

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Ana M. Quirk
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Natalie F. Weiss
Deputies Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of:

R.B. (Minor Child),
and

B.B. (Mother)

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 25, 2022

Court of Appeals Case No.
21A-JT-2537

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause No.
18C02-2103-JT-24

Tavitas, Judge.

Case Summary

- [1] B.B. (“Mother”)¹ appeals the juvenile court’s grant of a Department of Child Services (“DCS”) petition to terminate her parental rights to minor child R.B. (“Child”).² Child was removed from Mother’s care as a result of her substance abuse and failure to supervise Child. After Mother participated in court-ordered services sporadically and continued to abuse drugs, DCS filed a petition to terminate her parental rights. The juvenile court concluded that the conditions resulting in Child’s removal were unlikely to be remedied and that termination of Mother’s parental rights is in the best interest of the Child. We agree. Accordingly, we affirm.

Issues

- [2] Mother raises three issues, of which we address two³:

¹ R.B.’s father is deceased.

² Child has two other siblings who were included in DCS’ petition to terminate Mother’s parental rights. The juvenile court did not terminate Mother’s rights to the two siblings, however, and they are not part of this appeal.

³ Mother also argues that the continuation of the parent-child relationship does not pose a threat to the well-being of the Child. The State correctly points out that the juvenile court made no such determination. Appellee’s Br. p. 18. Accordingly, the issue is not properly before us. Additionally, Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, the DCS was required to demonstrate by clear and convincing evidence of a reasonable probability that *either*: (1) the conditions that resulted in the Children’s removal or the reasons for placement outside the home of the parents will not be remedied, or (2) the continuation of the parent-child relationship poses a threat to the well-being of the Children. *See, e.g., Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 n.5 (Ind. 2005). The trial court here found a reasonable probability that the conditions that resulted in the Child’s removal or reasons for placement

- I. Whether there was a reasonable probability that the conditions resulting in removal would be remedied.
- II. Whether termination of Mother's parental rights is in the best interest of the Child.

Facts

[3] Child was removed from Mother's care at birth in November 2017 because drugs were present in his system. After sixteen months in foster care, Child was returned to Mother.

[4] Only a few months later, Mother tested positive for cocaine and Child was removed from Mother's care on an emergency basis on November 19, 2019, as a result of "allegations of abuse and/or neglect," specifically, Mother's drug use, arrest, and a "burn" on Child's stomach. Appellant's App. Vol. II p. 13; Tr. Vol. II p. 8. Additionally, DCS alleged that Mother used marijuana in the presence of the Child and his siblings, and that other people were using syringes in the home. A doctor examined Child, discovered the burn on Child's stomach, and noted that Child was both verbally delayed and underweight. Mother claimed that the burn was as a result of Child playing with a plastic bag that caught fire, yet Mother failed to seek medical attention for Child.

outside Mother's home will not be remedied. As we will explain *infra*, there is sufficient evidence to support that conclusion. Accordingly, we do not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Children.

[5] DCS filed a petition on November 19, 2019, alleging that Child was a child in need of services (“CHINS”). During the fact-finding hearing on February 6, 2020, Mother admitted to substance abuse, conceded that Child was a CHINS, and acknowledged her incarceration for the period between when Child was removed and January 2020. The juvenile court entered its dispositional order March 4, 2020 and granted wardship of the Child to DCS. Mother was ordered, in part, to: (1) complete a substance abuse assessment; (2) complete a parenting assessment; (3) maintain a stable income; (4) maintain stable housing; (5) participate in home-based case work; (6) maintain contact with a family case manager; (7) complete random drug screens and visitation; and (8) comply with any recommendations issued as a result of the aforementioned assessments.

[6] Mother failed to complete the sober living program but did complete a substance abuse assessment in December 2020. She sporadically participated in group therapy and participated in individual therapy as ordered. She failed to complete the home-based case work,⁴ and periodically tested positive for gabapentin,⁵ cocaine, and THC, the active ingredient in marijuana.

⁴ Mother stopped participating in home-based case work by November 9, 2020, and never completed any of the goals associated with the service. Mother’s home-based case work was terminated for non-compliance on two different occasions.

⁵ Mothe tested positive for gabapentin use after her arrest for possessing it without a prescription in January 2021. The charge was still pending as of the TPR fact-finding hearing. Gabapentin is a medication that is frequently prescribed to lessen seizures and the transmission of pain signals; however it can be abused for its euphoric effects. Mother did have a prescription, but DCS considered it to be invalid as it was two years old at the time Mother presented it to DCS.

