MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Megan Shipley
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE INDIANA DEPARTMENT OF CHILD SERVICES

Theodore E. Rokita
Attorney General

Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE KIDS' VOICE OF INDIANA

Katherine Meger Kelsey
Chief Legal Counsel
Kids' Voice of Indiana
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of Ma.P., E.P., and V.P. (Minor Children), and

M.P. (Mother),

Appellant-Respondent,

December 30, 2022

Court of Appeals Case No. 22A-JT-1191

Appeal from the Marion Superior Court

The Honorable Scott B. Stowers, Magistrate

Trial Court Cause Nos. 49D09-2011-JT-797, -798, -799

v.

Indiana Department of Child Services,
Appellee-Petitioner

and

Kids' Voice of Indiana,
Appellee-Guardian ad Litem

Crone, Judge.

Case Summary

[1] M.P. (Mother) appeals the trial court's order involuntarily terminating her parental rights to her minor children Ma.P., E.P., and V.P. (the Children). Finding no error, we affirm.

Facts and Procedural History

[2] The evidence in support of the judgment and the undisputed findings of fact follow. Mother and P.P. (Father) (collectively the Parents) are the parents of V.P., born in December 2006; Ma.P., born in October 2008; and E.P., born in May 2010.[1] Mother also has three adult daughters. Father was arrested for molesting one of the adult daughters in 2012, pled guilty to the charges in 2013,

[1] Father's parental rights to the Children were also terminated, but he is not participating in this appeal.

was incarcerated from 2010 to 2020, is a registered sex offender, has no relationship with the Children, and has been ordered not to have contact with Mother or the Children.

[3] In 2012, when Father was arrested for child molesting, the Indiana Department of Child Services (DCS) first became involved with the family, and the Children were adjudicated children in need of services (CHINS). Ex. Vol. 1 at 234. In June 2013, V.P. and E.P. were successfully reunited with Mother and the case was closed. In September 2013, V.P. and E.P. were again adjudicated CHINS.[2] *Id*. at 222. In October 2015, Mother and Children were successfully reunited and the case was closed.

[4] In January 2019, Mother placed the Children in the care of a family friend because Mother's Indianapolis rental home was uninhabitable as the electricity was off and the ceiling was falling in. On March 22, 2019, DCS received a call from law enforcement requesting assistance at Mother's friend's home. DCS family case manager (FCM) Edel Senefeld responded. At the friend's home, FCM Senefeld encountered Mother, five of her children (including the three Children), and Mother's friend. Mother refused to let FCM Senefeld see her rental house, but she offered to show FCM Senefeld the home of her oldest daughter, where Mother wanted to take the Children to live. The two youngest children were crying and acting scared. FCM Senefeld did not believe it was

[2] The record does not reveal the reason for the second adjudication. Ma.P. was not involved in this case apparently because he was living in California at the time. Tr. Vol. 2 at 198.

safe to let the Children go with Mother and took the Children into DCS custody.

[5] On March 26, 2019, DCS filed a petition alleging that the Children were CHINS. On July 3, 2019, Mother admitted that the Children were CHINS because she needed "assistance obtaining and maintaining sobriety" and the "coercive intervention of the Court [was] necessary." *Id*. at 114-15. In the dispositional decree, Mother was ordered to participate in home-based case management, engage in substance abuse assessment, submit to random drug screens, and join in family therapy as recommended by the Children's therapist.

[6] DCS explored relative placement with the older siblings but found that it was not viable. Mother did not provide DCS with any other relatives for potential placement. In May 2019, DCS placed the Children with a foster parent with whom they have remained. At the end of 2019, the foster parent moved with the Children to Crown Point.

[7] In November 2020, DCS filed its petition to terminate parental rights. The trial court held a termination hearing in March 2022. On April 29, 2022, the trial court issued its order terminating the Parents' parental rights. In relevant part, the trial court concluded as follows:

> 57. There is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside of the home will not be remedied by their parents. [Mother] has [had] over three years to put forth an effort and has been unable to do so. She has had minimal participation in services and has made no progress toward reunification. Stability

> and sobriety remain major concerns. She is presently homeless and is still using illegal drugs as recently as two days before this trial. ….
>
> ….
>
> 59. Termination of the parent-child relationship is in the children's best interests. Termination would allow them to be adopted into a stable and permanent home where their needs will be safely met. Delaying permanency is detrimental to the children's mental well-being.

