

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: D.M. (Minor Child),

K.M. (Mother),

Appellant,

v.

Indiana Department of Child
Services,

Appellee.

April 28, 2023

Court of Appeals Case No.
22A-JT-2419

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause No.
34C01-2206-JT-210

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] K.M. (“Mother”) appeals the involuntary termination of her parental rights with respect to her child, D.M. (“Child”). We affirm.

Facts and Procedural History

- [2] Child was born on August 4, 2020. DCS received a report that Mother had been released from incarceration to give birth and that she used cocaine and marijuana during the pregnancy, drug screens administered to Mother and Child returned positive for cocaine, and Child was placed in foster care. On August 26, 2020, the Indiana Department of Child Services (“DCS”) alleged Child was a child in need of services (“CHINS”). It alleged Mother submitted to drug screens on August 11, 14, and 19, 2020, which returned positive for cocaine. It also alleged Mother had an eviction hearing and agreed to vacate her residence by August 27, 2020.
- [3] The court found Child was a CHINS and, on December 3, 2020, issued a dispositional order. Among other requirements, the dispositional order required Mother to maintain stable housing, secure a stable source of income, not consume controlled substances, obey the law, submit to drug screens, attend all scheduled visitations, and complete parenting, psychological, and substance abuse assessments and follow all recommendations. In August 2021, DCS filed a petition to terminate Mother’s parental rights. Mother made significant progress in her recovery from drugs, and in April 2022, DCS dismissed the

petition. The court held a review hearing on May 23, 2022. Mother had relapsed and had positive drug screens for THC, codeine, and cocaine.

[4] On June 13, 2022, DCS filed another petition to terminate Mother's parental rights. Mother tested positive for cocaine on August 11 and 15, 2022. On August 22, 2022, the court held a factfinding hearing at which it heard testimony from DCS Family Case Manager Rebekah Ables, Case Manager Emily Lytle-Spencer, Mother, Foster Care Manager Jennifer Hatfield, DCS Family Case Manager Jennifer Miles ("FCM Miles"), and Court Appointed Special Advocate Lucretia Olive ("CASA Olive"). When asked about Mother's plan for supervising Child if he were returned to her, Lytle-Spencer testified "we had discussed using childcare during the day because she [was] working nights," and when asked "[h]ow is she taking advantage of her time to get that childcare in order," she answered "she reached [out] to several childcare facilities, she was on waitlists but at a [] recent [family team meeting] she said she was not going to pursue the childcare until he was closer to being returned to her care." Transcript Volume II at 11.

[5] On September 19, 2022, the trial court entered an order terminating Mother's parental rights. The court found that, in the review period prior to the May 23, 2022 hearing, DCS had implemented steps to place Child with Mother, Mother began to sabotage her own progress, Child was found to be unsupervised with the stove left burning during a visit in the home with Mother, and Mother admitted she left Child unattended for a significant amount of time while she slept in a different room. It found that, around the same time, Mother relapsed

and had multiple positive drug screens. The court found that, during the review period preceding the factfinding hearing on the termination petition, Mother's substance abuse continued and worsened, that despite the looming risk of termination she failed to work in any significant way to remedy the reasons Child remained out of her care, her drug screens indicated she had fully relapsed into active addiction to cocaine and other substances, her interest in visiting Child began to wane, she continued to cancel visits and request that visits be shortened, and her words and actions showed a steep regression to the very same circumstances which led to Child's removal. It found that it had never been safe or appropriate to return Child to Mother's care.

[6] The court found Mother had not remedied the reasons for Child's removal, Child tested positive for cocaine at a fragile age, and Mother was suffering from untreated mental health problems including depression for which she self-medicated. It found that, for a time after the first termination petition was filed, Mother made progress, maintained housing and sobriety, and increased the time she spent with Child. It found that, unfortunately, Mother's improvements and participation declined, in late Spring of 2022 she began testing presumptively positive for illegal substances, the frequency of the positive screens indicated she had relapsed, her mental health issues and addictive behaviors resurfaced, and DCS and its providers tried to engage her in recovery. It found she was offered inpatient rehabilitation but declined to take advantage of the resource, she stated that she knew what she needed to do and could do it without assistance, her subsequent drug screens and declining

participation showed she chose not to rectify her position or needed help but refused to accept assistance, and her situation was virtually identical to her situation two years earlier when DCS removed Child. It found Child had been in his foster home for nearly two years, it was the only stable home he had known, his bond with the foster parents is clear, and their love for him was consistent and stable.

