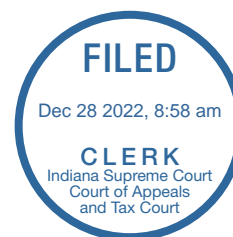


## MEMORANDUM DECISION

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 re the Termination of the  
Parent-Child Relationship of  
K.R. (Minor Child) and D.R.  
(Mother)

D.R. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

December 28, 2022

Court of Appeals Case No.  
22A-JT-840

Appeal from the  
Floyd Circuit Court

The Honorable  
J. Terrence Cody, Judge

Trial Court Cause No.  
22C01-2012-JT-766

**Vaidik, Judge.**

## Case Summary

- [1] D.R. (“Mother”) appeals the termination of her parental rights to her daughter, K.R. (“Child”). We affirm.

## Facts and Procedural History

- [2] Mother is the biological mother of Child, born in August 2017. K.W. (“Father”) is Child’s biological father. Father’s parental rights were terminated at a separate hearing, and he does not participate in this appeal.
- [3] In September 2017, the Department of Child Services (DCS) in Floyd County received a report that Mother was using illegal substances. Mother admitted to DCS that she had a history of drug use and entered into an Informal Adjustment, agreeing to submit to drug screens and to ensure Child always had a sober caretaker. At the time, Father was incarcerated, and he remained incarcerated for most of the CHINS and termination proceedings. Despite the Informal Adjustment, Mother continued to use illegal substances, even when caring for Child. In February 2018, DCS removed five-month-old Child from the home and placed her in foster care, where she has since remained.
- [4] That month, DCS filed a petition alleging Child was in need of services (CHINS). Mother admitted Child was a CHINS, and the trial court ordered her to, among other things, remain in contact with DCS, attend scheduled visitation with Child, complete a substance-abuse assessment and follow any recommended treatment, and submit to drug screens.

[5] For the next three years, Mother failed to consistently comply with Child's case plan. She completed a substance-abuse assessment, which recommended inpatient treatment. DCS referred her to two inpatient programs, both of which she started but soon after "stopped attending" and "never graduated." Tr. Vol. II p. 117. She often refused to submit to drug screens, submitting less than half of the required screens. When she did screen, she would "test negative for several weeks or months, then she would have two or three months of positive screens." *Id.* Of the seventy-four tests Mother submitted during the CHINS proceedings, twenty-four were positive for illegal substances, including cocaine, methamphetamine, opiates, marijuana, and ecstasy. She also failed to consistently communicate with DCS, sometimes going months without contact.

[6] As the case went on, Mother's attendance at visitation also dropped. For the first few years, Mother "was pretty consistent" in visiting Child, but by 2020 she was failing to attend scheduled visits for months at a time. *Id.* at 129. When she did attend, the visits were "not productive," with Child displaying "severe reactions" to Mother's presence to the point "where [Child] became a danger to herself during the visitations." *Id.* at 132. In December 2020, DCS petitioned to terminate Mother's and Father's rights. The next month, due to Mother's continued failure to appear for visitation, the court suspended in-person visits until Mother showed compliance with the case plan. Thereafter, Mother failed to consistently attend virtual visits, and a few months later all visits were suspended.

- [7] The court scheduled two initial hearings on the termination petition in early 2021, both of which were continued because Mother did not appear. In March, Mother appeared at the third initial hearing and was appointed an attorney. In September, the court held a pretrial conference, which Mother and her attorney attended. At the conference, the court stated the final termination hearing would be held on February 10 and 11, 2022.
- [8] The termination hearing was held on those dates. Father, still incarcerated, did not appear because his facility was on lockdown due to a COVID-19 outbreak. He asked for and received a continuance on that basis.<sup>1</sup> Mother also did not appear, and neither her attorney nor DCS had been in contact with her since the pretrial conference in September 2021. No reason for her absence was given. Her attorney moved for a continuance, which the trial court denied.
- [9] At the hearing, Family Case Manager (FCM) Courtney Nott testified that Mother's contact with her throughout the case was "on and off" and that she had been unable to get ahold of Mother since September 2021. *Id.* at 125. FCM Nott also testified that, after failing to successfully complete DCS-recommended substance-abuse services, Mother sought an outside service, but remained inconsistent with her participation, not engaging in the program for "several months" at a time. *Id.* at 120. FCM Nott also testified that Mother was not "consistent with the therapy side" of the program and had tested positive

