

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of: J.S. (Minor  
Child)

and

S.S. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

April 12, 2021

Court of Appeals Case No.  
20A-JT-2046

Appeal from the Hendricks Superior  
Court

The Honorable Mary G. Willis,  
Senior Judge

Trial Court Cause No.  
32D03-2005-JT-14

**Bailey, Judge.**

## Case Summary

- [1] S.S. (“Mother”) appeals the trial court’s judgment terminating her parental rights to J.S. (“Child”). The only issue she raises on appeal is whether the trial court clearly erred when it terminated her parental rights.
- [2] We affirm.

## Facts and Procedural History

- [3] M.P. (“Father”)<sup>1</sup> and Mother are parents of J.S., who was born on April 13, 2017. On April 25, 2017, the Indiana Department of Child Services (“DCS”) filed a petition alleging J.S. was a Child in Need of Services (“CHINS”). That same day, the trial court held a combined initial and detention hearing at which it ordered Child detained and found that:

The DCS was unable to provide efforts to prevent removal of the Child as a result of the emergency nature of the situation surrounding the removal, in that Mother has untreated mental health problems and does not possess the basic skills needed to take care of an infant. Mother goes back and forth on whether she is going to keep the [C]hild or give him to various families to raise for a couple of years until he can travel the world with her. Mother displayed paranoid concerns.

Appealed Order at 2.

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<sup>1</sup> Father does not actively participate in this appeal.

[4] On May 18, 2017, Mother and DCS submitted an agreed entry on factfinding, disposition, and the issuance of a parental participation order, under which Mother admitted:

Mother lacks the parenting skills necessary to care for an infant and Mother has untreated mental health diagnoses that interfere with her ability to parent [Child]. Mother needs mental health and parenting education services that she would not receive without the coercive intervention of the court.

Ex. at 33. Mother further admitted that her participation in a plan of care for Child was necessary. On September 1, the trial court adopted the agreed entry and found Child to be a CHINS. Mother agreed to and was ordered to comply with a number of dispositional terms to facilitate reunification with Child, including:

- meeting her own mental health needs in a timely manner by attending all appointments;
- being an effective caregiver who possesses the necessary skills, knowledge, and abilities to provide Child with a safe, secure, and nurturing environment;
- completing a mental health evaluation and successfully completing all recommendations from that evaluation.

Appealed Order at 4.

[5] In review hearings from August-November of 2017, the CHINS court found that Mother had complied with Child's case plan. However, at the end of

November of 2017, Mother was unsuccessfully discharged from mental health services, home-based case work services, and supervised visitations through the Children’s Bureau. In March of 2018, Child’s permanency plan was changed from reunification to “reunification with a concurrent plan of adoption.” *Id.* at 7.

[6] By the time of the August 2018 review hearing, Mother was once again complying with the case plan. She successfully transitioned from individual therapy through Centerstone to cognitive behavioral therapy (“CBT”), although progress in the latter was slow. Mother engaged in supervised visitations with Child but, due to Mother’s emotional instability, her visitations were changed to therapeutic supervised visitations. In December of 2018, Mother’s visitations increased but remained therapeutically supervised.

[7] As of the May 29, 2019, review hearing, Mother continued to generally comply with the case plan but failed to successfully apply what she was being taught by service providers, leading the trial court to find that she had “not enhanced her ability to fulfill her parental obligations.” *Id.* at 9. Mother was also transitioned from therapeutic to traditional supervised visitations; however, the transition led to persistent safety concerns for Child during visits. For example, Mother frequently walked up to 150 feet ahead of Child, who was a toddler, while walking in the community on sidewalks and public parks. Thus, the trial court concluded that, while Mother was cooperating with DCS, “she [was] not making adequate progress to keep [C]hild safe,” *id.* at 10, and the court was “very concerned with Mother’s inability to keep the child safe during visits,” *id.*

at 11. Therefore, the court ordered that visitation would once again be therapeutic supervised visitation.

[8] On May 29, 2020, DCS filed its petition to terminate parental rights (“TPR”). On June 10, 2020, the trial court conducted a combined CHINS review hearing and TPR initial hearing. The court found that Mother had “not enhanced her ability to appropriately parent and supervise [Child], ha[d] not established safe and suitable housing for [Child], and ha[d] maintained a disorganized posture regarding her understanding of the safety concerns that originally prompted [Child’s] removal from her care, and the need for ongoing DCS involvement.”  
Appealed Order at 11. The court further found that the cause of Child’s out-of-home placement had not been alleviated.

[9] Mother failed to appear at the July 23, 2020, combined CHINS review hearing and TPR fact-finding hearing. The trial court noted in the CHINS hearing that Mother was not complying with the case plan, had ceased all participation in court-ordered services, had ceased visiting Child, and failed to respond to DCS requests for her to contact them. Mother also failed to appear for the August CHINS review hearing, at which the trial court noted Mother’s continued failure to participate in services or enhance her ability to fulfill her parental obligations. The court found Mother had only infrequently visited Child and had informed DCS that she would not participate in any further visits with Child unless the visits transitioned to being fully unsupervised. Mother had also admitted to continuing to use marijuana. The trial court modified Child’s permanency plan to termination of parental rights and adoption.

