

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Deidre L. Monroe
Gary, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary
Termination of the Parent-Child
Relationship of:

B.G. (*Minor Child*),

and

C.G. (*Mother*),

Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner,

June 3, 2021

Court of Appeals Case No.
20A-JT-2353

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2005-JT-65

Robb, Judge.

Case Summary and Issue

- [1] C.G. (“Mother”) appeals the termination of her parental rights to her minor child and raises two issues which we consolidate and restate as whether the juvenile court’s order is clearly erroneous. Concluding it is not, we affirm.

Facts and Procedural History

- [2] Mother has one child, B.G. (“Child”), born January 3, 2013.¹ On September 17, 2018, the Indiana Department of Child Services (“DCS”) received a report alleging Child was a victim of neglect due to Mother’s substance abuse and lack of supervision. On September 22, DCS family case manager (“FCM”) Ayana Ward investigated the report and met with Child, who appeared to be “happy [and] healthy[.]” Transcript, Volume II at 30.
- [3] On October 1, DCS received a second report regarding allegations of Mother’s drug use. FCM Ward made contact with Mother on October 17 during which time Mother admitted to using THC and being a recovering heroin addict. Mother voluntarily submitted to a drug screen the same day, which later yielded positive results for THC, cocaine, heroin, and morphine. Child was removed from Mother on October 22 and placed in foster care.

¹ Child’s father is deceased. He passed away prior to DCS’ involvement in this matter.

- [4] On October 23, DCS filed a petition alleging Child was a child in need of services (“CHINS”) due to Mother’s substance abuse and inability to properly care for Child. An initial/detention hearing was held the same day during which Mother denied the allegations. Child was placed in relative care. FCM Jacqueline Magee was assigned the case. At some point, Mother, on her own, sought out substance abuse treatment at a facility in Cambridge, Indiana and was discharged in December 2018 or January 2019.
- [5] A fact-finding hearing was held on January 15, 2019 and the juvenile court adjudicated Child a CHINS. By agreement of the parties, the juvenile court immediately proceeded to disposition and subsequently issued its dispositional decree requiring Mother to complete a substance abuse assessment and a parenting assessment; submit to random drug screens twice each week; and attend supervised visitation with Child at a third-party facility. *See* Exhibits at 30.
- [6] Mother completed the substance abuse assessment, which recommended treatment, and the parenting assessment.² In February, Mother began home-based casework. However, in a progress report filed with the juvenile court in March, FCM Magee reported that it had been difficult to get in contact with Mother, stating that “[s]he does not answer her phone, nor does she return phone calls.” *Id.* at 37. She reported that Mother had only submitted to one

² No recommendations were made as a result of the parenting assessment.

drug screen since December, when she tested positive for cocaine and heroin, and Mother “continues to struggle with her addiction and is reluctant to screen due to this.” *Id.* at 38.

- [7] On April 1, Mother was arrested for possession of drugs. In a June progress report, DCS detailed Mother’s non-compliance and continued struggle to maintain sobriety during the reporting period, April 5 to June 28. DCS reported that Mother checked herself into a drug treatment facility in May; failed to participate in any services at the time; refused to submit to drug screens; and failed to respond to the FCM or home-based case worker. DCS also stated that Mother submitted to a drug screen after the last court date, which was positive for cocaine and heroin, and that Mother’s “levels were so high that a representative from the lab contacted the FCM to inform her that [Mother] could possibly overdose.” *Id.* at 43.
- [8] At some point in 2019, Mother requested individual therapy. FCM Magee put in the appropriate referral for Mother. The therapist went to Mother’s house three different times, but Mother never answered the door. Therefore, she never met with the therapist.
- [9] During a child and family team meeting in August, Mother agreed to call in for drug screens on a regular basis and to begin individual therapy. However, Mother only called in four times and each time she tested positive for drugs. In September, DCS reported that Mother “puts forth no efforts to be compliant with her services” and during visitation with Child, Mother “is more focused on

attending to the needs of her boyfriend verses [sic] spending time with [Child].”
Id. at 49.

[10] At some point and upon Mother’s request, DCS referred Mother to a long-term inpatient treatment facility in Indianapolis. Mother had an intake appointment scheduled for February 10, 2020; however, she failed to attend and indicated to the home-based case worker that she had changed her mind and may go in three months. On March 3, DCS submitted another progress report stating that Mother’s visits with Child had been inconsistent and sporadic and she failed to provide any reason for such infrequency and/or cancellations.

