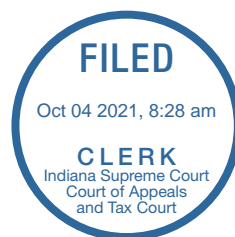


## MEMORANDUM DECISION

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 C.G. (Minor Child)

and

A.M. (Mother),  
*Appellant-Respondent*,

v.

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

October 4, 2021

Court of Appeals Case No.  
21A-JT-543

Appeal from the Howard Circuit  
Court

The Honorable Lynn Murray,  
Judge

Trial Court Cause No.  
34C01-2008-JT-336

**Bradford, Chief Judge.**

## Case Summary

[1] A.M. (“Mother”) is the biological mother of C.G. (“Child”).<sup>1</sup> The Department of Child Services (“DCS”) became involved with Mother and Child on May 24, 2019. DCS removed Child from Mother’s care and filed a petition alleging that Child was a child in need of services (“CHINS”) after discovering unsafe living conditions in the family’s home, a lack of attention to Child’s medical needs by Mother, and a failure by Mother to provide Child with necessary therapies to address his autism. Mother was ordered to complete certain services. DCS eventually petitioned to terminate Mother’s parental rights to Child after Mother failed to successfully complete the ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Mother contends that the juvenile court’s order was improper and that DCS failed to present sufficient evidence to support the termination of her parental rights. We affirm.

## Facts and Procedural History

[2] Child was born to Mother on March 2, 2013. On May 24, 2019, DCS received a report alleging that Mother had neglected Child. The report indicated that

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<sup>1</sup> Child’s biological father agreed to a voluntarily termination of his parental rights to Child and does not participate in this appeal.

Mother was non-compliant with medical referrals for Child, who suffered from autism and global delays. The report also noted that Child “smelled of cat urine” and “was not receiving any kind of education or services for his autism or global delays.” Appellant’s App. Vol. II p. 97.

[3] On May 29, 2019, family case manager (“FCM”) Macey Titus visited the family’s home and observed extensive clutter inside and multiple cats jumping in and out of a window. She also noted “a strong odor of cat urine emitting from the home.” Appellant’s App. Vol. II p. 97. Mother admitted to FCM Titus that she was aware that Child required medical care and occupational and behavioral therapy. Mother also informed FCM Titus that Child, who was six years old at the time, was still using a bottle and was teething. FCM Titus informed Mother that “she needed to improve the home conditions” and “follow up with [Child’s] doctor appointments.” Tr. Vol. II p. 74. FCM Titus told Mother that she would be following up with her to make sure the conditions had improved.

[4] FCM Titus returned to the family’s home during the afternoon hours of June 12, 2019. Mother, who appeared to have just woken up, indicated that Child was asleep. Mother further indicated that she had not followed up on Child’s needed medical treatment. FCM Titus observed that the home was “still very cluttered” and that “there was an abundance of gnats in the kitchen, lying around.” Tr. Vol. II p. 75. When FCM Titus observed Child, he was wearing only a pull-up diaper. Mother then explained that Child “was not potty trained at that time.” Tr. Vol. II p. 75. FCM Titus also observed that Child “was

covered in what appeared to be [] bug bites. Some looked fresh, some looked scarred.” Tr. Vol. II p. 76. Mother, who also seemed to have similar bite marks on her skin, eventually indicated that the bite marks were from fleas. FCM Titus returned to the home two days later and observed that the home remained in the same condition as on her prior visits and that no progress had been made by Mother in addressing Child’s medical needs. Given Mother’s failure to demonstrate any progress in remedying the home conditions and in addressing Child’s medical needs, DCS removed Child from Mother’s care and placed him in foster care.

