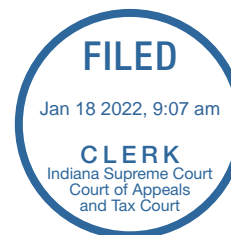


MEMORANDUM DECISION

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

In the Termination of the Parent
Child Relationship of:

C.R. & K.R. (Minor Children)

And

L.R. (Father) & S.R. (Mother),
Appellant-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner,

January 18, 2022

Court of Appeals Case No.
21A-JT-1413

Appeal from the Randolph Circuit
Court

The Honorable Jay Toney, Judge

Trial Court Cause Nos.
68C01-2003-JT-73
68C01-2003-JT-74

Robb, Judge.

Case Summary and Issue

[1] L.R. (“Father”) and S.R. (“Mother”) (collectively, “Parents”) are the parents of C.R. and K.R. (“Children”). In August 2018, the Children were each adjudicated a child in need of services (“CHINS”) and in March 2020, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Parents’ parental rights. On June 17, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Parents’ parental rights. Parents now individually appeal, raising multiple issues which we consolidate and restate as: (1) whether certain findings of fact made by the juvenile court were erroneous; and (2) whether sufficient evidence supported the termination of their parental rights. Concluding that any error in the juvenile court’s findings is harmless and that clear and convincing evidence supports the termination, we affirm.

Facts and Procedural History

[2] In early March 2018, the Children, both under the age of two, were left overnight with a babysitter. The babysitter was expected to return the Children the following day, but she refused to return them. Parents did not immediately attempt to retrieve the Children and after multiple days, DCS intervened and took the Children into their custody. The babysitter was arrested and tested positive for methamphetamine. At the time of their removal, the Children were

unhealthy and developmentally behind. DCS evaluated the Children and recommended that they not be returned to Parents' care as Parents' home was unsafe.¹ Instead, the Children were placed into foster care where they have remained ever since.

[3] On March 5, 2018, DCS filed a verified petition alleging the Children to be CHINS. DCS alleged that the Children's condition was impaired or endangered as a result of Parents' neglect and inability or refusal to supply the Children with necessary shelter or supervision. Further, the Children were not receiving necessary medical care for their developmental delays and recurring health concerns. In August 2018, Parents entered an admission and the Children were adjudicated CHINS.

[4] In November 2018, the juvenile court conducted a dispositional hearing. The juvenile court ordered Parents to, among other things: enroll in any program recommended by DCS and keep all appointments; maintain suitable and safe housing; refrain from consuming any illegal, controlled substance or unprescribed medications; participate in and successfully complete an intensive family preservation program; engage in home-based counseling and demonstrate positive changes in their lives; complete a parenting assessment

¹ In November 2017, Parents entered an informal adjustment with DCS due to unsafe conditions in the home. At the time of the Children's removal, the informal adjustment had failed because the home remained unsafe. The home lacked basic utilities, the living conditions were poor, feces covered the floor, and multiple other children, not subject to this proceeding, were living in the home. Additionally, Parents had failed to cooperate with DCS and the Children were being left in the care of others, in addition to the babysitter mentioned above, for extended periods of time.

and all subsequent recommendations including parenting classes, home-based counseling, and other counseling services; complete a substance abuse assessment and follow all treatment recommendations; submit to random drug screens; complete a psychological evaluation and successfully complete any recommendations; meet all personal medical and mental health needs; and attend all visits. Mother was also ordered to meet with medical/psychiatric personnel and take all prescribed medications as ordered. The permanency plan was reunification.

[5] Between December 2018 and October 2019, Parents were found mostly compliant with the case plan, however, Parents failed to resolve the home conditions and engage in many services. Specifically, home conditions fluctuated between acceptable and very cluttered, dirty, and unsafe. Parents failed to apply lessons learned in home-based services regarding home upkeep and budgeting.

[6] Although Parents regularly attended visits, they were not fully compliant with visitations, sometimes cancelling or failing to appear. When Parents did attend visits, Mother disengaged and at one point told DCS that she did not want to be alone with the Children, she could not handle the Children by herself, and she no longer wanted visits. Although Father performed better during visits, he was unable to connect with the Children or develop a significant relationship. Parents had to be reminded to supervise the Children or follow after the Children when they left the room or followed others out the door. Parents were

never granted unsupervised visitations and their visits were reduced from two per week to one per week due to non-compliance.