Appealed Order at 4. This appeal ensued.

Discussion and Decision

[8] Mother seeks reversal of the termination of her parental rights. In addressing her arguments, we acknowledge that "a parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (quoting *Bester v. Lake Cnty. Office of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005)). "[A]lthough parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008). Involuntary termination of parental rights is the most extreme sanction, and therefore "termination is intended as a last resort, available only when all other reasonable efforts have failed." *Id*.

[9] "We have long had a highly deferential standard of review in cases involving the termination of parental rights." *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

> In considering whether the termination of parental rights is appropriate, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and any reasonable inferences therefrom that support the judgment, and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. Where a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. [Ind. Trial Rule 52(A)]. In evaluating whether the trial court's decision to terminate parental rights is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment.

K.T.K. v. Ind. Dep't of Child Servs., 989 N.E.2d 1225, 1229-30 (Ind. 2013) (citations and quotation marks omitted). Mother challenges only two of the trial court's sixty-one findings. When findings of fact are unchallenged, this Court accepts them as true. *In re S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). As such, if the unchallenged findings clearly and convincingly support the judgment, we will affirm. *Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015), *trans. denied*.

[10] A petition to terminate a parent-child relationship must allege, 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). DCS must prove each element by "clear and convincing evidence." *R.S.*, 56 N.E.3d at 629; Ind. Code § 31-37-14-2. If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother challenges the trial court's conclusions as to elements (B) and (C). We observe that DCS need prove only one of the options listed under subsection 31-35-2-4(b)(2)(B). Here, the trial court concluded that DCS had established options (i) and (ii) by clear and convincing evidence.[3] Mother challenges both conclusions,

[3] The trial court also could have based its decision on option (iii) with regard to V.P. and E.P. because they had been adjudicated CHINS in two previous CHINS cases.

but we may affirm if the findings of fact clearly and convincingly support either one.

Section 1 –The trial court's conclusion that there is a reasonable probability of unchanged conditions is not clearly erroneous.

[11] In determining whether there is a reasonable probability that the conditions that led to the Children's removal and continued placement outside Mother's care will not be remedied, we engage in a two-step analysis. *K.T.K.*, 989 N.E.2d at 1231. First, "we must ascertain what conditions led to their 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 1132, 1134 (Ind. 2010)). In the second step, the trial 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." *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." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In addition, a trial court may consider services offered by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. DCS "is not required to

provide evidence ruling out all possibilities of change; rather, it need only establish 'that there is a reasonable probability that the parent's behavior will not change.'" *Id*. (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)). Further, "a court may consider not only the basis for a child's initial removal from the parent's care, but also any reasons for a child's continued placement away from the parent." *In re D.K.*, 968 N.E.2d 792, 798 (Ind. Ct. App. 2012); *see also Matter of K.T.*, 137 N.E.3d 317, 327 (Ind. Ct. App. 2019) ("A trial court may consider conditions that emerge subsequent to initial removal and that would justify continued removal.").

[12] Here, the Children were adjudicated CHINS due to Mother's abuse of illegal substances. The Children were removed from Mother's care in March 2019, and the termination hearing was held in March 2022. The trial court's findings may be summed up as follows: Mother's engagement with services had been sporadic; she had a history of using methamphetamine and marijuana and admitted to being an alcoholic; she had not submitted to any drug screens since September 2021; she continued to use marijuana every other day; she attempted to submit a fraudulent certificate of completion for a substance abuse program to DCS but told DCS providers that she did not think the certificate would be verified; and she was not currently participating in substance abuse treatment. Appealed Order at 3. In addition, the court found that Mother had been employed for approximately one month providing home health care to a friend; she had been homeless for the three months preceding the termination hearing; she had not had any in-person parenting time with the Children since

September 2021; and she suffered from severe anxiety and was unable to travel long distances in an automobile even if somebody else was driving.[4] *Id*. at 3. After three years, Mother had not made progress and was not in any position to be reunited with the Children. The trial court's unchallenged findings support its conclusion that there is a reasonable probability that the conditions that led to the Children's removal and continued placement outside Mother's care would not be remedied.