[5] On June 17, 2019, DCS filed a petition alleging that Child was a CHINS. In its petition, DCS alleged that Mother had failed to provide Child with a safe and clean home, necessary medical care, and necessary therapies to address Child’s autism. At some point after DCS filed the CHINS petition, Michelle Harris was appointed as the Court Appointed Special Advocate (“CASA”) to represent Child’s interests in the proceedings. The juvenile court adjudicated Child to be a CHINS on August 5, 2019, and set the matter for a dispositional hearing on August 19, 2019, at which time, Mother was ordered to complete certain services. Mother, however, failed to successfully complete the ordered services.

[6] On August 26, 2020, DCS filed a petition to terminate Mother’s parental rights to Child. The juvenile court held an evidentiary hearing on DCS’s petition on November 9 and 16, 2020 and January 11, 2021. During the evidentiary hearing, DCS presented evidence outlining Mother’s failure to make significant

progress towards providing Child with a safe and stable living environment. Following the conclusion of the evidence, the juvenile court took the matter under advisement. On March 1, 2021, the juvenile court entered its order terminating Mother’s parental rights to Child.

## Discussion and Decision

[7] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *Bester v. Lake Cnty. Office of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent–child relationship. *Id.*

[8] “In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses.” *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the

juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* “First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions.” *Id.*

[9] In deference to the juvenile court’s unique position to assess the evidence, we set aside the juvenile court’s findings and judgment terminating a parent–child relationship only if they are clearly erroneous. *Id.* “A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it.” *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

## I. Alleged Bias by the FCM

[10] Mother contends that the juvenile court’s termination order is “improper, inadequate, and/or illegal” because FCM Jennifer Miles, who was assigned to the case in August of 2019, allegedly admitted to being biased against Mother. Appellant’s Br. p. 6. In support, Mother points to the following exchange which occurred during FCM Miles’s testimony at the fact-finding hearing:

[Mother’s Counsel]:        You do not get along with my client,  
would that be fair to say?

[FCM Miles]:                I’ve never not gotten along with your  
client.

[Mother’s Counsel]:        Really?

[FCM Miles]:                      Correct.

Tr. Vol. II p. 193. Mother asserts that the above-quoted exchange represents “blunt testimony that [FCM Miles] has never gotten along with” Mother. Appellant’s Br. p. 9. Contrary to Mother’s assertion, however, we read the above-quoted exchange to say just the opposite, *i.e.*, that FCM Miles felt that she got along with Mother. As the State points out in its brief, “[t]he use of the double negative (never-not) by FCM Miles results in a positive answer that FCM Miles did get along with Mother. This does not establish bias or even animosity.” Appellee’s Br. p. 23.

[11] Mother points to nothing else in the record to support her assertion that FCM Miles was biased against her. While Mother may not have agreed with FCM Miles’s opinion that Mother did not make satisfactory progress and that termination of Mother’s parental rights was in Child’s best interests, FCM Miles’s opinions in this regard do not demonstrate bias as they were backed up by evidentiary support. Mother has failed to establish that FCM Miles was biased against her, much less that the juvenile court’s order was improper, inadequate, or illegal.<sup>2</sup>

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<sup>2</sup> In support of her assertion, Mother relies on *In re C.M.S.T.*, 111 N.E.3d 207 (Ind. Ct. App. 2018), in which we concluded that reversal of a termination order was warranted given misconduct by certain DCS case workers, including one case worker engaging in a romantic relationship with the Father of the children involved in the underlying termination proceedings, which is easily distinguishable from the instant case. Here, nothing in the record suggests that any of the DCS case workers or service providers engaged in any form of misconduct. Mother’s reliance on *C.M.S.T.* is therefore misplaced.

## II. Sufficiency of the Evidence

[12] Mother also contends that the evidence is insufficient to sustain the termination of her parental rights to Child. In order to support the termination of Mother's parental rights to Child, DCS was required to prove the following:

(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....

(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....

(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). To the extent that Mother claims that DCS failed to present sufficient evidence to establish the above-stated statutory requirements by clear and convincing evidence, Mother's arguments appear to



be limited to subsections (B) and (C).<sup>3</sup> We will therefore limit our review to these same two subsections.

