

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parental Rights of:

La.B., A.B., Li.B., and Le.B.,
(Minor Children)

and

D.B. (Mother),

Appellant-Defendant,

v.

Indiana Department of Child
Services,

Appellee-Plaintiff.

June 8, 2023

Court of Appeals Case No.
22A-JT-2970

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

Trial Court Cause No.
02D08-2203-JT-58
02D08-2203-JT-59
02D08-2203-JT-60
02D08-2203-JT-61

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issue

- [1] D.B. (“Mother”) is the biological mother of four children: La., born in 2015; A., born in 2016; Li., born in 2018; and Le., born in 2020 (collectively, “Children”). The Indiana Department of Child Services (“DCS”) became involved with the family in 2019 when the three oldest children were alleged to be Children in Need of Services (“CHINS”). DCS removed the children from Mother’s care in August 2020. Mother’s parental rights were terminated in November 2022.¹
- [2] On appeal, Mother raises a single issue: whether the juvenile court’s order terminating Mother’s parental rights is clearly erroneous. Concluding the juvenile court’s judgment is supported by the unchallenged findings of fact and is not clearly erroneous, we affirm.

Facts and Procedural History

¹ The rights of the father of all four children were also terminated. The father does not appeal, and we will accordingly limit the facts to those pertinent to Mother.

- [3] In August 2019, DCS filed a petition alleging La., A., and Li. were CHINS because Mother was unable to effectively parent the Children due to untreated mental health diagnoses, substance abuse, and domestic violence in the home. The Children were not removed from Mother's care at that time. Stephen Ulrick was assigned as the case manager and Yvonne Spillers was appointed as the Guardian Ad Litem.
- [4] The juvenile court adjudicated the Children as CHINS in December but continued their placement in Mother's care. Mother, who was present in court for the dispositional hearing, was ordered to refrain from criminal activity; maintain clean, safe, and appropriate housing; cooperate with DCS and caseworkers; attend all case conferences; obtain diagnostic, drug and alcohol, and psychiatric assessments and follow all recommendations; submit to random drug screens; and enroll in and successfully complete individual and group substance abuse therapy and home-based case management.
- [5] Le. was born in February 2020. In early August, Mother appeared in court for a permanency hearing. At that time, Mother was not participating fully in services, continued to use illegal substances, and had failed to comply with requested drug screens. The court "admonished [Mother] that the continued placement of her children in her care [was] in jeopardy[,]” and ordered her to re-enroll and participate in services and comply with and test negative on drug screens. Exhibit Binder, Volume 1 at 37-38. Soon after, Mother had a positive drug screen.

- [6] In mid-August, Mother was arrested for possession of methamphetamine, marijuana, and paraphernalia, and incarcerated. DCS filed a petition alleging Le. was a CHINS and the Children, including Le., were placed with their paternal grandmother (“Grandmother”). The juvenile court ordered supervised visitation between Mother and the Children. Mother last visited with the Children in October 2020. After that, Mother did not complete any substance abuse or mental health services and otherwise failed to comply with the court’s parental participation order. Mother was unsuccessfully discharged from individual and group counseling and home-based services in December 2020.
- [7] Following a hearing in February 2021 at which Mother failed to appear, Le. was adjudicated a CHINS. Mother did not appear at any subsequent review or permanency hearings held in 2021 and her whereabouts were unknown. At the end of 2021, the Children’s permanency plan was amended from reunification to termination and adoption.
- [8] Mother was charged with conversion in September 2021 and pleaded guilty in October. Her communication with DCS, already sporadic after the Children’s removal, stopped altogether around that time. Mother was charged with escape in January 2022; a warrant for her arrest remained outstanding at the time of the termination hearing.
- [9] DCS filed a petition for the involuntary termination of Mother’s parental rights to the Children in April 2022. A hearing was held in August. Mother did not

appear but was represented by counsel.² Grandmother testified she had last spoken with Mother in June, when she invited Mother to a birthday party for one of the Children. But Mother did not attend the party. Grandmother believed it had been at least a year since Mother had seen the Children. Ulrick saw Mother at a local store in June. He gave her his phone number again—his phone number had not changed since the start of the case—and asked her to call him and call her attorney because of the upcoming termination hearing. Mother refused to give her phone number to Ulrick, and she never got in touch with him.

