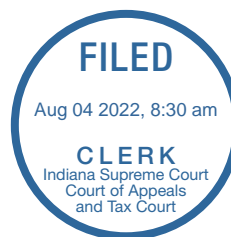


MEMORANDUM DECISION

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:

A.P., Z.T. & M.P. (*Minor Children*)

and

Q.P. (*Mother*),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

August 4, 2022

Court of Appeals Case No.
22A-JT-238

Appeal from the Howard Circuit Court

The Honorable Lynn Murray,
Judge

Trial Court Cause Nos.
34C01-2107-JT-347
34C01-2107-JT-348
34C01-2107-JT-349

Case Summary and Issue

- [1] Q.P. (“Mother”) is the mother of the three children (“Children”) at the heart of this case. The Indiana Department of Child Services (“DCS”) became involved with the family in 2017, and in 2021, the juvenile court terminated Mother’s parental rights to the Children. Mother appeals, raising one issue for our review: whether the juvenile court erred in terminating her parental rights. Concluding the juvenile court did not err because there was clear and convincing evidence of each element required to support termination, we affirm the juvenile court’s orders.

Facts and Procedural History

- [2] A.P., born in 2009, is the biological child of Mother and J.M.¹ Z.T., born in 2013, and M.P., born in 2018, are the biological children of Mother and J.T.²

¹ J.M.’s parental rights were also terminated in this proceeding, but he does not participate in this appeal, and we have omitted facts related to him.

² As with J.M., J.T.’s parental rights were also terminated in the proceeding, but he does not participate in this appeal, and we have omitted facts related to him.

In March 2017, A.P. and Z.T. were removed from Mother's home when DCS investigated a report that Mother was feeling overwhelmed and was using marijuana and methamphetamine. A.P. and Z.T. were adjudicated children in need of services ("CHINS") in May, and although Mother initially continued to struggle, she eventually made enough progress that the CHINS case was closed and the family was reunified in March 2018. M.P. was born in April.

[3] In December, DCS opened an assessment upon receiving a report that Mother's home lacked utilities. While that assessment was ongoing, DCS received a report of alleged sexual abuse of M.P. During the investigation, both Mother and M.P. tested positive for amphetamine and methamphetamine. The Children were removed from Mother's care but returned in February 2019 when Mother agreed to participate in services through an informal adjustment with DCS.

[4] In April, however, a home-based case manager arrived at Mother's home for a scheduled visit and found Mother passed out on the porch. The home-based case manager reported to the DCS family case manager that Mother admitted to having used methamphetamine, the Children were unattended, and home conditions were unacceptable. DCS removed the Children from Mother's care because she was not cooperating with the terms of the informal adjustment and a second CHINS proceeding was initiated. The Children were adjudicated CHINS in July, and in August, the juvenile court entered a dispositional order detailing the requirements of Mother's parental participation plan.

[5] Over the course of the next two years, Mother's compliance with the plan was, at best, inconsistent and the inconsistency ultimately caused the Children's mental health and behaviors to decline. In January 2020, Mother was participating in most services, attending most of her visits with the Children, and maintaining her sobriety. By January 2021, Mother's mental health had declined but she had cancelled or failed to attend many of her therapy appointments, her use of illegal substances had increased, she struggled to meet her living expenses, and she had stopped participating in virtually all services. She had difficulty controlling the Children during visits, and she refused to take responsibility for the family's situation. In July 2021, Mother had made some progress, including submitting clean drug screens, and DCS increased visits with the Children and identified several avenues for Mother to obtain her own housing³ as a prelude to reunification. However, the plan to reunify the family did not come to fruition as Mother did not pursue independent housing and the increased visits were counterproductive to the Children's physical and emotional health. On July 23, DCS filed petitions for involuntary termination of Mother's parental rights to the Children.

³ In early 2021, Mother moved in with a man she met through work. He had a criminal record, and their relationship was volatile. DCS, the juvenile court, and various service providers informed Mother that reunification with her children would not be possible as long as she remained in his home.

[6] Following a hearing, the juvenile court made extremely thorough and thoughtful findings that summarized Mother's course of conduct during the CHINS proceedings:

[Mother was not] able to meaningfully remedy the reasons for the removals of [her children]. Although Mother successfully reunified with her children in the first CHINS case in 2018, she reverted to substance abuse, housing instability, and involvement in abusive relationships that has led to the [children] being outside her care since 2019. . . .

