

## 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 Termination of the Parent-  
Child Relationship of:

E.G. & G.G. (Minor Children),  
and  
A.K. (Mother)  
*Appellant-Respondent,*

v.

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

September 28, 2021

Court of Appeals Case No.  
21A-JT-867

Appeal from the Howard Circuit  
Court

The Honorable Lynn Murray,  
Judge

Trial Court Cause No.  
34C01-2101-JT-26  
34C01-2101-JT-27

**Bailey, Judge.**

## Case Summary

- [1] A.K. (“Mother”) appeals an order terminating her parental rights to E.G., born August 9, 2012, and G.G., born September 11, 2013, (“Children”), upon the petition of the Howard County Department of Child Services (“the DCS”). Mother presents the sole issue of whether the termination order is clearly erroneous in light of her addiction. We affirm.

## Facts and Procedural History

- [2] On July 19, 2019, Children were removed from Mother’s care when she was arrested and charged with Possession of Methamphetamine.<sup>1</sup> On September 30, 2019, Children were found to be Children in Need of Services (“CHINS”). Mother was ordered to maintain contact with the DCS, submit to drug screens, participate in visits with Children (conditioned upon providing two successive clean drug samples), complete mental health and drug assessments and follow related recommendations, and secure stable housing and employment. On November 20, 2019, Children were placed in the home of their paternal grandfather and step-grandmother (“Paternal Grandparents”).

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<sup>1</sup> Children were solely in Mother’s care at that time because Children’s father was incarcerated. He has since consented to the termination of his parental rights and is not an active party to this appeal.

[3] Mother was generally non-compliant with services and her whereabouts were generally unknown to the DCS caseworkers. However, in October and November of 2020, Mother provided two drug screens. One was positive for methamphetamine. Because of the lack of requisite clean drug screens and communication with the DCS, no visit between Mother and Children could be scheduled. On October 26, 2020, the CHINS court changed the plan for Children from parental reunification to reunification or, alternatively, adoption by Paternal Grandparents. On January 19, 2021, the DCS petitioned to terminate Mother's parental rights to Children.

[4] On April 5, 2021, a fact-finding hearing was conducted. By that time, Children had been removed from Mother's care for twenty months without any formal visitation.<sup>2</sup> Mother's participation in services had been very minimal. In addition to providing the two drug screens, Mother had completed a mental health assessment. She had also attended a team meeting at which she met Children's Court-Appointed Special Advocate, Lucretia Olive, ("the CASA"). Mother had failed to maintain contact with the CASA or the DCS, but the CASA believed that Mother may have completed one home-based counseling session before her discharge for non-compliance.

[5] Mother's criminal charges of Possession of Methamphetamine and False Informing had not been resolved by the time of the hearing. She testified that

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<sup>2</sup> Mother may have informally visited with Children during their placement in relative care.

she was living at a friend's two-bedroom house and applying for disability benefits. Family case manager Charlotte Thompson and the CASA each testified regarding futile attempts to maintain contact with Mother. They each opined that Mother had failed to make progress toward reunification, Children were thriving in the care of Paternal Grandparents, and adoption would be in Children's best interests.

[6] On April 22, 2021, the trial court entered its findings, conclusions, and order terminating Mother's parental rights. Mother now appeals.

## Discussion and Decision

### Standard of Review for Clear Error

[7] When we review whether the termination of parental rights is appropriate, we will not reweigh the evidence or judge witness credibility. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016). We will consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* In so doing, we give "due regard" to the trial court's unique opportunity to judge the credibility of the witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing Indiana Trial Rule 52(A)). We will set aside the trial court's judgment only if it is clearly erroneous. *K.T.K. v. Ind. Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1229 (Ind. 2013). In order to determine whether a judgment terminating parental rights is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports

the findings and the findings clearly and convincingly support the judgment.  
*I.A.*, 934 N.E.2d at 1132.

## Requirements for Involuntary Termination of Parental Rights

[8] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). Although parental rights are of a constitutional dimension, the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). The State is required to prove that termination is appropriate by a showing of clear and convincing evidence, a higher burden than establishing a mere preponderance. *In re V.A.*, 51 N.E.3d at 1144.

