

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of M.B. and P.B. (Minor
Children), and A.H. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

April 29, 2022

Court of Appeals Case No.
21A-JT-2561

Appeal from the Clark Circuit
Court

The Honorable Vicki L.
Carmichael, Judge

The Honorable Joni Grayson,
Magistrate

Trial Court Cause Nos.
10C04-2105-JT-30
10C04-2105-JT-31

Brown, Judge.

[1] A.H. (“Mother”) appeals the involuntary termination of her parental rights to her children, M.B. and P.B. We affirm.

Facts and Procedural History

[2] Mother and S.B. (“Father,” and collectively with Mother, “Parents”) are the parents of M.B., who was born on September 28, 2007, and P.B., who was born on July 16, 2009.¹ In March 2019, DCS filed petitions alleging that M.B. and P.B. were children in need of services (“CHINS”). On April 11, 2019, the court entered an order authorizing the removal of the children from the home and found the children to be in need of services. On October 30, 2020, the court entered an order finding Mother in contempt for her intentional and willful noncompliance with the court’s dispositional order. On May 18, 2021, DCS filed petitions for the involuntary termination of the parent-child relationship between Parents and the children.

[3] On September 14, 2021, the court held a hearing. The court heard from multiple witnesses including Breanna Huerta, an assessment worker, Logan Emmitt, a therapist, Vikki Reiter, a therapist and addictions counselor, Maribeth Hogan, an employee of the Clark County Department of Child Services, Iris Rubadue, the program coordinator for the Clark County Family Recovery Court, Brittany Johnson, a case manager with Ireland Home Based

¹ Father does not appeal the termination of his parental rights. In its October 21, 2021 order terminating Parents’ parental rights, the court found that Father received custody of the children in 2013, a no contact order between Father and the children was issued in 2017 due to substantiated allegations of sexual abuse by Father, and Father has had no contact with the children since the 2017 order.

Services, Samantha Roth, a home-based case worker, Greg Kiesel, a therapist, Swan Roberts, a home-based therapist for M.B. and P.B., Dr. Liz England, a psychologist, Dennis Bartsch, a social worker, Family Case Manager Savannah Allen, who was assigned to the case beginning in 2019 until September 2020, Family Case Manager Dustin Smith (“FCM Smith”), who was assigned to the case beginning in October or November 2020, Court Appointed Special Advocate Melissa Borries (“CASA Borries”), and Mother.

- [4] On October 21, 2021, the court entered a twelve-page order terminating Parents’ parental rights. It found that there was a reasonable probability that the conditions which resulted in the children’s removal or the reasons for placement outside the home of the parents will not be remedied, continuation of the parent-child relationship was not in the children’s best interests, and there was a satisfactory plan for the care and treatment of the children.

Discussion

- [5] Mother argues the juvenile court’s findings that the family case manager and CASA recommended termination of parental rights do not clearly and convincingly support the conclusion that termination of her parental rights is in the children’s best interests. Mother requests this Court to reconsider our reliance on precedent suggesting that recommendations of family case managers, court appointed special advocates, and guardians ad litem are sufficient to establish that termination of parental rights is in a child’s best interests. She asserts such holdings are in tension with the Indiana Supreme Court’s instruction in *Matter of M.I.*, 127 N.E.3d 1168, 1171 (Ind. 2019), that a

variety of circumstances be considered. She argues that the juvenile court relied entirely on the recommendations of the family case manager and court appointed special advocate. She contends the court's finding that FCM Smith "recommended termination and adoption was the best means of getting permanency for the children" is not supported by the evidence. Appellant's Brief at 19 (quoting Appellant's Appendix Volume II at 56). She also asserts the court did not make any findings to support that she was not able to provide housing, address her historical ability to provide stability or supervision for the children, or address the bond between her and her children. DCS argues that Mother's challenge to the court's best interest conclusion is an improper request to reweigh the evidence.

[6] 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 that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[7] 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.

[8] While Mother does not specifically challenge the trial court’s conclusion that there was a reasonable probability that the conditions which resulted in the children’s removal or the reasons for placement outside the home of the parents will not be remedied, we find it helpful to discuss the court’s conclusion in addressing Mother’s argument regarding the children’s best interests.

Generally, in determining whether the conditions that resulted in a child’s

removal will not be remedied, we engage in a two-step analysis. *See E.M.*, 4 N.E.3d at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *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, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug 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. *Id.* 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. *Id.*

[9] The court's order terminating Mother's parental rights found that the circumstances that led to the removal of the children was excessive school absences and Mother's failure to comply with a safety plan in which she agreed to refrain from illegal drug use. Under the heading, "Remediation of Conditions or Threat to Child's Well-Being," the court found:

34. This family has been involved with DCS for over five years.

* * * * *

36. [Mother] has been unsuccessful at completing court-ordered services. She continues to test positive for illicit substances. [Mother] started participating in the Family Recovery Court program in July, 2020. Despite the services offered by DCS and through the Family Recovery Court program, she is still actively using drugs. [Mother] has repeatedly refused to participate in inpatient treatment and her participation in outpatient treatment has been sporadic. [Mother] was discharged from home-based therapy due to her lack of attendance.