[10] Ulrick testified that after the Children were removed, Mother did not successfully complete any services. DCS sought termination of Mother’s parental rights due to her “general overall noncompliance. Not visiting with her children. Not addressing the underlying issues that led to [DCS] involvement. [H]aving the criminal involvement, not addressing that. Just not doing – not following through on anything that was ordered by the Court.” Transcript, Volume 2 at 42-43. Spillers testified that “originally [Mother] was very active. . . . [W]e were optimistic that [she] would eventually complete the services. It was a surprise . . . when she had relapsed and [the C]hildren were removed and . . . she stopped engaging in all services[.]” *Id.* at 61. Spillers opined that it was in the Children’s best interests to terminate Mother’s parental rights because Mother refused to engage in services for the past two years and

² DCS obtained permission to give Mother notice of the hearing by publication.

that “is a very long time, and these [C]hildren deserve permanency.” *Id.* If parental rights were terminated, DCS planned for the Children to be adopted by Grandmother, who “has been there and provided a stable home to them[.]” *Id.*

[11] The juvenile court issued findings of fact in November, concluding DCS had proved by clear and convincing evidence each of the elements required to terminate Mother’s parental rights. Specifically, the juvenile court concluded DCS proved the Children had been removed from Mother’s care for at least six months under a dispositional decree and there was a satisfactory plan for their care and treatment. *See* Appealed Order at 12-13 (citing Ind. Code § 31-35-2-4(b)(2)(A), (D)).³

[12] Further, the court concluded DCS proved pursuant to Indiana Code section 31-35-2-4(b)(2)(B) (“Subsection B”) there is a reasonable probability the “reasons that brought about the [Children’s] placement outside the home will not be remedied” because Mother had not maintained contact with DCS and had not visited the Children since October 2020; had not provided “any type of financial or emotional support” for the Children for the past two years; and had not completed services related to her mental health or substance abuse issues. Appealed Order at 13. In sum, the court concluded “[n]o issues were addressed . . . , let alone remedied through services during the pendency of the CHINS

³ Mother does not challenge these conclusions regarding the period of removal from the home and the plan for the care and treatment of the Children, and we note there is sufficient evidence in the record supporting them.

case.” *Id.* The court also concluded DCS had proved under the alternate provision of Subsection B that continuation of the parent-child relationship posed a threat to the Children’s well-being because Mother had significant mental health and substance abuse issues that had not been addressed and, because her whereabouts were unknown at the time of the termination hearing, “[n]o one even knows if [Mother] has housing, let alone safe, stable housing free from substance abuse.” *Id.*

[13] Finally, the juvenile court concluded pursuant to section 31-35-2-4(b)(2)(C) that termination was in the Children’s best interests because they had no contact with Mother for almost two years, were doing well in their current placement, and Mother had not participated in services to remedy her mental health, housing, or substance abuse issues.

[14] Mother now appeals the court’s order terminating her parental rights to the Children.

Discussion and Decision

I. Standard of Review

[15] Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). Indiana Code section 31-35-2-4 sets out the elements that DCS must

allege and prove to terminate a parent-child relationship. Pertinent to Mother's claims on appeal, DCS must prove by clear and convincing 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 child in need of services.

(C) that termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2); *see also* Ind. Code § 31-37-14-2 (stating burden of proof in termination proceedings).

[16] If the juvenile court concludes the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship[.]” Ind. Code § 31-35-2-8(a), and must enter findings supporting its conclusions, Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. Ind. Trial Rule 52(A); *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. If the evidence clearly and convincingly supports the findings and the

findings clearly and convincingly support the judgment, the judgment is not clearly erroneous. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). 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).

[17] Mother has not challenged any of the juvenile court's findings of fact, and we therefore take them as true and need only determine whether the unchallenged findings clearly and convincingly support the judgment. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

II. Is the Judgment Clearly Erroneous?

A. Remedy of Conditions

[18] Mother's statement of issues ostensibly challenges both of the juvenile court's conclusions under Subsection B. *See* Brief of Appellant at 5, 12. Subsection B is written in the disjunctive and therefore, to support termination, DCS is required to prove there is a reasonable probability that *either* conditions leading to removal will not be remedied *or* continuation of the relationship poses a threat to the child's well-being. *See In re S.S.*, 120 N.E.3d at 610. In other words, where, as here, the juvenile court found DCS proved both sub-elements of Subsection B by clear and convincing evidence, Mother must show on appeal the court clearly erred as to both. But Mother's argument is directed solely to whether the evidence was sufficient to show there is a reasonable probability the conditions that resulted in the Children's removal will not be remedied. *See Br.*

of Appellant at 16-18. Even if Mother is correct and the juvenile court's conclusion that conditions will not be remedied is set aside as clearly erroneous, the juvenile court's termination order is still supported by the unchallenged conclusion that DCS proved continuation of the relationship threatens the Children's well-being.

