

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
M.O. (Minor Child)

and

T.O. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

January 4, 2022

Court of Appeals Case No.
21A-JT-1622

Appeal from the St. Joseph Probate
Court

The Honorable Ashley Mills
Colborn, Magistrate

Trial Court Cause No.
71J01-2009-JT-121

Mathias, Judge.

[1] T.O. (“Mother”) appeals the St. Joseph Probate Court’s order terminating her parental rights to her child, M.O. She argues that the court’s order is not supported by clear and convincing evidence.

[2] We affirm.

Facts and Procedural History

[3] M.O. was born in April 2018. Te.O. is M.O.’s father (“Father”), and he does not participate in this appeal.

[4] In October 2018, DCS filed a petition alleging that M.O. was a child in need of services (“CHINS”) due to escalating domestic violence between Mother and Father. Specifically, on October 8, Father put Mother in a headlock on the ground outside their residence and he bit her face. Approximately three weeks later, Father stabbed Mother, hit her with a vase, and broke two of her fingers.¹ DCS also alleged that Father was using methamphetamine. M.O. remained in Mother’s care, and the court issued a no contact order between Father and Mother and M.O.

[5] Mother admitted that M.O. was a CHINS on November 7, 2018. Mother was ordered to participate in numerous services, including a domestic violence assessment and drug screens. Mother completed a domestic violence

¹ Father pleaded guilty to Level 6 felony domestic battery in January 2019. After violating the no-contact order, Father was charged with and pleaded guilty to Class A misdemeanor invasion of privacy and Level 6 felony intimidation.

assessment with the Center for Positive Change. As a result of the assessment, Mother was asked to participate in a forty-week domestic violence group and participate in individual therapy once a week. Mother suffers from anxiety and did not want to participate in group therapy. The Center for Positive Change accommodated Mother's request and arranged for her to participate in an individual domestic violence class.

[6] In April 2019, Mother completed a parenting assessment. During the assessment, Mother described many instances of domestic abuse perpetrated by Father. Mother denied substance abuse.

[7] Mother and Father violated the no contact order on at least two occasions in the summer of 2019. Although Mother eventually reported Father for violating the no-contact order, Mother admitted that they spent a weekend together before Father was arrested. Tr. p. 15. As a result, the Center for Positive Change returned Mother to the group therapy class. Mother failed to attend those sessions.

[8] Mother's compliance with services began to wane in the fall of 2019. She canceled numerous appointments with her family case manager. And Mother failed to submit to drug screens from November 11, 2019, to the end of January 2020. Mother left M.O. in the care of her grandparents for several weeks because she was using drugs. M.O.'s grandparents were concerned that they would not be able to obtain medical care for M.O. if needed. For these reasons, DCS filed a Rule to Show Cause against Mother in January 2020.

- [9] On January 29, 2020, Mother was found in contempt of court and sentenced to forty-five days in the St. Joseph County Jail. But the trial court suspended the sentence to give Mother another chance to comply with court-ordered services. At a status hearing in March 2020, the court determined that Mother failed to purge herself of contempt of court because she only participated in one of four domestic violence group classes. The trial court reduced Mother's contempt sentence to seven days executed with the remainder suspended so that she would have an opportunity to comply with services.
- [10] The day after the March status hearing, DCS removed M.O. from Mother's care and placed him with his maternal grandmother. Mother was ordered to participate in supervised visitation with M.O. Mother missed several visits and was discharged by the service provider. Mother was referred to Families First in May 2020 for supervised visitation. Mother continued to miss visitations with M.O. But when Mother participated in visitation, she was loving toward M.O. and their interactions were appropriate.
- [11] Mother participated in services after she was released from the St. Joseph County Jail. However, in July 2020, her participation became sporadic. Mother was only attending one out of every four domestic violence group classes per month. As a result, she was removed from the Center for Positive Change's schedule in August 2020. Mother resumed domestic violence classes in October 2020, but she was unsuccessfully discharged later that month after she missed two scheduled appointments.

- [12] Mother also tested positive for methamphetamine on many dates from January 2020 to October 2020. She had completed a substance abuse assessment in March 2020, but she never attended the recommended substance abuse treatment program.
- [13] In November 2020, DCS referred Mother to the YWCA to participate in both domestic violence and substance abuse treatment. A YWCA counselor attempted to contact Mother to register her for services. Mother never responded to the counselor's communications. Mother also failed to participate in visitation with M.O. from January 12, 2021, to March 4, 2021.
- [14] Due to Mother's failure to participate in services and continued substance abuse, DCS filed a petition to terminate Mother's parental rights in September 2020. The termination fact-finding hearing was held on March 5, 2021. On July 1, 2021, the trial court issued its order terminating Mother's parental rights.² The trial court found that Mother failed to complete a single service ordered in the dispositional decree and failed to prioritize visitation with M.O. The court concluded:

Mother's failure to participate in domestic violence treatment, failure to participate in substance abuse treatment, positive methamphetamine drug screens, failure to complete any service successfully and consistently, and failure to even visit consistently with [M.O.] demonstrates that there is a reasonable

² The trial court also terminated Father's parental rights. As we noted above, Father does not participate in this appeal.

probability that the conditions that resulted in the removal, and continued placement outside of Mother's home, will not be remedied.