[7] Further, Parents refused to engage in parenting assessments as directed by DCS or counseling despite open referrals. Although Parents submitted to psychological evaluations, they refused to follow any recommendations. Specifically, Parents refused therapy and Mother refused medication for her diagnosed Bi-Polar disorder. DCS attempted to encourage Mother to take the medication, but Mother would not engage the topic. Mother also struggled with substance abuse and repeatedly tested positive for opioids.²

[8] In November 2019, the permanency plan was changed from reunification to adoption with a concurrent plan for reunification. Following the changed permanency plan, Parents' compliance remained inconsistent. Home conditions were unsafe, including conditions both inside and outside of the house, and Parents continued to show an inability to supervise and connect with the Children during visits. Parents remained noncompliant with services offered and would not cooperate with DCS unless directed by their attorney. Mother continued to abuse substances and Father provided Mother with transportation and money to purchase drugs. Father also spent significant time making excuses to DCS for Mother's behavior.

² During the CHINS proceedings, Mother tested positive for opioids and/or THC on twenty-one of forty-six drug screens.

[9] On March 24, 2020, DCS filed a verified petition to involuntarily terminate Parents' parental rights. A fact-finding hearing began on July 22, 2020, and due to a number of continuances, was concluded on March 11, 2021. At the hearing, DCS offered extensive testimony regarding Parents' neglect of the Children,³ Children's removal, and Parents' non-compliance with the Children's case plan.

[10] Homebased caseworker Karla Eberle opined that Parents spent two years not complying with the services offered. She indicated that recommendations were not followed, home conditions would improve and then fall apart, and ultimately, that conditions never changed throughout the duration of the CHINS proceedings. Eberle believed that it would be a "struggle" for Parents to remedy conditions and provide a safe home for the Children. Transcript of Evidence, Volume 2 at 181. Eberle, Family Case Manager ("FCM") Stephanie Leffel, and FCM Brittany Duffer each indicated that termination of parental rights was in the best interest of the Children.

[11] The Children's foster father testified regarding the Children's current condition. He indicated that the Children were well adjusted and up to date on their developmental milestones. He also testified regarding the impact visitations had on the Children. The Children were cautious and anxious prior to visits with Parents. During in-person visits, C.R., who was potty-trained, would have

³ Evidence was also provided indicating that DCS had received numerous reports of neglect from members of the community regarding these and the other children living with Parents dating back to 2014.

accidents. During virtual visits, the Children would attempt to hide, run, or turn off the computer. After visits, the Children would be clingy, whiney, struggle to communicate, and refuse to cooperate. C.R. would pick at her skin until it bled and reverted back to the use of diapers. K.R. would become agitated and bang his head against objects. The foster father testified that when visits did not occur for any length of time, these issues would disappear and that the Children did not exhibit the same behaviors when around other people. FCMs Leffel and Duffer echoed the foster father's testimony.

[12] In their defense, Parents offered testimony from Father. He testified that he has been compliant with the Children's case plan and is now in therapy, voluntarily entered alcohol abuse treatment, and has requested help with anger management. He articulated that Mother is taking her medications, Parents have completed a parenting assessment, and the family is in therapy. However, these changes did not begin until after the first date of the fact-finding hearing in July 2020 and some were as recent as two- and one-half weeks prior to his March 2021 testimony. When asked why it had taken so long to engage in services, he indicated that DCS had not entered referrals with the service providers. However, FCM Duffer testified that numerous referrals had been open throughout the case.⁴ Further, she indicated that other referrals had not been made until after the fact-finding hearing began because Parents had

⁴ The juvenile court found that forty-four referrals had been open for the family since November 2017.

outright refused specific services until the fact-finding hearing started in July 2020.

- [13] On June 17, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Parents' parental rights. Parents now appeal.

