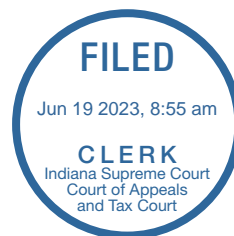


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

### ATTORNEY FOR APPELLANT

Phyllis J. Emerick  
Monroe County Public Defender  
Bloomington, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Robert J. Henke  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

In the Termination of the Parent-  
Child Relationship of T.H.  
(Minor Child)

K.D. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of  
Child Services,

*Appellee-Petitioner*

June 19, 2023

Court of Appeals Case No.  
23A-JT-84

Appeal from the Monroe Circuit  
Court

The Honorable Stephen R. Galvin,  
Judge

Trial Court Cause No.  
53C07-2207-JT-334

**Memorandum Decision by Judge Weissmann**  
Judges Riley and Bradford concur.

## **Weissmann, Judge.**

- [1] K.D. (Mother) appeals the termination of her parental rights to T.H. (Child) over her substance abuse and neglect of Child's medical needs. Mother argues the trial court erred in finding that termination was in Child's best interest and that the conditions resulting in Child's removal will not be remedied. We affirm the trial court's judgment.

## **Facts**

- [2] Child was born via homebirth in July 2021 and quickly showed signs of health problems. Two days later, Mother took Child to a hospital, where he was diagnosed with jaundice and an eye infection. Despite hospital staff impressing upon Mother the importance of attending follow-up visits to ensure Child's health, Mother missed Child's next two appointments. This prompted the Indiana Department of Child Services (DCS) to remove Child from Mother's home on an emergency basis for alleged abuse or neglect. DCS also filed a petition alleging Child was a child in need of services (CHINS).
- [3] Child was later hospitalized after having trouble swallowing, coughing, and choking while eating. Physicians found that Child was aspirating milk into his lungs and determined that tube feedings were the safest way to feed Child. Child's paternal aunt and uncle went to the hospital after hearing about his condition and stayed with Child for three days. Hospital staff eventually released Child into the custody of his aunt and uncle who were already caring

for another of Mother's children, T.H.'s older brother.<sup>1</sup> As Child's foster parents, they were taught how to feed Child, change his feeding tubes, and attend to his other medical needs.

[4] The trial court adjudicated Child as a CHINS due to neglect by Mother and his severe medical diagnosis at birth. The court ordered Mother to engage in a variety of programs such as psychological testing; participate in recovery coaching and substance abuse programs; therapy; complete a medication evaluation; visit Child; and submit to random drug screens. Although Mother participated in services initially, her participation lagged over the next few months. Mother also stopped visiting Child within a month of the dispositional hearing and described her last visit as a "goodbye visit." App. Vol. II, p. 21. Mother's substance abuse advisor described Mother as continually disengaged and uncooperative. Child had been in care with aunt and uncle for almost a year when DCS changed Child's permanency plan from reunification to adoption after Mother failed to attend a placement hearing for Child. DCS then moved to terminate Mother's parental rights to Child.

[5] After being out of the State for six months, Mother returned to Indiana a month after the missed placement hearing. Mother moved into a hotel with her boyfriend, which she admitted consistently smelled of methamphetamine and had reports of shootings. Four months passed before the trial court held a fact-

---

<sup>1</sup> Mother has three other children besides Child. All of whom have also been removed from Mother's care.

finding hearing on the termination petition. After finding that Mother had recently tested positive for THC and her living conditions were unstable, the trial court concluded that considering Mother's failed attempts to address the reasons for removal, termination of Mother's parental rights was in Child's best interest.

## **Discussion and Decision**

- [6] We apply a two-tiered standard of review when assessing a termination of parental rights. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Under this standard, the court will first determine whether the evidence clearly and convincingly supports the findings and, secondly, whether the findings clearly and convincingly supports the judgement. *Id.* The trial court's judgment will not be set aside unless clearly erroneous. *Id.* When reviewing a termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *S.W. v. Ind. Dep't of Child Servs.*, 19 N.E.3d 313, 319 (Ind. Ct. App. 2014).

## **Termination of Parental Rights**

- [7] A petition to terminate parental rights must allege:

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

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

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

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services.

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

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

Ind. Code § 31-35-2-4(b)(2). Mother only challenges the trial court's conclusions under subsections (B)(i) and (C), that the conditions resulting in Child's removal are unlikely to be remedied and that termination is in Child's best interests.

[8] As an initial matter, because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the State need only prove one of the statute's three subsections. The trial court found that the State proved two: (i) a reasonable probability that the conditions that resulted in Child's removal will not be remedied; and (ii) a reasonable probability that continuing Mother and Child's relationship poses a threat to Child's well-being. App. Vol. II, p. 24. As Mother only challenges the court's remedying conditions finding, she has waived appellate review of the court's conclusion of threat to Child's well-being under Indiana Code § 31-35-2-4(b)(B).

### *Remedying Conditions*

- [9] Waiver notwithstanding, the trial court did not err in finding a reasonable probability that the conditions resulting in Child's removal would be remedied. Courts undertake a two-step analysis when determining whether a reasonable probability exists that the conditions resulting in a child's removal or placement outside the home will not be remedied. The court considers the conditions that led to the Child's placement and retention in foster care and then evaluates whether there is a reasonable probability that those conditions will not be remedied. *K.T. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). As part of the second step, the judge determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions. *S.E. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 37, 46 (Ind. Ct. App. 2014).
- [10] Mother's continual struggles with substance abuse and mental health led to the removal of Child. Mother participated in court-ordered drug treatment and counseling services for only a few weeks before beginning to miss appointments. Although Mother eventually reengaged in the services several months later, she was inconsistent overall with treatment and counseling. Mother also tested positive for THC twice while this case was pending. And although Mother obtained employment, she still resided in an unstable environment with violence and the smell and presence of drugs. By the time the petition to terminate was filed, Mother had not been in contact with or seen Child in over 6 months.

[11] The trial court did not clearly err in concluding the conditions that led to the Child's placement with his foster parents are not likely to be remedied.

### ***Child's Best Interests***

[12] Mother next argues that DCS did not prove termination was in the Child's best interests because, although she had periods of non-compliance with services, the trial court failed to consider her progress in securing a stable job and home. We disagree and find the record amply supports the trial court's finding that termination was in Child's best interests.

[13] The best interests of the child are analyzed through the totality of the circumstances. *McBride v. Monroe Cty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Child was severely sick from birth while in Mother's care, and Mother did little to address Child's medical needs. According to Child's Court Appointed Special Advocate (CASA), Child has been thriving since being fostered with his aunt and uncle. Child's medical needs are also being met. Further, both the CASA and Child's physician believed that, due to Mother's missed appointments and failure to obtain prenatal care, Child would not receive necessary medical care if placed with Mother. This evidence supports the trial court's finding that terminating Mother's parental rights was in Child's best interests. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (recognizing that the "failure to substantially engage in or to demonstrate any ability to effectively use the services recommended to [the parent] is sufficient to support the court's best interest conclusion").

[14] Mother relies heavily on the proposition that a child's ability to thrive in foster care is not enough to show that termination of parental rights is in the Child's best interest. *In re G.Y.*, 904 N.E.2d 1257, 1265-66 (Ind. 2009). But as identified above, the trial court's best interest finding is supported by Mother's intermittent participation in services, recent drug use, and unstable housing in addition to Child's positive reaction to foster care. The court's finding, therefore, is not clearly erroneous.

[15] Affirmed.

Riley, J., and Bradford, J., concur.