Appellant's App. p. 34. The court also noted that in January 2018, Mother's parental rights to another child were terminated due to domestic violence and substance abuse in the parents' home.

[15] Finally, the court concluded that termination of Mother's parental rights was in M.O.'s best interests citing the testimony of the court-appointed special advocate ("CASA") and the family case manager. *Id.* at 38. The court concluded that M.O. needs permanency, and "Mother's actions have shown that she is unwilling to make the changes necessary to have [M.O.] placed back in her care." *Id.* at 39.

[16] Mother now appeals the termination of her parental rights to M.O.

Standard of Review

[17] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[18] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, in her Appellant’s Brief, Mother does not challenge the trial court’s findings of fact as clearly erroneous; therefore, we will accept the unchallenged findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[19] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2021). Two of those elements are at issue here: (1) whether there is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home will not be remedied; and (2) whether termination is in the child’s best interests. *I.C. § 31-35-2-4(b)(2)(B)(i), (C)*.

[20] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

[21] Mother argues that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in M.O.'s removal or reasons for placement outside of Mother's home will not be remedied and that termination of her parental rights is in M.O.'s best interests.

I. Clear and convincing evidence supports the trial court's finding that the conditions that resulted in M.O.'s removal or reasons for placement outside Mother's home will not be remedied.

[22] When we review whether there is a reasonable probability that the conditions that resulted in the child's removal or reasons for placement outside the parent's home will not be remedied, our courts engage in a two-step analysis. See *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention in foster care." *Id.* Second, we "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or

deprivation of the child.” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

[23] DCS removed M.O. from Mother’s home due to her failure to participate in domestic violence treatment and substance abuse treatment. Domestic violence between Mother and Father has been an issue in their home for many years. Mother’s parental rights to another child were terminated in 2018 due to domestic violence. But Mother continued to reside with Father until he was arrested after the two incidents in October 2018 that began DCS’s involvement in these proceedings. Mother did not participate in domestic violence classes and therapy as ordered. And she was found in contempt of court as a result.

[24] Mother also abused substances before and after M.O. was removed from her home. Mother tested positive for methamphetamine throughout 2020. Fortunately for M.O., Mother left M.O. in the care of his grandparents when she began using methamphetamine. But Mother did not communicate regularly with his grandparents and did not give them authority to seek medical treatment for him if needed. Mother claims that she has been sober for several months, but because she failed to participate in substance abuse treatment, the trial court reasonably concluded that Mother had not adequately addressed her substance abuse issues.

[25] Mother cares for and is bonded with M.O. Mother’s and M.O.’s interactions during supervised visitations were loving and appropriate. But Mother failed to consistently participate in visitation with M.O. Mother’s inconsistent

participation in visitation combined with her failure to complete domestic violence classes and substance abuse treatment demonstrates a lack of commitment toward taking the necessary steps to preserve the parent-child relationship. See *Lang v. Starke Cnty. Off. of Fam. & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (explaining that “the failure to exercise the right to visit one’s children demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship”), *trans. denied*.

[26] For all of these reasons, we conclude that clear and convincing evidence supports the trial court’s finding that there is a reasonable probability that the conditions that resulted in M.O.’s removal or reasons for placement outside Mother’s home will not be remedied.

II. Clear and convincing evidence supports the trial court’s finding that termination of parental rights is in M.O.’s best interest.

[27] A court’s consideration of whether termination of parental rights is in a child’s best interest is “[p]erhaps the most difficult determination” a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child’s need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648. Further, the recommendation from

service providers to terminate parental rights accompanied by evidence that the conditions resulting in removal will not be remedied can be sufficient to establish that termination is in the child's best interest. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*.

[28] The family case manager testified that termination of Mother's parental rights was in M.O.'s best interests because her attendance and progress in services has been inconsistent for two and one-half years. Tr. pp. 38–39. She also noted that Mother was inconsistent and failed to benefit from services in a prior termination of parental rights case and her rights to her daughter were terminated as a result. The family case manager explained that M.O. "needs a caregiver that isn't in and out . . . of his life for long periods of time due to incarceration or [who] disappears for weeks . . . and is unreachable." *Id.* at 39. And M.O. needs a home free from substance abuse and domestic violence. *Id.* at 39–40. The CASA acknowledged the strong bond between Mother and M.O. but testified that termination of Mother's parental rights was in M.O.'s best interests because Mother has not completed domestic violence classes or substance abuse treatment. *Id.* at 127, 129. The CASA believed that returning M.O. to Mother's care would be dangerous for M.O.'s well-being. *Id.* at 127.

[29] We agree that Mother's failure to participate in services demonstrates that she is not willing to make the long-term changes necessary to have M.O. returned to her care. And M.O., like all children, needs and deserves stability and permanency. For all of these reasons, we conclude that clear and convincing

evidence supports the trial court's conclusion that termination of Mother's parental rights is in M.O.'s best interests.

Conclusion

[30] Clear and convincing evidence supports the trial court's judgment terminating Mother's parental rights to M.O.

[31] Affirmed.

Bailey, J., and Altice, J., concur.