- [7] As of January 4, 2021, the juvenile court noted that Mother “partially complied with the child’s case plan[,]” *id.* at 16, tested positive for cocaine on November 18, 2020, and failed five previous drug screens. The juvenile court concluded that Mother “demonstrated significant manipulation in the CHINS cases with service providers, in her compliance with the Dispositional Order[,] and in choosing when to submit to drug screens.” Appellant’s App. Vol. II p. 88. Mother was, however, employed, participated in visitation, and engaged in substance abuse and parenting programs.
- [8] The juvenile court expressed concern that Mother could not adequately parent the Child while she continued to parent her two other children. Specifically, service providers expressed concerns that Mother was unable to consistently discipline her children during supervised visitation. Said visitation appeared to negatively impact Child, who experienced behavioral issues, night terrors, and stomach problems after visitations.⁶ The juvenile court entered an order on January 19, 2021, and modified the Child’s permanency plan to adoption.
- [9] DCS filed a petition to terminate Mother’s parent-child relationship on March 10, 2021. The juvenile court held a fact-finding hearing on May 20, 2021. The juvenile court entered numerous findings and conclusions. Mother does not challenge on appeal any of the relevant findings as follows:

⁶ Visitation was suspended in June 2021.

Mother tested positive for buprenorphine on November 18, 2019.
Mother was arrested on November 19, 2019.

* * * * *

[Mother admitted that she] struggles with substance abuse; that
Mother has remained incarcerated from the initiation of this
cause until approximately January 30, 2020[.]

* * * * *

There are still concerns with mother's ability to parent all three
(3) children. Currently, mother is working with Lifeline for
home[-]based casework to work on housing and parenting.
Mother now has a new home which is appropriate. Mother is
cooperating with DCS and is engaged in substance abuse
treatment through Aspire. Mother is attend[ing] parenting
classes through First Choice for Women. Mother has stated [sic]
to engage in individual counseling but only started on November
23, 2020. Mother needs additional time to meet her treatment
goals and complete the curriculum. There is still concern that
mother and [Child] are not bonded. Based upon mother's recent
positive drug screen for cocaine, it appears that [M]other is not in
recovery and is still manipulating the system to her advantage.

[Mother] has minimally enhanced her ability to fulfill her
parental obligations.”

* * * * *

[] Mother was arrested on January 26, 2021 for unlawful
possession or use of a legend drug under 48C05-2101-F6-000265.

[] Following Mother's arrest in January 2021, Mother tested positive for gabapentin.

* * * * *

[] Mother began testing positive for gabapentin in February 2021 after DCS requested that Mother's drug screens include a screen for gabapentin following her arrest for unlawful possession of gabapentin. Mother provided DCS with a prescription for gabapentin dated May 14, 2019. DCS did not consider the prescription for gabapentin to be valid due to it being nearly two (2) years old. Mother also had provided a drug screen positive for THC. []

* * * * *

29. Based upon observed concerns with Mother's lack of appropriate parenting during supervised visitation, Mother did not progress to unsupervised visitation with [Child] and his siblings. Based upon observed concerns during visitations and concerns regarding [Child]'s behavior surrounding visitation. Mother's visitation with [Child] was suspended in June 2021.

* * * * *

32. Both the prior CHINS adjudications and the current CHINS adjudications resulted in significant part from Mother's substance abuse, lack of supervision and lack of appropriate parenting skills.

* * * * *

45. Based on the foregoing, there is a reasonable probability that the conditions that resulted in the [Child]'s removal and

continued placement outside of the home—namely, Mother’s lack of adequate parenting skills sufficient to meet [Child]’s needs or her ability provide [Child] with a home free of abuse and/or neglect—will not be remedied.

* * * * *

48. In considering whether termination of the parent/child relationship is in the best interest of the child, the child’s need for permanency is a central consideration among the factors contemplated by the Court.

49. After considering a myriad of factors and the totality of the evidence, the Court finds by clear and convincing evidence that termination of the parent/child relationships is in the best interest of [Child].

* * * * *

[] Of the approximate forty-four (44) months of [Child]’s life, he has resided with the [foster parents] for thirty-six (36) months and Mother for eight (8) months.

52. [Child] is thriving in his placement. He is very bonded to both [foster parents], and he does not demonstrate a similarly close bond with Mother. Given the length of time that [Child] has been placed with the [foster parents], it would be extraordinarily traumatic to [Child] to remove him from their care and would threaten [Child]’s emotional and social development. [Child] needs and deserves the stability that the [foster parents]are providing and will continue to provide to him. The [foster parents]’s home is a pre-adoptive home.

Appellant's App. Vol. II pp. 84-91. The juvenile court terminated Mother's parental rights to Child on October 19, 2021. This appeal followed.

