

## 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:

K.R. (Child),  
and  
W.S. (Mother),  
*Appellant-Respondent,*

v.

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

October 31, 2022

Court of Appeals Case No.  
22A-JT-1272

Appeal from the Jennings Circuit  
Court

The Honorable Murielle S. Bright,  
Judge

Trial Court Cause No.  
40C01-2112-JT-37

## Case Summary

- [1] W.S. (“Mother”) appeals the trial court’s order terminating her parental rights over her minor child, K.R. (“Child”).<sup>1</sup> Mother presents one issue for our review, namely, whether the court clearly erred when it terminated her rights. We affirm.

## Facts and Procedural History

- [2] Mother gave birth to Child on September 3, 2020. Shortly thereafter, the Indiana Department of Child Service (“DCS”) received a report that Child had been born “drug exposed[.]” Ex. Vol. 2 at 26. DCS Family Case Manager (“FCM”) Ida Prange visited Mother, and Mother admitted that she had used methamphetamine while pregnant. In addition, FCM Prange screened Mother, and Mother tested positive. DCS removed Child from Mother’s care on September 8 and filed a petition alleging that Child is a Child in Need of Services (“CHINS”) on September 10. At a subsequent hearing, Mother admitted that Child is a CHINS based on her “struggles with methamphetamine use.” *Id.* at 29.

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<sup>1</sup> Child’s father, B.R., does not participate in this appeal.

- [3] Following her admission, the court adjudicated Child a CHINS and entered a dispositional order in which it ordered Mother to participate in services. In relevant part, the court ordered Mother to not “use, consume, manufacture, trade, distribute[,] or sell any illegal controlled substances”; complete a substance abuse assessment “and follow all treatments and successfully complete all treatment recommendations”; and submit to random drug screens. *Id.* at 37.
- [4] Mother partially complied with services. Mother attended visits with Child “very consistently” and only missed two. Tr. at 57. And Mother would be “prepared” and have “everything that she needs” at those visits. *Id.* at 74. Mother was also “open” to taking the random drug screens throughout the case, and she screened consistently beginning in September 2020. *Id.* at 67. Mother had clean screens on September 17 and September 22, 2020. *See Ex. Vol. 2* at 182-83. But after September 22, 2020, “all” of Mother’s screens were positive for methamphetamine. Tr. at 69.
- [5] DCS offered Mother “inpatient rehab,” which Mother was initially “open to,” but Mother “never followed through.” *Id.* at 73. In particular, DCS offered Mother “rehab inpatient detox” three times, but Mother turned DCS down each time. *Id.* at 72. Mother was never “successfully discharged from any substance abuse treatment provider.” *Id.* Accordingly, DCS filed a petition to terminate Mother’s rights over Child.

[6] The court held a hearing on DCS' petition. During the hearing, Mother admitted that she uses methamphetamines and that she has a "history of substance abuse" that began approximately four or five years prior to the hearing. Tr. at 19. Mother also admitted that she completed a substance abuse assessment but that she did not follow the recommendations. When asked about any periods of sobriety she may have obtained since she began using drugs, Mother stated that she had been sober for six months at one point and two months at another point but "did not stay sober." *Id.* at 22. And Mother admitted that she had used methamphetamine as recently as "four or five days" prior to the hearing. *Id.* Mother then acknowledged that DCS had "offered [her] the opportunity for inpatient treatment" on multiple occasions but that she had "refused." *Id.* at 28.

[7] On May 24, 2022, the court entered findings of fact and conclusions thereon. In relevant part, the court found that Mother has failed to obtain sobriety, despite "extensive efforts" by DCS. *Id.* at 15. The court also found that, not only had Mother not "submitted a single negative drug screen" since September 22, 2020, she "has tested positive for varying levels of methamphetamine on every screen taken since that time[.]" *Id.* The court then concluded that Mother's "demonstrated and ongoing use of methamphetamine and failure to complete treatment combined with her lack of understanding as to the repercussions her methamphetamine use ha[s] on the minor child" clearly show that "there is a reasonable probability that the reasons for removal will not be remedied." *Id.* at 19. And the court concluded that "[r]eturning the minor

child to Mother at this point would threaten both the emotional and physical development of the minor child.” *Id.* The court also found that the termination of Mother’s parental rights was in Child’s best interests and that DCS had a satisfactory plan for Child’s care. Accordingly, the court terminated Mother’s parental rights as to Child. This appeal ensued.

## Discussion and Decision

- [8] Mother challenges the trial court’s termination of her parental rights over Child. 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.
- [9] 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:

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

[10] 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*.

[11] Here, in terminating Mother’s parental rights, the trial court entered extensive 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.

[12] On appeal, Mother does not challenge the court’s conclusions that the termination of her rights is in Child’s best interest or that DCS has a satisfactory plan for Child’s care or treatment. Rather, she only contends that the court erred when it concluded that the conditions that resulted in Child’s removal from her care will not be remedied, and that the continuation of the parent-child relationship poses a threat to Child. But because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only consider whether DCS presented sufficient evidence to prove that the conditions that resulted in Child’s removal and the reasons for placement outside of Mother’s home will not be remedied.

[13] 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] On appeal, Mother contends that the court erred when it concluded that there is a reasonable probability that the reasons for Child’s removal and continued placement outside of her home will not be remedied because “she was fully engaged with her caseworker, attend[ed] weekly sessions, complet[ed] the parenting assessment, fully participat[ed] in home-based care management, and report[ed] for drug screens as required.” Appellant’s Br. at 13. She further contends that “she never ceased attempting to seek and receive treatment for her addiction” and that “she was actively seeking placement in an in-patient program” at the time of the hearing. *Id.* And she maintains that “she never



used illegal drugs around the child and refrained from using at least 24 hours before each visit” and that she “never felt high during a visit.” *Id.*

[15] However, Mother’s argument on appeal is simply a request for his Court to reweigh the evidence, which we cannot do. The evidence most favorable to the court’s findings demonstrates that Mother had a history of drug abuse for which she has not successfully sought treatment. Mother’s drug use began four or five years before the hearing. While Mother has briefly obtained sobriety on two occasions in the past, she admittedly “did not stay sober.” Tr. at 22. Mother continued to use drugs even while pregnant with Child, which resulted in Child being born “drug-exposed.” Ex. Vol. 2 at 26. DCS then offered Mother “tons of opportunities for drug treatment options,” but Mother refused each one. Tr. at 31. Other than two negative screens early in the case, Mother tested positive for methamphetamine at every drug screen through April 2022. And, most notably, Mother used methamphetamine as recently as a few days prior to the fact-finding hearing despite the pending petition to terminate her rights.

[16] Child needs a sober caregiver. However, despite nineteen months and numerous offers by DCS, Mother has not demonstrated an ability to obtain and maintain sobriety. We therefore hold that the trial court’s findings support its conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal and the reasons for Child’s placement outside of Mother’s home will not be remedied.

## Conclusion

[17] The trial court did not clearly err when it determined that the reasons for Child's removal or the continued placement outside of Mother's home will not be remedied. We affirm the trial court.

[18] Affirmed.

Riley, J., and Vaidik, J., concur.