

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of J.K., Mother, and A.B. and
R.B., Minor Children,
J.K.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

February 6, 2023

Court of Appeals Case No.
22A-JT-2249

Appeal from the
Warrick Superior Court

The Honorable
Robert R. Aylsworth, Senior Judge

Trial Court Cause Nos.
87D01-2110-JT-184
87D01-2110-JT-185

Memorandum Decision by Judge Foley

Judges Vaidik and Tavitias concur.

Foley, Judge.

- [1] J.K. (“Mother”) is the mother of A.B. and R.B. (together, “Children”), and her parental rights were terminated by the juvenile court. Mother appeals the juvenile court’s judgment and argues that the juvenile court erred in terminating her parental rights because the termination judgment was not supported by clear and convincing evidence. Finding no error in the juvenile court’s judgment, we affirm.

Facts and Procedural History

- [2] Mother and K.B. (“Father”)¹ are the parents of A.B., born September 1, 2017, and R.B., born March 29, 2019. In June of 2020, Mother and Father abandoned Children to relatives and left the State, spending time in Missouri and Texas. Mother and Father initially left Children with paternal grandmother, but shortly thereafter, Father’s sister (“Aunt”) took over the care of Children. Children have been in her care from July 22, 2020, until the present.
- [3] Neglect of a dependent charges were filed against Mother in August 2020 for the abandonment of Children. She pleaded guilty to these charges in August

¹ Father’s parental rights were terminated by default in a separate order, dated January 4, 2022. Father does not participate in this appeal.

2021. Judgment was ordered withheld for one year with the possibility of dismissal if Mother complied with probation, but a petition to revoke the deferral was filed on November 8, 2021, and Mother was arrested. Mother admitted the violation on January 21, 2022, and was allowed to return to the deferral. A second petition to revoke the deferral was filed on February 8, 2022, and Mother was again arrested. On May 10, 2022, Mother admitted her violation and the court allowed her to be furloughed to the Lighthouse Recovery Center in Washington, Indiana, where she remained at the time of the termination hearing in the present case.

[4] From July 1 through July 12, 2020, after receiving the report that Children had been abandoned by Mother and Father, the Indiana Department of Child Services (“DCS”) attempted to contact Mother and Father and finally made contact with them on July 13, 2020. Mother and Father agreed to return to Warrick County by July 20 to meet with the family case manager (“FCM”). However, Mother and Father did not return and, instead, went to Texas. During this time that Mother and Father were out of state, they were homeless and living in their vehicle.

[5] On July 22, 2020, DCS filed a petition alleging that Children were children in need of services (“CHINS”), and the Children were also formally removed from the care of Mother and Father on the same date. The matter was set for an initial detention hearing on July 23, 2020. Mother and Father appeared at the initial detention hearing telephonically from Texas. On September 22, 2020, the juvenile court adjudicated Children to be CHINS. On October 21, 2020, a

dispositional hearing was held, and the resulting dispositional decree required Mother to maintain regular contact with DCS, maintain suitable and stable housing, receive services, obey the law, and abstain from the use of illegal controlled substances and alcohol, among other requirements. Mother had a history of substance abuse, some of which she attributed to coping with the abuse she suffered as a child and later as an adult as well.

[6] A review hearing was held on January 15, 2021, and the juvenile court found Mother had not complied with the decree and had not resolved the issues that required removal of Children. She had failed to participate in recommended substance abuse treatment, was not consistently meeting with her parent aide, was not consistently participating in random drug screens, and was homeless. At a hearing on April 16, 2021, evidence showed that Mother had not complied with the case plan; she had not met with her therapist, had been kicked out of a shelter that her parent aide was able to get her into, and had not completed the drug screen she was ordered to complete during the review period.

[7] At the July 30, 2021 permanency hearing, the juvenile court found that Mother was not consistently submitting to drug screens, attending supervised visits with Children, or meeting with her therapist and parent aide and that she had recently had a positive drug screen for methamphetamine and THC. The juvenile court added adoption as a concurrent permanency plan and admonished Mother to comply with services. At the next review hearing, held on October 22, 2021, Mother was still not consistently participating in the recommended services and was unemployed and homeless and had only

completed one drug screen during the reporting period. Although Mother received two visitations with Children per week, she was only attending a few per month. She tested positive for methamphetamine, amphetamine, and THC immediately after the review hearing.

