the credibility of witnesses.” *Id.* “We consider only the evidence favorable to the trial court’s judgment and all reasonable inferences derived from it.” *Id.*

[11] Where, as here, the juvenile court enters findings of fact and conclusions thereon, we “apply the following two-tiered standard of review: we first determine whether the evidence supports the findings of fact and then determine whether the findings of fact support the judgment.” *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018). “We will set aside findings if they are clearly erroneous, which occurs only when the record contains no facts to support them either directly or by inference.” *Id.* “We further note that there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters.” *Id.* (internal quotation omitted). Additionally, given that modifications of custody actions are civil in nature, the trial court may draw a negative inference from Mother’s invocation of the Fifth Amendment to questions about her drug use. *See Matter of Ma.H.*, 134 N.E.3d 41, 47 (Ind. 2019) (“[I]n civil proceedings, a court can draw a negative inference from a claim of the Fifth Amendment privilege against self-incrimination.”).

## II. Modification of Custody

[12] Indiana Code section 31-17-2-21(a) provides that “[t]he court may not modify a child custody order unless: (1) the modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8.” Section 8 provides that

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child’s parent or parents.
- (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child’s parent or parents;
  - (B) the child’s sibling; and
  - (C) any other person who may significantly affect the child’s best interests.
- (5) The child’s adjustment to the child’s:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the

court shall consider the factors described in section 8.5(b) of this chapter.

(9) A designation in a power of attorney of:

(A) the child's parent; or

(B) a person found to be a de facto custodian of the child.

Ind. Code § 31-17-2-8.

### **A. Substantial Change in Circumstances**

[13] In arguing that the juvenile court abused its discretion in granting Father's petition to modify custody, Mother challenges the juvenile court's conclusion that "had the matter proceeded on the DCS petition, sufficient evidence was presented for the Court to find that Child was a [CHINS] as defined under Ind. Code 31-34-1-1 as to Mother." Appellant's App. Vol. II p. 33. Mother spends a significant portion of the argument section of her brief asserting her claim that the evidence did not indicate that Child was harmed or endangered by Mother's actions.<sup>2</sup> With regard to the juvenile court's custody determination more specifically, Mother asserts that the juvenile court

did not enumerate any Findings of Fact that expressed how Child was affected by Mother's perceived issues. Looking at the context of the whole environment that Child lived in, Child had zero adverse effects from Mother's decisions and Mother would

---

<sup>2</sup> Although Mother focuses on this conclusion, the record is clear that the juvenile court did not rule on the CHINS petition, but rather granted Father's petition to modify custody. DCS subsequently moved to dismiss the CHINS petition, acknowledging that there had been a substantial change in the circumstances that led to the filing of the CHINS petition and, given the change, "there is no longer a legally sufficient basis to proceed under this cause." Appellant's App. Vol. II p. 143.

argue that her denial of a drug issue, her OWI, failed drug tests, or who resided in the home, had no effect on Child, and are thus inconsequential changes that would not rise to the level of “substantial.”

Appellant’s Br. p. 20. Thus, Mother claims that “[a]s the evidence presented does not support any Findings of Fact demonstrating a substantial change in one or more of the factors the trial court could have considered in modifying custody, its Conclusion of Law is thus unsupported by adequate Findings of Facts.” Appellant’s Br. p. 20. We disagree.

[14] The juvenile court heard evidence and made numerous findings regarding Child’s relationship with both of her parents and her adjustment to her home, school, church, and community in Texas. While both Mother and Father seemingly had stable housing, Mother was unemployed at the time of the evidentiary hearing. Father, on the other hand, was an active member of the United States Army with steady income. The juvenile court also heard evidence and made findings that Mother had failed to provide child with needed dental care; Father had provided Child with the needed dental care and counseling; and although Father had once suffered from mental health issues, he had received treatment and “had not had any mental health issues for many years.” Appellant’s App. Vol. II p. 29. Father had also arranged for Child to see a pediatrician.

[15] The juvenile court also considered Mother’s drug use and her failure to take any steps to end or address said drug use as a factor relating to Child’s wellbeing.

The Indiana Supreme Court has held that “the knowing exposure of a dependent to an environment of illegal drug use poses an actual and appreciable danger to that dependent.” *White v. State*, 547 N.E.2d 831, 836 (Ind. 1989). Further, while we have previously concluded that evidence of a parent’s use of marijuana and evidence that marijuana has been found in the family home, without more, does not demonstrate that a child has been seriously endangered for purposes of the CHINS statute, *see Ad.M. v. Ind. Dep’t of Child Servs.*, 103 N.E.3d 709, 713–14 (Ind. Ct. App. 2018), the juvenile court’s decision in this case was not based solely on marijuana use but rather on Mother’s repeated use of other drugs including methamphetamine, methadone, amphetamine, and Oxycodone, for which Mother did not have a prescription. Further, while the record does not indicate that Mother had used illegal drugs while in Child’s presence, Mother had tested positive for various different drugs on at least two separate occasions while acting as Child’s sole caregiver. Mother had also allowed a known drug user to reside in the home with Mother and Child. Mother’s drug use had led to the filing of criminal charges against Mother and the charges had not been resolved as of the date of the evidentiary hearing.

[16] Considering all of these factors together, the juvenile court determined that Father had shown a substantial change in the circumstances, warranting a change of custody. We cannot say that the juvenile court’s findings and conclusions in this regard are clearly erroneous.

## **B. Child's Best Interests**

[17] Mother also challenges the juvenile court's conclusion that a change of custody was in Child's best interests. In raising this challenge, Mother concedes that multiple witnesses testified that a change of custody was in Child's best interests. Specifically, Father testified that he believed that a change in custody was in Child's best interests because he lives in a drug-free home, has the financial resources to provide for Child, is able to provide her with a healthy routine, and does not subject her to unhealthy individuals. Stepmother detailed the positive nature of her relationship with Child and outlined the various activities they engage in together before testifying that she believed it would be in Child's best interests to remain with her and Father. FCM Garrett testified that she believed it was in Child's best interest to continue placement with Father. In addition, GAL Webber testified that given the ongoing concerns of drug use by Mother, she believed "placement outside the home is in [Child's] best interest." Tr. Vol. IV p. 145.

[18] In challenging the trial court's determination regarding Child's best interests, Mother simply points to her own self-serving testimony and the testimony of a few of her family members indicating that they believed that it was in Child's best interests to remain in Mother's care. Mother's argument, however, effectively amounts to an invitation to reweigh the evidence, which we will not do. *See In re Marriage of Sutton*, 16 N.E.3d at 484. Given FCM Garrett's and GAL Webber's testimony, we cannot say that the juvenile court's conclusion that a change of custody was in Child's best interests was clearly erroneous.

[19] The judgment of the juvenile court is affirmed.

Vaidik, J., and Brown, J., concur.