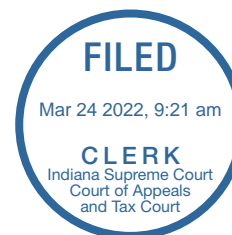


## MEMORANDUM DECISION

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 re Termination of the  
Parent-Child Relationship:

K.S. (*Minor Child*),

and

C.S. (*Mother*),

*Appellant-Respondent*,

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*,

March 24, 2022

Court of Appeals Case No.  
21A-JT-2190

Appeal from the Wayne Superior  
Court

The Honorable Darrin M.  
Dolehanty, Judge

Trial Court Cause No.  
89D03-2106-JT-17

**Robb, Judge.**

## Case Summary and Issue

- [1] The juvenile court terminated the parental rights of C.S. (“Mother”) to her son, K.S. (“Child”). Mother appeals, raising the sole issue of whether the Indiana Department of Child Services (“DCS”) proved by clear and convincing evidence there was a reasonable probability the reasons for Child’s removal would not be remedied. Concluding sufficient evidence supports the juvenile court’s termination order, we affirm.

## Facts and Procedural History

- [2] Mother gave birth to Child on January 29, 2020, when she was twenty-one years of age.<sup>1</sup> At that time, both Mother and Child tested positive for opiates. Mother admitted to using illicit substances, including methamphetamine and heroin, since she was sixteen and she had a criminal history of drug-related convictions. Mother left the hospital for approximately five hours soon after Child’s birth and when she returned, she appeared to be under the influence of a controlled substance. Mother had no permanent and stable residence and was unable or unwilling to ensure Child received proper care and supervision.

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<sup>1</sup> Child’s father has not been identified.

Child was removed from Mother's care on February 4, 2020, and has remained outside her care since that date.

[3] Child was adjudicated a child in need of services ("CHINS") on February 26, following a hearing at which Mother admitted Child was a CHINS because "she was incarcerated for approximately two and one-half . . . months prior to [Child's] birth; . . . she had a history of substance abuse; . . . she needed help accessing substance abuse treatment; and . . . as a result of her incarceration, she could not care for [Child]." Appealed Order at 2, ¶ 4; *see also* Appellant's Appendix, Volume II at 23 (Joint Stipulation of Facts). At the time of the dispositional hearing in May, Child's permanency plan was reunification and Mother was ordered to participate in the services and take the actions required by the parental participation plan. Mother was referred for a substance abuse assessment, residential substance abuse therapy, intensive outpatient substance abuse therapy, individual therapy, case management, drug screens, and supervised parenting time.

[4] In the CHINS case, Mother appeared at a periodic review hearing in August 2020 in the custody of the Wayne County Sheriff's Department. Due to her incarceration, Mother was unable to comply with the case plan, but to the extent possible had cooperated with DCS. Mother was again in the custody of the Wayne County Sheriff's Department at a January 2021 hearing. Mother had completed the substance abuse assessment but had not participated in any other services, including parenting time. Child's permanency plan was modified to reunification with a concurrent plan of termination and adoption.

At a March 2021 hearing, Mother remained in the custody of the Wayne County Sheriff's Department. She admitted to being in contempt for failing to comply with the dispositional order, including failing to attend scheduled parenting time with Child, and was ordered to contact DCS within forty-eight hours of her release because DCS had arranged for her to begin residential substance abuse treatment. Mother failed to appear at an August 2021 hearing. At that hearing, however, the juvenile court received evidence that Mother had been released from incarceration since the last hearing but had refused to attend the residential substance abuse treatment program. She had not participated in individual outpatient treatment or individual therapy, she had been discharged from case management services for noncompliance, and she had attended only one virtual and one in-person supervised parenting time session since the March hearing despite being offered two sessions per week.

[5] In the meantime, DCS had filed a petition to involuntarily terminate Mother's parental rights in June 2021. Three initial hearings were scheduled and continued because Mother failed to appear. The initial hearing was finally held in August and the termination hearing proceeded as scheduled in September 2021.

