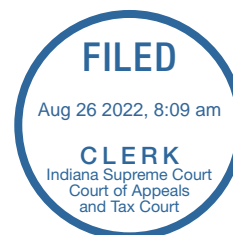


## MEMORANDUM DECISION

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 Matter of the Termination  
of the Parent-Child Relationship  
of P.E. (Child) and A.N.  
(Mother);

A.N.,  
*Appellant-Respondent*,

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*

August 26, 2022

Court of Appeals Case No.  
22A-JT-746

Appeal from the Wabash Circuit  
Court

The Honorable Robert E.  
McCallen, III, Judge

Trial Court Cause No.  
85C01-2201-JT-3

**May, Judge.**

[1] A.N. (“Mother”) appeals the involuntary termination of her parental rights to P.E. (“Child”). Mother<sup>1</sup> presents four issues for our review, which we consolidate and restate as:

1. Whether the trial court’s findings support its conclusion that the conditions under which Child was removed from Mother’s care would not remedied;
2. Whether the trial court’s findings support its conclusion that termination of Mother’s parental rights is in Child’s best interests; and
3. Whether the trial court’s findings support its conclusion that there was a satisfactory plan for Child’s care and treatment following termination of Mother’s parental rights.

We affirm.

## Facts and Procedural History

[2] Mother gave birth to Child on March 20, 2020. In late 2020, the Department of Child Services (“DCS”) received a report that Mother and her boyfriend (“Boyfriend”) were involved in a domestic violence altercation, that Mother and Boyfriend used illegal substances including methamphetamine and heroin,

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<sup>1</sup> Child’s father is unknown. Mother’s boyfriend was first thought to be Child’s father but a DNA test excluded his paternity. Another man, C.R., was also a possibility to be Child’s father, but C.R. did not establish paternity and did not participate in the fact-finding hearing. The trial court’s order does not mention C.R. even though he is a named party.

and that Child was dirty. DCS also was “unsure if there was running water, and whether or not there was electricity on in the home.” (Tr. Vol. II at 121.) DCS and Mother agreed to an informal adjustment to address the issues in the home, and Child remained in Mother’s care.

[3] On December 28, 2020, DCS removed Child from Mother’s care because she continued to use illegal substances, including methamphetamine and fentanyl, and legal substances for which she had no prescription, including Klonopin and Suboxone. On December 29, 2020, DCS filed a petition alleging Child was a Child in Need of Services (“CHINS”) based on Mother’s substance abuse. DCS placed Child in relative placement with Child’s second cousin.

[4] During the fact-finding hearing on April 6, 2021, Mother admitted Child was a CHINS. The trial court entered its order adjudicating Child as a CHINS on April 8, 2021. On April 26, 2021, the trial court held its dispositional hearing. On April 29, 2021, the trial court issued its dispositional order requiring Mother to complete services recommended by DCS; maintain a stable income and stable, safe housing; refrain from using illegal substances or substances without a prescription; obey the law; complete a substance abuse assessment and follow all recommendations; submit to random drug screens; and visit Child.

[5] In April 2021, Mother was evaluated and accepted into Family Recovery Court, which was a drug recovery program sponsored by the court. Mother was not compliant with those services and her involvement with Family Recovery Court ended on December 3, 2021. Mother sporadically tested

positive for marijuana and for Tramadol, for which she had no prescription. Mother did not reengage with substance abuse treatment until March 2022 and did not successfully complete substance abuse treatment.

[6] In October 2021, Mother was also put on informal probation for earlier convictions of Class B misdemeanor interference with custody of her earlier-born child who is in the custody of that child’s father; Class B misdemeanor leaving the scene of an accident; and Class B misdemeanor possession of marijuana. However, that probation was put on “pause” because Mother committed a new crime<sup>2</sup> and was placed on house arrest. (*Id.* at 104.) Mother’s driver’s license was suspended throughout the CHINS and termination proceedings because she failed to pay child support.

[7] Mother initially engaged in home-based services such as “budgeting, building on parenting skills, resume writing, [and] helping with applying for jobs[.]” (*Id.* at 124.) However, despite her participation, the service providers indicated Mother had a “lack of follow through.” (*Id.*) Mother also consistently visited with Child. DCS allowed overnight visitation with Mother starting in July 2021 because the home where Mother was living was appropriate and Mother “was doing well.” (*Id.* at 127.) However, overnight visits were terminated around October 2021 because Mother stopped submitting drug screens and stopped attending substance abuse treatment, and the family case manager was

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<sup>2</sup> The crime Mother committed is not in the record.

concerned Child would not have “an appropriate sober caregiver.” (*Id.*) Child was returned to relative placement, and Mother was permitted to see Child during supervised visits.

