

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
E.E. (Child) and

C.E. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

March 11, 2022

Court of Appeals Case No.
21A-JT-2291

Appeal from the Hendricks
Superior Court

The Honorable Karen M. Love,
Judge

Trial Court Cause No.
32D03-2103-JT-8

Mathias, Judge.

[1] C.E. (“Mother) appeals the Hendricks Superior Court’s order terminating her parental rights to E.E. Mother argues that Department of Child Services failed to present clear and convincing evidence to prove that termination of her parental rights was in E.E.’s best interests.

[2] We affirm.

Facts and Procedural History

[3] Mother gave birth to E.E. in January 2020. J.W. is E.E.’s alleged father, but there “may be an unknown alleged father.”¹ Appellant’s App. p. 102. Near the date of E.E.’s birth, DCS received a report that Mother was using heroin. Mother admitted to heroin use two weeks before E.E.’s birth, but E.E. was not born drug positive. As a result of the ensuing DCS assessment, Mother agreed to reside with her mother, participate in substance abuse treatment, and obtain a methadone prescription.

[4] When E.E. was four months old, DCS received a report that Mother was using heroin and had checked herself into the hospital due to suicidal ideations. Mother told her family case manager that she was not sure who E.E.’s father was because she exchanged sex for money near the date that E.E. was conceived. Mother also admitted that she regularly used heroin in her home and suffered from a seven-year heroin addiction.

¹ The alleged Father, J.W., never participated in the CHINS or termination proceedings. He also refused to parent E.E.

- [5] On May 7, 2020, DCS filed a petition alleging that E.E. was a Child in Need of Services. The trial court held a fact-finding hearing on July 22, and Mother admitted that E.E. was CHINS. E.E. was removed from Mother's care and placed in relative care with his maternal grandmother. Mother was ordered to participate in many services including a parenting assessment, a substance abuse assessment, random drug testing, and a mental health evaluation. Mother was ordered to follow all recommendations as a result of the assessments.
- [6] In June, Mother was sentenced to 180 days with 174 days suspended for a Level 6 felony unlawful possession of a syringe conviction.² In September, Mother began inpatient treatment for her substance abuse. Before she was admitted, Mother screened positive for Fentanyl. She completed the in-patient treatment successfully and transitioned to a halfway house in October.
- [7] Mother did not consistently participate in other court-ordered services including home-based casework and bonding services at Riley Children's Hospital. Mother stopped participating in her therapeutic substances abuse recovery sessions. In November and December, Mother tested positive for methamphetamine, morphine, Fentanyl, amphetamine, and THC. In December, Mother declined to participate in recommended inpatient substance

² Mother has a prior Level 6 felony unlawful possession of a syringe conviction from 2018. In that case she was ordered to serve 365 days, with 333 days suspended to probation. Mother's probation was revoked and she was ordered to serve 80 days in jail. In 2019, Mother was once again convicted and sentenced for Level 6 felony unlawful possession of a syringe. She was ordered to serve 910 days with 888 days suspended. She violated her probation when she committed the same offense in June 2020.

abuse treatment. Mother also failed to actively participate in visitations with E.E. instead spending a significant amount of time in the restroom or on her phone.

[8] In January 2021, Mother reported to her family case manager that she was “living on the street.” *Id.* at 114. Mother would not share her whereabouts with her case manager because she knew there was an active warrant for her arrest. On January 27, 2021, Mother was arrested for a probation violation and the State alleged that she had consumed or possessed opiates, cocaine, and methamphetamine.

[9] As a result of her probation violation, Mother was placed on work release and ordered to complete substance abuse treatment. During Mother’s work release placement, she was employed and consistently engaged in home-based casework. However, in March 2021, Mother’s probation was terminated and she was sentenced to 120 days in the Hendricks County Jail. Mother was given credit for 100 days of time served.

[10] Shortly after she was released from jail, in April and May 2021, Mother relapsed and tested positive for Fentanyl three times. Visit supervisors expressed concern that Mother was under the influence during her visitations with E.E. Mother was also dependent on the visit supervisor and E.E.’s caregiver for assistance with E.E. during her parenting time.

[11] DCS referred Mother to Hickory House for in-patient substance abuse treatment in May 2021. And DCS made plans to transport Mother to Hickory

House on her intake day. Mother ultimately refused to admit herself to Hickory House. Mother failed to communicate with her case worker for two weeks after she refused to admit herself to Hickory House.