[6] The parties filed a joint stipulation the day before the termination hearing. Among other things, they stipulated to the following regarding Mother's criminal history:

- Before Child was born:

- Mother pleaded guilty to and was sentenced on November 26, 2018, for Class A misdemeanor possession of methamphetamine.
- Mother pleaded guilty to and was sentenced on November 26, 2018, for the Level 6 felonies of possession of methamphetamine, possession of a narcotic drug, and unlawful possession of a syringe.
- Mother pleaded guilty to and was sentenced on June 6, 2019, for Class A misdemeanor criminal trespass.
- After Child was born:
  - Mother pleaded guilty to and was sentenced on April 20, 2020, for Class A misdemeanor unlawful possession of a syringe.
  - Mother pleaded guilty to and was sentenced on July 27, 2020, for the Level 6 felonies of possession of a narcotic drug and unlawful possession of a syringe.
  - Mother pleaded guilty to and was sentenced on July 7, 2021, for Class B misdemeanor unlawful entry of a motor vehicle.
  - Mother was arrested and charged with Class A misdemeanor resisting law enforcement, Class B misdemeanor public intoxication, and Level 6 felony battery against a public safety official for an incident occurring approximately one month prior to the termination hearing. Those charges remained pending at the time of the hearing.

*See* Appellant’s App., Vol. II at 24-25. Mother was incarcerated off and on during the CHINS case. The pending charges were filed after police responded to a report of an intoxicated person and found Mother in the street, “flailing, screaming[,] showing signs of erratic behavior, sweating profusely.” Transcript, Volume II at 104. Police, who had dealt with Mother “numerous times via calls for service[,] . . . could immediately tell she was intoxicated on most likely drugs, methamphetamine.” *Id.* Mother was incarcerated as a result of these charges at the time of the termination hearing.

[7] At the termination hearing, Child’s foster mother testified that he was placed with her and her husband (who are also Child’s great-great aunt and uncle) when he was approximately two weeks old and has remained in their home throughout these proceedings. The foster mother testified that he was doing very well and that she and her husband were willing to adopt Child if Mother’s parental rights were terminated. Child was assessed by First Steps and has not required services. The foster mother said Mother had reached out to them to ask how Child was “[m]aybe a handful of times” in the approximately eighteen months he had been placed with them, and had visited him five times “at the max.” *Id.* at 28.

[8] As for the services offered to Mother, Tracey Lickfelt, the director of outpatient services at Centerstone of Indiana, did an intake assessment with Mother in October 2020 to assess her needs and make recommendations for services. During that assessment, Mother reported she first began using marijuana at fourteen, heroin at sixteen, and methamphetamine at eighteen. She continued

to use those drugs regularly, “which led to a lot of consequences for her, including her involvement with DCS, the legal system, incarceration. It affected her family relationships, the ability for employment, the loss of her child from her home, [and] her daily living skills and abilities.” *Id.* at 32. Lickfelt recommended that Mother participate in substance abuse treatment and individual therapy to address her history of trauma. Mother was agreeable to the recommendation for substance abuse treatment but did not want to do individual therapy.

[9] Cortney Baudendistel, team leader for the addictions department at Centerstone, then met with Mother one time, in April 2021, after Mother missed two earlier appointments. Baudendistel held an orientation session with Mother during which she assessed Mother’s substance abuse treatment needs and determined which group or individual placement would be best for her. Baudendistel recommended Mother participate in individual therapy, individual recovery coaching, and the “Living in Balance” group – a “life skills based treatment protocol for substance use disorders.” *Id.* at 37. Baudendistel assigned Mother’s case to Brooke Kidd, another Centerstone staff member, to facilitate her services. Kidd, however, never met with or spoke to Mother after being assigned to her case. An appointment was scheduled for May 2021 but did not occur, and Mother did not reach out to Centerstone after that.

[10] Brooke-Lyn LeMaster, a community health worker, was to provide case management services for Mother, which could include parenting education, providing connections with community resources for help with housing and

employment, assisting with medical appointments; “basically, whatever the specific need may be for the family.” *Id.* at 46. LeMaster spoke with Mother by phone in April 2021 and scheduled an enrollment appointment for May, which Mother did attend. Mother missed the next appointment, however, and became angry about a follow-up letter requesting contact. LeMaster had no further contact with Mother after May 2021.

[11] Finally, Gary Sandifar, who provides visitation facilitation and casework through Healing Solutions Counseling Service, began working with Mother in March 2021. After the initial intake appointment, Sandifar met with Mother seven times, and she cancelled or no-showed five times. Although Mother denied substance use, Sandifar believed Mother was sober only two of the seven times they met, and at least two times, she was “totally incoherent.” *Id.* at 110-11. In August, Sandifar discharged her from the services offered by Healing Solutions primarily because of lack of contact and because they “were not making any progress whatsoever.” *Id.* at 113.

