

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of:

E.J.-M, R.J.-M., T.H., and N.J.  
(Children in Need of Services),

S.J.-M (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 9, 2023

Court of Appeals Case No.  
23A-JC-231

Appeal from the  
Allen Superior Court

The Honorable  
Sherry A. Hartzler, Magistrate

The Honorable  
Lori K. Morgan, Judge

Trial Court Cause Nos.  
02D08-1905-JC-282  
02D08-2001-JC-23, 24, 25  
02D07-1007-JP-510  
02D07-1310-JP-803  
02D07-1810-JP-840  
02D08-2106-MI-550

**Memorandum Decision by Judge Vaidik**  
Judges Mathias and Pyle concur.

**Vaidik, Judge.**

## Case Summary

- [1] S.J.-M. (“Mother”) appeals the trial court’s award of custody of her four children to relatives. We affirm.

## Facts and Procedural History

- [2] Mother has four children: E.J.-M. (born in April 2010); R.J.-M. (born in September 2013); T.H. (born in November 2017); and N.J. (born in March 2019). Paternity has been established for the three oldest children. *See* Cause Nos. 02D07-1007-JP-510 (E.J.-M., whose father is A.W.), 02D07-1310-JP-803 (R.J.-M., whose father is R.K.); 02D07-1810-JP-840 (T.H., whose father is Ty.H.). Mother was awarded custody in each case. Paternity has not been established for N.J., as “an alleged Father has not been identified,” and thus Mother had custody of N.J. as well. Appellant’s App. Vol. II p. 138.
- [3] In July 2019, the oldest child, E.J.-M., was found to be a child in need of services (CHINS) because of educational neglect. E.J.-M. remained in Mother’s care, and Mother was ordered to participate in services. By February 2020, the other children, R.J.-M., T.H., and N.J., were found to be CHINS because of Mother losing her housing, getting removed from a shelter due to an argument, and asking for the children to be removed. The children were removed from

Mother, and she was ordered to participate in services and visit the children. The children were placed back with Mother in October 2020, when she obtained housing with help from the Department of Child Services (DCS). By March 2021, however, the conditions of Mother's home had deteriorated "to the extent that maggots were in the refrigerator; the floors were covered in dirty diapers, glass, bath salts and razors; furniture was tipped over; and large amounts [of] rodent feces we[re] observed. The children were found walking around barefoot in diapers." *Id.* at 119. In addition, Mother was "stressed and overwhelmed" and asked for the children to be removed. *Id.* The children were removed again and placed with relatives, where they remain today: E.J.-M. was placed with his paternal grandmother, S.C.; R.J.-M. was placed with his paternal aunt, D.M.; T.H. was placed with his father, Ty.H.; and N.J. was placed with his maternal aunt and uncle, P.M. and S.M., who filed a third-party action for custody of him. *See* Cause No. 02D08-2106-MI-550. Mother was awarded two hours of therapeutic supervised visits with the children each week.

[4] Conditions did not improve with Mother, so in August 2021 DCS filed a "Motion for Permanency" in the CHINS cases alleging that there had been a change in circumstances so substantial and continuing as to make the existing custody orders in JP-510, JP-803, JP-840, and MI-550 unreasonable. DCS alleged that it was in the best interests of the children for custody to be modified from Mother to the above relatives. DCS said the CHINS court had the

authority to modify the existing custody orders in JP-510, JP-803, JP-840, and MI-550 under Indiana Code section 31-30-1-13.<sup>1</sup>

[5] The CHINS court held a hearing on the Motion for Permanency on August 8 and October 4, 2022. In January 2023, the CHINS court entered orders modifying custody of the children from Mother to their respective relatives. In the orders, the court first found that it had jurisdiction over the parties and subject matter, including the issue of custody in JP-510, JP-803, JP-840, and MI-550, under Section 31-30-1-13. The court said that it had considered the factors in Indiana Code sections 31-14-13-2 and 31-14-13-6 regarding modification of custody, found that there had been a substantial change in one or more of the factors set forth therein, and concluded that it was in the best interests of the children that custody be modified from Mother to their respective relatives. For all the children except T.H. (who was placed with his father), the court found that the presumption that a natural parent should have custody over a third party had been rebutted. In support, the court made the following findings, none of which Mother challenges on appeal:

9. At the time of these proceedings, Mother reported that she was in a better place and that she meditates and reads the bible. However, visitations have not progressed beyond therapeutic supervised visits with all four children for over one year. The

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<sup>1</sup> In October 2021, DCS filed petitions to terminate Mother's parental rights to the children; however, it later dismissed those petitions without prejudice.

