

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Parent-Child
Relationship of A.T., Mother,
and H.E., J.T., and H.T., Minor
Children,

A.T.,

Appellant-Respondent,

v.

June 14, 2022

Court of Appeals Case No.
21A-JT-2240

Appeal from the
Marion Superior Court

The Honorable
Scott B. Stowers, Magistrate

Trial Court Cause Nos.
49D09-1912-JT-1003

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian Ad Litem.

49D09-1912-JT-1004

49D09-1912-JT-1005

Molter, Judge.

[1] A. T. (“Mother”) and J.E. (“Father”) (collectively, “Parents”) are the parents of H.E. (born in 2016), J.T. (born in 2015), and H.T. (born in 2014) (collectively, “Children”). Children were adjudicated as children in need of services (“CHINS”). The juvenile court later terminated both parents’ parental rights, but only Mother appeals the juvenile court’s ruling.

[2] Mother contends the juvenile court erred in concluding the Indiana Department of Child Services (“DCS”) proved by clear and convincing evidence that there is a reasonable probability that the conditions resulting in Children’s removal from her care would not be remedied. We disagree and therefore affirm the juvenile court.

Facts and Procedural History

[3] Mother, Father, and Children resided with maternal grandparents. In October 2017, Mother, Father, and maternal grandparents were arrested because police found methamphetamine in the home. That day, DCS removed Children from

Parents' care due to neglect and the deplorable conditions of the home and filed petitions alleging that Children were CHINS. Tr. Vol. II at 55; Appellant's App. Vol. II at 34, 39, 44, 49, 52, 55, 150, 167, 170, 177, 187, 191, 198, 208. Parents later admitted they needed help maintaining stable housing and improving their parenting skills, so in January 2018, the juvenile court adjudicated Children as CHINS. Appellant's App. Vol. II at 34, 39, 44. The juvenile court required Mother to participate in home-based case management, home-based therapy, and a parenting assessment.

[4] In November 2019, the juvenile court changed the permanency plan to adoption because Mother (1) had made no progress toward reunification; (2) was not participating in home-based management; (3) parenting time was "very chaotic"; (4) Mother had participated in parenting education but had made no progress with her parenting skills; and (5) the guardian ad litem ("GAL") recommended that the plan change to adoption.

[5] DCS provided home-based case management, home-based therapy, and a parenting assessment for Mother. Mother's parenting assessment included a recommendation that she work on parenting education. Mother struggled with the parenting education material due to her learning disability, so DCS assigned a parent aide to Mother. The parent aide tried to teach Mother about brain development, behaviors, and different ways to parent Children. As of December 2019, Mother had achieved none of her goals with the parent aide, so the aide discharged Mother.

- [6] While she was still in a relationship with Father, Mother often canceled her meetings with the home-based case manager. Mother left Father in December 2020. At that time, after more than three years of services, Mother admitted there had been domestic violence in her relationship with Father. DCS then arranged for separate services for Mother and Father and provided Mother with domestic violence services. After her separation from Father, Mother canceled fewer meetings with the home-based case manager, but she still canceled about twenty-five percent of the meetings. *Id.* at 35, 40, 45; Tr. Vol. II at 122.
- [7] Mother’s home-based case management goals were employment, budgeting, obtaining food stamps, keeping her phone on, and obtaining a driver’s license. At the factfinding hearing, DCS family case manager (“FCM”) Lindsey Pettitt testified that Mother was not making any progress toward her treatment goals. Tr. Vol. II at 58, 60, 99. DCS provided Mother with services throughout the four-year span of the CHINS cases, but she did not successfully complete any services. *Id.* at 17, 58. At the time of the termination factfinding, Mother was still working on 123 Magic, a curriculum that teaches stability, budgeting, and parenting skills. She was also learning how to access community resources.
- [8] Until Mother and Father separated, they visited Children together. At the time of the factfinding hearing, Mother still had visitation with Children, but the frequency of visits was reduced, and she visited with H.T. separately from J.T. and H.E. Consuelo Gahs, Children’s therapist, testified that separate visits and fewer visits were in Children’s best interests because Children displayed a lot of

“psychological behaviors” after visits. Appellant’s App. Vol. II at 36, 41, 46; Tr. Vol. II at 84, 189.