[8] Four days before that hearing, on October 18, 2021, DCS filed a petition to terminate Mother's parental rights as to both Children. The termination factfinding hearing was held on June 17, 2022. The evidence presented at the hearing showed that Mother has never substantially complied with the ordered services necessary to rehabilitate her for the possibility of reunification with Children to occur. She repeatedly started but did not complete the services. Mother's last negative drug screen was collected almost two years prior, on September 17, 2020. At the time of the hearing, Mother did not have a residence and continued to be unemployed.

[9] DCS estimated her compliance rate with calling in for drug screening at seven percent. In addition to the criminal charges for neglect of a dependent filed against Mother that were related to Children's removal, Mother's criminal history included convictions for trespass, theft, and possession of a controlled substance, as well as several petitions to revoke probation. When the termination hearing occurred, Children had been removed from Mother's care for approximately two years, and she had never consistently participated in visitations with Children.

[10] At the time of the termination hearing, Mother was in a treatment program through the Lighthouse Recovery Center (“Lighthouse”). She had been at Lighthouse for almost a month, having been released to there from the Warrick County Security Center as part of her criminal proceedings. She was compliant with the treatment program at the time of the hearing, and her program could last from nine months to two years, although it was an open facility, and people may choose to leave as they wish.

[11] Children’s court appointed special advocate (“CASA”) testified that, while the relationship between Mother and Children was loving, Mother was unable to take care of herself, much less the Children. CASA explained that “we’ve not seen her have an established home and how stable and safe that can be. We don’t have that history yet. So I can’t say I feel comfortable that she can provide a safe and stable home.” Tr. Vol. 2 p. 158. CASA ultimately concluded that she did not believe that Mother would be able to be a “full-time mother to these children in the foreseeable future.” *Id.* at 161. She also testified that Children needed permanency and that they were thriving in their placement but that not having permanency caused Children stress. CASA further stated that she believed that termination was in the best interests of Children. The FCM also testified that she believed it was in Children’s best interests for Mother’s parental rights to be terminated.

[12] On August 26, 2022, the juvenile court entered its order terminating Mother’s parental rights, concluding that there was a reasonable probability that Mother would not remedy the reasons for Children’s removal and placement outside

her care, that there was a reasonable probability that Mother’s continued parent-child relationship posed a threat to Children’s wellbeing, and that the termination of Mother’s parental rights was in Children’s best interests. Mother now appeals.

Discussion and Decision

[13] While the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children, the law allows for the termination of parental rights based on the inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child’s interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. 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 their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[14] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to

the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). Where, as here, the juvenile court enters specific findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn from it that support it. *Id.* If the evidence and inferences support the juvenile court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[15] Before an involuntary termination of parental rights may occur, the State must 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.

² Mother does not challenge the majority of the juvenile court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. See *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

(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 [CHINS];

(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). The State’s burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, “if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship.” I.C. § 31-35-2-8(a) (emphasis added).

A. Conditions Not Remedied

[16] Mother first argues that the juvenile court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of Children and the reasons for placement outside of the home would not be remedied was not supported by sufficient evidence.³ In determining whether there is a

³ Mother asserts that Finding 13 was not supported by the evidence in that it stated that “‘mother cannot be a full time mother now or in the foreseeable future.’” Appellant’s Br. p. 18 (quoting Appellant’s App. Vol. 2 p. 193; Appellant’s App. Vol. 3 p. 169). However, Mother picks out only a portion of the finding to take issue with. The entire sentence to which Mother’s challenge refers states,

reasonable probability that the conditions that led to a child's removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must determine what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[17] In the second step, the juvenile court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, "[juvenile] courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).

[18] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that

[CASA] testified that she observed a loving relationship between the mother and the girls when they were all together, but her concern was the long-term care for the girls who have thrived in their current placement, and agreed with the DCS that termination of their mother's parental rights is in the girls' best interest since their *mother cannot be a full time mother now or in the foreseeable future.*

Appellant's App. Vol. 2 p. 193; Appellant's App. Vol. 3 p. 169 (emphasis added). Thus, the challenged finding paraphrased the testimony of Children's CASA, and our review of the transcript confirms this testimony. *See Tr.* Vol. 2 pp. 158–61. We, therefore, conclude that Finding 13 was supported by the evidence presented.

