

## 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 Termination  
of the Parent-Child Relationship  
of E.E. (Minor Child);

M.E. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

October 25, 2021

Court of Appeals Case No.  
21A-JT-1060

Appeal from the Cass Circuit  
Court

The Honorable Stephen R. Kitts,  
II, Judge

Trial Court Cause No.  
09C01-2008-JT-9

**Najam, Judge.**

## Statement of the Case

- [1] M.E. (“Mother”) appeals the trial court’s termination of her parental rights over her minor child E.E. (“Child”). Mother presents a single issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of her parental rights.
- [2] We affirm.

## Facts and Procedural History

- [3] Mother and J.O. (“Father”) have one child together, Child, born August 14, 2015. In April 2018, Child was living with legal guardians L.W. and S.W. when the Indiana Department of Child Services (“DCS”) received a report that Child had tested positive for cocaine and methamphetamine. At that time, Mother did not have stable housing, and Father’s paternity of Child had not yet been sought or established. DCS removed Child from his guardians’ care and filed a petition alleging that Child was a child in need of services (“CHINS”). The guardianship was dissolved.
- [4] At a factfinding hearing on the CHINS petition, Mother appeared and admitted that Child was a CHINS. The trial court found that Child was a CHINS. At the conclusion of a disposition hearing in August, the trial court ordered Mother to, among other things: complete a substance abuse assessment and successfully complete all recommended treatment; submit to random drug screens; maintain physical and mental health, including taking all prescribed

medications as directed; attend all scheduled visitations with Child; and maintain suitable, safe, and stable housing.

[5] Mother's compliance with the dispositional order was inconsistent. While Mother completed a substance abuse assessment and the recommended intensive outpatient treatment, she did not complete the six aftercare sessions that were prescribed. Mother did not attend recommended individual therapy. In May 2019, Mother tested positive for methamphetamine, and Mother tested positive for THC approximately twenty times between April 2018 and November 2020. Mother moved around a lot and had several boyfriends, one of whom physically abused her. Mother was only employed for a few weeks in October 2020 and for a few weeks in January 2021. Mother refused assistance in seeking Social Security Disability benefits or employment assistance. Mother's visits with Child were "sporadic" and her attendance at visits "deteriorated" in early 2021. Tr. 19, 50. Father established paternity of Child in July 2020, and Father contacted DCS and participated in services.

[6] On August 21, 2020, DCS filed a petition to terminate Mother's and Father's parental rights over Child. The trial court held a factfinding hearing in March 2021. Both Mother and Father appeared and were represented by counsel. On May 5, the trial court entered an order terminating Mother's parental rights, but

the court denied the petition to terminate Father’s parental rights. This appeal ensued.<sup>1</sup>

## Discussion and Decision

[7] Mother contends that the trial court erred when it terminated her parental rights. We begin our review of this issue by acknowledging 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. (In re M.B.)*, 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. (In re K.S.)*, 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.

[8] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove:

(B) that one (1) of the following is true:

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<sup>1</sup> Father does not participate in this appeal.

(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.

\* \* \*

(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. (In re G.Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] 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. (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 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. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[10] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When 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.

[11] Mother does not challenge any of the trial court’s findings. Rather, Mother challenges the trial court’s conclusions that (1) the conditions that resulted in Child’s removal and the reasons for his placement outside of Mother’s home will not be remedied<sup>2</sup> and (2) that termination is in Child’s best interests. We address each contention in turn.

*Reasons for Child’s Placement Outside of Mother’s Home*

[12] This Court has clarified that, given the wording of the statute, it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent’s rights should be terminated, but also any basis

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<sup>2</sup> The trial court did *not* find that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Child.

resulting in the continued placement outside of a parent's home. *Inkenhaus v. Vanderburgh Cnty. Off. of Fam. & Child. (In re A.I.)*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court properly considered the conditions leading to the continued placement of Child outside of Mother's home. Simply stated, Mother has not demonstrated any willingness or ability to provide a stable home for Child.