### **A. Indiana Code Section 31-35-2-4(b)(2)(B)**

[13] It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court's determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

[14] In this case, that juvenile court made numerous findings about the conditions resulting in removal and the likelihood that said conditions would be remedied. Specifically, the juvenile court found:

45. Despite her positive interactions during visits with the Child and the extensive services provided and offered to her, Mother has been able to make any significant progress towards reunification or show that she has the willingness or ability to properly nurture, supervise, or generally care for her Child long term, especially with regard to his special needs. When the Child was removed from her care on June 14, 2019, the primary

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<sup>3</sup> Nothing in Mother's appellate arguments suggest that she is challenging the juvenile court's conclusions that DCS proved by clear and convincing evidence that Child had been removed from her care under a dispositional decree for a period of more than six months or that DCS had a satisfactory plan for Child's care and treatment, *i.e.*, adoption.

reasons for removal included the unsafe, unsanitary home conditions, medical neglect, and the apparent neglect for the Child's needs, including his special needs. The Child has remained in out of home placement since that time due to Mother's consistent refusal to acknowledge or address the issues that contributed to the Child's removal and the issues that have been identified since in relation to Mother's mental health and the Child's special needs.

46. It is undisputed that Mother has made progress in improving the home conditions, however it is notable that those improvements took nearly nine (9) months to accomplish. The unsafe and unsanitary home conditions were only one reason the Child was removed from Mother's care.

47. DCS initially became involved due to concerns that the Child was not receiving proper medical treatment for a variety of conditions. Mother confirmed this information to DCS upon her first meeting with FCM Titus. Medical records and other information later obtained by DCS further confirmed that Mother had neglected the Child's medical needs, as well as his other physical, mental, and developmental needs. At the time of removal, some of the concerns identified with the Child[']s condition included that he weighed ninety-three (93) pounds, was still receiving a bottle from Mother, was extremely limited in his verbal skills, displayed extreme lethargy, needed extensive dental work and had been diagnosed with iron deficiency anemia, requiring regular iron supplements, was not potty trained, and would display extreme violent behaviors. After four months of receiving proper care and nutrition in his foster placements, the Child had lost more than thirty (30) pounds and was able to discontinue iron supplements after approximately three (3) years of needing them. Despite the drastic improvements in the Child's health as a result of his improved diet and care, Mother regularly refused to acknowledge or accept that the Child's diet or care before removal was a detriment to his health. While Mother did engage with service providers in a limited capacity to

address proper nutrition, she regularly contested any need to do so....

49. Mother has repeatedly refused parenting education to assist her with understanding the needs of the Child, special and otherwise, and has repeatedly indicated a belief that the parenting style she was utilizing prior to the Child's removal was sufficient. Mother has failed to show any tangible growth in her ability to provide necessary and appropriate care.

50. Further, Mother's own mental health has also been a significant factor in this case and one that she has not only been unable to adequately address but one that she has refused to acknowledge as a critical component of being able to provide safe and appropriate care to the Child. DCS, CASA, and providers alike have frequently attempted to address their concerns for Mother's consistent, pathological lying, however Mother has consistently become angry and defensive when the topic has been raised. To Mother's credit, she has participated in some mental health services, it is clear by her actions that there ha[ve] been no measurable improvements as a result of those services. Further, Mother has repeatedly refused to acknowledge the need for mental health services at all, and despite the same being clearly contained in the dispositional decree, has repeatedly claimed that she was required to participate in the same.

51. While Mother has consistently maintained visitation with the Child, she has repeatedly refused to acknowledge his needs or the care he requires on a full-time basis. Despite the placement disruptions that he has experienced, the Child has thrived since being in foster care. His physical health significantly improved after just a few months in care. While the Child has had setbacks with his behaviors, he has consistently received the services he needs to continue making progress in that regard. The Child has additionally made great strides in his education and overall development since being in foster care.