37. [M.B.] and [P.B.] have experienced trauma at the hands of their parents. This trauma has manifested in their anger and behavior. As a result, it was necessary for [M.B.] and [P.B.] to undergo therapy. Although they are progressing, more work is required.

38. Moreover, allegations that [Father] sexually abused [M.B.] were substantiated by [DCS], which ultimately led to the 2017 'no contact' order and the children have had no relationship with their father since that time.

39. Although the parents were the source of [M.B.] and [P.B.'s] trauma, neither parent has meaningfully participated in their rehabilitation. Instead, the parents continue to neglect the children's need for a stable and safe home environment.

40. During the CHINS case, the children enjoyed some visits with [Mother] but also expressed apprehension about visiting with their mother due to [her] unpredictable behaviors. [Mother's] use of illicit substances continues.

41. The parents have not provided [M.B.] and [P.B.] with the permanency they need to grow and develop into healthy individuals.

Appellant's Appendix Volume II at 15-16 (some capitalization omitted).

[10] 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*. In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the children's removal and the reasons for placement outside Mother's care will not be remedied.

[11] With respect to Mother's challenge to the trial court's finding that termination of the parent-child relationship is in the best interests of the children, we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cty. 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*.

[12] Under the heading "Best Interests," the court observed that "[i]n determining what is in a child's best interests, a juvenile court is required to look beyond the factors identified by the DCS and consider the totality of the evidence" and found:

44. . . . [M.B.] and [P.B.] were removed from their parents approximately twenty-four (24) months ago. During this 24-month period of time, the parents have completely failed to make the necessary adjustments that would ensure the children could be safely returned home.

45. [M.B.] and [P.B.] have responded well to the care they have received from their foster placements.

46. [FCM Smith] recommended termination and adoption as the best means of getting permanency for the children.

47. [CASA Borries] recommended termination of parental rights as being in the children's best interests.

48. The recommendations of the family case manager and CASA, in addition to the probability that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence termination is in the child's best interests. See[] *Ramsey v. Madison County Dep't of Family and Children*, 707 N.E.2d 814, 818 (Ind. Ct. App. 1999).

Appellant's Appendix Volume II at 16-18 (some capitalization omitted).

[13] We cannot say that the juvenile court relied entirely on the recommendations of FCM Smith and CASA Borries. Nor can we say that the Indiana Supreme Court's statement in *Matter of M.I.* that, "[w]hen determining what is in children's best interests, trial courts may consider a variety of factors," 127 N.E.3d at 1171, conflicts with this Court's prior holdings or the juvenile court's order which specifically observed that a juvenile court is required to "consider the totality of the evidence" in determining what is in a child's best interest. Appellant's Appendix Volume II at 16.

[14] Further, we conclude that the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. Kiesel, Mother's therapist, testified that he had noticed an increase in Mother's attendance at his sessions but had received reports of continued positive drug screens "up until the present." Transcript Volume II at 76. When asked if Mother was prepared to take custody of the children, he answered in part: "I have significant concerns about any parent being able to safely and effectively parent when there's active substance use going on." *Id.* at 78.

[15] When asked for her recommendation, Roberts, the home-based therapist for M.B. and P.B., answered: "[A]t this time with everything I've seen, I would have concerns for their safety if they were to be reunified with [Mother]. And I think adoption would be the best outcome for them to have permanency." *Id.* at 86. On cross-examination, when asked why she thought adoption was in the children's best interests, she answered: "[B]ecause of the substance use, drug

screens that were recently positive. I do believe that that would impose safety concerns for the children to be reunified with [Mother].” *Id.* at 88.

[16] With respect to a recommendation, FCM Smith stated:

I don’t believe the children should be returned back to [Mother’s] care at this time. [Mother] continues to test positive for another, illegal substances, methamphetamine, amphetamine. We’[v]e recently seen screens, also, with fentanyl. She has been inconsistent in maintaining substance abuse treatment, inconsistent with Family Recovery Court. As previously stated, she hasn’t phased or promoted in the Family Recovery Court. Instability in [Mother] not maintaining her appointments. And those services towards reunification.

Id. at 113. He later stated: “My recommendation would be adoption by termination of parental rights at this time. M.B. and P.B. have been out of the home for over two (2) years. [Mother] continues to show positive drug screens, inconsistent with appointments, as previously stated.” *Id.* at 114. When asked if DCS was willing to continue to work with Mother and provide services, he answered:

At this time, the permanency plan would be adoption. [Mother’s] been involved since Twenty Nineteen (2019) with this case. It has been explained to her by me, her dispositional orders, when I took over this case. At this time, M.B. and P.B. need stability, structure, consistency, and a safe and loving home at this time.

Id. at 119.

[17] CASA Borries stated:

My recommendation for today is for termination of parental rights and adoption. M.B. and P.B. have been out of the home for twenty-eight (28) months. [Mother] has not illustrated the ability to provide a safe, stable, or sober home for the children. . . . The children are doing really well in a family like setting. They consistently report a wish to be adopted and to have a permanent family. M.B. and P.B. deserve permanency.

Id. at 137-138.

[18] Based on the totality of the evidence, including the recommendations of Roberts, FCM Smith, and CASA Borries, we conclude the trial court's determination that termination is in the children's best interests is supported by clear and convincing evidence.

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

[20] Affirmed.

Mathias, J., and Molter, J., concur.