

## 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 Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of:

T.R. and A.A. (Minor Children)  
and  
H.A. (Mother) and T.R.(Father),  
*Appellant-Defendant,*

v.

Indiana Department of Child  
Services,  
*Appellee-Plaintiff.*

April 26, 2022

Court of Appeals Case No.  
21A-JT-2550

Appeal from the Hendricks  
Superior Court

The Honorable Karen M. Love,  
Judge

Trial Court Cause No.  
32D03-2012-JT-28  
33D03-2012-JT-29

**Bailey, Judge.**

## Case Summary

- [1] H.A. (“Mother”) appeals an order terminating her parental rights to A.A. (born in 2019) and T.R. (born in 2017) (collectively, “Children”), upon the petition of the Hendricks County Department of Child Services (“DCS”). Mother presents the sole issue of whether the termination order is clearly erroneous because DCS failed to establish, by clear and convincing evidence, the requisite statutory elements to support the termination decision. We affirm.

## Facts and Procedural History

- [2] On June 2, 2019, DCS received a report that Mother had overdosed on heroin while caring for Children and needed hospitalization.<sup>1</sup> The ensuing DCS investigation concluded with Children being allowed to remain in the care of Mother and maternal relatives who had agreed to implement a safety plan. On June 10, 2019, and again on June 17, 2019, Mother tested positive for the presence of illegal drugs. On June 24, 2019, DCS filed a petition alleging that Children were Children in Need of Services (“CHINS”).
- [3] Mother appeared at a fact-finding hearing and admitted that Children were CHINS due to Mother’s substance abuse and her history as a victim of domestic violence. Mother was ordered to, among other things: obey the law,

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<sup>1</sup> Children’s father, T.R., Sr. (“Father”), was unavailable for Children’s placement at that time due to his incarceration in the Marion County Jail.

refrain from using illegal substances, secure adequate housing,<sup>2</sup> obtain a parental assessment and a mental health evaluation, participate in individual therapy, provide samples for drug screening, and attend supervised visits with Children.

[4] Mother was partially compliant with services offered to her. She attended most of the scheduled visits with Children but displayed aggression toward some of the service providers. At times, she interacted with Children appropriately; at other times, she devolved into yelling and cursing. One agency temporarily declined to continue to supervise visits until Mother obtained mental health treatment. Mother completed an intake assessment for intensive outpatient therapy but attended only four of the recommended thirty to thirty-six sessions. She completed one individual therapy session. She provided numerous drug screens that showed positive results for substances such as cocaine and amphetamines. During the CHINS proceedings, Mother was arrested for driving while intoxicated. She pled guilty to that offense and was placed on probation. Mother was generally cooperative with her last home-based caseworker and she obtained independent housing.

[5] On December 18, 2020, DCS petitioned to terminate Mother's and Father's parental rights. A fact-finding hearing was conducted on May 20, 2021. Mother testified that she had housing and a stable source of income, she had

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<sup>2</sup> Mother had a stable source of income, having been awarded Supplemental Security Income at age eighteen.

been drug-free for fifty-seven days, and she could provide a stable home for Children in the future. Father, who was serving a two-year sentence in the Indiana Department of Correction, and also had been indicted on a federal weapons charge, testified that he would like the opportunity to parent Children when he was released from prison. In addition to the testimony of various service providers, the trial court heard testimony from Children’s court-appointed special advocate (“CASA”). Children’s family case managers and CASA uniformly recommended termination of Mother’s parental rights.

- [6] On October 21, 2021, the trial court entered its findings of fact, conclusions thereon, and order terminating Mother’s and Father’s parental rights.<sup>3</sup> Mother now appeals.

## Discussion and Decision

- [7] When ordering the termination of parental rights, the trial court must enter findings of fact. Ind. Code § 31-35-2-8(c). Under Trial Rule 52(A), we “shall not set aside the findings or judgment unless clearly erroneous” and must give “due regard ... to the opportunity of the trial court to judge the credibility of the witnesses.” A finding is clearly erroneous if the record contains no evidence to support the finding. *Town of Brownsburg v. Fight Against Brownsburg Annexation*, 124 N.E.3d 597, 601 (Ind. 2019). And a judgment is clearly erroneous “if the

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<sup>3</sup> Father is not an active party to this appeal.

court applied the ‘wrong legal standard to properly found facts.’” *Id.* (quoting *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016)). In conducting our review, we do not reweigh the evidence or reassess the credibility of the witnesses, and we consider only the evidence and the reasonable inferences that support the judgment. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016). If the evidence supports the findings and the findings support the judgment, we affirm. *See id.*

[8] In a termination proceeding, “[a] finding ... must be based upon clear and convincing evidence.” I.C. § 31-37-14-2. To terminate parental rights, the court must find

(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.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department 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 child in need of services or a delinquent child;

(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.