52. Other than remedying unsafe, unsanitary home conditions, Mother has failed to remedy the reasons for the Child's removal from her care: namely, Mother's inability or refusal to properly care for her Child and to address her mental health needs. It is well-settled that a parent's mental illness or disability cannot, standing alone, support the termination of parental rights. In re V.W., 51 N.E.3d 1140, 1147 (Ind. 2016). However, if such illness or disability causes a parent to be unable and unwilling to develop the skills necessary to fulfill his or her legal obligations as a parent, parental rights may be terminated. Id. at 1148 (citing R.G. v. Marion County Office of Family & Children, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995), *trans. denied*). In this case, it is clear that whatever the root cause of Mother's instability, it still exists at the time of the termination hearing and it would pose a clear and present danger to the welfare of the Child if he were to be returned to her care. Although she denied it in her testimony at fact finding, Mother had previously stated to DCS and providers that once the Child was returned to her care, she intended to withdraw him from public school to home school him, and cease services for his special needs. Mother seems unwilling or unable to acknowledge or accept the deficiencies in her care of the Child that led to removal.

53. While it is impossible to determine the full extent that the Child's lack of proper care has had on him, it is clear that the neglect the Child had suffered at the hands of his Mother prior to removal had led to significant harm already in light of his significant health issues and delays which could have, and should have, been addressed through much earlier intervention. In light of Mother's complete refusal to acknowledge or address the deficits that led to the Child's neglect in her care, the Court finds that there would be a substantial probability of future neglect or deprivation if the Child were to be returned to Mother's care. The Child has a history of displaying significant negative, self-harming behaviors that correlate with his visitation with Mother. Permitting the continuation of the parental-child relationship

when Mother so clearly refused to alter her own behaviors presents a clear danger to the [C]hild's well-being.

Appellant's App. Vol. II pp. 110–13 (underlining in original). The juvenile court also found that prior to removal, Mother had failed to follow through with recommended therapies or treatment for Child's special needs and did not seem to make progress in understanding the importance of these recommended therapies and treatments for Child's development.

[15] The juvenile court further found that

57. In the judgment of this Court, there is a reasonable probability that Mother will not be able to remedy the reasons for removal nor ever safely and adequately care for this Child....

63. The Court finds by clear and convincing evidence that it is reasonably probable that the conditions that led to the removal and that led to the continued placement outside the home, namely Mother's unwillingness or inability to safely and appropriately care for the Child, to address her own mental health needs, and to ensure that the Child is free from abuse and neglect will not be remedied to the degree that Mother will be able to provide the Child with the nurturing, stable, and appropriate care and environment that he requires on a long term basis. The Child should not have to endlessly wait to have a secure, stable, and safe environment in which to live and the Court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating a parent-child relationship.

Appellant's App. Vol. II pp. 114, 116–17 (internal citation omitted). Based on these findings, the juvenile court concluded that there is a reasonably

probability that the conditions leading to Child's removal from Mother's care would not be remedied.

[16] Mother does not specifically challenge any of the juvenile court's findings on appeal, so they "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). Thus, we accept as true that while Mother was able to make progress in remedying the conditions of her home, she has failed to make progress towards remedying any of the other conditions leading to Child's removal and continued placement outside Mother's care. As such, we conclude that the evidence is sufficient to support the conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from Mother's care would not be remedied. Mother's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

### **B. Indiana Code Section 31-35-2-4(b)(2)(C)**

[17] We are mindful that in considering whether termination of parental rights is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* "A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same

supports a finding that termination of parental rights is in the best interests of the children.” *Lang v. Starke Cnty. Office of Fam. & Child.*, 861 N.E.2d at 373. Furthermore, this court has previously determined that the testimony of the case worker, GAL, or a CASA regarding the children’s best interests supports a finding that termination is in the children’s best interests. *Id.* at 374.

