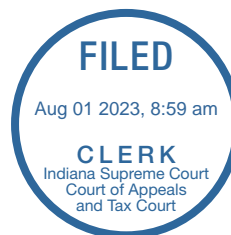


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of Z.S. (Minor Child) and
J.S. (Mother) and M.B. (Father)
J.S. (Mother) and M.B. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,

August 1, 2023

Court of Appeals Case No.
23A-JT-489

Appeal from the
Howard Circuit Court

The Honorable
Lynn Murray, Judge

Trial Court Cause No.
34C01-2209-JT-317

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] J.S. (“Mother”) and M.B. (“Father”) (collectively, “Parents”) appeal the termination of their parental rights to their son, Z.S. (“Child”). We affirm.

Facts and Procedural History

- [2] Parents are the biological parents of Child, born in May 2021. At that time, the Department of Child Services (DCS) was already involved with the family, as Child’s older siblings had been removed due to Parents’ drug use and frequent incarcerations. Specifically, Mother had been struggling with substance abuse for around a decade and Father had a lengthy criminal history, including at least seven felonies and eleven misdemeanors over twenty years. When Child was born, he tested positive for heroin, cocaine, and marijuana. Mother admitted using heroin, methamphetamine, cocaine, and marijuana throughout her pregnancy. At the time, Father was incarcerated. Child was removed by DCS and placed in foster care, where he has since remained.

- [3] In June 2021, DCS filed a petition alleging Child was in need of services (CHINS). Later that month, the trial court found Child to be a CHINS and ordered Parents to, among other things, complete substance-abuse assessments, submit drug screens, participate in individual counseling, attend supervised visitation, and participate in any other DCS-recommended services.
- [4] For the next year, Parents failed to comply with the case plan. Father remained incarcerated until January 2022, when he was released. But he made no effort to contact DCS or see Child and was quickly rearrested in February. He was released again on a work program in July but had only a few visits with Child before being arrested for violating the conditions of the program. Mother initially complied by beginning an inpatient rehabilitation program but was discharged after testing positive for illegal substances. For a year following her discharge, Mother avoided contact with DCS, did not visit Child, and refused rehabilitation services. In the fall of 2022, she was arrested for Level 6 felony possession of a narcotic drug.
- [5] In September 2022, DCS moved to terminate Mother's and Father's parental rights to Child. The final hearing was held in December. Family Case Manager (FCM) Mike Deardorff testified that during his time on the case, neither parent fully engaged in services nor took any responsibility for Child's removal. FCM Paula Pearsons also testified that termination was in Child's best interests because, despite the few visits, Parents had no bond with Child. FCM Pearsons testified that the continuation of the parent-child relationship with Mother and

Father would be harmful to Child “because of the drug usage and . . . the ongoing criminal cases.” Tr. Vol. III p. 36.

- [6] In February 2023, the trial court entered an order terminating Mother’s and Father’s parental rights.
- [7] Mother and Father now separately appeal.

Discussion and Decision

- [8] Parents argue the evidence presented at the termination hearing does 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 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).
- [9] 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, the court "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

[10] Parents challenge the trial court's conclusion that there is a reasonable probability the conditions resulting in Child's removal and continued placement outside the home 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 determine 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).

I. Father

[11] Child was removed due to Father’s incarceration and inability to provide care for Child. Father has a lengthy criminal history consisting of seven felonies and eleven misdemeanors. Throughout the eighteen-month CHINS proceedings, Father failed to show he could stop this pattern of criminal behavior. He was twice incarcerated throughout the CHINS proceedings. After he was released the first time, he made no contact with DCS before being rearrested within a month. After he was released the second time, he had only a few visits with Child before being rearrested. In sum, he has been incarcerated for most of Child’s life and as a result the two have no bond. Father has failed to show the trial court erred in its determination that there is a reasonable probability the conditions leading to Child’s removal will not be remedied.

[12] Father also challenges the trial court’s conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child’s well-being. But because we affirm the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (providing Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find that only

one of the three requirements of subsection (B) has been established by clear and convincing evidence), *trans. denied*.

II. Mother

[13] Unlike Father, Mother only challenges the trial court's conclusion that there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied. As an initial matter, we need not even address this argument. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements. *Id.* Here, the trial court found two elements: (1) there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied and (2) there is a reasonable probability the continuance of the parent-child relationship poses a threat to the well-being of Child. Mother does not challenge the trial court's second conclusion, and thus we could affirm on this basis alone.

[14] In any event, the trial court did not err in determining there is a reasonable probability Mother will not remedy the conditions that led to Child's removal. Child was removed from Mother because Child was born drug positive. At the time of Child's birth, Mother had been struggling with substance abuse for almost a decade and her older children had been removed from her care. After Child was removed, Mother consistently refused to submit random drug screens. Although she attended drug rehabilitation, she was unsuccessfully discharged after testing positive and refused further attempts by DCS to enroll

her in similar programs. During the CHINS case, she was arrested for Level 6 felony possession of a narcotic drug. Given the amount of time Mother has been given to overcome her substance-abuse issue and her complete lack of effort to do so during this case, it was reasonable for the trial court to determine she will not remedy these conditions. *See In re A.K.*, 755 N.E.2d 1090, 1097 (Ind. Ct. App. 2001) (holding trial court's conclusion that the conditions which led to the child's removal would not be remedied was supported where the mother failed necessary steps to overcome her drug addiction).

[15] The evidence supports the trial court's conclusion that Mother's habitual conduct shows there is reasonable probability she will not remedy the conditions that resulted in Child's removal and continued placement outside the home.

[16] Affirmed.

Mathias, J., and Pyle, J., concur.