[9] Some visits were chaotic; H.T. and H.E. acted out. H.T. once tried to choke Mother. Tr. Col. II at 41; Appellant’s App. Vol. II at 35, 40, 45. H.T. was critical of Mother and constantly asked her why she had not done more to reunite Children with her. When H.T. had “meltdowns” during visits, Gahs had to take H.T. outside to calm her down. H.T.’s behavior often caused J.T. and H.E. to overreact. To ensure everyone’s safety, DCS made certain that there were always two providers with Children after visits. Tr. Vol. II at 108. The second provider was there to “keep[] the first provider safe.” *Id.* Gahs testified that she would be concerned if Children were returned to Mother’s care because Mother struggled to keep Children under control. Gahs stated that during visits, Children “run the roost,” and Mother failed to understand that Children had matured. *Id.* at 183.

[10] Mother was to provide healthy meals during visits and stay off her phone. Appellant’s App. Vol. II at 35, 40, 45; Tr. Vol. II at 135, 148. Mother was often reminded of these responsibilities. But at least half the time she failed to provide appropriate meals, and several times she participated in FaceTime calls with a third party. Appellant’s App. Vol. II at 35, 40, 45; Tr. Vol. II at 137. During one visit a few weeks before the factfinding hearing, the visitation supervisor ended the visit early because Mother was on FaceTime with a friend, and Mother asked the friend to bring food to the visit. Mother often failed to

discipline or redirect Children during visits. Service providers often had to redirect Mother during visits.

[11] Mother's visits never progressed to unsupervised visits. Appellant's App. Vol. II at 36, 41, 46; Tr. Vol. II at 101–02, 152. At the time of the termination factfinding, Mother could not manage Children without redirection and prompting. Mother had failed to show she could parent Children on her own.

[12] Visits were often traumatic for Children. After visits, H.T. and H.E. had anger issues and acted out at school; these behaviors often resulted in emergency therapy sessions. Tr. II at 104; Appellant's App. Vol. II at 36, 41, 46. Visits were eventually reduced from three visits per week to one visit per week because Children's reactions to visits were so "severe." Tr. Vol. II at 84.

[13] Mother's housing situation was unstable. At the time of Children's removal, Mother and Father lived with the maternal grandparents. They later moved in with the paternal grandparents and then moved back in with the maternal grandparents. Both sets of grandparents abused amphetamines and methamphetamine. Mother and Father then lived with various relatives. At the factfinding hearing, FCM Petitt testified that as far as she knew, Mother was without stable housing and that she resided with the maternal grandmother.

[14] Mother testified that a few weeks before the factfinding hearing, she moved into a three-bedroom home with a roommate and that she was taking over the lease. But Mother never provided any paperwork to DCS about this new housing. *Id.*

at 63. Case manager Tanica Malone did not encourage Mother to be on the lease because she thought Mother should obtain low-income housing. Mother's main source of income is her SSI income for her learning disability.

Appellant's App. Vol. II at 35, 40, 45. Mother also works as a waitress, which is "under the table" because she is concerned the income may render her ineligible for SSI. *Id.* Without SSI income, Mother could not live within her budget.

[15] Children have been in the same foster home since they were removed from the care of Mother four years ago. Children were very withdrawn when they were removed from Mother's care. The foster parents meet Children's needs and provide them with stability. Children are thriving, doing well in school, and have bonded with the foster parents. The foster mother helps Children with their homework, takes them to all their medical appointments, and makes sure they get any help that they need.

[16] FCM Petitt testified that the reasons for Children's removal had not been remedied and that Mother lacked adequate parenting skills. Tr. Vol. II at 75. FCM Petitt also stated that continuation of the parent-child relationship threatened Children's wellbeing because Mother's living situation was unstable. *Id.* at 76. FCM Petitt testified that during the four-year duration of the CHINS cases, Mother never showed an ability to support herself or meet the needs of Children. *Id.* Considering these factors, FCM Petitt testified: "There is severe concern [] for the psychological well-being of [Children] if they were to be returned to parents' care at this time" and that "termination of the parental

rights . . . is in the best interest of Children.” *Id.* at 77. FCM also said that even if Mother were given more time, she was unlikely to remedy the conditions leading to the removal of Children. *Id.*

[17] Children’s court appointed special advocate (“CASA”) Patrice Bradley recommended termination and adoption because Mother made no progress in parenting skills and the foster home provided the love and support Children need. *Id.* at 202–03, 209. Therapist Gahs also testified that termination of Mother’s parental rights was in the best interest of Children because Mother could not provide the stability that Children need. *Id.* at 191.

[18] On September 23, 2021, the juvenile court issued its orders terminating Mother’s parental rights, finding, in part: (1) Children had been removed from Mother’s care for nearly four years; (2) Mother often canceled home-based counseling sessions; (3) Mother did not successfully complete any court-ordered services; (4) Mother often failed to follow the rules governing visitation; (5) Mother never had unsupervised parenting time with Children and still needed two service providers to supervise her parenting time; (6) Mother is still unable to effectively discipline Children; (7) service providers often needed to redirect Mother during visitations; (8) visitations were traumatic, Children had behavioral issues during and after parenting time, and Children often needed therapy after parenting time; (9) Mother did not have stable housing; and (10) Children were thriving in their foster home. Appellant’s App. Vol. II at 34–47.