[7] The court found the CHINS case “began with Mother’s substance abuse overtaking her own life,” “[t]oday, little has changed,” “[t]he progress and potential Mother once embraced have been eradicated by the decline of her own health and stability,” she “continues to largely reject the services and assistance best suited to remedy her current relapse and spiraling mental health, namely in patient care and rehabilitation,” she “is unwilling to fully accept change in her behaviors and lifestyle, and would prefer the Court prolong her CHINS case and risk further trauma to the Child,” and, “[a]t this point, it would be an injustice, and dangerous, to further subject [Child] to the habitual and deleterious behaviors of his parent.” Appellant’s Appendix Volume II at 38. It concluded DCS has shown by clear and convincing evidence that there is a reasonable probability the conditions that resulted in Child’s removal, including “Mother’s inability to demonstrate long term sobriety, to obey the law, to engage in healthy and supportive relationships, to maintain consistent personal stability through sobriety and mental health treatment, and to safely parent her Child and prioritize his needs over her own,” will not be remedied. *Id.* at 39. It further concluded that continuation of the parent-child relationship

poses a threat to Child’s well-being, Mother has rejected further outreach and services that would meaningfully address her substance abuse and instability, she is unwilling to take the steps necessary to stabilize her life and mental health, her actions “prove she remains firmly entrenched in a cycle of addiction and deteriorating mental health,” “[h]er inconsistent presence in the life of her Child, and the inconsistent nature of her recovery and mental health, pose a clear threat to the long term health and well-being of her Child,” and “[t]o this day [Mother] continues in her unstable lifestyle.” *Id.* at 40. The court also found that termination is in Child’s best interest and there is a satisfactory plan for Child following termination which is adoption.

Discussion

- [8] Mother argues the trial court erred in terminating her parental rights. She argues the testimony “clearly indicated that it was in the children’s [sic] best interest for the parents [sic] to be given additional time to comply with the dispositional decree and be returned to the care and custody of Mother.” Appellant’s Brief at 11. She argues that she regularly engaged in services and visitation throughout the CHINS matter, she was employed and worked a night shift, and she was in the process of obtaining childcare for when Child was returned to her. She also argues that, with the right services, she is capable of sobriety and she should be given time to complete additional services, including Family Recovery Court, and rectify her most recent relapse.
- [9] In order to terminate a parent-child relationship, DCS is required to allege and prove, 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). If the court finds the allegations in a petition are true, it shall terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[10] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency

of the evidence.” *Id.* at 640. In addressing the conditions resulting in a child’s removal, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against habitual patterns of conduct. *Id.* at 643. A court may consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent’s response to those services. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). Where improvements are merely temporary, the court may reasonably find under the circumstances that the problematic situation will not improve. *Id.*

[11] To the extent Mother does not challenge the court’s findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[12] The court found Mother did not remedy the reasons for Child’s removal and, while she made initial progress, she relapsed with respect to her drug use and her situation was virtually identical to the situation at the time of removal. It found Child was found unsupervised with the stove left burning and Mother admitted she left Child unattended for a significant time while she slept in a different room. It found substance abuse had overtaken Mother’s life, she largely rejected services, and it would be dangerous to subject Child to her behaviors. It also found Mother rejected services which would meaningfully

address her substance abuse and remained firmly entrenched in a cycle of addiction and deteriorating mental health. The record reveals that DCS presented testimony regarding Mother's substance abuse, her initial progress following DCS's involvement, her relapse and the extent of her continued drug use, including the positive tests for cocaine on August 11 and 15, 2022, days before the August 22, 2022 hearing, her mental health, and the extent of her visits with Child and engagement in services. FCM Miles testified "we're seeing more and more positive drug screens," Mother was "cutting visits almost in half" and "cancelling visits," and "I think [Mother] has almost given up." Transcript Volume II at 55. We conclude clear and convincing evidence supports the trial court's determinations that there is a reasonable probability the conditions which resulted in Child's placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to Child's well-being.

[13] In determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987

N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*. The court found that, over the course of two years without Child, Mother has not broken the cycles of dependency, toxic relationships, criminal behavior, incarcerations, and mental instability. It found that “there is nothing to show that this time will be different,” “[t]he failure to terminate the relationship will deny the Child the stability and permanence to which he is entitled, and which has too long been denied,” and it is “in the Child’s best interests to have permanency, not perpetual wardship and uncertainty in his life.” Appellant’s Appendix Volume II at 42. It also found that Child’s placement has provided a home in which he has developed free from trauma and neglect and the foster home has provided the only example of stability and healthy love Child has ever known. It found: “In the truest sense of the word, that placement is his home.” *Id.* at 39. Further, foster care manager Hatfield, FCM Miles, and CASA Olive indicated they believed termination of Mother’s parental rights was in Child’s best interest. Based on the totality of the evidence, we conclude the trial court’s determination that termination is in Child’s best interest is supported by clear and convincing evidence.

Conclusion

[14] This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’—that which leaves us with a definite and firm conviction that a mistake has been made.” *Egley v. Blackford Cnty. Dep’t of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here.

[15] For the foregoing reasons, we affirm the trial court.

[16] **Affirmed.**

Bailey, J., and Weissmann, J., concur.