

## 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.M. (Minor Child)

and

R.H. (Mother),  
*Appellant-Respondent*,

v.

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

December 15, 2022

Court of Appeals Case No.  
22A-JT-1190

Appeal from the Pike Circuit Court  
The Honorable Jeffrey L.  
Biesterveld, Judge

Trial Court Cause No.  
63C01-2111-JT-101

**Bradford, Chief Judge.**

## Case Summary

[1] R.H. (“Mother”) is the biological mother of E.M. (“Child”). P.M. (“Father”) is Child’s biological father.<sup>1</sup> The Department of Child Services (“DCS”) became involved with Child on April 22, 2020. Two days later, DCS filed a petition alleging that Child was a child in need of services (“CHINS”). After Child was found to be a CHINS, the juvenile court ordered Mother to participate in certain services. Mother’s participation in services was inconsistent, and Mother never achieved the level of stability necessary to put her in the position to successfully care for Child. DCS eventually petitioned to terminate Mother’s parental rights to Child after Mother failed to successfully complete the court-ordered services or maintain stability. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Mother contends that DCS failed to present sufficient evidence to support the termination of her parental rights. Mother alternatively contends that DCS violated her due process rights by failing to provide her with adequate services. We affirm.

## Facts and Procedural History

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

- [2] Child was born to Mother on April 21, 2020. Both Mother and Father (collectively, “Parents”) are intellectually impaired and have been diagnosed with developmental disabilities. Mother functions at the level of an eight-and-a-half-year-old child and has always had problems with home maintenance and personal hygiene.
- [3] On April 22, 2020, DCS received a report alleging that Child was a victim of neglect in that Mother had received poor prenatal care, that Mother had lice and active bedbugs while in the hospital where she had given birth, that Mother and Father had poor hygiene, and that the conditions of their home were poor. That same day, DCS family case manager Raejean Foster (“FCM Foster”) visited the hospital and observed that Mother was being treated for lice and that hospital staff had placed sticky mats around her room to trap the bedbugs she had brought from her home. FCM Foster learned that Parents had both been required to bathe at the hospital due to poor hygiene upon arrival and had been instructed to remove the baby supply bag that they had brought to the hospital because it contained bedbugs. In addition, Mother was unable to change Child’s dirty diaper and wipe Child appropriately at the hospital.
- [4] At the time of Child’s birth, Parents lived with the paternal grandfather, and when FCM Foster visited the home, she noticed that the porch was covered in trash and clutter. FCM Foster put on a hazmat suit to enter the home, and inside she observed animals and animal feces all over the home, roaches in Child’s bassinet, human feces in the toilet, holes in the floor, and extreme

clutter. DCS told Parents to find alternative housing where they would live with Child, but they were unable to do so.

[5] On April 23, 2020, DCS removed Child from Parents' care due to a lack of safe and appropriate housing and Parents' inability to care for Child. The next day, DCS filed a CHINS petition and placed Child with a family friend.

[6] In May of 2020, Parents relocated to Jasper with financial assistance from Father's family. Parents were offered services during the summer of 2020. At the time, they refused to participate in individual therapy and couple's counseling even though they had requested that service. They initially attended parent aide sessions and visitation, but their participation became inconsistent after about a month.

[7] On August 24, 2020, Parents admitted that Child was a CHINS. After Parents agreed to receive intensive services to maintain the safety of their home, Child was returned to Parents' care. Parents relied on Child's former foster mother for childcare, and between late August and early December of 2020, Child spent twenty-one days at her former foster parents' home. Parents also relied on the former foster mother to transport Child and to provide diapers, food, and wipes for Child. During the in-home placement, the former foster mother noticed that roaches crawled out of Child's diaper bag and that there were bedbugs on her jacket.

[8] Mother also demonstrated that she did not understand Child's nutritional needs. On one occasion, the former foster mother observed that Child appeared

lethargic, and Mother informed her that she had only fed Child a few ounces of formula over the course of several days. On another occasion, Mother fed Child mangoes despite previously being told that Child is allergic to the fruit.

[9] Also during the in-home placement, Parents failed to maintain the sanitary conditions in their home. Service providers observed old food; clutter; excessive amounts of trash; and insects, including bedbugs, in the home. In an attempt to help Parents maintain a suitable home, service providers gave Parents cleaning supplies and created a chart with chores to keep them organized. Parents also received trash stickers to help with the cost of trash removal.

[10] Parents also invited an unapproved individual to stay with them and were not honest about this with DCS. In fact, Mother was often dishonest, and when confronted about her dishonesty, Mother would explode in anger.

[11] On December 2, 2020, the court adjudicated Child a CHINS. The next day, DCS filed a petition to again remove Child from Parents' care due to the unsafe conditions of their home, Parents' imminent eviction, and Parents' refusal to meet with DCS personnel and service providers. The juvenile court granted the petition to remove Child on December 7, 2020, and Child was again placed with the same kinship care family as before. On January 25, 2021, the court entered a dispositional order, requiring Parents, among other things, to find and maintain suitable housing, meet with medical and psychiatric personnel and

take all prescribed medications as directed, and secure and maintain a legal and stable source of employment.

- [12] Following Child's second removal, Parents did not meet with the parent-aide service provider regularly, demonstrate an ability to maintain safe and stable housing, or visit with Child regularly. Mother admitted that she had missed visits because she had not woken up in time. When she did attend visits with Child, Mother was unable to express affection to Child and did not progress with her childcare skills. Mother was scheduled to attend weekly parent-aide sessions, but only attended five sessions between May and October of 2021. Further, while the overall condition of the maternal grandfather's home had improved since Child's initial removal, the cleanliness of the home remained inconsistent despite ongoing attempts by service providers to provide education on hygiene and home maintenance. Parents separated in December of 2021, and in February of 2022, Mother moved to Evansville and lived with friends, both of whom had been the subject of substantiated DCS investigations.
- [13] Mother also failed to maintain steady employment, with her longest period of employment lasting only three months. At one point, Mother told DCS that she had worked at McDonalds for several months, but DCS learned that Mother had only worked there for one day. Mother also said that she had worked at Blimpie's, but she was unable to provide pay stubs or other proof of employment and staff at Blimpie's told DCS that Mother had never been hired. At the time of the factfinding hearing, Mother was working at Home Depot in Evansville, but was in the process of losing her job due to lack of attendance.