[11] That same month, DCS filed a motion to amend Child’s permanency plan. Following a hearing, the juvenile court issued an order changing Child’s permanency plan of reunification to termination of the parent-child relationship and adoption for Child. DCS filed its petition to terminate Mother’s parental rights on May 14.

[12] Mother requested DCS put in a referral for a long-term substance abuse treatment program at Volunteers of America in Indianapolis. DCS put in the referral and Mother went twice. In June, FCM Magee received an e-mail stating Mother was discharged from the program unsuccessfully. In September/October, Mother claimed she completed a thirty-five-day rehab program at Recovery Works in Merrillville. She relapsed once while in the program and was discharged on October 6. However, Mother subsequently

relapsed on October 25 and was arrested for possession of Xanax. In 2020, Mother was hospitalized twice due to overdose attempts.

[13] A fact-finding hearing was held on November 5. The juvenile court subsequently entered an order terminating Mother's parental rights to Child and finding, in pertinent part:

[C]hild was removed from [M]other's care due to [her] substance abuse issues[.] Mother was unable to independently care for [C]hild due to being under the influence and sleeping most of the day. Mother and [C]hild were living with [M]other's boyfriend's parents. . . .

. . . Mother testified that she is a heroin and cocaine user and does not submit to drug screens due to actively using and not wanting to test positive. Mother has submitted to a few drug screens which were positive [and] Mother indicated that she has been addicted to drugs for ten years. Mother has not been successful in overcoming her addiction in order to adequately parent her child. [C]hild's safety would be in jeopardy due to [M]other's substance abuse issues. Mother is unable to provide [C]hild with stability and unable to provide for his basic needs.

* * *

Mother testified that she has mental health issues including suicidal ideations which she has hospitalized herself for, including a recent hospitalization on the day before the fact finding hearing date.

Mother further testified that she has completed a 35 day substance abuse program and was released October 6, 2020.

Mother further indicated that she has relapsed and used since her relapse and used while in the treatment center.

Mother testified that she is unable to care for this child at this time. . . .

Mother did not complete the case plan for reunification. Mother would not keep in consistent contact with her case manager or the service providers[,] participate in her therapy[,] communicate with the providers[, or] provide proof of her treatment programs that she claims she has attended and completed. Mother was not consistent with her visitations [and] has not seen her child in two months. Mother has never submitted a negative drug screen. All efforts to gain sobriety have failed. Mother has never progressed in her case plan or treatments. . . . It is unlikely that [M]other would become vested in the services and the case plan and obtain the sobriety needed to responsibly parent this child. Mother's drug usage includes heroin and fentanyl which are dangerous and unsafe for [C]hild to be exposed to. Mother has not changed her dangerous lifestyle choices and it is not safe for [C]hild. Mother does not have stable housing or employment [and] cannot provide for the basic needs of this child.

* * *

[C]hild remains outside of [Mother's] care. The original allegations of neglect have not been remedied by [M]other. . . . Mother has not overcome her substance abuse issues in order to properly and safely parent[,] has not demonstrated an ability to independently parent [C]hild and provide the necessary care, support and supervision. There is no basis for assuming [she] will complete the necessary services and find herself in a position to receive [C]hild into the home. Mother failed to utilize the available services and make the necessary efforts to remedy the conditions, which led to intervention by DCS and the Court.

Appealed Order 1-3. Based on these findings, the juvenile court concluded there is a reasonable probability that the conditions that led to Child's removal and continued placement outside of Mother's care will not be remedied and termination of Mother's parental rights is in Child's best interests. Mother now appeals.

Discussion and Decision

I. Standard of Review

[14] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). But the law also provides for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *Matter of J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). Although we acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotations omitted). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. As such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating parental rights is

to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[15] When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In deference to the juvenile court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). Thus, if the evidence and inferences support the decision, we must affirm. *Id.*

[16] When terminating parental rights, the juvenile court must enter findings to support its conclusions, Ind. Code § 31-35-2-8(c), and we therefore apply a two-tiered standard of review, *Bester*, 839 N.E.2d at 147. We first determine whether the evidence supports the findings, then determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous only if the findings do not support the court’s conclusions or the conclusions do not support the judgment thereon. *Id.*

II. Statutory Framework for Termination

[17] To terminate a parent-child relationship, DCS must allege and prove, in pertinent part:

(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.

Ind. Code § 31-35-2-4(b)(2)(B).

