

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-  
Child Relationship of:

B.A. (Minor Child),

and

B.G. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 30, 2023

Court of Appeals Case No.  
23A-JT-561

Appeal from the Marion Superior  
Court

The Honorable  
Marshelle Broadwell, Judge

The Honorable  
Pauline Beeson, Magistrate

Trial Court Cause No.  
49D16-2205-JT-4210

**Memorandum Decision by Judge May**  
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

- [1] B.G. (“Mother”) appeals the involuntary termination of her parental rights to B.A. (“Child”). Mother argues the trial court’s findings do not support its conclusion that there existed a reasonable probability that the conditions under which Child was removed from Mother’s care would not be remedied. We affirm.

## Facts and Procedural History

- [2] Mother gave birth to Child on August 19, 2016. On July 14, 2020, police responded to a call that J.A. (“Father”) was unresponsive at the family home. When they arrived, they found Father had died from an apparent drug overdose. Child was “‘walking and playing’ around the deceased body of [Father].” (Ex. Vol. I at 3.) The home was “cluttered and [had] vomit on the floor[,]” the refrigerator had “black mold and scarce amounts of food[,]” and Child was within reach of drug paraphernalia “including needles containing a substance believed to be heroin[.]” (*Id.* at 3-4.) Law enforcement expressed concern that Mother was under the influence of drugs but Mother refused a drug test stating, “she did not want to get in [‘]anymore trouble[’] or [‘]get [Child] taken away for stupid reasons.[’]” (*Id.* at 4.) Law enforcement called the Department of Child Services (“DCS”), who took custody of Child.

[3] On July 16, 2020, DCS filed a petition alleging Child was a Child in Need of Services (“CHINS”) based on the condition of the family’s home, Mother’s substance abuse, and the details surrounding Father’s death. On July 30, 2020, Mother waived the sixty-day statutory time frame for the issue to go to trial. On the same day, Child was placed with paternal grandfather, where he has remained. On October 15, 2020, Mother admitted Child was a CHINS because Mother “need[ed] assistance to ensure continued sobriety and that [Child] [was] provided a safe and stable living environment free from substance abuse.” (*Id.* at 8.) Immediately thereafter, the trial court held its dispositional hearing. In its subsequent dispositional order, the trial court required Mother to, among other things: engage in home-based therapy and follow all recommendations; engage in a home-based case management program and follow all recommendations; submit to random drug and alcohol screenings; and to continue to participate in a substance abuse treatment program<sup>1</sup> or, in the alternative, complete a substance abuse assessment with DCS and follow all recommendations stemming therefrom.

[4] At a review hearing on February 11, 2021, the trial court found Mother was “somewhat compliant” with services but “had several positive screens for methamphetamine[.]” (*Id.* at 22.) DCS indicated Mother’s last drug screen had been December 6, 2020. At a review hearing on July 8, 2021, the trial court

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<sup>1</sup> The trial court noted in its order that Mother was enrolled in a substance abuse treatment program at the time of the dispositional hearing.

found Mother had been participating in parenting time consistently but had not engaged in substance abuse treatment, had not submitted to random drug screens, and had not been compliant with home-based services for the previous few months. Despite Mother's continued participation in visitation, her parenting time had been reduced to six hours once a week due to the parenting time coordinator's concerns about Mother's substance abuse and failure to engage in services.

[5] At a review hearing on November 18, 2021, the trial court found Mother was participating in home-based case management and home-based therapy. Mother's new home had been inspected and was appropriate for Child. However, DCS indicated Mother remained non-compliant with random drug screens and needed to reengage in that service. Moreover, on November 2, 2021, Mother submitted a sample for a drug screen that was "presumptively positive for fentanyl." (*Id.* at 28.)

[6] On February 17, 2022, the trial court held a permanency hearing. The trial court found that although Mother acknowledged she needed substance abuse treatment, she had been unsuccessful in completing a program thus far. DCS indicated it would follow up with Mother to determine if it could help her obtain substance abuse treatment. The trial court's order also indicated Child was doing well in placement. On February 22, 2022, the trial court issued an order changing Child's permanency plan from reunification to adoption by paternal grandparents because Mother was inconsistent with services.

