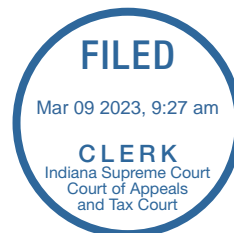


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

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

B.H. (Minor Child),

and

J.D. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

March 9, 2023

Court of Appeals Case No.
22A-JT-2129

Appeal from the Marion Superior
Court

The Honorable Danielle Gaughan,
Judge

The Honorable Tara Melton,
Magistrate

Trial Court Cause No.
49D15-2002-JT-177

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] J.D. (“Mother”) appeals the Marion Superior Court’s termination of her parental rights over her minor child B.H. (“Child”). Mother raises four issues for our review:

1. Whether the Indiana Department of Child Services (“DCS”) failed to make reasonable efforts to preserve the family in violation of her due process rights.
2. Whether the trial court erred when it found that the conditions that resulted in Child’s removal from Mother’s care were not likely to be remedied.
3. Whether the trial court erred when it found that termination of her parental rights is in Child’s best interests.
4. Whether the trial court erred when it found that DCS had established a satisfactory plan for Child’s care and treatment.

[2] We affirm.

Facts and Procedural History

[3] Mother and T.H. (“Father”)¹ are the parents of Child, who was born September 20, 2016. In January 2019, Mother was found “incoherent” in her car on the

¹ The trial court also terminated Father’s parental rights over Child, but Father does not participate in this appeal.

side of a road. Appellant's App. Vol. 2, p. 33. She was taken to a nearby hospital, where she tested positive for benzodiazepines, buprenorphine, cocaine, and marijuana. Mother reported that Child was "missing," even though she had dropped Child off at Father's house earlier that day. *Id.* Child was removed from Mother's care and DCS filed a petition alleging that Child was a Child in Need of Services ("CHINS"). DCS removed Child from Father's home and placed her with Mother's mother ("T.T.").

[4] Mother failed to appear for a fact-finding hearing in March. At the conclusion of that hearing, the trial court took the matter under advisement. The trial court subsequently found that Child was a CHINS. Following a dispositional hearing in May, the trial court ordered Mother to engage in home-based therapy and case management programs and follow all recommendations; submit to a substance abuse assessment and follow recommendations for treatment; submit to random drug screens; and participate in a mental health assessment and follow all recommendations.

[5] Mother declined to participate in the services offered by DCS. Instead, Mother sought her own substance abuse treatment and individual therapy, but her treatment was "inconsistent." Tr. Vol. 3, p. 13. Mother did not submit to weekly drug screens, as the trial court had ordered. Instead, she submitted to drug screens intermittently. Mother's visitation with Child was never changed from supervised to unsupervised due to Mother's substance abuse and transportation issues.

[6] On February 19, 2020, DCS filed a petition to terminate Mother's parental rights over Child. Following a fact-finding hearing, the court found in relevant part as follows:

19) [Mother] acknowledges her current CHINS case opened because of substance use. She admitted taking suboxone, but minimized her use of benzodiazepines, buprenorphine,^[2] cocaine and marijuana. Further, [Mother] has failed to acknowledge the fact that the current CHINS case was opened because of her mental health issues as well. Throughout the case, [Mother] was aware of referrals by DCS but refused to participate in them because she wanted a neutral program on her own.

20) [Mother] has two children. Her older son resides with his father and [Child] is a ward of the State who is placed with her maternal grandmother.

21) [Mother] currently resides in a one-bedroom apartment with her current boyfriend. [Mother] testified that she is about to move into a larger apartment; however, she did not produce any evidence confirming the larger apartment.

22) [Mother] attended substance abuse treatment at several places during the beginning of the current CHINS case: Aspire and Clean Slate. [Mother] attended individual therapy with Leslie Inlow once every two to three weeks. Ms. Inlow recommended that [Mother] have a psychological evaluation. [Mother] completed a Mental Health Assessment with Dr. Sarah Szerlong in June of 2022. However, [Mother] did not share the results of the mental health assessment with the Child and Family Team until December of 2022.

² As Mother points out, buprenorphine is suboxone.

23) [Mother] has not sufficiently addressed her mental health issues. [Mother] still blames her mother for [Child] not being in her care, she failed [to] acknowledge or show any remorse for how this case has affected [Child], and she continues to lack the ability to put [Child] before herself as evidenced by her choice to continue to claim [Child] for income tax purposes despite not having provided for [Child] for years.

24) [Mother] paid for hair follicle drug tests in September 2021 and December 2021 rather than submit to drug screens through DCS. Mother testified that she stopped taking suboxone since March 2021 and she had been sober for 9 months. Her last drug screen with DCS was March 2021 and it was positive with cocaine. There is no evidence of drug or mental health treatment after that date.