[8] Mother’s employment was sporadic during the proceedings. At the time of the termination fact-finding hearing, Mother had been employed at a call center for “a few weeks.” (*Id.* at 21.) Mother also testified she was employed at Dairy Queen for three months from October 2021 to January 2022. Mother did not remember where she was employed prior to Dairy Queen.

[9] Mother testified she rented a home and she was renovating her maternal grandmother’s house, where she intended to move. However, Mother did not indicate a plan or funds to renovate the house. Mother first said she was using her tax return to renovate the house, but then admitted she had yet to file her taxes and acknowledged that her tax return would be reduced to pay her child support arrearage.

[10] On January 3, 2022, DCS filed a petition to terminate Mother’s parental rights to Child based on her noncompliance with services. The trial court held its fact-finding hearing on March 30, 2022. On March 31, 2022, the trial court issued its order terminating Mother’s parental rights to Child.

## Discussion and Decision

[1] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge

the credibility of 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 most favorable to the judgment. *Id.* In deference to the juvenile court’s unique position to assess the evidence, we will set aside a 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, cert. denied* 534 U.S. 1161 (2002).

[2] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[3] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (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.
  - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the

- finding, and the manner in which the finding was made.
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children 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;
  - (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). DCS must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*.

“[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply with the statute terminating parental rights.” *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

[4] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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 juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

### **1. Conditions under which Child was removed would not be remedied**

[5] Mother argues the trial court’s findings ignore her “significant progress in bettering the conditions that led to the removal of Child from her care.” (Mother’s Br. at 18.) The trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable



probability that the conditions will change.” *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

[6] Regarding the probability the conditions under which Child was removed from Mother’s care would not be remedied, the trial court found:

[Mother] was evaluated and approved to for participation in FRC [Family Recovery Court]. She began participating in FRC during April of 2021. On or about December 3, 2021, [Mother] was discharged from FRC as unsuccessful.

FRC was not the first attempt to address [Mother’s] substance abuse issues. In 2018, the DCS referred [Mother] to the Bowen Center (local mental health treatment center) for services. She was unsuccessfully discharged. In the latter part of 2020, [Mother] agreed to participate in an Informal Adjustment involving [Child]. She failed to comply. Thereafter the DCS filed its most recent formal CHINS petition. Again, [Mother] was referred by the DCS for services. At that time, she was determined to have a severe substance use disorder and Intensive Outpatient (IOP) was recommended. She failed to complete the program. [Mother] was re-assessed by Parkview Behavioral Health on March 21, 2022. Again, because of her severe substance abuse disorder, IOP was recommended. Although she was scheduled to begin that March 22, 2022 and in fact told Elizabeth Finnicle of Parkview that she would be there, she failed to attend. On March 28, 2022, [Mother] was again terminated from IOP as unsuccessful.

Apparently, [Mother] has seen the light and she recently met with a counselor at the Bowen Center and is scheduled to commence individual counseling soon. The Court deems that, if true, to be too little too late. [Mother] fails to acknowledge the severity of her substance abuse and, because of that, she cannot

address it. Further, IOP was the recommendation, not solely individual counseling. She wants to do things her way, however, that is not in her or [Child's] best interests and it hasn't worked in the past.

[Mother] has an excuse for almost everything. Even if [Mother's] testimony could be believed, the evidence is clear that she failed to follow through with programming and services, time and again. The testimony of Janet Larkin and Elizabeth Finnicle was compelling. Unfortunately for [Mother], she cannot be believed. One glaring example of this was during her direct exam by the DCS'[s] attorney. When confronted with the statement "[s]o you have been driving, at least to some extent" [Mother] replied "[n]ot in the last year." Upon further questioning she then disclosed a charge filed against her earlier this year, for an event occurring this year, for driving while suspended in Miami County. Upon further questioning by the Court, she admitted that she was with [Boyfriend] and that he was too tired to drive so she did. The Court did believe [Mother] though when she admitted she has "half-assed" the last 4 months.

[Mother] has been substantially non-compliant with services throughout the proceedings.

[Mother] is not even capable of caring for herself. She has no driver's license. Her work history is sporadic. She has left other jobs because of problems with her supervisors or co-workers. Again, more excuses. She is fixing up a home, she says, to move into. Her source of funds for that is suspect. At one time, she discussed using proceeds from a tax return. At another time, she admitted she has not filed her tax return. And later, she stated that her tax return, if any, would be intercepted for back due child support. She remains dependent on [Boyfriend], who drove her to Court for the fact-finding hearing and has provided financial assistance to her and apparently continues to do so.