[7] On May 5, 2022, the trial court held another permanency hearing. The trial court found:

Mother is not compliant in her court ordered services or her parenting time sessions. Mother has not been in contact with DCS since March 17, 2022, and “fell off the radar” once she lost her death benefits. DCS reports that Mother did not go to Valle Vista after the last hearing. She stated that she went somewhere briefly, but did not stay there. DCS was unable to confirm that, though because they never received documentation to verify. Mother has not exercised parenting time in the last 5 weeks and prior to that it was inconsistent.

(*Id.* at 17.) Based thereon, the trial court concluded it was in Child’s best interest to continue adoption as the permanency plan because Mother “continues to struggle with her sobriety and failed to comply with services even after being given one additional opportunity to do so at the last Permanency Hearing.” (*Id.* at 18.)

[8] On May 22, 2022, DCS filed a petition to terminate Mother’s parental rights to Child. On June 13, 2022, the trial court suspended Mother’s visitation with Child until she could provide two weeks of clean drug screens. Mother did not accomplish that task.

[9] On February 15, 2023, the trial court held a fact-finding hearing on DCS’s termination petition. Mother did not appear but was represented by counsel. Courtney Whitfield, the Family Case Manager (“FCM”), was the only witness called to testify at the hearing. She told the court the last time Mother engaged in any court-ordered services was June 2022 and the last time Mother engaged

with the home-based case worker was January 2022. During the pendency of the case, Mother provided approximately seven drug screens and

[a]ll the screens were positive for illegal substances - excuse me - ranging from cocaine to methamphetamine to fentanyl. I believe tramadol was one of them. A lot of the screens were above the testable levels indicating heavy daily drug use. And then I believe there's also Xanax, but I think she may have had a prescription for that[.]

(Tr. Vol. II at 8.)

[10] FCM Whitfield reported Mother's last visit with Child was March or April 2022. FCM Whitfield recommended termination of Mother's parental rights to Child because

[Mother] has not been able to maintain sobriety at all for the duration of the case. She has been - not been in contact with me, not been in contact with providers. She has been unable to be contacted for quite some time by me and providers, and she just has not completed anything she needs to be doing.

(*Id.* at 13.) FCM Whitfield testified Mother's continued relationship with Child "would open him up to continued trauma by being - continuing to be a part of the system, and also if he were to have further contact with [Mother] it would cause more trauma." (*Id.* at 12.) She indicated she believed termination was in Child's best interests because Child "has a stable and healthy living environment there with a caring grandparent." (*Id.* at 12.) Child's Court-Appointed Special Advocate ("CASA") filed an affidavit prior the termination fact-finding hearing supporting termination of Mother's parental rights to Child

based on Mother's failure to demonstrate the ability to meet Child's needs because Mother could not maintain stable housing or sobriety. Based on FCM Whitfield's testimony, the evidence presented at the termination hearing, and the CASA's affidavit, the trial court issued its order terminating Mother's parental rights to Child on February 17, 2023.

## Discussion and Decision

- [11] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a 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, cert. denied* 534 U.S. 1161 (2002).
- [12] "The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own child should not be terminated solely because there is a better home available for the child, *id.*, but parental

rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[13] To terminate a parent-child relationship in Indiana, DCS must allege and 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.
  - (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 county office of family and children 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.



Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

[14] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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 juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[15] Mother argues the trial court’s findings do not support its conclusion that there existed a reasonable probability that the conditions under which Child was removed from Mother’s care would not be remedied. The trial court must judge a parent’s fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and

to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Mother does not challenge the trial court’s findings, and thus we accept them as correct. *See Madlem*, 592 N.E.2d at 687 (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

[16] Here, the trial court made findings relevant to its conclusion that the conditions under which Child was removed from Mother’s care would not be remedied:

5. A Child in Need of Services (“CHINS”) Petition was filed on July 16, 2020, under cause number 49D-2007-JC-001554, following allegations that [Mother] had failed to provide [Child] with a safe, stable, and appropriate living environment free from substance abuse. DCS became involved when [Child] was found walking and playing around [Father’s] deceased body, following an apparent fatal overdose from heroin. Drug paraphernalia was found within reach of [Child]. The floor was covered with food, black mold, and vomit. [Mother] was also under the influence of illegal substances.