25) [Mother] has not had parenting time with [Child] was [sic] at a visit in December 2020. January 2021, the CHINS Court suspended her parenting time until she completed a psychological evaluation. [Mother] completed the assessment in July 2021 and provided the copy of the result to DCS in December 2021. The assessment, however, was inconclusive and failed to provide the CHINS Court with information regarding how [Mother]'s mental health impacts her ability to parent.

26) [Mother] testified that she is making sufficient money and has stable income and no financial difficulties. However, she continued to claim [Child] on her tax return and received financial gain the last three (3) years even though she did not financially provide for [Child] during that time. [Mother] continued to claim [Child] for tax purposes after the CHINS Court specifically ordered her to refrain. Even in this, [Mother] refused to be accountable by blaming her accountant for this false filing.

27) [T.T.] is the relative placement and maternal grandmother of [Child] and she testifies as follows:

a) [Mother] started using drugs at age 15 and was a stripper at age 18.

b) Mother's first CHINS case was in 2017 due to Mother's substance abuse issue. [T.T.] was the placement of [Child] at that time and reunification was achieved in 2018.

c) in January 2019, [T.T.] picked up [Mother] at Valle Vista at which she was sought in-patient drug and mental health treatment.

d) At some point, due to Mother's behavior, [T.T.] obtained a Protective Order against Mother.

e) [Child] is actively engaged in Home Based Therapy and Behavior Therapy weekly. She has demonstrated progress and improvement with her aggressive behaviors.

28) Leslie Inlow is a self-employed therapist. She testified as follows:

a) [Mother] was her client until February 9, 2022 when Ms. Inlow terminated the service.

b) Ms. Inlow received a referral from Dr. Szerlong who conducted Mother's mental health evaluation.

c) Ms. Inlow terminated the service with Mother due to Mother's inconsistent attendance.

d) Ms. Inlow was not able to make a formal mental health diagnosis and there was no meaning[ful] therapeutic progress because [Mother] was not completely honest.

e) Ms. Inlow suspected that Mother was not honest during the sessions because she might have been afraid of that what she said would be shared with DCS.

29) Meghan Banks is a Home-Based Case Manager and Behaviorist from Connections. She testified as follows:

a) She worked with [Mother] as a visitation supervisor and Home Based Case Manager from May 2019 to August 2019. She was not able to confirm [Mother]'s sobriety.

b) [Mother] hindered her own parenting time with [Child] by including other individuals (her boyfriend and older son) instead of it being one-on-one time with [Child].

c) [Mother] successfully completed Home Based Case Work.

d) Ms. Banks terminate[d] the parenting time services with [Mother] because [Mother] missed parenting time, failed to comply with the regulations and/or was late for parenting time. [Mother] missed par[en]ting time on four (4) occasions. Ms. Banks' agency policy is to terminate the service once a parent misses more than two (2) parenting time appointments.

30) Mary Barber, a Home-Based Therapist, testified as follows:

a) Ms. Barber was [Mother]'s parenting time facilitator and Home-Based Therapist from September 2020 to January 2021. CHINS Court suspended Mother's parenting time in January 2021.

b) Mother's parenting time was fully supervised by Ms. Barber at the Agency.

c) During parenting time, [Mother] spoke negatively of the relative placement in the presence of the child and [Mother] escalated her negative comments and behavior after being corrected or redirected.

d) Ms. Barber recommended that [Mother] complete a psychological evaluation as a result of her work with [Mother].

e) Ms. Barber does not recommend reunification of [Child] with [Mother].

31) Sarah Szerlong, a licensed psychologist, testified as follows:

a) Dr. Sarah Szerlong is a Psychologist with a PhD in Psychology. She is a licensed health service provider.

b) [Mother]'s attorney referred her to Ms. Szerlong for a standard evaluation.

c) Dr. Szerlong was not able to develop a treatment plan and goals to enable the client to make meaningful progress. [Mother] did not make meaningful progress because she was not open and honest during her therapeutic evaluation.

d) [Mother]'s responses to the testing were invalidated because she responded in a manner that rendered them unreliable. [Mother] attempted to make herself seem free of symptoms. She attempted to present herself in a false light.

e) [Mother]'s profile from the Personality Assessment Inventory was questioning. [Mother] had a self-

favorable response style. Therefore, she needs a more thorough substance use assessment.

f) The Substance Abuse Subtle Screen Inventory (SASSI) was not reliable.

g) The Parenting Stress Index was invalidated.

h) Child Abuse Potential Inventory was invalidated by response style.

i) Dr. Szerlong recommended testing at a different time and place once [Mother] is ready to truthfully answer the questions for testing. She recommended individual therapy for [Mother]. [Mother] was not in mental health treatment when she was evaluated. [Mother] could have been defensive because she feels she has a lot [sic] to lose or gain. It is hard to admit your failures because of the consequences. The intentional deception may not be out of self-preservation but to beat the exam or therapist.

j) Could not recommend specific type of treatment or therapy because of the invalid report.

k) Dr. Szerlong couldn't diagnose Mother because Mother was not open and honest. For this reason, she referred [Mother] to another provider who could better assess and meet [Mother]'s needs.

l) Dr. Szerlong was not able to evaluate how [Mother]'s mental health impacts her ability to parent.