[18] DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the juvenile court need only find that one of the requirements of subsection (b)(2)(B) was established by clear and convincing evidence. See *In re L.S.*, 717 N.E.2d at 209. If the juvenile court finds the

allegations are true, “the court shall terminate the parent-child relationship.”
Ind. Code § 31-35-2-8(a).

III. Termination of Mother’s Parental Rights

[19] Mother does not challenge any of the juvenile court’s findings of fact; therefore, we accept the findings as true.³ *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied*. Mother challenges the juvenile court’s conclusions that there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside of her care will not be remedied and that termination is in Child’s best interests.

A. Remedy of Conditions

[20] We begin by addressing Mother’s contention that the juvenile court erred in concluding that she failed to remedy the conditions that led to Child’s removal and continued placement outside of her care. *See* Brief of Appellant at 10-11. We conclude there is ample evidence in the record to support the juvenile court’s conclusion.

[21] We engage in a two-step analysis to determine whether the conditions will be remedied: “First, we must ascertain what conditions led to [Child’s] placement

³ The State contends Mother challenges two of the juvenile court’s findings of fact. *See* Brief of Appellee at 14. However, based on our review of Mother’s brief, we disagree. Although Mother clearly challenges some of the juvenile court’s conclusions of law, she does not explicitly state or provide any argument that specific findings of fact are clearly erroneous for lack of evidence in the record. Therefore, to the extent Mother challenges the juvenile court’s findings, any argument is waived for failure to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a).

and retention in foster care. Second, we determine whether there is a reasonable probability that those conditions will not be remedied.” *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013) (quotation omitted). With respect to the second step, a juvenile court assesses whether a reasonable probability exists that the conditions justifying a child’s removal or continued placement outside his parent’s care will not be remedied by judging the parent’s fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions since removal. *In re E.M.*, 4 N.E.3d at 643.

[22] A parent’s habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). Habitual conduct may include criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment, but the services offered to the parent and the parent’s response to those services can also be 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*. And such a determination “must be founded on factually-based occurrences as documented in the record—not simply speculative or *possible* future harms.” *In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016). DCS need not “provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change.” *In re I.A.*, 903 N.E.2d 146, 154 (Ind. Ct. App. 2009).

[23] Here, Child was removed from Mother’s care due to her drug use and inability to care for Child. As a result of Mother’s continued substance abuse, lack of participation in services, and overall instability, Child remained outside of her care.

[24] For the last ten years, Mother has struggled with substance abuse. And unfortunately, since the inception of this case over two years ago, Mother has repeatedly tested positive for cocaine, heroin, morphine, and fentanyl. Mother was required to submit to drug screens twice per week; however, FCM Magee stated that Mother failed to do so consistently. Instead, Mother only submitted to a small percentage of those required, all of which were positive. At the hearing, Mother admitted that she did not submit to drug screens “[b]ecause [she] was still using.” Tr., Vol. II at 13. Also, during this case, Mother was cited for possession of marijuana in 2018 and arrested in 2020 for a drug-related crime. Most recently, Mother admitted to relapsing on October 25 – just two weeks prior to the termination hearing. FCM Magee stated that Mother is “actually a really good mom when she’s there and when she’s not high. . . . [T]he concern is just her drug usage.” *Id.* at 51.

[25] Similarly, the evidence in the record also establishes that Mother failed to complete substance abuse treatment, further demonstrating that she made no progress with respect to her addiction, the very condition that led to Child’s removal. Although Mother testified that she did complete substance abuse treatment, she failed to provide any documentation to DCS. Throughout this case, Mother sought treatment at a facility in Cambridge, Recovery Works, and

Volunteers of America. Mother was discharged as unsuccessful and never completed treatment at Volunteers of America. And FCM Magee asked Mother for proof of her treatment at the two other treatment facilities but was never able to verify Mother's alleged completion of either program. FCM Magee testified that she discussed with Mother the importance of providing documentation. Nonetheless, even if Mother had completed the treatment she claims, FCM Magee testified that Mother was still unable to maintain sobriety. At the fact-finding hearing, Mother testified that her drug of choice was heroin and conceded that she was still working on overcoming her addiction and needed more time.

[26] Mother also demonstrated a pattern of sporadic participation in services. Mother completed the substance abuse and parenting assessments, but she failed to consistently engage in the case plan. FCM Magee testified, "We have situations where [Mother] may be consistent [with the case plan] for about a month or two. And then, always conveniently right . . . before it's time for court, she checks out. And then, I don't know if she's using or she's afraid of court, but [it is] at that time that she stops." *Id.* at 54. Mother requested a referral for individual therapy and DCS referred her. The therapist visited Mother's house three times, but Mother never answered the door.