I.C. § 31-35-2-4(b)(2). On appeal, Mother focuses on whether there is sufficient evidence supporting the trial court's findings under subsections (B) and (C).

We address each subsection in turn.

## Analysis

[9] Mother first focuses upon whether there is clear and convincing evidence of a reasonable probability that she would fail to remedy the conditions that led to Children's removal. The trial court was persuaded that "Mother has not addressed issues of stability, mental health, sobriety, and parenting skills." Appealed Order at 17. According to Mother, the "concerns about domestic

violence seem to have evaporated” due to Father’s incarceration and “it cannot be denied that Mother has made efforts to improve.” Appellant’s Brief at 8-9.

[10] An argument as to remediation of conditions invokes a “two-step analysis.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* The trial court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct. *Id.* The trial court has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

[11] Habitual conduct may include parents’ prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by DCS and the parent’s response to those services as evidence of whether conditions will be remedied. *In re D.K.*, 968 N.E.2d 792, 798 (Ind. Ct. App. 2012).

[12] Children’s family case manager, Heidi Clossin, testified that Mother had a history of involvement in relationships involving domestic violence and thus had been offered “recommended [domestic violence] services” from which she had been “unsuccessfully discharged” on two occasions. (Tr. Vol. II, pg. 62.) Clossin summarized Mother’s response to other services:

[Mother] displays a pattern of instability within her own personal life. She only recently obtained housing, at the beginning of April. But prior to that, she was without stable housing for over a year. [Mother] has not completed – successfully completed any of her recommended – recommended services at this time. She recently relapsed on March 30 and tested positive for cocaine. [Mother] is currently engaged in services but has consistently engaged in periods [of services] and then fallen off where she did not engage in any services.

(Tr. Vol. II, pg. 61-62.)

[13] The record is replete with evidence that Mother has experienced a lengthy struggle with substance abuse. DCS caseworker Edward Hogan testified that Mother had been the focus of two prior neglect investigations and one of her children had been born “drug exposed.” (Tr. Vol. II, pg. 25.) During the investigation that followed Mother’s June 2019 overdose on heroin, she reported having used illegal substances since she was aged twelve. Within weeks of the heroin overdose, Mother twice tested positive for the presence of cocaine in her urine, prompting removal of Children notwithstanding the safety plan.



[14] Mother was provided with the opportunity for substance abuse treatment and individual counseling. Mother's therapist, Thomas Kixmiller, MSW, testified that Mother completed an intake assessment, was discharged for non-compliance, completed a second assessment, was discharged for non-compliance, and then completed a third and final assessment. She was given a referral for participation in intensive outpatient therapy, to consist of thirty to thirty-six sessions. Mother attended five therapy sessions in one year, four of which were intensive outpatient therapy group sessions, and one of which was an individual therapy session. Mother was discharged from the program in July of 2020 due to her "lack of engagement." (*Id.* at 90.) Mother expressed her dislike for individual therapy because it involved bringing up past painful events.

[15] During the CHINS proceedings, Mother provided sixteen drug screens that were positive for illegal substances. (App. Vol. II, pgs. 93-134.) She also pled guilty to an alcohol-related misdemeanor charge. Mother testified that she was "fifty-seven days clean" and her most recent home-based service provider believed that Mother had make progress toward meeting the goals of home-based services. (Tr. Vol. II, pg. 115.) Mother's progress is commendable; however, it took place in close proximity to the fact-finding hearing. The trial court was not required to accord greater weight to evidence of recent improvements than to evidence of historical conduct. *In re E.M.*, 4 N.E.3d at 643. The documentary and testimonial evidence of Mother's substance abuse, instability, and sporadic response to services is sufficient to establish, by clear

and convincing evidence, a reasonable probability that conditions leading to Children's removal will not be remedied.

[16] Mother also contends that DCS failed to present clear and convincing evidence that termination is in Children's best interests. In determining what is in a child's best interests, the court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d at 1158. Service providers, including Mother's therapist, testified to Mother's historical lack of cooperation in addressing her substance abuse issues. CASA believed that Children were doing well in their placement and opined that adoption by the foster parents was an appropriate plan for Children. Additionally, CASA testified that Mother had communicated in a hostile or threatening manner with CASA, a visitation supervisor, a previous home-based case worker, and a CASA volunteer. CASA and Children's caseworkers opined that termination of Mother's parental rights was in Children's best interests.

[17] Considering Children's successful placement, the opinions of appointed advocates and service providers, Mother's history of failed drug screens, and her insistence that she did not need individual therapy, DCS presented sufficient evidence that termination of parental rights was in Children's best interests.

## Conclusion

[18] DCS established by clear and convincing evidence the requisite elements to support the termination of parental rights. Accordingly, the termination judgment is not clearly erroneous.

[19] Affirmed.

Najam, J., and Bradford, C.J., concur.