

## 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:

G.M. and L.C. (Minor Children)  
and

H.C. (Mother),

*Appellants-Respondents,*

v.

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

June 27, 2022

Court of Appeals Case No.  
22A-JT-75

Appeal from the Lake Superior  
Court

The Honorable Thomas P.  
Stefaniak, Judge

Trial Court Cause No.  
45D06-2011-JT-206  
45D06-2011-JT-207

**Bailey, Judge.**

## Case Summary

- [1] H.C. (“Mother”) appeals the termination of her parental rights to G.M. and L.C. (“Children”) upon the petition of the Lake County Department of Child Services (“DCS”). Mother presents the sole issue of whether the judgment is clearly erroneous because DCS failed to present clear and convincing evidence to establish the requisite statutory elements. We affirm.

## Facts and Procedural History

- [2] In September of 2017, DCS received a report that Mother, then pregnant with L.C., was using illegal drugs and had passed out on a porch, with G.M. in a stroller nearby. DCS caseworker Sam Heredia went to the residence where Mother lived with Maternal Grandmother and Mother’s stepfather. Each of the adults refused to provide a drug screen sample, but Heredia saw no evidence of drugs or paraphernalia and he observed that “the baby looked good.” (Tr. Vol. II, pg. 11.) The report of neglect was unsubstantiated.
- [3] Later that month, DCS received a report that Mother had used cocaine and heroin while on probation. Mother again refused to provide a drug screen sample and DCS filed a motion to compel her compliance. When Mother provided a drug screen sample pursuant to a court order, she tested positive for cocaine. Under court order, DCS removed G.M. from Mother’s care. G.M. was adjudicated a Child in Need of Services (“CHINS”) and placed in foster care. Mother was ordered to complete substance abuse, clinical, and parental

assessments, and to participate in individual therapy, supervised visitation, random drug screens, and homebased casework services.

[4] In January of 2018, Mother gave birth to L.C. The infant was treated for drug withdrawal but remained in Mother's custody. In June of 2018, Mother's drug screen indicated that she had used cocaine. A drug screen administered in September 2018 indicated that she had used numerous substances, including morphine, cocaine, and fentanyl. In October of 2018, DCS received a report that Mother's drug screen had indicated her use of substances including cocaine, fentanyl, and opiates. DCS was unable to locate Mother but removed L.C. and placed him in G.M.'s foster home. Later that same month, L.C. was adjudicated a CHINS.

[5] Mother entered a residential drug treatment facility and, in February of 2019, DCS obtained approval for Children to transition to Mother's care within that facility. By April, Children had transitioned to placement with Mother. However, in August, Mother used a twenty-four-hour pass to leave the facility and provided a drug screen positive for cocaine upon her return. Because Mother refused to sign a relapse behavior contract, lacked employment, and did not engage a sponsor, she was discharged unsuccessfully from the treatment program. Children remained with Mother until September of 2019, when Mother tested positive for illegal drugs on two separate screens and the trial court ordered Children returned to their foster home.

- [6] Mother was court-ordered to return to in-patient drug treatment, and she successfully completed the second program in March of 2021. One month later, Mother again tested positive for cocaine.
- [7] DCS petitioned to terminate Mother’s parental rights.<sup>1</sup> The fact-finding hearing was conducted on November 10, 2021, at which time the trial court heard evidence from Mother, service providers, and DCS caseworkers. According to Mother’s therapist, Mother had initially been consistent with attendance and had been “engaged” but then there was a “drop off.” (*Id.* at 34.) The therapist opined that Mother had made no progress with regard to relapse prevention or mental health issues. DCS caseworkers testified that Mother had attended 75% of the scheduled visits with Children but had avoided many drug screens and provided dozens of drug screens that were positive for illicit drugs. Mother had reported to DCS that she had obtained an apartment and was in drug treatment; however, no documentation had been produced and DCS caseworkers were unable to inspect Mother’s residence.
- [8] On December 13, 2021, the trial court entered its findings, conclusions thereon, and order terminating Mother’s parental rights. In relevant part, the trial court found that: Mother had been unable to overcome her substance abuse issues; she had been inconsistent with therapy; she had struggled with housing stability through the four years of the CHINS proceedings; DCS had been unable to

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<sup>1</sup> DCS also petitioned to terminate Father’s parental rights. He did not appear at the hearing. He is not an active party to this appeal.

view Mother's current residence despite repeated attempts; Mother had an extensive criminal history and an outstanding warrant; and Children (then ages three and four) had spent the majority of their lives in foster care. This appeal ensued.

## Discussion and Decision

- [9] In conducting our review, we acknowledge that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.
- [10] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, 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.