[9] Under Indiana Code Section 31-35-2-4(b)(2), a petition seeking to terminate the parent-child relationship must allege, in pertinent part:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree....

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for

placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child....

(C) that termination is in the best interests of the child; and

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

If the court finds that the allegations are true, “the court shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a). In doing so, the court must enter findings and conclusions, irrespective of whether the parties have made a Trial Rule 52 request. *See* I.C. § 31-35-2-8(c).

## Analysis

[10] In terminating Mother’s parental rights, the trial court found that Mother had been incommunicative, uncooperative with drug screen requests, and non-compliant with services in general. The trial court further found that Children were thriving in their placement and had bonded to their half-sibling, who had been adopted some years earlier by Paternal Grandparents. Mother does not challenge any of the trial court’s factual findings. Indeed, she concedes “[Mother’s] acts of non-compliance were not contested.” Appellant’s Brief at 10. And Mother does not specifically challenge any particular conclusion of the

trial court or argue that a requisite element for termination of parent rights was not established by clear and convincing evidence.

[11] Rather, Mother advises us that a motion to suppress was granted in her criminal drug possession case and she expects an acquittal.<sup>3</sup> Mother then suggests that the drug court approach to addiction should be incorporated into CHINS proceedings. According to Mother, “the State has created two different systems that contradict each other,” and she explains that drug courts are “set up [as] problem solving courts” operating under the assumptions that “(1) there will be relapses and (2) breaking addiction is a lengthy process.” *Id.* at 8. She asserts that the DCS should “coordinate with the State” to utilize a “problem solving” approach after a child has been removed from a parent. *Id.* Mother concludes her argument:

It is illogical to treat an addicted citizen one way in the criminal system (loss of liberty) and a different way in the CHINS system (loss of parental rights) unless liberty is not really liberty, and breaking addiction to stop future criminal behavior is inherently more important than breaking addiction to preserve the “oldest fundamental liberty interest” of the parent-child relationship.

*Id.* at 9. As best we can discern Mother’s argument, it is that she was afforded insufficient time to overcome her addiction, which was a primary contributing

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<sup>3</sup> Mother’s brief does not address the relationship of the motion to suppress to the False Informing charge.

circumstance to Children's removal and continued placement outside the parental home.

[12] Mother's contention that more or different problem-solving measures could have yielded a different result may be understood as an implicit attack on the trial court's conclusion as to lack of remediation of removal conditions. A focus upon whether conditions are likely to be remedied invokes a "two-step analysis." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* "[I]t is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005).

[13] The trial court is entrusted with balancing a parent's recent improvements against habitual patterns of conduct. *In re E.M.*, 4 N.E.3d at 643. The trial court has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* "Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.* Habitual conduct may include parents' criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and

employment. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by the DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* The DCS need not present evidence to rule out every possibility of change; rather, it must establish that there is a reasonable probability that parental behavior will not change. *Id.*

[14] Children were removed from Mother's care when she was arrested on a drug charge. When the arrest was made, Mother and Children were found sleeping in a vehicle in very hot weather. Over twenty months, Mother's participation in services was near zero. Notwithstanding service provider calls, texts, letters, and a personal visit to Mother's reported workplace, regular contact with Mother could not be established and maintained. She provided two drug screens, one of which was positive for methamphetamine. Visitation with Children could not be initiated under those circumstances. It is possible, as Mother suggests, that she could have personally benefitted from long-term addiction services. But she did not avail herself of the referrals for services offered to her. The DCS presented clear and convincing evidence from which the trial court could conclude that the adverse conditions were unlikely to be remedied.

[15] To the extent that Mother suggests a deprivation of her due process rights, she does not develop an argument in this regard. To the extent that she urges incorporation into the CHINS statutes of "problem solving" measures beyond the service referrals available under the current statutory scheme, this is an

argument best directed to our Indiana Legislature. To the extent that Mother urges that the trial court's decision is "improper, inadequate, illegal, or illogical," *id.* at 3, because an addicted parent will predictably either relapse or at best slowly overcome an addiction, the contention does not comport with our standard of review.

## Conclusion

- [16] The order terminating Mother's parental rights to Children is not clearly erroneous.
- [17] Affirmed.

Crone, J., and Pyle, J., concur.