- [12] Also in May, during a supervised visitation, Mother locked herself in a bathroom for approximately 20 minutes and refused to unlock the door. After E.E.'s caregiver eventually found a key and unlocked the bathroom door, she and the case manager observed Mother slurring her speech and stumbling when she walked. Mother also had a syringe in her possession.
- [13] For a short period of time in June 2021, Mother resumed communication with her case manager. DCS arranged for Mother to admit herself for inpatient substance abuse and mental health treatment at Volunteers of America in July 2021. Once again, Mother's home-based case manager arranged to transport Mother to the facility on her intake day, and Mother refused to admit herself to the facility.
- [14] E.E. has special needs and participates in ongoing occupational and physical therapy. He has difficulty swallowing and chewing. E.E. requires special care and attention to ensure that he does not choke on food and eats full meals. Mother has only attended three of E.E.'s weekly physical and occupational therapy appointments since he was removed from her care in May 2020. E.E.'s caregiver offered to allow Mother to participate in those appointments via Zoom, but Mother declined to participate because the appointments did not interest her. Tr. p. 96.

[15] In March 2021, DCS filed a petition to terminate Mother’s parental rights. A fact-finding hearing was held on August 10, 2021. In the months leading up to the hearing, Mother did not consistently attend home-based counseling sessions, and she attended 17 out of 26 supervised visitations. *Id.* at 54. The visitation supervisor testified that she would not be comfortable recommending unsupervised visitation between Mother and E.E. *Id.* at 49. Mother did not have stable housing or employment throughout the CHINS and termination proceedings. The DCS case manager and E.E.’s court-appointed special advocate agreed that Mother’s parental rights should be terminated and E.E. should be adopted by his caregiver and maternal grandmother, who is willing to adopt him. *Id.* at 115, 122.

[16] On September 17, 2021, the trial court issued its order terminating Mother’s parental rights after concluding that DCS presented clear and convincing evidence to prove the factors enumerated in [Indiana Code section 31-35-2-4](#). In its order, the court issued the following factual findings summarizing the evidence presented at the hearing:

60. DCS has offered Mother extensive services to address her substance abuse, mental health and instability. Mother has refused to consistently engage in these services. This child was removed from Mother’s care on May 6, 2020. On [the] date of Fact-Finding, August 10, 2021, Mother’s circumstances had not improved. Mother was in no better position to safely care for this child.

62. Neither Parent has the current ability to meet the child's needs. It is not safe for the child to be in the care of Mother or Father at this time. Mother's history of instability, criminal behavior, and substance abuse continues. . . . All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationship[] would be detrimental to the child. The child needs permanency now.

Appellant's App. p. 124. Mother now appeals.

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)*. Here, the only element at issue is whether termination is in the child’s best interests. *I.C. § 31-35-2-4(b)(2)(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 only argues that DCS failed to present clear and convincing evidence that termination of her parental rights is in E.E.’s best interests. 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.

[22] By her own admission, Mother has struggled with substance abuse for several years. Throughout these proceedings, Mother had brief periods of sobriety. And she successfully completed in-patient treatment in Fall 2020, but she relapsed shortly thereafter. Mother tested positive for Fentanyl, heroin, and methamphetamine throughout the CHINS and termination proceedings. Twice, DCS arranged for additional in-patient treatment, and on the intake day, Mother refused to admit herself or stopped communicating with her caseworker.

[23] Mother was attentive to E.E. during supervised visitations but required assistance from the visit supervisor or maternal grandmother to care for E.E.'s needs. She also attended at least three visits while she was impaired due to substance abuse. E.E. has special needs and Mother has refused to attend his

physical and occupational therapy appointments. Mother's visitation never progressed to unsupervised visitation.

[24] Mother also failed to consistently participate in other services including home-based case work and therapy. Mother lacks stable housing and a stable income. Mother was convicted of a Level 6 felony and violated her probation during these proceedings. She was incarcerated and placed in work release during the CHINS proceedings.

[25] Mother has not demonstrated that she is able to care for herself, much less a two-year-old child. And Mother did not make any improvements in her own circumstances between the date E.E. was removed and the date of the fact-finding hearing.³ Finally, Mother's refusal to take advantage of the opportunities DCS provided to help her address her substance abuse issues demonstrated her lack of commitment toward reunification with E.E.

Conclusion

[26] For all of these reasons, we conclude that clear and convincing evidence supports the trial court's finding that terminating Mother's parental rights is in E.E.'s best interests. Therefore, we affirm the trial court's order terminating Mother's parental rights to E.E.

³ Mother attempts to analogize her case to the circumstances in *G.Y. v. Ind. Department of Child Services*, 904 N.E.2d 1257 (Ind. 2009). But the mother in that case maintained a consistent and positive relationship with her child, demonstrated commitment towards reunification with her child, and took positive steps during her incarceration to make improvements in her life.

[27] Affirmed.

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