[12] Tomi Haney, the family case manager (“FCM”) for the entirety of this case, made several referrals for Mother immediately upon being assigned the CHINS case and throughout. Of those referrals, Mother only completed the substance abuse assessment at Centerstone, although other referrals at Centerstone remained open through the termination hearing. Haney originally arranged for Mother to have parenting time with Child five times per week, but Mother only visited him a few times in eighteen months. Mother told Haney that her drug use was impacting her ability to participate in services and visit with Child.



Haney testified that DCS recommended that Mother's parental rights be terminated because Mother only partially engaged in services and admitted to continuing illegal substance use, and because Child had only seen Mother a few times and had been in his current placement since he was two weeks old and was bonded with his foster parents.

[13] Karen Bowen, the court-appointed special advocate ("CASA"), noted that Child is well cared for and loved in his placement and "has been allowed to develop parental feelings for [his foster parents], rather than his mom, because she hasn't taken the opportunities to visit him when she could have." *Id.* at 97. In the CASA's interactions with Mother, primarily when she has been incarcerated, Mother has acknowledged the need for inpatient services to treat her substance abuse issues, but then has done nothing to address them when she is out of jail. The CASA testified, "I believe that it is in [Child's] best interest that [Mother's] parental rights are terminated, and [Child] be allowed to move to adoption as a permanency plan[.]" *Id.* When asked if her opinion would change if Mother were given more opportunity to get clean, the CASA said,

On this particular [case], no. Because I have over and over and over had those conversations with [Mother]. . . . [S]he will say she wants to do these things, but then she disappears again. And that is where I do not believe . . . that given more opportunity that we can do this, because of her time and time and time again say[ing] that she will and wants to, and time and time and time again not do[ing] it. And that hurts [Child].

*Id.* at 101-02.

[14] The juvenile court issued an extensive and detailed order on the petition for termination of parental rights. Relevant to Mother's appeal, the juvenile court concluded:

The DCS has shown by clear and convincing evidence that there is a reasonable probability that the conditions that led to the child's removal from his mother and the reasons for his placement outside of his mother's home will not be remedied. As noted above, [Child] was removed from his mother due to Mother having been incarcerated for approximately two and one-half (2 ½) months prior to [Child's] birth; Mother's history of substance abuse; Mother's need for help in accessing substance abuse treatment; and because of Mother's inability to care for [Child] due to her incarceration.

Since the date of removal, Mother has essentially abandoned [Child], having visited with him only three (3) times in nineteen (19) months. In that same period, Mother has been convicted for two (2) additional drug-related offenses and is presently incarcerated on a pre-trial basis. Mother has only been in contact with the FCM five (5) times, and has barely participated in any of the rehabilitative services offered by the DCS. She participated in an "intake and assessment" at Centerstone in October 2020, but did not show up for orientation that month and again in December. She eventually completed the orientation session in April 2021, but never went to the treatment sessions that were to follow. Similarly, she spoke by phone with Brooke-Lyn LeMaster with Healthy Start, however did not show up for any of the appointments that were scheduled with that service provider. While she showed up for seven (7) meetings with Gary Sandifar, she was only sober for two (2) of them. There was no evidence presented that could be construed to show that any change is forthcoming from Mother.

Appealed Order at 7. Also concluding that DCS had proven that Child had been removed from Mother's care for at least six months under a dispositional decree, that termination was in Child's best interest, and that there is a satisfactory plan for Child's care and treatment, the juvenile court ordered the parent-child relationship terminated. Mother now appeals.

## Discussion and Decision

### I. Standard of Review

[15] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). We acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” but we also recognize that “parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights.” *In re I.A.*, 934 N.E.3d 1127, 1132 (Ind. 2010). Therefore, the law provides for the termination of parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children, and as such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. The purpose of terminating parental rights is to protect children, not to

punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[16] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship,<sup>2</sup> including:

(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.

DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2.

[17] If the juvenile court concludes the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a). In doing so, the juvenile court must enter findings supporting its conclusions. Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep’t of Child*

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<sup>2</sup> DCS must prove four elements in total, *see* Ind. Code § 31-35-2-4(b)(2)(A), (C), (D), but Mother challenges only the juvenile court’s determination that DCS proved there is a reasonable probability the conditions that resulted in Child’s removal will not be remedied.

*Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. To determine whether findings or a judgment are clearly erroneous, we consider whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

## II. Remedy of Conditions

[18] Mother concedes the juvenile court’s findings are supported by the evidence, *see* Appellant’s Brief at 6, and we therefore take those findings as true for purposes of reviewing the juvenile court’s judgment, *S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019). Mother challenges only one specific conclusion: that DCS proved by clear and convincing evidence there is a reasonable probability the reasons for Child’s original removal would not be remedied. *See* Appellant’s Br. at 6.

[19] We engage in a two-step analysis to determine whether the evidence supports the juvenile court’s conclusion that Mother was unlikely to remedy the reasons for Child’s removal: “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.” *In re E.M.*, 4 N.E.3d at 643 (quotations and citations omitted).

[20] In the second step, a parent’s fitness to care for his child must be judged at the time of the termination hearing, taking into consideration evidence of changed conditions. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). The parent’s habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. *Id.* “The [juvenile] court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct.” *In re J.S.*, 133 N.E.3d at 715. In doing so, it may consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *In re W.M.L.*, 82 N.E.3d 361, 367 (Ind. Ct. App. 2017). But such a determination “must be founded on factually-based occurrences as documented in the record—not simply speculative or *possible* future harms.” *In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016). 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. *In re Ma.J.*, 972 N.E.2d 394, 401 (Ind. Ct. App. 2012).

[21] The conditions that led to Child’s removal within a week of his birth were primarily related to Mother’s substance use: Child was born with opiates in his system; Mother left the hospital after his birth and returned seemingly under the influence; Mother admitted regular use of marijuana, heroin, and methamphetamine and that she needed help accessing substance abuse treatment and was unable to care for Child. The reasons for Child’s continued placement outside Mother’s home were Mother’s continued substance abuse,

her failure to participate in services to address that substance abuse, and her failure to visit Child or show interest in his well-being. At the time of the termination hearing, Mother had been in and out of jail and had pending charges relating to an incident just a month before where police responding to a report of an intoxicated person found Mother in the street, “flailing [and] screaming” and refusing to cooperate, most likely as a result of methamphetamine use. Tr., Vol. II at 104. Mother participated in virtually no services, including parenting time, during these proceedings. She admitted to the FCM that her inability to participate and to be a parent to Child stemmed from her substance abuse and that she needed help, and yet when offered that help, she failed or refused to take it. Thus, during these proceedings, Mother did not demonstrate any progress toward remedying the initial reasons for Child’s removal.

[22] Mother points out that only two drug tests were admitted into evidence, both from 2020, and one was negative. This is not the compelling evidence Mother apparently thinks it is. Regardless of the number, timing, or results of drug tests, Mother has not generally denied she has a substance abuse problem. Moreover, during the times she was incarcerated, she would not have been available for drug screens by DCS. Mother also points out that despite her criminal history as a whole, “the only criminal conviction Mother had for offenses in 2021 was for misdemeanor unlawful entry of a motor vehicle.” Appellant’s Br. at 9. This, too, is less-than-compelling evidence, given that repeated criminal behavior and frequent incarcerations for any criminal offenses

are an impediment to effective parenting. And although Mother acknowledges she has been incarcerated off and on throughout these proceedings and was incarcerated at the time of the termination hearing, she argues incarceration alone is insufficient to demonstrate that conditions leading to removal will not be remedied. *See id.* at 9-10 (citing *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 648 (Ind. 2015)). We agree that incarceration alone is not grounds for terminating parental rights. But Mother's rights were not terminated solely because she was incarcerated at times during the proceedings. They were terminated because Child was removed from Mother due to her substance abuse issues and admitted inability to care for him and those same issues remained at the time of the termination hearing. Mother's argument highlighting evidence she believes is favorable to her position essentially asks us to reweigh the evidence, which we will not do. *See In re E.M.*, 4 N.E.3d at 642.

[23] Mother's conduct throughout these proceedings has not demonstrated that her habitual patterns of substance abuse have changed in any way. She has almost completely failed to participate in services she admitted at the outset that she needed, and she has shown no desire or ability to parent Child. "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 the conditions will not change." *Matter of G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (quotation omitted). The juvenile court's conclusion that DCS proved by clear and convincing evidence that there is a reasonable



probability that the conditions that resulted in Child's removal from Mother's care will not be remedied is not clearly erroneous.

## Conclusion

[24] The juvenile court's judgment terminating Mother's parental rights is not clearly erroneous and is, therefore, affirmed.

[25] Affirmed.

Riley, J., and Molter, J., concur.