

## 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 Termination of the  
Parent-Child Relationship of  
K.G. (Minor Child) and S.A.  
(Mother)

S.A. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

March 3, 2022

Court of Appeals Case No.  
21A-JT-2140

Appeal from the Wayne Superior  
Court

The Honorable Darrin M.  
Dolehanty, Judge

The Honorable Barbara A.  
Harcourt, Senior Judge

Trial Court Cause No.  
89D03-2106-JT-16

**Vaidik, Judge.**

## Case Summary

- [1] S.A. (“Mother”) appeals the termination of her parental rights to K.G. (“Child”). We affirm.

## Facts and Procedural History

- [2] Mother and D.G. (“Father”) (collectively, “Parents”) are the biological parents of Child, born in 2013. Father’s rights were also terminated, but he does not participate in this appeal, so we limit our narrative to facts relevant to Mother.
- [3] In May 2017, the Department of Child Services (DCS) in Wayne County received a report that Child was the victim of abuse and neglect perpetrated by Mother and her then-boyfriend, S.A. (“Stepfather”).<sup>1</sup> Family Case Manager (FCM) Kalie Anderson investigated and found Child was very thin, there was a lock on her bedroom door, her room contained only a mattress on the floor, and the house was dirty with piles of trash and bugs. Mother “didn’t seem concerned” about the state of the home and did not “understand” why “locking a child in her bedroom wasn’t okay.” Tr. Vol. II p. 76. Father lived out of state and did not have contact with Child. DCS substantiated the neglect allegations and removed Child from the home. The next month, DCS filed a petition alleging Child was a child in need of services (CHINS), and in October Child

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<sup>1</sup> While the record is unclear as to the exact date, it appears Mother and Stepfather married between August 2018 and June 2019.

was adjudicated a CHINS pursuant to Parents' admission. In August 2018, the court determined Mother had sufficiently participated in services, Child was placed back in Mother and Stepfather's home, and the CHINS case was closed.

[4] In June 2019, DCS received another report that six-year-old Child was coming to school with black eyes, poor hygiene, and hungry. FCM Anderson investigated and found Child appeared dirty and underweight and the home was unkempt with cockroaches and trash. Again, Mother did not understand the concerns with the home or Child's safety. DCS removed Child and filed a petition alleging Child was CHINS. In November, Child was adjudicated a CHINS as to Mother pursuant to Mother's admission. At the dispositional hearing, Mother was ordered to, among other things, submit to a parenting assessment and follow any recommended treatment. Mother underwent a parenting assessment and attended DCS-recommended services but did not "fully participate." Ex. p. 83. She expressed she did not believe Child had been neglected or that her parenting skills needed improvement.

[5] After removal, Child exhibited behavioral issues at her foster home and in school. In September, Child began weekly meetings with therapist Aariah Yazell. In February 2020, Yazell attempted a "family therapy" session between Mother and Child, but the session was "not successful." Tr. Vol. II p. 86. After the session, Child's aggression increased. In April, Child was admitted to Reid Health's residential program after incidents of self-harming and aggressive behavior toward others. During her stay at Reid Health, Child refused to discuss Mother or the conditions that led to her removal from Mother's care.

Dr. Amanda Pfeffer, a clinical psychologist at Reid Health, diagnosed Child with post-traumatic stress disorder (PTSD) and recommended parenting time with Mother be suspended while Child underwent “trauma-focused cognitive behavioral therapy.” *Id.* at 20. Parenting time was suspended in May. That month, Child revealed to Yazell that before removal Stepfather had “put his penis in her vagina.” Tr. Vol. II p. 92. DCS investigated and substantiated claims of sexual abuse against Stepfather. A few months later, Child was again admitted to Reid Health due to her mental health. While there, Child told Dr. Pfeffer that she did not believe Mother would protect her from Stepfather.

[6] Mother and Child began visits again in September 2020. However, Child continued to show “aggressive behaviors” before and after visits. *Id.* at 108. In February 2021, Yazell again attempted a family-therapy session, but Child refused to stay in the room with Mother and showed increased aggression. Yazell then recommended family therapy be stopped, and parenting time was suspended on the advice of Child’s doctors.

