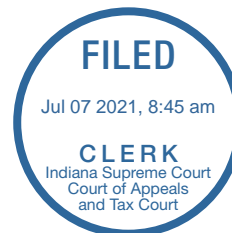


## MEMORANDUM DECISION

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 re the Involuntary  
Termination of the Parent-Child  
Relationship of: L.H., E.H.,  
H.H., and S.H. (Minor  
Children),

and A.H. (Mother) and G.H.  
(Father)

*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,

July 7, 2021

Court of Appeals Case No.  
20A-JT-1509

Appeal from the Franklin Circuit  
Court

The Honorable J. Steven Cox,  
Judge

Trial Court Cause Nos.  
24C01-1912-JT-827  
24C01-1912-JT-829  
24C01-1912-JT-830  
24C01-1912-JT-831

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*Appellee-Petitioner.*

**Bradford, Chief Judge.**

## Case Summary

[1] A.H. (“Mother”) and G.H. (“Father”) (collectively “Parents”) are the parents of four children: H.H., E.H., S.H., and L.H. (collectively “Children”). Parents first became involved with the Indiana Department of Child Services (“DCS”) in 2007, when their child, H.H., tested positive for drugs at birth. The 2007 case was eventually dismissed. DCS again became involved with the family after their child, S.H., tested positive for drugs at birth in 2015. The second case was also dismissed. Around May 18, 2018, L.H., was removed from Parents’ care by DCS when he tested positive for methamphetamine, amphetamine, and methadone at birth. On June 5, 2018, DCS filed a petition alleging Children were children in need of services (“CHINS”) due to Parents’ drug use. On July 23, DCS removed H.H., E.H., and S.H., from Parents’ care after DCS received a report that Mother was driving under the influence with those children in the vehicle. On July 26, 2018, the juvenile court held a

factfinding hearing and, after Parents admitted to drug use, adjudicated Children to be CHINS. The juvenile court ordered Parents to participate in services and, in pertinent part, refrain from drug use, obey the law, complete a substance-abuse assessment and all recommended treatment, and submit to random drug screens. On October 24, 2019, after a consistent failure to comply with the case plan and evidence of drug use by both Parents, the juvenile court changed the Children's permanency plan to adoption. On July 20, 2020, the juvenile court terminated Parents' parental rights to Children. Parents appeal, Father claiming that his due process rights were violated such that we should reverse the juvenile court's decision to terminate his parental rights, while Mother challenges the juvenile court's determination that she did not comply with the case plan. Because we disagree, we affirm.

## Facts and Procedural History

- [2] Parents became involved with DCS and the court through CHINS cases when H.H. was born testing positive for drugs in 2007 and when S.H. was born testing positive for drugs in 2015, though both cases were eventually dismissed. Around May 18, 2018, DCS removed L.H. from Parents' care after he was born and tested positive for methamphetamine, amphetamine, and methadone. Mother admitted to using methamphetamine once or twice a week, but Father denied drug use. DCS also removed the rest of the children from Parents' custody. Later that day, however, the juvenile court found that the removal of H.H., E.H., and S.H. was not necessary, but child L.H. remained removed

from Parents' custody. On June 5, 2017, DCS filed a petition alleging that Children were CHINS due to Parents' drug use, and eventually removed H.H., E.H., and S.H., after receiving a report that Mother had driven with them in a vehicle while she was under the influence.

[3] On September 13, 2018, the juvenile court entered a dispositional decree, ordering Parents to participate in services, as well as refrain from drug use, obey the law, complete substance-abuse assessments and all recommended treatment, and submit to random drug screens. On July 19, 2018, Parents both completed a substance-abuse assessment, after which the assessor recommended that they both participate in outpatient substance-abuse treatment; however, both parents failed to comply.

[4] On December 4, 2018, the juvenile court held a review hearing holding Parents in contempt for willfully failing to comply with the court-ordered treatment plan and ordering Parents to be held at the Franklin County Security Center until DCS located a residential-treatment facility. On December 21, 2018, the juvenile court ordered that Father be transferred to the Indiana Department of Correction until DCS located rehabilitative care for Father, which DCS located six days later, soon after entering him into inpatient treatment at Meridian. On January 18, 2019, Father successfully completed the program at Meridian and was set to progress to outpatient treatment at the Community Mental Health Clinic until he relapsed the day he began treatment there. Meridian then scheduled Father's return to residential treatment for April 8, 2019, but Father did not return until April 16, 2019. Father admitted upon his return that he had

been using methamphetamine, and admitted at a June 6, 2019, hearing that he had used methamphetamine six days previously.