- [10] On September 10, 2020, the trial court held Mother’s TPR trial. At trial, Tehrena Brown (“Brown”), the therapeutic visitation supervisor, testified regarding Mother’s volatile behavior and emotions and her continuing inability to keep Child safe during visitations. Eventually, Brown requested her service referral be closed out due to the severity of communication issues with Mother, Mother’s inconsistency in visiting Child, and Mother’s physical altercation with Brown on one occasion.
- [11] DCS presented additional evidence at trial of the mental health services offered to, and received by, Mother. Mother began individual counseling with Cummins Behavioral Health in June of 2017 but, by March of 2018, Cummins had discharged her as unsuccessful because Mother had requested that services end and Mother failed to regularly attend counseling sessions. By June of 2018, Mother was engaged in CBT through Ireland Home Based Services. During receipt of such services, Mother was “working on addressing [her] fear of rejection, past trauma, diffusing thoughts/hallucinations, forgiving herself, recognizing her rapid thoughts, coping skills, and deep breathing techniques when having panic attacks.” Appealed Order at 8.
- [12] Laura Coffey (“Coffey”) also testified at the TPR trial. Coffey provided individual therapy to Mother from May 2019-December 2019. After the first two months—during which Mother missed appointments—Coffey began providing therapy to Mother in Mother’s home. After three months of working on Mother’s trust issues, Coffey began working with Mother toward safe and appropriate parenting of Child and realistic expectations of what Child could be

expected to do at his age. During therapy sessions, Coffey observed “delusional and paranoid behaviors” by Mother; for example, Mother repeatedly stated that she felt her CHINS case was being used as an example for the government and that she was being “set up.” *Id.* at 15-16. During in-home therapy sessions, Coffey observed that Mother’s home was unclean and contained “safety issues” for Child, including the presence of marijuana and drug paraphernalia in areas that would be accessible to a child. Mother admitted to using marijuana.

[13] Coffey stated that Mother was never able to mentally progress to a point where she could begin enhancing her ability to parent or safely attend to Child’s basic needs. Mother’s mental state “remained manic and unstable.” *Id.* at 16.

Mother “consistently demonstrated severe mood swings, aggressive behaviors, memory loss, an inability to cognitively function well on a daily basis, ... and delusional thinking.” *Id.* at 17. Coffey stopped working with Mother because Mother requested that Coffey be removed from the case.

[14] At the conclusion of Mother’s TPR trial, the trial court ordered involuntary termination of Mother’s parental rights. In addition to the above facts, the trial court found:

61. [Mother] did not make any progress in addressing [her] inability to appropriately supervise and care for [Child] during the entirety of her time and services with Ms. Coffey. [Mother] was never able to grasp the possibility that she may have mental issues that need additional attention, and concerns were raised for [Mother’s] ability to function and attend to her own safety. At the conclusion of Ms. Coffey’s time working with [Mother],

[Mother] had not made any progress in improving her parenting skills or making progress in improving her mental health.

62. Ms. Coffey concluded that [Mother] suffers from a delusional diagnosis and substance abuse, and that [Mother's] "blackouts", inability to follow directions, paranoid thinking, frequent mood swings, aggressive behaviors towards others, and refusals to seek medical attention for herself are of a serious enough level that they endanger herself and others around her.

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64. Ms. Coffey further concluded that [Mother's] mental health concerns and the severity of her symptoms rise to the level of being recommended for long-term residential treatment, potentially at a State facility.

65. The Court places substantial weight on the testimony of Ms. Coffey and finds her conclusions and reasoning to be thoughtful. Ms. Coffey engaged in thorough efforts to attempt to engage [Mother] and address her mental health concerns and their relation to [Mother's] desire to reunify with [Child].

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69. The core of DCS' safety concerns that resulted in child's initial removal from [Mother] and ongoing concerns that have led to his continued removal from her care have substantially revolved around [Mother's] mental health and how that impacts [her] inability to attend to [Child's] basic needs and daily care.

70. [Mother] has repeatedly demonstrated inconsistent compliance with the services necessary to safely reunify with [Child]. While [Mother] has demonstrated periods of time where



she is either mostly or even entirely compliant with her participation in DCS' recommended and court ordered services, she has not been able to successfully translate this compliance into tangible improvements in her ability to attend to [Child's] basic needs or safely care for him.

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73. After [Mother] asked that Ms. Coffey be removed as her individual therapist, the DCS attempted to re-engage [Mother] with therapy at Life Spring in Madison, Indiana. This service referral was eventually closed due to [Mother's] failure to engage in scheduled appointments.

74. [Mother] has not participated in any DCS-recommended or ordered services since June 10, 2020, and the last time she visited with [Child] was on or about June 3, 2020. [Mother] stated that she would be leaving for a religious retreat over the summer despite [Family Case Manager "[FCM]" Clossin] emphasizing the significance and importance of remaining engaged with the case and visiting with [Child].

