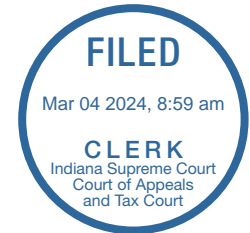


## MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

In the Termination of the Parent-Child Relationship of:

B.G. (Minor Child)

and

S.G. (Mother),

*Appellants-Respondents*

v.

Indiana Department of Child Services,

*Appellee-Petitioner*

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March 4, 2024

Court of Appeals Case No.  
23A-JT-2437

Appeal from the Allen Superior Court

The Honorable Lori K. Morgan, Judge  
The Honorable Beth A. Webber, Magistrate

**Memorandum Decision by Judge Bailey**  
Judges Crone and Pyle concur.

**Bailey, Judge.**

## Case Summary

- [1] S.G. (“Mother”) appeals the involuntary termination of her parental rights to B.G. (“Child”), upon the petition of the Allen County Department of Child Services (“DCS”). We affirm.

## Issues

- [2] Mother presents two issues for review:
- I. Whether DCS violated Mother’s due process rights when DCS did not make additional referrals for services to Mother upon receipt of Child’s neuropsychological evaluation report one week before the termination hearing; and
  - II. Whether the termination order is clearly erroneous because DCS failed to present clear and convincing evidence to establish the requisite statutory elements.

## Facts and Procedural History

- [3] Child was born on January 18, 2018, to Mother and D.P. (“Father”).<sup>1</sup> He has a chromosomal abnormality known as Chromosome 22q11.2 Distal Microduplication, which is associated with developmental delay.<sup>2</sup> Accordingly, Child needs routine occupational, speech, mental health, and physical therapy in addition to pediatric health care.
- [4] DCS became involved with Mother, who had the sole physical custody of Child, in November of 2020. DCS filed a petition alleging Child to be a Child in Need of Services (“CHINS”) because of Mother’s alleged failure to provide for Child’s basic needs and hygiene; a lack of adequate food in the household; the dirty condition of the residence; disruption of Child’s speech therapy; and Mother’s administration of an adult dose of melatonin to Child. On November 9, Child was adjudicated a CHINS. He remained in Mother’s physical custody, with Mother signing a safety plan.
- [5] On July 21, 2021, DCS received a report that Child was observed with red marks on his right side and feces leaking through the fabric of his dirty clothing. On September 13, the CHINS court ordered that Child remain in Mother’s care, but that Child not be subjected to physical discipline or left in the care of anyone not approved by DCS. Specifically, Child was not to be left in the care

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<sup>1</sup> Father is not an active participant in this appeal.

<sup>2</sup> This duplication has been described as: “a condition caused by an extra copy of a small piece of chromosome 22.” (Exhibits, pg. 93.) Affected individuals may have developmental delay, intellectual or learning disabilities, slow growth leading to short stature, and weak muscle tone (hypotonia). They are also at increased risk for gastrointestinal complications, endocrine dysfunction, ophthalmologic abnormalities, palatal anomalies, congenital heart disease, musculoskeletal differences, and neurologic abnormalities.

of Mother's then-boyfriend. On October 21, a DCS caseworker made an unannounced visit to Mother's residence and found that Child was alone in the care of Mother's then-boyfriend in violation of the court order. Mother had falsely claimed that she had left Child with his maternal grandfather, an approved caregiver, so that Mother could attend a therapy session. The caseworker observed "the home to be a mess" and Child was visibly dirty and wearing only a pull-up diaper. (Exhibits, pg. 113.) On the same day, the CHINS court issued a writ for Child's removal from Mother's custody.

[6] Mother was ordered to participate in services such as individual therapy, family therapy, home-based casework, and supervised visitation.<sup>3</sup> Mother was generally compliant and became increasingly so over time. She obtained employment with Easter Seals Arc and signed a lease with her most recent boyfriend, who is considered by Mother's relatives and service providers to be a stabilizing influence.