[5] DCS also located treatment facilities for Mother but, because Mother was using methadone at the advice of a physician to maintain the health of her pregnancy, many would not accept her; further, Volunteers of America was not able to accept Mother into their program because Mother tested positive for alcohol, despite being incarcerated. In June of 2019, after Mother gave birth to a child not part of this appeal, DCS offered her inpatient substance-abuse treatment; however, Mother declined, indicating that she did not need treatment. On June 16, 2019, the court ordered that it would hold her in contempt if she failed to comply with inpatient treatment at Harbor Lights, which necessitated lowering her methadone dosage. On August 6, 2019, because of Mother's failure to comply with treatment and continued methamphetamine use, the court held Mother in contempt and ordered she be held in custody until DCS could transport her to inpatient treatment. Mother escaped lawful detention and was later arrested in Hamilton County, Ohio on August 13, 2019. She was subsequently charged with Level 5 felony escape.

[6] Between May 13, 2018, and August 1, 2019, Mother tested positive for amphetamine and methamphetamine twelve times, and failed to submit to drug screens nineteen times between July 27, 2018 and November 29, 2018. Mother also testified at the termination hearing as follows:

Q: Do you think that it's in the best interest of the children to be with you right now?

A: Right now? No.

Q: Do you think that there's a reasonable probability that you're going to continue to use drugs after you get out?

A: No.

Q: You don't think there's a reasonable probability?

A: I mean, reasonably probability. Yes

Q: But you hope not to?

A: Correct.

Tr. Vol. II pp. 54–55.

[7] Father tested positive for methamphetamine and amphetamine fifteen times between November 20, 2018, and April 10, 2019. Father also failed to submit to drug screens at least thirty-two times during the underlying CHINS case. Further, Father is alleged to have violated the law during the proceedings: the State charged Father with driving while suspended in Franklin County on May 8, 2019, and he was arrested on June 6, 2019, in Kenton County Ohio on a felony warrant where he remained incarcerated until September of 2019, eventually pleading guilty to possession of methamphetamine.

[8] On October 24, 2019, the juvenile court held a permanency hearing and, due to Parents' failure to comply with the case plan, Father's continued drug use, and the Parents' incarceration, the juvenile court changed Children's permanency plan to adoption. By July of 2020, Children had been removed from Parents' care for over two years, amounting to L.H.'s entire life, and all of them were doing well in their respective placements. Court Appointed Special Advocate

(“CASA”) Michael Sauerland testified at the termination hearing that he believed that Parents’ parental rights should be terminated as it would be in the best interests of Children. On July 22, 2020, the juvenile court terminated Parent’s parent-child relationship with Children.

## Discussion and Decision

[9] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Moreover, we acknowledge that the parent–child relationship is “one of the most valued relationships of our culture.” *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children’s interests in determining the appropriate disposition of a petition to terminate the parent–child relationship. *Id.* The Indiana Supreme Court has made clear that the “purpose of terminating parental rights is not to punish parents, but to protect the children.” *Egly v. Blackford Cnty. Dep’t. of Pub. Welfare*, 592 N.E.2d 1232, 1234–35 (Ind. 1992). The *Egly* Court also explained that “[a]lthough parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents.” *Id.* at 1234. Termination of parental rights is

proper where the children’s emotional and physical development is threatened; however, the juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re T.F.*, 743 N.E.2d at 773.

[10] When reviewing an order terminating parental rights, we do not “reweigh the evidence or determine the credibility of witnesses,” but instead determine only whether the evidence supports the judgment. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016). This is a two-step review, which requires us to determine “whether the evidence clearly and convincingly supports the findings, and whether the findings clearly and convincingly support the judgment.” *Id.* We “give ‘due regard’ to the trial court’s opportunity to judge the credibility of the witnesses firsthand.” *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We will “not set aside findings or judgment unless clearly erroneous.” Ind. Trial Rule 52(A); *see also In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). Reversal is appropriate only if we find that the juvenile court’s decision is against the logic and effect of the facts and circumstances before the court or the reasonable inferences drawn therefrom. *In re Guardianship of B.H.*, 770 N.E.2d 283, 288 (Ind. 2002).

[11] Indiana Code section 31-35-2-4(b)(2) governs what DCS must allege and establish to support the termination of parental rights, and, for purposes of our disposition, that was:



- (A) that [t]he 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 [or]
  - (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.

Ind. Code § 31-35-2-4(b)(2). Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS need only establish one of the circumstances described in that subsection, two of which are listed above.