[13] We hold that the evidence supports the trial court's findings and conclusion on this issue. To determine whether there is a reasonable probability that the reasons for Child's continued placement outside of Mother's home will not be remedied, the trial court should judge Mother's fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also "evaluate the parent[s]' habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren]." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id.*

[14] The trial court found in relevant part that

Mother has failed, repeatedly, to comply with any services from DCS. She has no stable employment; she has bounced from job to job, losing multiple opportunities, all of which she asserts were lost through the fault of others. She has no stable housing, having moved through multiple residences, not just from dwelling to dwelling, but from city to city. She has failed to participate in visits with the child, while exhibiting behavior that DCS describes as not only not improving, but actively deteriorating. She has failed to complete applications for assistance that may have benefitted her, let alone the child in question.

Appellant's App. Vol. 2 at 105. And the evidence supports those findings. In addition, DCS presented testimony that Mother continues to abuse marijuana.

[15] Mother's argument on appeal is simply an invitation for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Moreover, Mother's argument focuses only on the reasons for Child's initial removal and ignores the reasons for his continued placement outside Mother's home. Mother contends that she currently has stable housing with her mother. But the home-based case manager, Nina Colford, testified that Mother described her mother's house as not appropriate "even [to] hold visits" with Child because her mother smokes marijuana almost daily and has had physically abusive boyfriends in the home. Tr. at 51. Based on the totality of the circumstances, we hold that the trial court's findings support its conclusion that there is a reasonable probability the conditions that resulted in Child's removal and the reasons for his placement outside of Mother's home will not be remedied.



### *Best Interests*

[16] In determining what is in a child’s best interests, a juvenile court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep’t of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent’s historical inability to provide “adequate housing, stability, and supervision,” in addition to the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[17] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep’t of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). “The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship.” *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *Id.*

[18] In her brief on appeal, Mother contends that, because the trial court did not terminate Father’s parental rights, termination of *her* parental rights “is not in [Child’s] best interest so long as reunification with Father remains an option.” Appellant’s Br. at 16. She maintains that “[t]here is no reason that Mother cannot continue to spend time with [Child] while he remains in placement, or when he is reunified with Father.” *Id.* at 17. In support of her contention,

*Mother cites C.B. v. Indiana Department of Child Services (In re B.F.)*, where we held that, where a father’s parental rights were not terminated and reunification with father was an option, termination of the mother’s parental rights was not in the children’s best interests. 141 N.E.3d 75, 83 (Ind. Ct. App. 2020).

[19] Mother’s reliance on *In re B.F.* is misplaced. In that case, we noted that “[t]he *only* lingering issue for Mother is a lack of stable and suitable housing. She and the Children are bonded and her parenting skills are appropriate.” *Id.* at 76 (emphasis added). And we stated that,

[a]fter the Children were removed from Mother’s care and custody, she *continued to visit with them consistently*. All service providers who have observed Mother’s interactions with the Children have noted that they have an obvious bond and that Mother parents them in a caring and appropriate way. At the time of the termination hearing, Mother was not participating with services in this CHINS case, *but she was doing so consistently in [another] CHINS case*[ in another county].

*Id.* at 79 (emphases added).

[20] Here, in contrast, Mother’s visitation with Child has been “sporadic” throughout the proceedings, and she only visited with Child in-person *twice* between October 25, 2020 and March 17, 2021. Tr. at 19. Mother attended some virtual visitation sessions with Child during that time period, but she had missed “many” of those sessions as well. *Id.* at 48. And Mother has not consistently participated in services. Finally, Mother has no source of income

and has not worked with service providers who have attempted to assist Mother in seeking employment and disability benefits.

[21] As the trial court's findings demonstrate, Mother has not shown that she is capable of parenting Child. Child is thriving in his pre-adoptive home. Both the GAL and the CASA testified that termination of Mother's parental rights is in Child's best interests. Given the totality of the evidence, Mother cannot show that the trial court erred when it concluded that termination of her rights is in Child's best interests.

### *Conclusion*

[22] DCS has shown by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside of Mother's home will not be remedied and that termination is in the best interests of Child. Mother does not challenge any of the other conclusions. We hold that the trial court did not err when it terminated Mother's parental rights.

[23] Affirmed.

Riley, J., and Brown, J., concur.