Section 2 – The trial court's conclusion that termination is in the Children's best interests is not clearly erroneous.

[13] To determine whether termination is in a child's best interests, the trial court must look to the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. "[C]hildren cannot wait indefinitely for their parent to work toward preservation or reunification–and courts 'need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship.'" *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1235). Also, "[p]ermanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009).

[4] We note that DCS provided transportation in the form of a driver so that Mother could visit the Children and also scheduled visits in Lafayette between Indianapolis and Crown Point to decrease Mother's time in the car. Tr. at 109, 144-45. Mother testified that she was participating in virtual visitation with the Children once a week. *Id*. at 109.

[14] In sum, the trial court found the following: the Children have been with the foster parent since May 2019; the foster parent is the pre-adoptive placement, and the Children are bonded and doing well; when the Children were first placed in foster care, they had severe behavioral problems; E.P. and Ma.P. were angry and aggressive; E.P. frequently hid in the house, pulled his hair out, and punched holes in the walls; Ma.P. punched holes in the walls; V.P. was very quiet; since being placed in foster care the Children's behavior has greatly improved; V.P. has become open and engaging and is a better advocate for herself; E.P. and Ma.P. are currently receiving therapy and have become less aggressive; although E.P. and Ma.P. are still aggressive toward each other, their behavior has improved, and they show brotherly love to each other; E.P. and Ma.P. have become more confident and have developed higher self-esteem; E.P. and Ma.P.'s therapist concluded that for them to thrive, they need to reside in a safe and structured environment, which is stable and has adequate food availability; and E.P. and Ma.P. were unable to read when placed in foster care, and now both can read at a very basic level. In addition, the trial court found that Mother is unable to maintain sobriety and is unable to provide stable housing for herself and the Children and that the guardian ad litem (GAL) agrees that the permanency plan of adoption is in the Children's best interests. These unchallenged findings, along with the findings supporting the court's conclusion regarding unchanged conditions, support its conclusion that termination is in the Children's best interests. We also note that we have previously found that a service provider's opinion that termination is in a child's best interests, combined with the evidence that conditions that resulted

in the child's removal from or reasons for placement outside the home will not be remedied, is sufficient to support the trial court's conclusion that termination is in the child's best interests.[5] *See A.D.S.*, 987 N.E.2d at 1158-59. Based on the foregoing, we affirm the trial court's termination order.

[15] Affirmed.

May, J., and Weissmann, J., concur.

---

[5] Mother challenges this Court's line of cases, which she claims state the following:

> [T]he appellate court *must* find there was sufficient evidence to support the best interests element if: (1) there was evidence to support the second element of the termination statute (that the conditions resulting in removal would not be remedied, or that the continuation of the parent-child relationship poses a threat to the child's wellbeing), and (2) the case worker and/or [GAL] and/or court-appointed special advocate (CASA) recommended termination.

Reply Br. at 6. We disagree that our cases apply this rule. What we have stated is that the "[r]ecommendations of the case manager and court-appointed advocate, 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 C.S.*, 190 N.E.3d 434, 439-40 (Ind. Ct. App. 2022) (quoting *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*), *trans. denied*. In a few cases where the trial court found *both* unchanged conditions and a threat to the child's well-being and we reviewed both conclusions for clear error, we stated that evidence supporting *both* of those grounds and the service provider's testimony that termination was in the child's best interest was sufficient to support termination. *See id.*; *In re M.M.*, 733 N.E.2d 6, 13-14 (Ind. Ct. App. 2000), *abrogated on other grounds by In re G.P.*, 4 N.E.3d 1158 (Ind. 2014)); *Ramsey v. Madison Cnty. Dep't of Fam. & Child.*, 707 N.E.2d 814, 818 (Ind. Ct. App. 1999). We draw a distinction between the probability of unchanged conditions and the threat to the child's well-being because the latter could be remedied and the parent and child reunified. In *R.S.*, 56 N.E.3d 625, the case cited by Mother, the trial court had terminated parental rights based on the threat to the child's well-being, not the probability of unchanged conditions, *id*. at 629, so there was no reason for our supreme court to acknowledge the line of the Court of Appeals cases cited by Mother.