[7] In May 2021, DCS filed a petition to terminate Parents’ rights. The termination hearing occurred over two days in August and September. Dr. Pfeffer testified that Mother “did not think that [Child] had been traumatized” and that there needed to be “accountability” so therapy between Mother and Child could succeed. *Id.* at 24, 32. Patricia Rubino, Child’s nurse practitioner, also testified Child’s PTSD is “very prominent” and manifests in “angry outbursts, hypervigilance, nightmares, [inability] to sleep, [and] difficulty in [forming] relationships for her age.” *Id.* at 38, 39. Yazell testified she attempted to

incorporate Mother into Child’s therapy, but Mother was “resistant” and “did not believe” Child’s accusations regarding Stepfather. *Id.* at 95. Yazell testified this harmed Child’s recovery because Mother must “understand where the child is coming from with the trauma . . . in order to support the recovery.” *Id.*

Danielle Hibbard, another of Child’s therapists, testified Mother “invalidate[d]” Child’s feelings and made Child feel unsafe, which created Child’s aggressive behaviors. *Id.* at 109. Finally, FCM Terri Witham testified Mother continued to live with Stepfather and the only safety plan Mother would agree to regarding reunification was to have Child not be alone in the home with Stepfather.

[8] After the hearing, the trial court issued an order terminating Parents’ rights.

[9] Mother now appeals.

## Discussion and Decision

[10] Mother argues DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether

the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[11] A petition to terminate parental rights must allege, among other things:

(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 prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

[12] Mother argues the trial court's findings do not support its conclusion that there is a reasonable probability that the reasons for Child's removal and continued

placement outside Mother's home would not be remedied. But Mother does not challenge the trial court's other conclusion that there is a reasonable probability that continuation of the parent-child relationship poses a threat to Child's well-being. DCS is not required to prove both conclusions because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. *See* I.C. § 31-35-2-4(b)(2)(B) (listing three options and noting DCS must prove "one"). Because Mother does not present an argument challenging the trial court's conclusion that a reasonable probability exists that continuation of the parent-child relationship poses a threat to Child's well-being, we may affirm under that portion of the statute and, thus, we need not address Mother's argument that the findings do not support the trial court's conclusion that the conditions under which Child was removed would not be remedied.

[13] Nonetheless, we prefer to resolve cases on the merits, especially when there is an "important parental interest at stake." *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017). As such, we will review Mother's claim that DCS did not provide sufficient evidence there is a reasonable probability the conditions that resulted in Child's removal will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must

consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[14] Here, the reasons for Child's removal were malnutrition, poor hygiene, and unsuitable housing conditions. DCS presented sufficient evidence there is a reasonable probability these conditions will not be remedied. Notably, despite Child being removed in 2017 for malnutrition, poor hygiene, and unsuitable housing conditions and Mother completing services to address these issues, Child was removed again less than a year after returning home for similar reasons. Both times, Mother indicated she did not understand that these issues were concerning or posed a risk to Child's safety. While Mother again attended DCS services to address these issues, she did not fully participate and insisted Child was not neglected and that her parenting skills did not need improvement. This supports the trial court's conclusion that there is a reasonable probability these issues will not be remedied.

[15] In addition to the reasons for removal, the court must look at the reasons for Child's continued placement outside the home. Here, after Child's removal, her substantiated claims of sexual abuse against Stepfather and her mental-health issues led to her continued placement outside the home. And again, DCS presented sufficient evidence there is a reasonable probability these conditions will not be remedied. Multiple professionals testified Child suffers from serious mental-health issues. Yet Mother did not believe Child had been traumatized and would not engage in Child's therapy. Because of this resistance, Child and Mother did not successfully engage in family therapy, and Child continued to



have serious behavioral issues and emotional outbursts relating to Mother. Furthermore, Mother did not believe Child's claim that Stepfather sexually abused her and would not implement a suitable safety plan with DCS should Child return to her care. This evidence supports the trial court's conclusion. *See In re Ma.H.*, 134 N.E.3d 41 (Ind. 2019) (noting there was a reasonable probability that conditions leading to the child's removal—sexual abuse allegations against the father—would not be remedied where the mother did not believe the allegations and would not agree to a safety plan).

[16] Mother acknowledges the above evidence but argues there was additional evidence, namely, the effect of the pandemic on her ability to engage in DCS services and visitation with Child, that the trial court did not consider. This is a request to reweigh evidence, which we do not do. *In re K.T.K.*, 989 N.E.2d at 1229.

[17] The trial court did not err when it concluded there is a reasonable probability the conditions resulting in Child's removal and continued placement outside the home will not be remedied.

[18] Affirmed.

Najam, J., and Weissmann, J., concur.