[19] That said, we recognize the constitutional dimension of the right at issue and will address whether the findings support the court's conclusion about the remedy of conditions under Subsection B. When considering whether conditions are unlikely to be remedied, the court engages in a two-step analysis: first, it identifies the conditions that led to removal and second, determines whether there is a reasonable probability that those conditions will not be remedied. *In re K.E.*, 39 N.E.3d 641, 647 (Ind. 2015). The second step requires determining the parent's fitness at the time of the termination hearing after consideration of any evidence of changed conditions. *Id.*

[20] Mother claims there is "not enough evidence to determine what conditions actually led to the removal" and therefore, there is no way to know whether those conditions will be remedied. Br. of Appellant at 17. We disagree. The findings reflect DCS became involved with this family because Mother tested positive for illegal substances, had untreated mental health issues, and was unable to provide the Children stable, adequate housing. *See* Appealed Order at 7, ¶ 27. When Le. was born approximately six months later, those issues remained. *See id.* at 7, ¶ 28. The Children were ultimately removed because Mother had a positive drug screen and was arrested for several possession

offenses just days after she was admonished that her continued use of illegal substances and failure to fully participate in services was jeopardizing her continued care and custody of her Children. At the time of the termination hearing, Mother had not visited with the Children in nearly two years; had attended no hearings in the CHINS proceedings, participated in any services, or had contact with DCS in over a year; had been convicted of another crime; and was wanted for escape. *See id.* at 9-10, ¶¶ 46, 50-58, 62.

[21] The court's findings of fact clearly demonstrate the reason for the Children's removal and amply support its conclusion those conditions were unlikely to change. A 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*. "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). Here, there were not even temporary improvements; Mother's conduct shows no overall progress as she continued to use illegal substances while the Children remained in her care and once they were removed, she completely disengaged from the CHINS proceedings. For nearly the entire two years following the Children's removal, Mother did not visit with the Children or participate in reunification services or the services offered to address her substance abuse and mental health issues. Because she did not maintain contact with DCS, she failed to show any ability

to provide the Children with a safe, stable, and substance-free home. And despite being told of the termination proceedings during a chance encounter with Ulrick, Mother took no steps to remedy any of these things in the months leading up to the termination hearing.

- [22] 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.’” *A.D.S.*, 987 N.E.2d at 1157 (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)). The juvenile court’s unchallenged findings clearly and convincingly support its conclusion that DCS proved there is a reasonable probability the conditions leading to the Children’s removal will not be remedied.

B. Best Interests

- [23] Mother also challenges the juvenile court’s conclusion that termination was in the Children’s best interests. The determination of a child’s best interests is based on the totality of the evidence. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A parent’s historical inability to provide a suitable environment, along with the parent’s current inability to do so, supports the conclusion that termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). Further, a service provider’s opinion that termination is in a child’s best interests combined with evidence that removal conditions will likely not be remedied, is sufficient to

support the juvenile court's conclusion that termination is in the child's best interests. *A.D.S.*, 987 N.E.2d at 1158-59.

- [24] Spillers, the Children's guardian ad litem, testified that termination was in the Children's best interests. The juvenile court, noting this testimony, and also noting the Children have had no contact with Mother for almost two years and Mother did not participate in services to remedy her mental health, housing, or substance abuse issues, determined that termination of Mother's parental rights is in the Children's best interests. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (noting the same evidence may prove multiple elements of the termination statute). The juvenile court's unchallenged findings clearly and convincingly support its conclusion that DCS proved termination is in the Children's best interests.

Conclusion

- [25] The juvenile court's judgment terminating Mother's parental rights to the Children is clearly and convincingly supported by its findings. The judgment terminating Mother's parental rights to the Children is therefore affirmed.
- [26] Affirmed.

Crone, J., and Kenworthy, J., concur.