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<sup>1</sup> The termination hearing as to Father was held in November 2022. After that hearing, the court issued an order terminating Father's parental rights.

for methamphetamine in August 2021—the most recent test provided to DCS. *Id.* After the hearing, the court issued an order terminating Mother’s rights to Child.

[10] Mother now appeals.

## Discussion and Decision

### I. Motion to Continue

[11] Mother challenges the trial court’s denial of her motion to continue the termination hearing. A trial court’s decision to grant or deny a motion to continue is generally subject to abuse of discretion review. *In re K.W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion. *Id.* at 244.

[12] Mother has not shown good cause for granting the motion. It is undisputed she had notice of the hearing, as she was informed of the dates in person by the court. Yet she did not contact the court or her attorney to let them know she wouldn’t be attending so her attorney could request a continuance in advance. Nor was any reason given for her absence. This is consistent with Mother’s behavior over the course of the case—she often did not appear for visitation or stay in contact with DCS, and the initial hearing on the termination petition had to be continued twice because she failed to attend.

[13] Rather than showing good cause, Mother argues the court should not have denied her motion because there was no harm to DCS in continuing the hearing as to her when it was already being continued as to Father. While that may be true, we do not believe the court abused its discretion by not doing so.

Undeniably, Father had good cause for a continuance—he could not attend due to COVID restrictions. Mother did not. And the record indicates that Mother’s and Father’s cases were largely separate—they were not together during the cases and participated in all services individually—further supporting the trial court’s decision to hold two hearings. Given that Child had been in foster care for four years at this point, we cannot say the court abused its discretion in going ahead with the hearing as to Mother, even if it meant holding two termination hearings.

[14] The trial court did not abuse its discretion in denying Mother’s motion to continue.

## II. Sufficiency

[15] Mother also argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or

judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court’s findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[16] A petition to terminate parental rights must allege, 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.

(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 prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

[17] Mother challenges the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child’s removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child’s placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[18] The reasons for Child’s removal and continued placement outside the home were Mother’s substance abuse and inability to provide a safe and stable home. After four years of DCS involvement, Mother has shown no ability to remedy these issues. She continued to test positive for illegal substances throughout the case or refuse to screen at all. Nor has she shown much interest in working on her substance abuse. Her participation in DCS services to address her substance abuse was limited—she attended the assessment but refused to participate in the recommended inpatient treatment. And while at the time of the termination hearing she was participating in substance-abuse services on her own, she was not consistently attending that program and had recently tested positive for methamphetamine.

[19] As for Mother’s stability, she often failed to contact DCS for months at a time. She also failed to consistently visit with Child, to the point that Child would



have severe reactions to Mother's presence at visits. Ultimately, visits were terminated until Mother showed consistent participation in the case plan, which never occurred. At the time of the termination hearing, Mother had not visited with Child in almost a year and had not been in contact with the court or DCS in almost six months. She did not attend the termination hearing. Overall, the evidence shows Mother is no closer to providing Child with a stable, drug-free environment than she was at the beginning of the CHINS case in 2018.

[20] The trial court did not err when it concluded there is a reasonable probability the conditions leading to Child's removal will not be remedied.<sup>2</sup>

Affirmed.

Riley, J., and Bailey, J., concur.

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<sup>2</sup> Mother also challenges the trial court's conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child's well-being. But because we affirm the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the three requirements has been established by clear and convincing evidence), *trans. denied*.