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7. Child was adjudicated to be a CHINS on October 15, 2020, with [Mother’s] admission: “[Child] is a minor child in Need of Services pursuant to Indiana Law, as defined by IC 31-34-1, because . . . [Mother] needs assistance to ensure continued sobriety and that [Child] is provided a safe and stable living environment free from substance abuse. For this reason, the coercive intervention of the court is necessary.”

8. On October 15, 2020, the Court proceeded to disposition as to [Mother]. She was ordered to participate in the following services: Home Based Therapy, Home Based Case Management, Random Drug Screens, and Substance Disorder Treatment. [Mother] was further ordered to follow all recommendations of the service providers. [Child] remained removed from [Mother's] care pursuant to the Dispositional Decree.

9. [Mother's] participation in services was sparse and she was unsuccessfully discharged from them. During the CHINS case, [Mother] provided only seven (7) random drug screens and all were positive for illegal substances.

10. On June 13, 2022, the Court ordered [Mother's] parenting time be suspended until she could provide two (2) weeks of consistent call-ins and clean drug screens. [Mother] never complied with the order.

11. [Mother] has not exercised parenting time for at least ten (10) months and has only maintained infrequent communication with DCS since their involvement began.

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13. There is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside of the home will not be remedied by [Mother]. She has failed to remedy the reasons for DCS'[s] involvement. She has further made no meaningful or sustainable progress toward reunification.

(App. Vol. II at 17.) Mother contends these findings do not support the trial court's conclusion because, at the time of Child's removal, she had not been

ordered to participate in services and visitation and thus her failure to comply with the terms of the trial court's dispositional order could not be later used to support the termination of her parental rights.<sup>2</sup>

[17] Mother's argument ignores what is implied in the findings - Mother continued to use drugs just as she was when Child was removed from her care and Mother thus remained unavailable to safely parent Child. As we stated recently in *C.S.*, when reviewing whether the trial court's findings supported its conclusion that the conditions under which a child was removed from a parent's care would not be remedied, we consider the "initial reasons for removal, but also the reasons for continued placement outside the home." 190 N.E.3d 434, 438 (Ind. Ct. App. 2022). We then determine if those conditions still exist, "balancing recent improvement against habitual patterns of conduct." *Id.* Here, Child was removed from Mother's care because of, generally, Mother's substance abuse and unsafe housing conditions. Mother did not maintain sobriety during the CHINS case or after the termination petition was filed. Further, Mother did not complete services to help her better parent Child and did not maintain stable and safe housing. Based thereon, we conclude the trial court's findings

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<sup>2</sup> Mother also argues the trial court's consideration of her failure to complete services and visit with Child violated her due process rights because the trial court "altered the statute to make termination of parental rights automatic and deprived [Mother] of a meaningful opportunity to contest the termination." (Mother's Br. at 11.) As we explain in our analysis of the trial court's findings as related to its conclusion that the conditions under which the Child was removed would not be remedied, the trial court is required to consider not only the conditions existing at the time of the child's removal, but also the conditions that existed through the pendency of the case, noting any changes thereto to support or counter DCS's petition to terminate a parent's parental rights to their child. Thus, Mother's argument fails.

supported its conclusion there was a reasonable probability that the conditions under which Child was removed from Mother's care would not be remedied.<sup>3</sup> *See In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (mother's pattern of behavior during the CHINS and termination proceedings supported the trial court's conclusion that the conditions under which her children were removed from her care would not be remedied), *reh'g denied, trans. denied*.

## Conclusion

[18] The trial court's findings supported its conclusion that there existed a reasonable probability the conditions under which Child was removed from Mother's care would not be remedied. Accordingly, we affirm the trial court's decision to terminate Mother's parental rights to Child.

[19] Affirmed.

Altice, C.J., and Foley, J., concur.

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<sup>3</sup> Mother also argues the trial court's findings do not support its conclusion that the continuation of the Mother-Child relationship poses a threat to Child's well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code section 31-35-2-4(b)(2)(B). *See, e.g., In re B.J.*, 879 N.E.2d at 20 (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein). Accordingly, we need not address this argument to affirm the trial court's judgment.