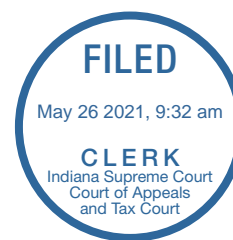


## MEMORANDUM DECISION

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

N.W.,

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

May 26, 2021

Court of Appeals Case No.  
20A-JT-2340

Appeal from the Tippecanoe  
Superior Court

The Honorable Faith Graham,  
Judge

The Honorable Tricia Thompson,  
Magistrate

Trial Court Cause No. 79D03-  
2002-JT-5

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Respondent, N.W. (Mother), appeals the trial court's termination of her parental rights to the minor child, S.M. (Child).

[2] We affirm.

## ISSUE

[3] Mother raises one issue on appeal, which we restate as follows: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

## FACTS AND PROCEDURAL HISTORY

[4] Mother and M.M. (Father)<sup>1</sup> are the biological parents to Child, born on May 13 2013. Mother is also the biological parent to S.W. (Sibling), born on August 18, 2014.<sup>2</sup> Prior to March 16, 2017, DCS received several reports about child abuse and neglect, resulting in an assessment of Mother's alcohol abuse on different occasions. Mother entered into safety plans with DCS. On March 16, 2017, DCS received a report that Mother was unresponsive at the residence while caring for Child and Sibling. When DCS arrived at the residence to assess the situation, Mother slurred her words but denied having consumed

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<sup>1</sup> Father does not appeal the termination of his parental rights to the Child. Facts pertaining to Father will be included insofar as these are relevant to Mother's appeal.

<sup>2</sup> Child and Sibling have different biological fathers. Although both children were removed from Mother's care at the same time, Sibling's case proceeded under a different cause number and facts related to Sibling will only be included if relevant to the current cause.

alcohol. Mother submitted to two breathalyzer tests—during which she did not follow instructions—with the first test showing a result of .417 blood alcohol content and the second showing a result of .140 blood alcohol content. DCS removed Child and Sibling from Mother’s care due to Mother’s alcohol abuse and placed them in foster care. On March 17, 2017, DCS filed a petition alleging Child and Sibling were Children in Need of Services (CHINS), which was granted by the trial court on April 28, 2017.

[5] On May 26, 2017, the trial court entered a dispositional order and a parental participation order, requiring Mother, among other things, to contact DCS at least twice a month, enroll in recommended programs, keep all appointments with service providers, secure and maintain safe housing and employment, not consume illegal substances, submit to random drug screens, and attend scheduled visitations with Child. Mother initially complied with the parental participation order and obtained substance abuse treatment in the summer of 2017. She participated in a chemical dependency and domestic violence dual treatment program from which she graduated on August 17, 2017. She enrolled in an after-care program and participated in individual therapy.

[6] After Mother’s substance abuse treatment was completed, Mother decided to remain in South Bend to be closer to Child and Sibling, who resided in foster care there. She visited the children regularly, which resulted in overnight visits and eventually in a trial home visit starting in October 2018. The trial home visit lasted approximately six months and ended on April 17, 2019. On April 17, 2019, DCS’s Family Case Manager (FCM) and the Court Appointed

Special Advocate (CASA) visited Mother and noticed that Child and Sibling were not at the residence. When questioned, Mother admitted that she and her boyfriend had been involved in an argument and she had taken the Child and Sibling to the neighbor's residence. FCM suspected that Mother had been consuming alcohol because "she was just repeating herself." (Transcript p. 148). While FCM was at the residence, a "drug screen person" arrived and although Mother at first refused to answer the door, she eventually consented to the drug screen and breathalyzer which showed Mother's blood alcohol level at .382. (Tr. p. 148). The children were removed and returned to their foster placement. After this, Mother no longer engaged in any services. When DCS assessed Child and Sibling, it was discovered that they had been physically abused and neglected at Mother's residence, with Sibling having been sexually abused by Mother's boyfriend.

[7] Mother started screening for substances on April 21, 2017, and on that day she screened positive for alcohol. She tested positive 32 times in 2017, 12 times in 2018, and 9 times in 2019. Between April and July 2019, out of 20 required screens, only three screens were negative with the others being either positive or no-shows.

[8] On February 10, 2020, DCS filed a petition to terminate Mother's and Father's parental rights in Child. On July 31 and August 3, 2020, the trial court conducted a hearing, which Mother did not personally attend even though she was represented by counsel. FCM testified that Child and Sibling had been in several different foster homes since their removal from Mother's care on March

16, 2017. When they arrived at their current placement on January 18, 2018, the children were “very nondisciplined,” but have since improved; they are now thriving, and the foster parents are willing to adopt Child and Sibling. (Tr. p. 188). FCM testified that adoption was in the Child’s best interest because she had been in foster care for three years, Mother had exposed her to alcohol abuse and domestic violence, and Father had not contacted DCS in two years. FCM advised that it would not be in Child’s and Sibling’s best interest to be separated since they are clearly bonded through their biological connection and shared experiences. CASA affirmed FCM’s testimony and agreed that “to separate these girls would be devastating for them.” (Tr. p. 189).