Discussion and Decision

I. Standard of Review

- [14] The right of a parent to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *S.S. v. Ind. Dep't of Child Servs.*, 120 N.E.3d 605, 609 (Ind. Ct. App. 2019). Nevertheless, the law provides for termination of these constitutionally protected rights when parents are unable or unwilling to meet their parental responsibilities. *Id.* When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that support the judgment of the juvenile court. *Id.*

- [15] The juvenile court entered findings of fact and conclusions of law as required by Indiana Code section 31-35-2-8(c). This court will not set aside the decision unless it is clearly erroneous. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In determining whether a decision is clearly erroneous, we apply a two-tiered standard of review. *S.S.*, 120 N.E.3d at 609. First, we must decide whether the

evidence supports the findings, and second, whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.* A judgment is clearly erroneous if a review of the record leaves us with a firm conviction that a mistake has been made. *In re J.W.*, 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), *trans. denied.*

II. Findings of Fact

[16] Mother, individually, challenges five of the juvenile court's findings of fact as unsupported by the evidence.⁵ Specifically, Mother challenges findings 14, 16, 17, 46, and 53.⁶ We accept the remaining unchallenged findings as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[17] Findings 14 and 16 indicate that in March and October 2019, Parents were found to be mostly compliant with the Children's case plan. *See* Order on Fact-Finding Hearing at 2. Meanwhile, finding 53 indicates that Parents have made minimal progress on the underlying CHINS case. *See id.* at 5. Mother argues that Parents cannot simultaneously be mostly compliant and failing to make progress on the Children's case plan. Therefore, Mother argues, at least one of these findings must be clearly erroneous. However, findings 14 and 16 are

⁵ Father does not challenge any of the juvenile court's findings.

⁶ Mother also challenges findings 54 through 56. However, these findings are the juvenile court's conclusions of law as to whether DCS proved the elements necessary for termination of Parents' parental rights. We address these conclusions of law independently below.

referencing compliance as of twenty-four and seventeen months prior to the conclusion of the fact-finding hearing. Meanwhile, finding 53 is an overall assessment of Parents' compliance as of the end of fact-finding hearing.

Although it is true that at review hearings in March and October 2019, Parents were found to be mostly compliant with the CHINS proceedings, extensive testimony was presented at the subsequent fact-finding hearing highlighting that Parents never progressed further. Indeed, visits never improved to unsupervised, visit time was reduced because Parents failed to comply, Parents failed to fully engage in services, Mother never addressed her drug problem, Father enabled Mother's drug problem, and Mother refused to seek help with her Bi-Polar disorder. These findings can co-exist and are supported by the record.

[18] Finding 17 provides: "The Court further changed the permanency plan for the Children from Adoption, with a concurrent plan of Reunification to only Adoption, pursuant to the Order on Periodic Case Review filed July 8, 2020, in the underlying CHINS cases." *Id.* at 2. Mother argues that nothing in the record verifies the information in the July 2020 order. DCS confirms that Mother is correct. *See* Consolidated Brief of Appellee Indiana Department of Child Services at 37. However, Mother does not contend that the plan was not in fact changed and other evidence in the record supports the finding that the permanency plan had changed to adoption only at some point. At the fact-finding hearing, FCM Leffel and FCM Duffer each testified that it was in the Children's best interest to be adopted. *See* Tr., Vol. 2 at 57, 107-08. FCM

Duffer further testified that it was DCS' intention to pursue adoption. *See id.* at 132. Therefore, we conclude finding 17 did not prejudice Parents and results in harmless error. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (indicating that an erroneous finding did not prejudice the mother because it was surplusage to evidence found in the record), *trans. denied.*

[19] Finding 46 provides: “The Department of Child Services hotline has received over fifty (50) reports, from different members of the community, regarding abuse/neglect of the children who remain in the home with Parents.” *See* Order on Fact-Finding at 5. Mother does not argue that there is not evidence of these reports in the record. In fact, the existence of these reports was testified to multiple times during the fact-finding hearing. *See* Tr., Vol. 2 at 33, 116, 207, and 212; *see also* Tr., Vol. 3 at 53-55. Instead, Mother argues that this finding is prejudicial because the vast majority of these reports are unsubstantiated. Although Mother is correct that many of these claims were unsubstantiated, there is evidence in the record showing that Parents have been the subject of numerous substantiated reports of neglect of the children living in their home since 2014. As a result, we conclude that Parents were not prejudiced by this finding and any resulting error is harmless. When an erroneous finding does not call into question the court’s conclusion in light of the other evidence presented and findings made, we will not reverse. *Matter of A.C.B.*, 598 N.E.2d 570, 573-74 (Ind. Ct. App. 1992).

[20] Ultimately, Mother’s argument asks this court to reweigh evidence which we will not do. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 149 (Ind.

2005). We conclude there is evidence to support findings 14, 16, and 53. To the extent that findings 17 and 46 are erroneous, they did not prejudice Parents as they are not the sole basis for the juvenile court's ultimate determination to terminate Parents' parental rights and therefore, any error is harmless. As a result, we now turn to Parents' challenge to the sufficiency of the juvenile court's conclusions.