Court finds that even when able, Mother does not exercise all of the visitation available to her.

10. The Court finds that visitations with the children have been ordered therapeutically supervised for which Mother visits 2 hours per week since June 2021. Over the course of the CHINS proceedings the Department has had to refer Mother to multiple agencies as she had been unsuccessfully discharged due to her behavior or her failure to attend visitations. At the time of these proceedings, Mother was only visiting for 2 hours a week in a therapeutic setting. It was not until two weeks prior to these proceedings that Mother even asked to expand her visitations. The Court also finds that Mother does have the option to exercise more visitation however she has elected not to do so. The Court finds that Mother is often overwhelmed in her visitations and that she has been provided parenting classes to teach her coping with the children's behaviors. However, she does not utilize the skills she learned in parenting classes during visitations. When confronted about her failure to do so Mother expressed she was not interested in utilizing any of these skills.

11. The Court further finds that Mother has not benefitted from services to assist her with reunifying with her children and has continued to engage in inappropriate behavior during visitations. Even Mother admits that there is frequent fighting during the visitations and that her children struggle. Mother contends that her missed visitations do not harm the children.

12. The Court further finds that although Mother contends that she remedied the state of her home from March 2021, she was then taking medication that she now contends she does not need. However, Mother has had evictions filed for nonpayment of her rent that did not end up proceeding to eviction.

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15. The Court finds through the testimony of the Guardian Ad Litem that it is in the best interests of the children to grant custody to their respective placements. The Guardian Ad Litem contends that the children have medical and mental health needs and Mother is not an appropriate caregiver. The Court finds the children are bonded with their respective placements and have been thriving.

Appellant’s App. Vol. II pp. 119-21.<sup>2</sup> The court awarded Mother therapeutic supervised parenting time, “terminated” the “wardship” in each CHINS case, and directed the orders to be “spread of record” in JP-510, JP-803, JP-840, and MI-550. *Id.* at 122-23.

[6] Mother now appeals.

## Discussion and Decision

[7] Mother contends the trial court erred in concluding that there is a reasonable probability that “the conditions that gave rise to the removal of the children and placement had not been remedied.” Appellant’s Br. p. 10. The problem with Mother’s argument is that this is a standard for terminating parental rights. *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii) (stating that a petition to terminate parental rights may allege that “[t]here is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the

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<sup>2</sup> The orders are substantially the same for each child, so we cite to only one of the orders.

home of the parents will not be remedied”). Indeed, Mother relies on termination-of-parental-rights case law in her brief. *See* Appellant’s Br. pp. 9-10.

[8] But this is not a termination case. Rather, the CHINS court simply modified custody of the children under the paternity statutes in JP-510, JP-803, JP-840, and MI-550, which Section 31-30-1-13 allows the court to do. For all the children except T.H., the court found that the presumption that a natural parent should have custody over a third party had been rebutted. Mother does not discuss these cause numbers or statutes in her brief. Nor does Mother challenge the court’s findings. These findings—particularly that Mother has struggled with housing, didn’t complete services, and was still in the stage of therapeutic supervised visitation with the children and hadn’t progressed—adequately support the court’s modification of custody from Mother to the children’s respective relatives.<sup>3</sup> Meanwhile, Mother has therapeutic supervised visits with the children and is control of whether she can take the necessary steps to regain custody of them. We therefore affirm the court.

[9] Affirmed.

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

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<sup>3</sup> Mother doesn’t argue that any of the court’s findings are clearly erroneous. To the extent she intended to challenge the court’s ultimate conclusions by arguing the court should have given more weight to her testimony, this is a request to reweigh the evidence, which we cannot do.