[18] With regard to Child’s best interests, the juvenile court found as follows:

54. Termination of parental rights is in the best interest of the Child and the continuation of the parent-child relationship would pose a threat to his well-being. The Child requires stability, even more so than normal due to his special needs. The Child progressed in each foster home he has resided in, despite the necessary changes in placement, because each of his foster homes has tended to all of his needs, special and otherwise, and ensured stability in the Child’s day to day routine. Continuing the parent-child relationship between the Child and Mother at this juncture is likely to do nothing more than confuse and seriously destabilize the Child as he continues to grow and develop.

55. The Child requires the security of a safe, nurturing environment and routine in order to provide him with stability. Most importantly, the Child needs, requires, and deserves permanency in his life. In this case, the Child’s need for stability is even greater due to his special needs. The evidence was abundantly clear that a stable routine with a suitable caregiver is of the utmost importance to successfully treating the Child based on his needs and diagnoses....

61. In this case, Mother and Child share a strong bond, however that bond is only one factor when determining what is in the Child’s best interests. When considering the totality of the evidence, the bond that Mother and Child share simply does not outweigh the ample evidence that termination is in the best

interest of the Child.

62. “The testimony of a child’s guardian ad litem regarding the child’s need for permanency supports a finding that termination is in the child’s best interest.” [McBride, 798 N.E.2d at 203]. CASA Harris was appointed as the Child’s CASA on June 27, 2019. CASA Harris had reviewed all of the records to familiarize herself with the background of the case and had visited with the Child regularly and with Mother periodically since her appointment. CASA Harris submitted her TPR Report to the Court on October 30, 2020, detailing her interactions, observations, and concerns regarding the case. CASA Harris relayed her recommendation through ... both her report and her testimony at Fact-Finding that this Court terminate parental rights and that doing so is in the Child’s best interests....

65. The Court further finds by clear and convincing evidence that termination of the parent-child relationship of Mother to the Child is in the Child’s best interests in that further efforts to reunite Mother and Child are unlikely to succeed. Throughout the CHINS case, Mother has shown an unwillingness to acknowledge that the reasons for removal and continued placement outside of the home included anything other than her home conditions. Mother has been involved with a multitude of service providers and maintained visitation with the Child throughout the case, but has also been extremely uncooperative with providers, DCS, and CASA at the same time. Mother has continuously become angry and belligerent when confronted with the issues that she refuses to acknowledge and continues to show no accountability or responsibility for the Child being removed from her care or for the Child remaining out of her care.

66. Failure to terminate the parent-child relationship at this time would simply deny the Child the stability and permanency to which he is entitled, and which has already too long been denied. It is in the Child’s best interest to have permanency, not perpetual wardship and uncertainty in his young life. Further, it



is clear that stability plays a crucial role in this Child's treatment and well-being in light of his special needs.

Appellant's App. Vol. II pp. 113–14, 116–18 (underlining in original). Based on these findings, the juvenile court concluded that termination of Mother's parental rights was in Child's best interests.

[19] Again, Mother does not specifically challenge any of the juvenile court's findings on appeal, so they "must be accepted as correct." *Madlem*, 592 N.E.2d at 687; *see also M.M.*, 160 N.E.3d at 1135. As the juvenile court found, both CASA Harris and FCM Miles opined that termination of Mother's parental rights was in Child's best interests. Given the juvenile court's unchallenged findings, including the opinions of CASA Harris and FCM Miles, we conclude that the juvenile court's determination that termination of Mother's parental rights is in Child's best interests is supported by sufficient evidence. *See Lang*, 861 N.E.2d at 374 (providing that the testimony of the case worker, GAL, or a CASA regarding the children's best interests supports a finding that termination is in the children's best interests). Mother's claim to the contrary again amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[20] The judgment of the juvenile court is affirmed.

Robb, J., and Altice, J., concur.