III. Statutory Framework

[21] The involuntary termination of parental rights is designed as a last resort when all other reasonable efforts have failed. *S.S.*, 120 N.E.3d at 609. To terminate parental rights, Indiana Code section 31-35-2-4(b)(2) provides the State must prove, in relevant part:

(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 and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

[22] The State must prove each element by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231; *see also* Ind. Code § 31-34-12-2. Because the provisions of Indiana Code section 31-35-2-4(b)(2)(B) are written in the disjunctive, DCS need only prove one of those statutory elements. *S.S.*, 120 N.E.3d at 610. If the juvenile court finds the allegations are true, the parent-child relationship shall be terminated. Ind. Code § 31-35-2-8(a).

[23] On appeal, Parents challenge the juvenile court's determination that there is reasonable probability that conditions that resulted in the Children's removal or the reasons for placement outside the home of Parents will not be remedied. Parents also argue that the termination is not in the best interests of the Children. We address each argument in turn.

A. Remedy of Conditions Resulting in Removal

- [24] To determine whether the conditions resulting in a child's removal will not be remedied, we conduct a two-step analysis. *In re E.M.*, 4 N.E.3d at 642-43. First, we identify the conditions that led to removal. *Id.* at 643. Second, we determine whether a reasonable probability exists that those conditions will not be remedied. *Id.*
- [25] When considering whether there is a reasonable probability that the conditions will not be remedied, we evaluate a parent's fitness as of the time of the termination proceeding while taking into account evidence of changed circumstances. *S.S.*, 120 N.E.3d at 610. However, habitual patterns of conduct and engagement in services offered by DCS may also be considered. *Id.* Ultimately, past patterns may be considered the best predictor of future behavior. *In re E.M.*, 4 N.E.3d at 643.
- [26] Here, the Children were removed from Parents' care in March 2018 due to unsafe living conditions. Parents' home exhibited poor living conditions, had feces on the floor, and lacked basic utilities. Since March 2018, the record demonstrates that Parents' home has continued to be in varying states of disarray. Although there have been times when the home has improved, it has never stayed that way. Where there are only temporary improvements and a pattern of conduct shows no overall progress, the juvenile court may conclude that problematic conditions will not improve. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

Eberle, who had been helping Parents with home organization and cleaning since 2018, testified that the home was usually very cluttered, dirty, and dangerous. She indicated that trash and food would be strewn about the home, medicine bottles would be on the floor, and the occupants of the home would eat on the floor. Home conditions were like this “nearly every time” Eberle was present. Tr., Vol. 2 at 163. Such an habitual inability to maintain a safe and suitable home environment is not indicative of an ability to remedy the conditions that led to the Children’s removal.

[27] Additionally, the Children were also removed, in part, due to neglect. Parents would leave the Children in the custody of others for extended periods of time. Indeed, at the time the Children were taken into DCS’ custody, they were not being cared for by Parents. Rather, Parents had left the Children for several days with a babysitter who refused to return the Children and subsequently tested positive for methamphetamine. Nevertheless, since 2018, Parents have failed to exhibit signs that such neglect might be remedied in the future. During supervised visits Parents struggled to both supervise and engage with the Children. Both Parents had to be regularly reminded to pay closer attention to the Children and follow the Children if they attempted to leave the room or in one instance, wandered into a street. Additionally, Mother often refused to engage with the Children during visits. In fact, at one point she indicated that she did not want to be alone with the Children and could not care for the Children on her own. Similarly, it was determined that Father was incapable of developing a significant relationship with the Children. This two-year pattern

of failing to connect with and supervise the Children in a controlled environment is not indicative of an ability to provide a safe, nurturing home.

[28] In addition to reviewing the initial reasons for removal we must also examine those factors that have led to continued placement outside of the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013), *trans. denied*. Here, the record is littered with Parents' failure or outright refusal to engage in services and Mother's unwillingness to seek treatment for her mental health issues. Further, there is nothing to suggest that Mother ever addressed her drug problem or that Father stopped enabling her destructive behavior. Although Father argues that circumstances have changed and Parents are now engaged in services to rectify their problems, the record indicates these changes were not made until after the first day of the fact-finding hearing in July 2020. The time to take corrective action is early in the CHINS proceedings, *Prince v. Dep't Child Servs.*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007), and efforts made right before termination may be disregarded in light of prior conduct, *K.T.K.*, 989 N.E.2d at 1234. Parents spent two years either not engaging or refusing to participate in several services designed to bring the Children home. The time to act began when the Children were removed, not weeks before the termination of parental rights.