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(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) (2021). DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R.Y. v. Ind. Dep't of Child Servs.*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[11] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

- [12] Where, as here, a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.
- [13] Mother challenges the sufficiency of the evidence DCS presented to satisfy the elements of Indiana Code Section 31-35-2-4, inclusive of subsections (B) (remediation of conditions or posing of threat to child), (C) (best interests of child) and (D) (satisfactory plan). We address Mother’s contentions in turn.
- [14] Mother contends that the court erred when it concluded that the conditions that resulted in Children’s removal from her care will not likely be remedied but does not challenge the court’s conclusion that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of Children. Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus Mother’s failure to challenge both prongs of that subsection means she has waived our review of the sufficiency of the evidence to support the court’s conclusion on either prong.

- [15] Waiver notwithstanding, we will consider Mother's contentions as to remediation of conditions. Specifically, she claims that "the reasons for removal have been remedied and there is no probability of future neglect." Appellant's Brief at 12. According to Mother, she has shown an ability to maintain sobriety but "substance addiction is a disease that needs to be monitored and intentionally addressed for a lifetime." *Id.* at 15.
- [16] This invokes a "two-step analysis." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we must 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.* (citing *Bester*, 839 N.E.2d at 152). 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.*
- [17] 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. *Id.*

[18] Children were initially removed from Mother's care primarily due to her substance abuse and secondarily due to her inability to provide a safe and stable residence. Over several years, Mother had participated in therapy sporadically and she had completed two in-patient drug treatment programs. However, in each instance, Mother relapsed shortly after her release. She had been unable to provide custodial care for Children apart from one trial placement in a residential treatment facility. After a history of housing instability, Mother had recently obtained housing without cost. But DCS had been unable to view the premises and ascertain whether it was suitable for Children, despite repeated efforts to do so. As of the time of the termination hearing, Mother remained unemployed and involved in the criminal justice system. The trial court's determination of a reasonable probability that the conditions leading to removal and continued placement outside the parental home are unlikely to be remedied is not clearly erroneous.

[19] Mother also challenges the trial court's conclusion that termination of the parent-child relationship is in Children's best interests. Mother asserts that Children are bonded with Mother and with Maternal Grandmother, and she argues "it is never in the best interest of children to forever terminate the parent/child relationship where there is a significant parent/child bond." Appellant's Brief at 20.

[20] In determining what is in a child’s best interests, the court must look to the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In this case, DCS involvement began in September of 2017.<sup>2</sup> Mother struggled to achieve and maintain sobriety over the next several years and was historically non-compliant with drug screening. At the fact-finding hearing conducted on November 10, 2021, Mother testified that she had used heroin one month earlier and had last used cocaine in April of 2021. She had obtained housing, which is commendable, but had no employment. Mother testified that she received food stamps and also had financial assistance from Maternal Grandmother.

[21] Meanwhile, Children were thriving in foster care. G.M. was a toddler and H.C. was an infant when placed with their foster parents. Children’s Court Appointed Special Advocate (“CASA”) testified that Children were “very bonded” with their foster parents, who had expressed a desire to adopt Children. (Tr. Vol. II, pg. 64.) CASA recommended that Mother’s parental rights be terminated. Children’s family case manager agreed that Children had thrived in their foster placement and also opined that termination of parental rights and adoption was in Children’s best interests. The totality of the evidence is such that the trial court did not clearly err in finding termination of Mother’s parental rights to be in Children’s best interests.

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<sup>2</sup> Mother had lost custody of two older children. One child had been adopted and Maternal Grandmother was the long-term guardian of one child.

[22] Finally, Mother claims that the evidence does not establish that DCS had a satisfactory plan for Children. In order for the trial court to terminate the parent-child relationship the trial court must find that there is a satisfactory plan for the care and treatment of the child. *In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id.* Adoption is one example of a satisfactory plan. *In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014), *trans. denied*.

[23] Children's long-term foster parents wish to adopt them; DCS and the CASA endorse this plan. Mother deems the plan unsatisfactory because she would prefer that guardianship be given to Maternal Grandmother, in accordance with Maternal Grandmother's request at the fact-finding hearing. In short, Mother asserts that she has a more satisfactory plan and invites us to reweigh the evidence. DCS initially considered Maternal Grandmother as a custodian of Children during the CHINS proceedings. Because of her refusal of drug screens and her then-husband's failure to pass a background check, Maternal Grandmother was eliminated as a potential guardian. There is no statutory requirement imposed upon DCS for reconsideration of placement at the fact-finding hearing. In sum, DCS established that it had a satisfactory plan for Children.

## Conclusion

- [24] DCS presented sufficient evidence to establish the requisite statutory elements. Accordingly, the order terminating Mother's parental rights to Children is not clearly erroneous.
- [25] Affirmed.

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