[9] On November 3, 2020, the trial court entered its findings of fact and conclusions thereon, terminating Mother’s parental rights to Child. The trial court concluded, in pertinent part, that:

[Child] needs permanency now. Mother has not remedied the conditions that led to the removal of the Child. Although Mother was able to make substantial progress for a time, she was not able to maintain that progress or her sobriety. The trial home visit with Mother failed for alcohol abuse and domestic violence, which was the same reason the Child as removed two (2) years prior. Mother has not participated in services or visits since the trial home visit ended. Father was incarcerated for the first year of the DCS case due to domestic violence with Mother. Shortly after his release from incarceration, Father disappeared and abandoned his Child. Father has not visited with the Child or participated in services for over two (2) years. Both parents have abandoned this Child, and to continue the parent-child relationship would be detrimental to the Child.

(Appellant’s App. Vol. II, pp. 19-20).

[10] Mother now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

[11] Mother challenges the trial court’s termination of her parental rights to her Child. 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, 147 (Ind. 2005). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If “parents are unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[12] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans.*

*dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court's judgment, and we accord deference to the trial court's "opportunity to judge the credibility of the witnesses firsthand." *Id.*

### I. *Termination of Parental Rights Statute*

[13] In order to terminate a parent's rights to his or her child, DCS must 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.

\* \* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . 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 [CHINS] . . . ;

(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 [CHINS];

(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 each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[14] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Co. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Co. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show



by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." *K.T.K.*, 989 N.E.2d at 1230.

- [15] Not challenging the trial court's basis for the Child's removal listed in I.C. § 31-35-2-4(b)(2)(B), Mother solely focuses on the trial court's conclusion that termination is in the Child's best interest. To determine whether termination is in a child's best interest, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interest. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).
- [16] Because Mother does not challenge the trial court's legal conclusion that there was a reasonable probability that Mother would not remedy the reasons for the Child's removal or that the continuation of the parent-child relationship posed a threat to the Child's well-being, she essentially concedes that these conclusions are not clearly erroneous and thus must be accepted as true. *See, e.g., In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007), *trans. denied*.

[17] FCM and CASA both testified that adoption was in Child's best interest because she had been in foster placement for three years, Mother had exposed her to alcohol abuse and domestic violence, and Father had not contacted DCS in two years. Adoption by her current foster placement was desirable because Child and Sibling are comfortable with the foster parents and are thriving in their care.

[18] Citing to the trial court's order denying termination of Mother's rights in Sibling, Mother now argues that termination is not in Child's best interest because it would be detrimental for the children to be separated. Accordingly, Mother maintains that "if it is not in [Sibling's] best interest to terminate her relationship with her [M]other, it cannot be in [Child's] best interest to do so." (Appellant's Br. p.19). However, the trial court's rationale to decline terminating Mother's rights to Sibling were based on the strides Sibling's father had made in working with DCS to gain custody of Sibling.<sup>3</sup> Moreover, the trial court in its Order did not base its decision to terminate Mother's parental rights on Child's relationship with Sibling; rather the trial court concluded termination to be in the Child's best interest because

The [C]hild needs stability in her life. The [C]hild needs parents with whom the [C]hild can form a permanent and lasting bond and who will provide for the [C]hild's emotional, psychological, and physical wellbeing. The [C]hild's wellbeing would be

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<sup>3</sup> It should be noted that on February 23, 2021, DCS again filed a petition to terminate Mother's and Sibling's father's parental rights to Sibling.

threatened by keeping the [C]hild in a parent-child relationship with parents whose own choices and actions have made them unable to meet the basic needs of this [C]hild. Both parents have abandoned this [C]hild.

(Appellant's App. Vol. II, p. 20). Termination as to one child, but not the other in the related termination proceeding is not of itself error. *See, e.g., In re I.A.*, 903 N.E.2d 146, 156 (Ind. Ct. App. 2009).

[19] Here, although Mother availed herself of the opportunities and services offered by DCS to reunite with the Child and actually reunited with Child during a brief trial home visit, no progress nor commitments were made after the trial home visit failed and Mother essentially no longer engaged in any services. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014). Even though “the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child’s interest to maintain this relationship.” *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Mother’s inability to maintain sobriety, her inability to parent Child, and her lack of interest in the Child to the point that she did not even attend the termination hearings support the trial court’s conclusion that termination of her parental rights is in the best interests of the Child. Accordingly, we affirm the trial court’s decision.

## CONCLUSION

[20] Based on the foregoing, we conclude that DCS presented sufficient evidence to support the trial court's Order terminating Mother's parental rights to the Child.

[21] Affirmed.

[22] Mathias, J. and Crone, J. concur