[7] Mother regularly participated in visits with Child. However, even as Mother made significant efforts, Child's behavior destabilized. Child began to claim that he hated Mother and wished her dead. He would speak of "bashing her head" or "squeezing her throat." (Tr. Vol. II, pg. 91.) During visits, Child would strike Mother, throw things, and randomly spit on objects. He would climb on furniture and attempt to jump; he scratched and bit a visitation

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<sup>3</sup> Father was ordered to participate in visitation, but never contacted DCS or participated in any reunification service.

supervisor. Mother’s attempts at intervention “made the situation worse.” (*Id.* at 46.) The frequency and severity of Child’s outbursts caused the visitation service provider to contact DCS and recommend discontinuation of in-person visits for the safety of Child and others.

[8] During CHINS review hearings, DCS maintained the position that Mother lacked the necessary skills to manage all the appointments necessary to address Child’s special needs and to keep Child safe. DCS never recommended a trial in-home visit with Mother. On December 19, 2022, DCS filed its petition to terminate Mother’s and Father’s parental rights. An evidentiary hearing commenced on June 5, 2023, and concluded on June 20, 2023. Father appeared only by counsel.

[9] At the hearing, Dr. Barbara Gelder testified regarding her neuropsychological evaluation of Child, completed one month earlier. Dr. Gelder had made the following diagnoses:

Neurodevelopment disorder (associated with 22q11.2 duplication); Adjustment Disorder with mixed anxiety and depressed mood; Post-Traumatic Stress Disorder; Unspecified lack of coordination; Mixed receptive-expressive language disorder; Speech delay; Executive function deficits; Sleep disorder, unspecified; Nightmares; Seizures; Gastro-esophageal reflux disease with esophagitis; cardiac murmur, unspecified; asthma; congenital hypotonia; Chromosome 22q11.2 Distal Microduplication; personal history of neglect in childhood; and personal history of physical abuse in childhood.

(Exhibits, pg. 94.) According to Dr. Gelder, Child, then aged five, had a low-average I.Q. and was functioning socially at the level of a child one year and

nine months old. His communication skills and overall adaptive behavior were consistent with that of a child of two years and one month and his processing was “a bit slow.” (Tr. Vol. II, pg. 62.) Dr. Gelder explained that Child would need multiple services as he matured and entered the public school system, and she opined that, if Child were returned to his biological parents, they would need “a minimum of one year of services.” (*Id.* at 71.)

[10] Additional testimony focused upon whether Mother could likely meet Child’s needs and provide a safe environment for him. DCS Family case manager Amanda Ray testified to her lack of confidence that “Mother has the necessary skills to parent [Child],” considering his extensive needs and Mother’s needs.<sup>4</sup> (*Id.* at 130.) The Court Appointed Special Advocate (“CASA”) testified that Mother was unable to control Child and had historically struggled with her own medical appointments. Regarding the benefits of parenting education, the CASA opined that there had been “no real transfer of knowledge or participation.” (*Id.* at 197.) But Mother’s parent educator found Mother “capable of learning” and she had “no concerns” that Mother was unable to benefit from instruction. (*Id.* at 217.) Likewise, Mother’s therapist had “no concerns” about Mother “working with” Child and believed that Mother had achieved stability. (*Id.* at 229.)

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<sup>4</sup> Mother had been diagnosed with attention deficit disorder, fetal alcohol syndrome, and an adjustment disorder with anxiety.

[11] On September 18, 2023, the trial court entered its findings, conclusions thereon, and order terminating Mother’s and Father’s parental rights. Mother now appeals.

## Discussion and Decision

### **Due Process**

[12] Approximately one month prior to the commencement of the termination hearing, Dr. Gelder conducted a neuropsychological assessment of Child; her findings were made available to DCS one week before the hearing. At the termination hearing, Dr. Gelder explained the evaluation process,<sup>5</sup> summarized the results, and testified in general terms about services, support, and educational interventions Child is likely to need as he matures. DCS did not make referrals for any additional services to Mother based upon the neuropsychological assessment. According to Mother,

Mother’s substantive due process right to raise her child and her procedural due process right to fair proceedings are at issue; the Court can and should, *sua sponte*, consider whether those rights were protected in this case.