75. [Mother] further stated to FCM Clossin that she would not be participating in any further parenting time with [Child] while visits remained supervised, as [Mother] believed she did not require any supervision at visits and that she was being treated unfairly.

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79. It is DCS' position that termination of parents' parental rights is in [Child's] best interests, and if [Child] were to be returned to [Mother's] care, his life would be in a constant state of instability without a safe and secure caregiver.

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85. [Guardian Ad Litem (“GAL”) Susan] Conger reports that [Mother] has been unable to address her mental health concerns over the past three years of involvement with the underlying CHINS case, and that [Child] cannot be safely reunified with [Mother].

86. GAL Conger believes the DCS has offered [Mother] multiple opportunities to address her mental health condition through many different referrals to different agencies, and that there has never been a point in the last three years where [Mother] could step down from supervised visitation.

87. GAL Conger is a credible witness and the Court places significant weight on her opinion; she recommends that it is in [Child’s] best interests for parents’ parental rights to be terminated.

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104. Despite the duration of DCS involvement and efforts exerted by the DCS, GAL, and services implemented, [Mother] has been unable to obtain safe and suitable housing for [Child]; she has permitted possession and use of illegal substances in her home; she has not obeyed the law; she has been unable to demonstrate or develop basic parenting skills such as safely supervising [Child] in public spaces or providing safe and adequate nutrition for [Child]; she has not attended all scheduled visitations, and has frequently put her own interests above visiting with [Child].

105. Termination of parents’ parental rights is in the child’s best interests.

*Id.* at 17-22. The trial court ordered that Mother's parental rights to Child be terminated, and this appeal ensued.

## Discussion and Decision

[15] Mother maintains that the trial court's order terminating her parental rights was clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[16] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

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

\* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22)

months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

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(C) [and] that termination is in the best interests of the child ....

Ind. Code § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[17] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence

and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[18] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[19] Mother challenges the trial court’s ultimate findings that the conditions that led to Child’s removal were unlikely to be remedied and that Mother’s continued relationship with Child posed a threat to Child.<sup>2</sup> In doing so, Mother does not identify any specific trial court findings that she challenges. However, she alleges generally that the trial court clearly erred by “ignor[ing] that Mother,

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<sup>2</sup> Mother does not challenge the length of time Child was removed from her home or the trial court’s conclusion that termination of her parental rights is in Child’s best interests.

through no fault of her own, never received sufficient services to address the underlying issue that led to removal—her untreated mental health problems.” Appellant’s Br. at 7. Mother contends that if DCS had provided her with “further mental health services, the conditions that led to removal [of Child] ... would be remedied and Mother’s continued relationship with [Child] would not threaten his well-being.” *Id.* at 10. Thus, Mother asserts that, because DCS failed to provide her with necessary mental health services, “there is no way the trial court could correctly determine” that there is no reasonable probability Mother would remedy the reasons for removal and cease being a threat to Child. *Id.* Mother maintains that if DCS “were to provide the kind of mental health services that Mother requires, ... it is likely that Mother could cure the defects that led to the child’s removal.” *Id.* at 10-11.

[20] The latter statement is mere speculation; Mother has pointed to no evidence in the record that she was likely to “cure the defects” that led to Child’s removal if she had been provided some types of mental health services other than those she received. Moreover, Mother frequently cancelled and/or failed to participate in the mental health services made available to her.

[21] To the extent Mother challenges the findings that she was offered and received mental health services from DCS throughout her case, there is abundant evidence supporting those findings. DCS presented evidence that it provided Mother with individual counseling through Cummins Behavioral Health beginning in June of 2017, i.e., approximately one month after the CHINS case was filed. Although Mother failed to regularly attend those services, DCS

continued to make them available to her until March of 2018, at which time Mother requested that the services end. Then Mother was offered and received CBT through Ireland Home Based Services from June 21, 2018, up to May of 2019. Beginning in May of 2019 and continuing through December of 2019, Coffey provided individual therapy to Mother. Those services ended because Mother requested that Coffey be removed from Mother's case. Thereafter, DCS attempted to re-engage Mother with therapy at Life Spring, but Mother failed to engage in scheduled appointments.

[22] Thus, the trial court did not err in finding that DCS consistently provided Mother with mental health services throughout her case. Nor did it err in finding that, despite the provision of those services, Mother did not progress in addressing her inability to safely supervise and care for Child; that finding was supported by provider documentation and testimony, and the testimony of DCS caseworker and the GAL. Moreover, those findings support the trial court's ultimate finding that there was a reasonable probability that the conditions that led to Child's removal from Mother—i.e., her inability to safely care for Child due to untreated mental health problems—had not been, and would not be, remedied.<sup>3</sup>

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<sup>3</sup> Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, the court is required to find that only one prong of subsection 2(B) has been established by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Therefore, we do not address Mother's contentions regarding the probability of her relationship posing a threat to Child's well-being.

[23] The trial court did not commit clear error in terminating Mother's parental rights.

[24] Affirmed.

May, J., and Robb, J., concur.