Mother has shown some progress in her addiction to methamphetamines, although she continues to self-medicate by marijuana and alcohol in lieu of needed mental health treatment. Mother's parenting style, even with direct supervision, has caused emotional if not physical harm to her children. Mother has continued to make bad decisions for herself including involvement in abusive relationships. The volatility in her personal relationships has no doubt contributed to her bouts of depression, her inability to maintain total sobriety from drugs and alcohol, and her instability with housing.

* * *

. . . This case ends with little substantive progress having been made on any of the issues that led to removal. If there is a constant in this case, it is that [Mother] exhibit[s] habitual inconsistency and a propensity for poor decision making that is as deleterious to [her] own health and well-being as much as it to [her children's]. In the preceding years, Mother has not broken the cycles of dependency, toxic relationships, housing instability, and mental instability.

Appealed Order (A.P.) at 19-20, ¶¶ 46-47 and at 24, ¶ 59; *see also* Appealed Order (Z.T. and M.P.) at 19-20, ¶¶ 43-44 and at 25, ¶ 56.⁴ The juvenile court made the requisite conclusions that DCS had adequately proved each element for termination, and in particular found DCS had proved by clear and convincing evidence that it is reasonably probable the conditions that led to the removal and continued placement of the Children outside the home would not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of the Children. Accordingly, the juvenile court terminated Mother’s parental rights to all three Children. Mother now appeals.

Discussion and Decision⁵

I. Standard of Review

[7] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). The parent-child relationship is “one of the most valued relationships in our culture[,]” but “parental interests are not absolute

⁴ Because the Children had different fathers, each of whom was also a part of the termination proceedings at the trial court level, the juvenile court issued one order in A.P.’s case addressing Mother’s and J.M.’s course of conduct and one order in Z.T. and M.P.’s cases addressing Mother’s and J.T.’s course of conduct. For all intents and purposes, the juvenile court’s findings as to Mother are the same in both orders.

⁵ Mother’s counsel filed a notice of exclusion of confidential information from public access and identified all volumes of the appendix in this case as confidential. We appreciate the attention to confidentiality issues but remind counsel that juvenile cases are already excluded from public access in their entirety, *see* Access to Court Records Rule 5(A)(1) and Ind. Code § 31-39-1-2, and no notice of exclusion from public access is required in a termination proceeding.

and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights." *In re I.A.*, 934 N.E.3d 1127, 1132 (Ind. 2010). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children, and as such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. But the law provides for the termination of parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019).

[8] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship, and it must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2. If the juvenile court concludes DCS has proven the allegations of the petition for involuntary termination are true, the court shall terminate the parent-child relationship, Ind. Code § 31-35-2-8(a), and must enter findings supporting its conclusions, Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018), *trans. denied*. To determine whether findings or a judgment are clearly erroneous, we consider whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We do not reweigh the evidence or judge the credibility of witnesses but

consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

II. Termination of Parental Rights

- [9] Mother generally contends DCS did not present sufficient evidence of each element required by Indiana Code section 31-35-2-4(b)(2), but she specifically challenges only the juvenile court’s conclusion that DCS proved there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for their placement outside the home will not be remedied. *See* Brief of Appellant at 11.⁶
- [10] Indiana Code section 31-35-2-4(b)(2)(B) (“subsection B”) is written in the disjunctive, requiring DCS to prove:

(B) that *one (1)* of the following is true:

- (i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.

⁶ DCS must prove four elements in total, *see* Ind. Code § 31-35-2-4(b)(2)(A) (period of removal from home and efforts at reunification), (C) (best interests), (D) (plan for care and treatment of child), but as Mother did not challenge the proof of those elements, we consider any argument regarding them waived. *See* Ind. Appellate Rule 46(A)(8)(a).

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.^[7]

(Emphasis added.) Accordingly, the juvenile court only needs to find DCS proved one of the prongs of subsection (B) by clear and convincing evidence. *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 646 n.4 (Ind. 2015).