[27] With respect to visitation, FCM Magee stated, "When [Mother]'s not using, she is consistent. When she's using, unfortunately which is the majority of the time, she's not consistent with the visits." *Id.* at 51. At the time of the hearing,

Mother had not visited Child in several months. And it was never recommended that Mother graduate to unsupervised visits.

- [28] Mother's participation in home-based casework was also inconsistent. According to FCM Magee, Mother was not actively engaged in that program but "*when* [Mother] chooses to engage, she will engage with the homebased caseworker versus me." *Id.* at 60 (emphasis added). Ultimately, FCM Magee opined that there has "been no change in her behaviors [W]e are still pretty much at day one." *Id.* at 52-53.
- [29] And finally, Mother never reached a position of stability. At the time of the hearing, Mother was unemployed. And historically, FCM Magee testified, "[Mother] may work for a week or two, and then maybe a month, and then she stops working. [T]he next time I see her which may be six months down the road, she'll say, I'm going to get a job. I know of two jobs she's had, one at Dunkin Donuts and one at a restaurant. She may work a couple of weeks, and then she's no longer working." *Id.* at 56.
- [30] Evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services demonstrates the requisite reasonable probability that the conditions will not change. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Such is the case before us. Given the ample evidence of Mother's inability to maintain sobriety, inconsistent participation in services, and lack of stability, we conclude there is sufficient evidence to support the juvenile court's

conclusion that there is a reasonable probability that the conditions resulting in Child's removal and continued placement outside of Mother's care will not be remedied.⁴

B. Best Interests

[31] Mother also challenges the juvenile court's conclusion that termination of her parental rights is in Child's best interests. Mother contends termination is not in Child's best interests because Child will endure pain and suffering "when he realizes that he will not have on-going contact with [Mother, and] he will likely want to know [her,]" particularly because Father is deceased. Br. of Appellant at 12. We conclude there is sufficient evidence to support the juvenile court's conclusion.

[32] "Permanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). To determine the best interests of children, the juvenile court looks to the totality of the evidence and must subordinate the interests of the parents to those of the child. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. The juvenile court need not wait until a child is irreversibly harmed before terminating parental rights. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App.

⁴ The juvenile court also concluded there is a reasonable probability that the continuation of the parent-child relationship poses a risk to the well-being of Child. Mother challenges this conclusion as well. However, having already concluded the evidence is sufficient to show a reasonable probability that the conditions will not be remedied, we need not consider whether the parent-child relationship poses a threat to Child's well-being. See *In re L.S.*, 717 N.E.2d at 209; see also Ind. Code § 31-35-2-4(b)(2)(B).

2003). Testimony of the service providers may support a finding that termination is in the child's best interests. *In re S.K.*, 124 N.E.3d 1225, 1234 (Ind. Ct. App. 2019), *trans. denied*.

[33] Here, for the last two years, Mother has demonstrated an inability to maintain sobriety or the stability required to be able to care for Child. FCM Magee testified that Mother's continued substance abuse is concerning "[b]ecause [Child] needs to be in a place where he's safe. And my concern is that [Child] doesn't know what to do if mom doesn't wake up. I need [Child] to be somewhere where he is safe and free, and he needs to be able to thrive and live as a typical seven-year-old versus worrying about if mom is not going to wake up or if something is wrong with her." Tr., Vol. II at 50. Ultimately, she stated, "[W]hat's in the best interest of [Child] is for him to have stability and to . . . be in a home where he's loved, and he can thrive. Unfortunately, with [Mother's] behavior and the drug usage, he's not . . . able to be safe." *Id.* at 55-56.

[34] Further, it is undisputed that Child is thriving in his current placement; he is bonded with the foster family and loves them. When asked why she believed it was in Child's best interests to be adopted by his current placement, FCM Magee responded, "Because they love him, he loves them. . . . It would serve best for him. It's in his best interest to be in a home where he's loved and thriving, and able to just be stable and safe." *Id.* at 56.

[35] Based on the totality of the circumstances, we conclude DCS has proven by clear and convincing evidence that termination of Mother's parental rights is in Child's best interests.

Conclusion

[36] Based on the foregoing, we conclude the juvenile court's order terminating Mother's parental rights to Child is not clearly erroneous. Accordingly, we affirm.

[37] Affirmed.

Bailey, J., and May, J., concur.