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<sup>5</sup> According to Dr. Gelder: “Unlike a psychological assessment, which just looks at emotions and some behaviors, a neuropsychological assessment looks at the whole individual including not only psychological social emotional behavioral adaptive functioning, cognitive functioning, learning, memory, but it also incorporates any and all medical issues that ... may be part of the individual’s particular presentation profile, including what we can gather from available medical records.” (Tr. Vol. II, pg. 57.)

Appellant’s Brief at 23. More specifically, Mother contends that “DCS is now ... asking the court to hold mother responsible for services not part of the plan and that no one can define.” *Id.* at 24.

[13] Mother acknowledges that she did not raise a due process argument before the trial court. Nonetheless, we have discretion to address such claims. *See e.g., Plank v. Cmty. Hosp. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013), (“Even though the general rule is that failure to challenge the constitutionality of a statute at trial results in waiver of review on appeal, this Court as well as the Court of Appeals has long exercised its discretion to address the merits of a party’s constitutional claim notwithstanding waiver.”)

[14] It has been established that, as a matter of statutory elements, DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship. *In re T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. However, when the State seeks to terminate parental rights, “it must do so it in a manner that meets the requirements of due process.” *M.K. v. Marion Cnty. Dep’t of Child Serv.*, 30 N.E.3d 695, 699 (Ind. 2015) (quotations and citations omitted).

[15] The nature of the process due in proceedings to terminate parental rights is governed by a balancing of the “three distinct factors” specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the private interests affected by the proceeding; the risk of error created by the State’s chosen procedure; and the countervailing governmental interest supporting use of the challenged



procedure. *Phelps v. Porter Cnty. Off. of Fam. & Child.*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*.

The private interest affected by the proceeding is substantial—a parent’s interest in the care, custody, and control of his or her child. And the State’s interest in protecting the welfare of a child is also substantial. Because the State and the parent have substantial interests affected by the proceeding, we focus on the risk of error created by DCS’s actions and the trial court’s actions.

*K.M. v. Ind. Dep’t of Child Serv.*, 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013) (citing *In re C.G.*, 954 N.E.2d at 917).

[16] In looking at the risk of error created by DCS’s actions, we keep in mind that “due process protections at all stages of CHINS proceedings are vital because every CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.” *J.A. v. Ind. Dep’t of Child Serv.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (quotations and citations omitted). “[T]hese two proceedings—CHINS and TPR—are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter.” *Id.*; *see also A.S. v. Ind. Dep’t of Child Serv.*, 111 N.E.3d 207, 213 (Ind. Ct. App. 2018) (holding that “the chaotic and unprofessional handling” of a CHINS case violated the parents’ due process rights, requiring reversal of the termination order).

[17] Here, DCS made referrals for Mother for each of the court-ordered services. Mother engaged in individual therapy, home-based caseworker services,

supervised visitation, and short-term family therapy.<sup>6</sup> She completed budgeting and parenting classes; the parenting classes included a program entitled Parenting for Challenging Children. Mother did not advise DCS or the CHINS court if she found these services to be inadequate. And DCS caseworker Amanda Ray testified that she notified Mother of her right to attend Child’s medical appointments, but Mother did not avail herself of the opportunity to do so. *See In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000) (“[A] parent may not sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting”).

[18] During her testimony, Dr. Gelder offered her opinion that, if Child were returned to his biological parents, a year of services – at a minimum – would likely be needed. To the extent that Dr. Gelder was advocating for increased services, she offered global and largely non-specific recommendations. Dr. Gelder referred to Child’s needs at various developmental stages; for example, she addressed advocacy services available to students with an Individualized Educational Plan and generally referred to free services to assist parents of special needs children. But her evaluation and testimony were not targeted to identifying specific service referrals that DCS had the opportunity to provide. Under these circumstances, we cannot say that Mother’s due process rights were violated.

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<sup>6</sup> The family therapy was discontinued after several sessions because of Child’s inability to fully participate.

## Sufficiency of the Evidence of Requisite Statutory Elements

[19] Mother contends that the trial court's order terminating her parental rights is 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.