Analysis

[10] Mother argues that the juvenile court clearly erred in terminating her parental rights to Child. The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dept. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and can be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[11] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections

(a) and (b)” when granting a petition to terminate parental rights.⁷ Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor do we judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[12] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

⁷ Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (a) Except as provided in section 4.5(d) of this chapter, 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.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

I. Reasonable Probability of Remedying Conditions

[13] Mother challenges the trial court’s conclusion that 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.” I.C. § 31-35-2-4(b)(2). “In determining whether ‘the conditions that resulted in the [Children’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989

N.E.2d at 1231). “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.* In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester*, 839 N.E.2d at 152). “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 parents’ past behavior is the best predictor of their future behavior.” *Id.*

[14] Here, Mother challenges only the juvenile court’s finding that she failed to complete the substance abuse program offered at Shifra house, a finding which the State concedes is clearly erroneous. Appellee’s Br. p. 18. Because Mother’s completion of the Shifra house program does not support the judgment of the juvenile court, however, we do not consider it, and any error stemming from the juvenile court’s inaccurate finding is harmless. We further note that, because Mother fails to challenge any of the other findings of the juvenile court, we will accept those findings as true. *See, e.g., S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (citing *McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997)). Accordingly, we need only decide whether the remaining findings support the judgment. We conclude that they do.

[15] The primary condition that led to the removal of Child was Mother’s problem with substance abuse, including abusing substances in front of Child and

allowing others to abuse substances in her home. Mother repeatedly tested positive for a variety of illegal drugs and refused to submit to drug screens throughout the proceedings below, including after the completion of her time at Shifra House. We further note that a doctor discovered a burn on Child's stomach which, even accepting Mother's explanation for its provenance, is concerning. So too is Mother's failure to seek medical treatment for the burn. Finally, we note that Mother's sporadic engagement with services and concerns that she was merely going through the motions suggest that there is a reasonable probability that the conditions that warranted the initial removal will not be remedied.

[16] Mother emphasizes the services with which she has complied, either in whole or in part. The juvenile court, however, was well within its discretion to weigh more heavily Mother's historical patterns of drug abuse, failure to fully comply with services, and inattentiveness to her children than Mother's progress and partial successful participation in services. *See, e.g., S.S.*, 120 N.E.3d at 611 (citing *K.T.K.*, 989 N.E.2d at 1234). Mother merely requests that we reweigh the evidence in order to rebalance it in her favor, which we will not do. We cannot say that the trial court clearly erred in concluding that the conditions that lead to the removal of Child will not be remedied in the future.

II. Best Interest of the Child

[17] Next, Mother challenges the trial court's determination that the termination of Mother's parental rights is in the Child's best interest. In determining what is in the best interests of a child, the trial court is required to look at the totality of

the evidence. *Z.B. v. Indiana Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[18] Mother has waived this issue. The sum total of her briefing on the matter is the following line: "There was no evidence that it was in the best interest of [R.B.] to terminate the parental rights of [Mother]." Appellant's Br. p. 18. Our Appellate Rules require cogent arguments supported by authority, and Mother has failed to provide any authority. *See* Ind. Appellate Rule 46(A)(8)(a); *Clark Cnty. Drainage Bd. v. Isgrigg*, 963 N.E.2d 9, 18 (Ind. Ct. App. 2012), *adhered to on reh'g*, 966 N.E.2d 678 (Ind. Ct. App. 2012) (citing *Watson v. Auto Advisors, Inc.*, 822 N.E.2d 1017, 1027-28 (Ind. Ct. App. 2005), *trans. denied*) ("When parties fail to provide argument and citations, we find their arguments are waived for appellate review.").

[19] Waiver notwithstanding, the juvenile court did not clearly err in concluding that termination of Mother's parental rights is in the Child's best interest. Mother failed to challenge the trial court's findings that: (1) she was inconsistent in implementing discipline with Child and his siblings; (2) she was

unable to control the children when they were all together, even in supervised visitation settings; and (3) CASA concluded that termination and adoption are in Child's best interest. Most importantly, in the context of Child's critical need for permanency, Mother did not challenge the trial court's findings that Child is bonded with his pre-adoptive parents and that removal from their home would be traumatic for Child. Those findings, combined with Mother's inability to maintain sobriety and fully comply with services, clearly support the juvenile court's conclusion that termination of Mother's parental rights is in the best interest of the Child.

Conclusion

[20] The juvenile court did not clearly err in concluding that the conditions warranting removal of the Child are unlikely to be remedied and that termination of Mother's parental rights is in Child's best interest. Accordingly, the juvenile court's termination of Mother's parental rights is not clearly erroneous. We affirm.

[21] Affirmed.

Riley, J., and May, J., concur.