[14] During the evidentiary hearing, none of the service providers recommended that Child be returned to Mother's care, and Child's court-appointed special advocate opined that adoption by the foster family was in Child's best interests. In light of the evidence before the court, the juvenile court made over 130 factual findings and concluded that (1) Child had been removed from Mother's care for fifteen of the most recent twenty-two months, (2) there was a reasonable probability that the conditions which resulted in Child's removal and continued placement outside the home would not be remedied, (3) there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Child's well-being, (4) termination of parental rights was in Child's best interests, and (5) there was a satisfactory plan for the care and treatment of Child, that being adoption. Given its extensive factual findings and conclusions, the juvenile court entered an order terminating Mother's parental rights to Child on May 18, 2022.

## Discussion and Decision

[15] "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. Off. of Family & Children*, 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.*

[16] 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.*

[17] 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. Sufficiency of the Evidence

[18] In challenging the juvenile court's order, Mother 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....
  - (iii) The child has been removed from the parent ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services....
- (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). Mother argues that the evidence is insufficient to prove subsection (B)(i).<sup>2</sup>

[19] 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.

[20] The juvenile court concluded both that there is a reasonable probability that (1) the conditions that resulted in the child's removal will not be remedied and (2) the continuation of the parent-child relationship posed a threat to Child's well-being. Mother does not challenge the second conclusion, which alone is sufficient to prove that termination of Mother's parental rights was justified under Indiana Code section 31-35-2-4(b)(2)(B). Nevertheless, we will address Mother's claim regarding whether the evidence is sufficient to prove that there

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<sup>2</sup> Although Mother asserts in the portion of her brief setting forth the issues presented on appeal that she is challenging the sufficiency of the evidence to prove that termination of Mother's parental rights is in Child's best interests, Mother does not develop any argument regarding the sufficiency of the evidence to prove that termination of Mother's parental rights is in Child's best interests. As such, we need not address it further as Mother has waived her argument by failing to present the court with cogent argument in support of her assertion. *See Ind. App. R. 46(A)(8)(a)* ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.")

is a reasonable probability that the conditions that resulted in Child's removal from her care will not be remedied.

[21] When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In so doing, the trial court may consider the parent's response to the services offered through the department of child services. A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability that the parent's behavior will not change.

*In re B.J.*, 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008) (internal citations and quotations omitted), *trans. denied*.

[22] The juvenile court made over 120 factual findings in support of its determination that the conditions that led to Child's removal from Mother's care would not be remedied. Specifically, the juvenile court's unchallenged findings demonstrate that although Mother's home would occasionally be suitable, it would then deteriorate to deplorable conditions, including roaches and bedbugs being found in and on Mother's clothing and Child's belongings. Mother also allowed unknown individuals to reside with her or chose to reside

with individuals against whom DCS had previously substantiated cases of child neglect. Issues with Mother's personal hygiene also persisted.

[23] In addition, Mother was not able to maintain steady employment and, on at least two occasions, lied to DCS regarding her employment status. Although Mother was employed at the time of the factfinding hearing, the record revealed that she was in the process of losing that job, in part because she failed to arrive to work on time. In addition, Mother did not successfully complete services aimed at helping her to maintain steady housing and employment or at teaching her how to adequately care for Child. Mother also missed meetings with service providers because she was unwilling or unable to get out of bed in time for the meetings. Mother failed to consistently attend visitation with Child and failed to appropriately feed Child, on occasions failing to feed Child enough or feeding Child foods to which Child was allergic. For these reasons, the juvenile court determined that "Mother has demonstrated an inability to maintain consistency and stability for more than a month at a time during the two (2) years the child has been removed from her care." Appellant's App. Vol. II p. 30. 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).

[24] Rather than challenging the juvenile court's findings, Mother points to evidence which she claims indicates that she could maintain suitable housing for a short period of time and had behaved appropriately around Child. Mother's claim on

appeal, however, 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.

## II. Mother's Due Process Claims

[25] Mother alternatively claims that she was denied due process because DCS failed to provide her with appropriate services. DCS asserts that Mother has waived her due-process argument on appeal because she did not raise it before the trial court. “[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal.” *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016); see also *Hite v. Vanderburgh Cnty. Off. of Family & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006) (“It is well established that we may consider a party’s constitutional claim waived when it is raised for the first time on appeal.”); *McBride v. Monroe Cnty. Off. of Family & Children*, 798 N.E.2d 185, 194–95 (Ind. Ct. App. 2003) (providing that the mother waived her procedural due process claims by raising them for the first time on appeal).

[26] On appeal, Mother does not point to any objection made on her behalf to the services offered by DCS, but rather merely points to one service provider’s opinion that if Child were to be returned to Mother’s care, due to Mother’s mental deficiencies, ongoing specific instructions and services would need to be provided to Mother. Mother then vaguely asserts that she was only provided with the “customary provision of services in the customary manner.” Appellant’s Br. p. 24. Our review of the record reveals that Mother did not

object at the evidentiary hearing to the termination of her parental rights on the basis that DCS had failed to provide her with adequate services aimed at reunification. As such, Mother's due process argument is waived on appeal.

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

Pyle, J., and Altice, J., concur.