[20] 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.

\* \* \*

(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).

[21] 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.* Furthermore, 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*.

[22] When, as here, a trial court’s judgment contains special findings and conclusions, we first determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Bester v. Lake Cnty. Office of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). “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.

[23] Although Mother purports to challenge many of the trial court’s findings of fact, she actually does not specifically claim that any finding is unsupported by the evidence. Rather, she contends that the trial court failed to give enough emphasis to her compliance with services and the recent positive steps that she has taken. On that basis, she challenges the trial court’s conclusions that the conditions prompting Child’s removal will likely not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of Child.<sup>7</sup> Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we only address whether the trial court erred in concluding that Mother is not likely to remedy the conditions that resulted in Child’s removal.

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<sup>7</sup> Mother makes no separate argument with regard to Child’s best interests. Nor does she contest that Child was removed from the parental home for the requisite period of time or that DCS has a satisfactory plan for Child.

[24] As to the likelihood of remediation of conditions, we engage in 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 determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* (quotations and citations omitted). In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent’s fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643.

[25] However, the court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the “trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship”). In evaluating the parent’s habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent’s prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). And DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Moore*, 894 N.E.2d at 226.

[26] Child was removed from Mother's care because she was not providing him with a safe, stable living environment nor was she appropriately obtaining the developmental interventions that Child needed. Mother has made efforts which are commendable. She has been employed for over one year and, after a history of housing instability, she has signed a lease. Mother has also been cooperative with service providers. However, there is evidentiary support for the trial court's conclusions that Mother is unable to adequately address Child's escalating negative behaviors, meet his significant needs for intervention, and keep him safe.

[27] Child is developmentally delayed and has asthma and poor muscle tone. He suffers from night terrors and seizures. In light of these conditions, Child has weekly appointments for occupational and speech therapy. He also has a mental health therapist whom he sees weekly. Child sees a neurologist on a semi-annual basis and receives checkups for asthma at least quarterly. On a daily basis, he receives two breathing treatments and two medications. Mother has not attended Child's medical appointments.

[28] For reasons not entirely clear from the record, Child became unwilling to visit Mother. He would hide from his foster mother and beg not to be taken to a visit. At times, his anxiety was so extreme that he would shake and convulse and require an inhaler. He stated to his foster mother that he wanted to die, wanted to kill Mother, and wanted to hurt people at the counseling center. He protested a scheduled visit by "smashing his entire body against the wall." (Tr.

Vol. II, pg. 104.) Child would experience night terrors, screaming for up to forty-five minutes before calming down.

[29] Mother testified that visits had deteriorated during the last six months for unknown reasons. She related that Child would “throw things, pick anything up that he can find and throw them. And or get on things and jump off of them. And sometimes say I hate you. You’re not my mom.” (*Id.* at 15.) She explained that she had been taught to count to three and give a time out or use a bear hug and hold Child until he calmed down. But, according to Mother, such techniques eventually failed:

It just made the situation 10 times worse. It just escalated his behavior when I would try to hold him or try to hug him to calm him down or get him to where he could sit instead of jumping off of things, climbing on things. It just made his behavior 10 times worse so Quality [services provider] would tell me just let us try to get him calmed down and then you can try to talk to him.

(*Id.* at 46.) After visits ended early on four occasions due to Child’s oppositional behaviors, the service provider contacted DCS and recommended discontinuation of visitation services, out of concern for the safety of Child and those around him. Ultimately, Child’s therapist formed the opinion that it caused Child great emotional distress to continue his relationship with Mother.

[30] In sum, Mother has made some commendable efforts of relatively recent origin but remains non-equipped to handle the significant challenges of her special needs child. The trial court’s determination of a reasonable probability that the



conditions leading to removal and continued placement outside the parental home are unlikely to be remedied is not clearly erroneous.

## Conclusion

[31] Mother was not denied due process. DCS presented sufficient evidence to establish the requisite statutory elements for termination of Mother's parental rights. Accordingly, the order terminating Mother's parental rights to Child is not clearly erroneous.

[32] Affirmed.

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

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