[29] Therefore, we agree with the juvenile court that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions resulting in the Children’s removal will not be remedied.⁷

B. Best Interests of the Children

[30] Parents next contend that there was insufficient evidence to show that the termination of their parental rights is in the best interests of the Children. A determination of the best interests of a child is not based merely on the evidence identified by DCS, but instead is based on the totality of the circumstances. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. In making such a determination, the juvenile court must subordinate the interests of the parents to those of the child. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. And a child has a paramount interest in permanency. *K.T.K.*, 989 N.E.2d at 1235. Indeed, courts “need not wait until the child is irreversibly harmed such that the child’s physical, mental and social development is permanently impaired before terminating the parent-child relationship.” *Id.*

⁷ Parents also argue the juvenile court erred in finding that the continuation of the parent-child relationship poses a threat to the Children's well-being. However, as noted above, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires only one element be proven to terminate Parents’ parental rights. See *In re L.S.*, 717 N.E.2d 204, 209 (Ind. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). Having concluded sufficient evidence exists to show a reasonable probability the conditions resulting in the Children’s removal will not be remedied, we need not also determine whether the parent-child relationship poses a threat to the Children's well-being.

[31] The Children have been removed from Parents' care since March 2018. However, Parents have never progressed on the Children's case plan. Although Parents have participated in visitations and recently begun to utilize some services, any improvement observed in their level of engagement did not occur until after the fact-finding hearing on the termination of their parental rights began in June 2020. A two-year pattern of failing to progress on the Children's case plan will not be overlooked simply because recent improvements have been made. Forcing the Children to continue to wait for permanency while Parents attempt to make the necessary improvements to bring the Children home after nearly three years of failing to make similar changes is not in the best interests of the Children.

[32] Further, when DCS first became involved, the Children were unhealthy and developmentally behind. Since their removal, the Children have made significant strides. The Children are now healthy, well adjusted, and up to date on their major developmental milestones. However, when forced to interact with Parents at supervised visits, the Children exhibit behavioral and developmental reversions before, during, and after the visits. Not only do the Children act out, but they engage in self-harm as C.R. picks at her skin until she bleeds and K.R. bangs his head against objects. Additionally, C.R. reverts back to the use of diapers. *See In re A.H.*, 832 N.E.2d at 571 (reasoning that the children's troubling behavior after visiting with their father demonstrates that termination of parental rights is in the best interest of the children). Therefore,

we cannot say that the Children's response to visitations with Parents demonstrates that a continued parent-child relationship is in their best interests.

[33] Finally, testimony from the FCM combined with evidence that conditions resulting in the placement outside the home will not be remedied, is sufficient to show that termination of the parent-child relationship is in a child's best interests. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*. Here, FCMs Leffel and Duffer as well as homebased caseworker, Eberle, testified that termination is in the Children's best interests and, as detailed above, the conditions that led to the Children's removal are not likely to be remedied. Therefore, the totality of the evidence supports the juvenile court's judgment that termination of the parent-child relationship is in the Children's best interests.⁸

Conclusion

[34] We conclude that the majority of the challenged findings of fact are supported by the record and any erroneous findings did not prejudice Parents and thus, result in harmless error. Further, sufficient evidence showed that there is a

⁸ To the extent that Mother argues that termination of Parents' parental rights to the Children is improper because there are other children residing in Parents' home not subject to this proceeding, this court has previously determined that terminating a mother's parental rights to one child while simultaneously maintaining those rights in her other children is not improper when the child in question has been treated separately from his siblings throughout the case. *In re I.A.*, 903 N.E.2d 146, 156 (Ind. Ct. App. 2009). Here, the Children have been treated separately since their removal from Parents' care. The Children were the only children left in the care of the babysitter and were the only children DCS petitioned to be adjudicated CHINS. Parents' other children have never been brought into this case. Therefore, we find Mother's argument unpersuasive.

reasonable probability that the reasons for the Children's removal will not be remedied and that termination of parental rights is in the Children's best interests. Therefore, we conclude the juvenile court's decision was not clearly erroneous, and we affirm.

[35] Affirmed.

Riley, J., and Molter, J., concur.