[11] In this case, the juvenile court found there was a reasonable probability that *both* the conditions prompting removal would not be remedied *and* the continuation of the relationship posed a threat to the Children's well-being. *See* Appealed Order (A.P.) at 22-23, ¶¶ 56, 57; Appealed Order (Z.T. and M.P.) at 23-24, ¶¶ 53, 54. But Mother challenges only the proof supporting the juvenile court's finding that the conditions prompting removal will not be remedied. She does not *also* challenge the proof supporting the juvenile court's additional conclusion that the Children's well-being would be threatened, and the well-being conclusion alone is sufficient to prove subsection (B). Therefore, we need not address Mother's claim that there is insufficient evidence the conditions will not be remedied because even if she is correct and the remediation conclusion is set aside, the juvenile court's order is still supported by its unchallenged remaining conclusions. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (when a parent "does not specifically challenge the trial court's findings or

⁷ A third prong, that the child has on two separate occasions been adjudicated a CHINS, *see* Ind. Code § 31-35-4-4(b)(2)(B)(iii), was not alleged herein, *see, e.g.*, Appellant's Appendix, Volume 2 at 18.

conclusions[,]” the argument that they are clearly erroneous is waived), *trans. denied*.

[12] Notwithstanding the fact Mother essentially concedes that DCS satisfied its burden of proving each element of the termination statute by failing to argue otherwise, we briefly address her claim that there was insufficient evidence that conditions would not be remedied.

[13] There is a two-step analysis for addressing whether the conditions that resulted in a child’s removal will not be remedied: first, identifying the conditions that led to removal, and second, determining whether there is a reasonable probability those conditions will be remedied. *See E.M.*, 4 N.E.3d at 642-43. In the second step, the juvenile court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* The statute does not simply focus on the initial basis for a child’s removal for purposes of determining whether a parent’s rights should be terminated; it also allows consideration of those bases resulting in the child’s continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). We entrust that delicate balance to the juvenile court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *E.M.*, 4 N.E.3d at 643. Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court

might reasonably find that under the circumstances the problematic situation will not improve. *N.Q.*, 996 N.E.2d at 392.

[14] The reasons for the Children’s removal from Mother’s care were that Mother was not properly supervising the Children, she tested positive for methamphetamine, and the conditions of the family home were unsafe and unsanitary. The reasons for their continued placement outside her care were Mother’s continued struggle to maintain sobriety, her inconsistent engagement with services, her housing instability, and the fact that her inconsistency adversely affected the Children. In challenging the sufficiency of the evidence regarding whether she is likely to remedy those conditions, Mother notes that she has “maintained her desire to parent her children” and that “even DCS points out that [Mother] had once successfully reunified with her children and had shown progress in her addiction to methamphetamine.” Br. of Appellant at 11-12.⁸

[15] It is true that the juvenile court observed Mother had “shown some progress in her addiction to methamphetamines[.]” Appealed Order (A.P.) at 19, ¶ 47; Appealed Order (Z.T. and M.P.) at 20, ¶ 44. But Mother fails to acknowledge the second part of the juvenile court’s observation: that she had replaced

⁸ Mother likens her case to *In re G. Y.*, 904 N.E.2d 1257 (Ind. 2009), a case in which our supreme court reversed a juvenile court’s termination order. However, *G. Y.* was concerned solely with the juvenile court’s conclusion that termination was in the child’s best interests, a conclusion not challenged in this case. Moreover, the main point of contention in *G. Y.* was the effect of the mother’s incarceration, a factual circumstance unlike the circumstances presented here. Thus, *G. Y.* is distinguishable and does not compel the same result in Mother’s case.

methamphetamine with marijuana and alcohol, *see id.*, thus still exhibiting addictive, self-medicating behavior. It is also true that Mother was once reunified with A.P. and Z.T., but since then, they were removed from Mother’s care, returned as part of an informal adjustment, and then removed again. And when DCS tried to move toward reunification by assisting Mother with independent housing strategies and increased visitation with the Children, she was unable or unwilling to meet the challenge. This troubling pattern supports the juvenile court’s finding that Mother has not been able to “maintain consistent personal stability[.]” Appealed Order (A.P.) at 22, ¶ 56; Appealed Order (Z.T. and M.P.) at 23, ¶ 53. Mother maintains she wants to be the mom her kids need her to be, she just needs more time to be in a position to properly care for them, but the evidence and the juvenile court’s findings support the juvenile court’s conclusion that “further efforts to reunite [Mother] with the [children] are unlikely to succeed.” Appealed Order (A.P.) at 24, ¶ 59; Appealed Order (Z.T. and M.P.) at 25, ¶ 56.

[16] The evidence clearly and convincingly supports the juvenile court’s findings and the unchallenged findings clearly and convincingly support the judgment that DCS proved each element required for termination.

Conclusion

[17] The juvenile court did not err in concluding DCS had sufficiently proven the elements required for termination, and the juvenile court’s orders terminating Mother’s parental rights to the Children are therefore affirmed.

[18] Affirmed.

Pyle, J., and Weissmann, J., concur.