## **A. Mother’s Claims**

[12] Mother challenges the juvenile court’s conclusion that there is a reasonable probability that she will not remedy the conditions resulting in Children’s removal; however, she does not challenge the juvenile court’s conclusion that the continuation of the parent-child relationship poses a threat to the well being of the Children. The State correctly points out that, because the juvenile court concluded that DCS proved both statutory elements, Mother has waived any challenge as to the threat element. However, we nonetheless choose to review Mother’s challenge to the juvenile court’s conclusion that the reasons for Childrens’ removal would not be remedied.

[13] Children were removed and have continued placement outside of Parents' care because of significant drug use, lack of visitation, and a failure to comply with the case plan. Mother argues that she was unable to participate in inpatient services due to her taking a physician-recommended dose of methadone to ensure her and her baby's health during pregnancy, and therefore the juvenile court's reliance on her failing to participate in services was unfounded. We are unpersuaded. Subsequent to a release from incarceration to give birth to a child not subject to this appeal, Mother tested positive for methamphetamine, was sent to jail, and fled the courthouse, eventually leading to her incarceration until the time of the termination hearing. Fleeing custody and continuing drug use are clear indicators of non-compliance.

[14] Further, the court relied on multiple considerations in concluding that the conditions which led to the removal of Children were unlikely to be remedied. Mother admitted on May 21, 2020, that it was not in the best interests of the Children to be in her care at the time and that there was a reasonable probability that she would use drugs again. Further, the juvenile court considered Mother's long history of habitual drug use, noting that Mother has had significant problems with drug abuse since 2007. *See In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010) ("However, the trial court must also 'evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of a child.' [...] When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed

conditions.”). Mother argues that her significant decrease in methamphetamine use over the course of the CHINS case and her compliance with a methadone regimen should be viewed as a positive change in conditions warranting reversal of the termination of her parent-child relationship; however, this is simply a request that we reweigh the evidence, which we will not do. *See Bester*, 839 N.E.2d at 147 (“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.”).

## **B. Father’s Claims**

[15] Father argues that his due process rights were violated by his detention for contempt, not that there was insufficient evidence to support the termination of his parental rights: he has, therefore, waived his rights to argue that the termination of his parental right was clearly erroneous. *See In Re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007). Father also failed to raise a due process argument below, also waiving this argument on appeal. *See L.H. v. Ind. Dep’t of Child Servs.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019) (“Generally, a party waives on appeal an issue that was not raised before the trial court.”), *aff’d on reh’g*, 122 N.E.3d 832, *trans denied*. “However, we have discretion to address such claims, especially when they involve constitutional rights, the violation of which would be fundamental error[,]” *Id.* at 586, so for the purposes of this appeal, we choose to review Father’s due process claim on the merits.

[16] Fundamental error “review is extremely narrow and ‘available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.’” *In Matter of Eq. W*, 124 N.E.3d 1201, 1214 (citing *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008)). Jail sentences for contempt “must be coercive or remedial rather than punitive in nature.” *In re Paternity of C.N.S.*, 901 N.E.2d 1102, 1106 (Ind. Ct. App. 2009) (citing *K.L.N. v. State*, 881 N.E.2d 39, 42 (Ind. Ct. App. 2008)). In order to avoid punitive sentencing, “a contempt order must offer an opportunity for the recalcitrant party to purge himself or herself of the contempt.” *Id.*

[17] While Father argues that his alleged due process violation undermines the entire termination proceeding, Father also argues that the juvenile court’s contempt order, which was in response to his positive test for methamphetamine, did not supply him with a way to purge himself of contempt, as it was up to DCS. *See Flash v. Holtsclaw*, 789 N.E.2d 955, 959 (Ind. Ct. App. 2003) (“Nevertheless, a contempt order which neither coerces compliance with a court order or compensates the aggrieved party for loss, and does not offer an opportunity for the recalcitrant party to purge himself, may not be imposed in a civil contempt proceeding.”). We disagree. During the pendency of this case, Father was detained twenty-three days by the juvenile court’s contempt order, a detention which was ended when DCS secured Father inpatient treatment. Father’s detention was in direct response to his

violation of a court order, specifically that he not use drugs, coercing his compliance. Father had the opportunity to avoid contempt by following the court order and the opportunity to purge himself of contempt by complying with the treatment after DCS located a facility. Father does not argue that DCS delayed in locating a treatment facility or that the juvenile court relied only on his contempt-related incarceration in deciding to terminate his parental rights, and the record shows it did not. The juvenile court relied on Father's sporadic visitation, noncompliance with the case plan, and substantial continued drug use. Even if the juvenile court erred by holding Father in contempt, given the amount of evidence that the juvenile court relied on in reaching its determination, we cannot say that it fundamentally undermined the proceeding's fairness.

[18] The judgment of the juvenile court is affirmed.

Mathias, J., and Brown, J., concur.