[19] The juvenile court concluded: (1) there is a reasonable probability that the conditions that led to the removal of Children would not be remedied; (2) the continuation of the parent-child relationship threatens Children’s wellbeing; (3) termination of the parent-child relationship is in Children’s best interests; and (4) there is a satisfactory plan for the future care and treatment of Children—adoption. *Id.* at 36–37, 41–42, 46–47. Mother now appeals the termination of her parental rights.

Discussion and Decision

I. Standard of Review

[20] 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 of 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.*

[21] 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, 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 trial 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*.

[22] 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).

II. Sufficiency of the Evidence

[23] Mother contends the evidence is insufficient to support the termination of her parental rights.¹ Before an involuntary termination of parental rights may occur, the State must allege and prove, among other things:

¹ Mother challenges the evidentiary basis for some of the trial court’s findings, but we will not address those challenges because our decision does not rely on the findings that Mother has identified as unsupported by the evidence.

(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 [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.²

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 at 149. 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." Ind. Code § 31-35-2-8(a) (emphasis added).

[24] On appeal, Mother challenges the juvenile court's conclusion that DCS proved, by clear and convincing evidence, that there was a reasonable probability that

² Mother does not contest whether termination of the parental relationship is in the best interests of Children or whether there is a satisfactory plan for the care and treatment of Children.

the conditions that resulted in Child’s removal or the reasons for placement outside the home of the parents will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).³ In determining whether there is a 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.*

[25] In the second step, the juvenile court must judge a parent’s fitness at the time of the termination proceeding, considering 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, “trial 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). DCS is not required to provide

³ Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, the court is required to find that only one prong of subsection 2(B) has been established by clear and convincing evidence. Therefore, we will not address whether there is a “reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of [Children].” Ind. Code § 31-35-2-4(b)(2)(B)(ii).

evidence ruling out all possibilities of change; it must establish only that there is a reasonable probability that 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 trial 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.

[26] Children were removed from Mother's care because of Mother's admission that she needed help to (1) maintain stable housing and (2) improve her parenting skills to provide Children with a safe, appropriate, and sanitary living environment. Appellant's App. Vol. II at 34, 39, 44. During the four-year duration of this case, Mother never obtained stable housing. She moved back and forth between maternal and paternal grandparents and other relatives. FCM Petitt testified that Mother did not have stable housing at the time of the factfinding hearing and was, at that time, living with the maternal grandmother. Mother claimed she was living in a three-bedroom home in Beech Grove with roommates and would soon take over the lease, but Mother provided no documentation about this residence. At the time of the factfinding hearing, Mother was on several waiting lists for housing. *Id.* at 35, 40, 45. FCM Petitt testified that Mother's unstable living situation threatened the well-being of Children. Tr. Vol. II at 76. Because the evidence sufficiently established that

Mother made no progress on obtaining suitable housing for her and Children, it was reasonable for the juvenile court to conclude that there was a reasonable probability Mother's housing situation would not be remedied.

[27] Mother also made no progress on her parenting skills during the long tenure of this case. She failed to successfully complete even one service program. She did not make sufficient progress to allow unsupervised parenting time and, indeed, always needed two service providers to help her monitor, redirect, and discipline Children during each parenting session. She often failed to follow the rules during visits, especially with respect to meals. Appellant's App. Vol. II at 35, 40, 45. Visits were usually traumatic; Children would act out both during and after visitations and would sometimes misbehave in school after visitations occurred. *Id.* at 36, 41, 46; Tr. Vol. II at 104. Children often needed emergency therapy after visitation, and the reactions of Children to parenting time was so severe that the frequency of parenting time sessions was reduced from three sessions to one session per week. Appellant's App. Vol. II at 36, 41, 46; Tr. Vol. II at 84. Because the evidence sufficiently established that Mother did not improve her parenting skills, it was reasonable for the juvenile court to conclude that there was a reasonable probability that Mother's parenting skills would not improve.

[28] In sum, Mother failed to meet her burden to show the evidence was insufficient to support the trial court's conclusion that the conditions that led to the removal of Children and placement outside the home would not

be remedied. Therefore, the trial court did not commit clear error in terminating Mother's parental rights.

[29] Affirmed.

Mathias, J., and Brown, J., concur.