the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "We entrust th[e] delicate balance to the [juvenile] court, which has [the] 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. When determining whether the conditions for the removal would be remedied, the juvenile court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[19] Here, the reason for Children's removal from the home was Mother's abandonment of Children, leaving them with relatives while she and Father left the state and remained absent from the state for several months. This abandonment resulted in criminal charges being brought against Mother. Throughout the CHINS matters, Mother's contact with DCS was inconsistent, and she was often unresponsive and was uncooperative with service providers, resulting in the termination of the services. Mother was not able to establish stable housing for herself throughout the proceedings. She "lived in numerous different motels" and with various friends and family members throughout the case but never obtained housing of her own and "really was never anywhere for longer than one month." Tr. Vol. 2 pp. 76–77. She temporarily stayed at shelters at different periods of time as well. Although it is true that Mother was living at Lighthouse at the time of the termination hearing, and had been there for a few weeks, she was there on a furlough from detention on her criminal case, and her treatment could last anywhere from nine months to two years. The evidence also showed that Mother obtained employment on more than one

occasion during the proceedings but did not hold any position for more than three months. The trial court properly acknowledged Mother's recent efforts at sobriety, but ultimately placed greater weight on Mother's long history of neglect, substance abuse, and instability.

[20] Mother was not consistent with her participation in drug screens with an estimated compliance rate of seven percent. Mother also tested positive for THC, methamphetamine, and amphetamine throughout the case and failed to demonstrate her ability to remedy her substance abuse issues that led to her inability to care for Children. Additionally, over the course of the case, Mother faced charges of criminal trespass, neglect of a dependent, theft, and possession of a controlled substance. Mother's lack of compliance with services and patterns of behavior, and unstable lifestyle including criminal activity and substance abuse throughout the CHINS proceedings show that Mother is unable or unwilling to remedy the reasons for Children's continued removal from her care.

[21] Mother's arguments challenging the juvenile court's conclusion are merely requests to reweigh the evidence, which we cannot do. *E.M.*, 4 N.E.3d at 642. Here, Mother had many opportunities to engage in services and participate in visitations with Children but failed to maintain contact with service providers and the FCM, continued to use illegal substances, failed to consistently visit Children, and engaged in criminal activity. Children "cannot wait indefinitely on Mother to work toward preservation or reunification." *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quoting *E.M.*, 4 N.E.3d at 648), *cert. denied*. We,

therefore, conclude that the juvenile court's conclusion that there was a reasonable probability that the conditions which resulted in Children's removal and continued placement outside the home would not be remedied was supported by sufficient evidence.⁴

B. Termination in Best Interests of Children

[22] Mother also argues that the juvenile court's conclusion that termination was in the best interests of Children was not supported by clear and convincing evidence. In determining what is in the best interests of the child, a juvenile court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the juvenile court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent's historical inability to provide a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In*

⁴ We need not address whether the juvenile court properly concluded that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Children's well-being because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the juvenile court need only find that one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. See Ind. Code § 31-35-2-4(b)(2)(B); *A.D.S. v. Ind. Dep't Child Servs.*, 987 N.E.2d 1150, 1157 n.6 (Ind. Ct. App. 2013), *trans. denied*. Because we have concluded that the juvenile court's determination that the conditions for Children's removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence, we do not need to reach this argument.

re A.P. 981 N.E.2d 75, 82 (Ind. Ct. App. 2012). Testimony of the service providers, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A juvenile court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[23] In looking at the totality of the evidence, at the time of the termination hearing, Children had been removed from the care of Mother for two years, and Mother failed to make the changes necessary to provide Children with a safe and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Mother would not remedy the reasons for Children's removal from her care. Additionally, Children's CASA testified that, while the relationship between Mother and Children was loving, Mother was unable to take care of herself, much less the Children and that she was not comfortable that Mother could provide a safe and stable home. CASA further stated that she believed that termination was in the best interests of Children and that Children needed permanency because although they were thriving in their placement, not having permanency caused Children stress.

CASA ultimately concluded that she did not feel that Mother would be able to be a “full-time mother to these children in the foreseeable future.” Tr. Vol. 2 p. 161. The FCM also testified that she believed it was in Children’s best interests for Mother’s parental rights to be terminated and for Children to be adopted and that Children deserve permanency which Mother was unable to provide.

[24] The juvenile court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Children should not have to wait any longer for the opportunity to enjoy the permanency that is essential to their development and overall well-being. The juvenile court’s conclusion that termination of Mother’s parental rights was in Children’s best interests was supported by clear and convincing evidence.

[25] Affirmed.

Vaidik, J., and Tavitas, J., concur.