(App. Vol. II at 25-6.) In its findings, the trial court noted some of Mother’s recent steps to remedy her substance abuse issues. However, the trial court also noted Mother’s lack of progress in services throughout the CHINS and termination proceedings, including an inability to complete the required substance abuse treatment. Mother is barely closer today to addressing her substance abuse issues than she was when Child was removed in late 2020. Based thereon, we hold the trial court’s findings support its conclusion that there existed a reasonable probability that the conditions under which Child was removed would not be remedied.<sup>3</sup> See *In re E.M.*, 4 N.E.3d 636, 644 (Ind. 2014) (findings regarding father’s continued non-compliance with services support trial court’s conclusion that conditions resulting in children’s removal from father’s care would not be remedied).

## 2. Child’s best interests

[7] Mother argues termination of her parental rights to Child is not in Child’s best interests because “despite her past drug and housing history, Mother has the means to provide adequate drug-free housing, stability, safety and supervision for Child.” (Mother’s Br. at 20.) She contends it is instead in Child’s best interests if she be afforded additional time to complete services “to demonstrate

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<sup>3</sup> Mother also argues the trial court’s findings do not support its conclusion that the continuation of the Mother-Children relationship poses a danger to Children’s well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code Section 31-35-2-4(b)(2)(A). See *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code Section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*. Accordingly, we need not determine whether the trial court’s findings also support that conclusion.

even more ability to comply [with] the terms of the trial court’s Dispositional Order[.]” (*Id.* at 19.) In determining what is in Children’s best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent’s historical inability to provide a suitable environment, along with the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child’s best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[8] In addition to the trial court’s unchallenged findings above regarding Mother’s inability to remedy the conditions under which Child was removed from her care, the trial court also found specifically regarding Child’s best interests:

No one disputes [Mother] loves [Child] and that there is a bond between them. However, that is not enough.

The Court’s focus is on [Child], his stability, permanency and best interests, as it must be.

[Child] is doing well in his current placement, where he has been since he was removed from [Mother].

(App. Vol. II at 26.) Additionally, the Court Appointed Special Advocate testified: “I think for [Child] his best interest would be to be adopted by his current placement . . . it’s his best shot at permanency at this time with no progress being made.” (Tr. Vol. II at 117.)

[9] While Mother seems to have made a last-ditch effort at sobriety less than a month before the fact-finding hearing, we cannot conclude her efforts would be successful considering her past dismissals from substance abuse treatment programs. Based thereon, we hold the trial court’s findings support its conclusion that termination of the parent-child relationship is in Child’s best interests. *See Z.B. v. Indiana Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018) (findings regarding mother’s inability to care for child and CASA’s testimony it was in child’s best interests that mother’s parental rights be terminated were sufficient to support trial court’s conclusion that termination of mother’s parental rights to child was in child’s best interests), *trans. denied*; and *see A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002) (termination in child’s best interests in part because child was thriving in foster placement), *trans. denied*.

### **3. Satisfactory plan for care and treatment of Child following termination**

[10] While Mother concedes adoption is a satisfactory plan for Child’s care and treatment following the termination of Mother’s parental rights, she contends “maintaining the status quo . . . is a satisfactory plan for the care and treatment of Child as Child was safe and secure in foster care.” (Mother’s Br. at 20.)

Pursuant to Indiana Code section 31-35-2-4(b)(2)(D), parental rights cannot be terminated unless DCS provides sufficient evidence of a satisfactory plan for the care and treatment of the child following termination. We have long held the post-termination permanency plan “need not be detailed, so long as it offers general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *In re D.D.*, 804 N.E.2d at 268.

[11] DCS indicated Child’s relative placement planned to adopt Child. The trial court found “DCS’[s] plan for [Child] is the only chance that he will have to get the permanency he deserves now.” (App. Vol. II at 26.) Mother does not argue this plan is unsatisfactory. As noted above, DCS has provided Mother with opportunities to obtain the tools to successfully reunite with Child, and Mother has not availed herself of those opportunities. Child cannot be made to languish, waiting for permanency, until Mother demonstrates she can provide him with a safe, stable home. *See Baker v. Marion Cnty. OFC*, 810 N.E.2d 1035, 1040 n.4 (Ind. 2004) (limitations on trial court’s ability to approve long-term foster care are designed to ensure a child does not “languish, forgotten, in custodial limbo for long periods of time without permanency”) (*quoting In re Priser*, No. 19861, 2004 WL 541124 at \*6 (Ohio Ct. App. March 19, 2004)). Child needs permanency now, not when it is convenient for Mother, and adoption is a satisfactory plan. *See In re S.L.H.S.*, 885 N.E.2d 603, 618 (Ind. Ct. App. 2008) (adoption is satisfactory plan for child’s care and treatment after termination).

## Conclusion

[12] The trial court's findings support its conclusions that the conditions under which Child was removed from Mother's care would not be remedied, that termination of Mother's parental rights to Child was in Child's best interests, and that there existed a satisfactory plan for Child's care and treatment following the termination of Mother's parental rights to Child. Accordingly, we affirm the trial court's decision.

[13] Affirmed.

Riley, J., and Tavitas, J., concur.