Appellant's App. Vol. 2, pp. 36-39. The court then terminated Mother's parental rights over Child. This appeal ensued.

Standard of Review

- [7] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* In deference to the trial court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*
- [8] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).
- [9] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App.

2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code § 31-35-2-4(b)(2)* (2021). We need only discuss three of those elements raised by Mother in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside of Mother’s home will not be remedied; (2) whether termination of Mother’s parental rights is in Child’s best interests; and (3) whether DCS established a satisfactory plan for the care and treatment of Child. *I.C. § 31-35-2-4(b)(2)(B)(i), (C), & (D)*.

[10] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child’s very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child’s emotional and physical development are put at risk by the parent’s custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. *I.C. § 31-35-2-8(a)*.

1. Due Process

[11] Mother first contends that her due process rights were violated by DCS’s alleged failure to provide certain reunification services. However, Mother has procedurally defaulted this claim by failing to raise her due process concerns in the trial court. *See In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016). And, on appeal, Mother does not present cogent argument to show that her claim

amounts to fundamental error. Mother has thus failed to preserve this issue for appellate review. *Bowman v. State*, 51 N.E.3d 1174, 1179 (Ind. 2016).

[12] Waiver notwithstanding, the record shows that DCS did not violate Mother’s due process rights. Termination of parental rights is a “unique kind of deprivation,” and thus, when DCS seeks to terminate parental rights, it must do so in a manner that comports with due process. *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981)). While the phrase “due process” has never been defined, it “embodies a requirement of fundamental fairness.” *Id.* (quotation omitted). DCS specifically must make “reasonable efforts” to reunify the family. *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*. What constitutes “reasonable efforts” will vary from case to case. *Id.*

[13] Mother argues that

DCS’s failure to follow its own policies and procedures, and the Court’s mischaracterization of [Mother’s] attempts at sobriety reflect a deep misunderstanding of DCS’s role, policies, and procedures and the evidence-based path to sobriety as endorsed by HHS and SAMHSA; as well as the appropriate course of counseling for those who have experienced trauma. DCS’s failure to assist [Mother] and its actions thwarted [Mother’s] attempts to use medication-assisted treatment (MAT) to control her substance use disorder (SUD), and appropriate mental health counseling when interwoven with SUD. Further, DCS service providers urged a conclusory narrative that [Mother] was an uncaring, selfish, untruthful person using illicit substances, and that DCS had made reasonable efforts at reunification. The Juvenile Court erroneously accepted and incorporated those

conclusory statements into its Findings/Conclusions thereby violating state and federal statutes and caselaw regarding due process in termination proceedings and the requirement that DCS make reasonable efforts toward reunification.

Appellant's Br. at 56.³

[14] The evidence is undisputed that Mother rejected most of the services offered by DCS and sought out her own services. Mother was entitled to do that, of course, but she cannot now complain that DCS failed to assist her in her treatment. Indeed, Mother refused to sign releases to keep DCS apprised of her progress with services including Clean Slate, which managed her suboxone therapy. And she did not provide DCS with Dr. Szerlong's psychological evaluation until December 2021, a full year after the trial court had suspended Mother's visitations with Child pending the evaluation. The evidence shows that Mother refused help in getting to drug screen appointments. In all, we cannot say that DCS failed to make reasonable efforts to reunify Mother and Child.

[15] To the extent that Mother felt that DCS's support was inadequate, it was her responsibility to request additional assistance. *See Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007). Indeed, "a parent may not sit idly

³ In support of her due process argument, Mother challenges several of the trial court's findings and conclusions as mischaracterizing the evidence presented at the fact-finding hearing. But we have reviewed the record and conclude that each of the challenged findings is supported by the evidence, and we agree with DCS that Mother's challenges to them are merely requests that we reweigh the evidence, which we will not do.

by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting.” *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Thus, even if Mother had not waived this issue for our review, Mother has not established that DCS violated her due process rights. *Cf. T.W.*, 135 N.E.3d at 618 (finding a parent’s due process rights were violated where parent asked for additional assistance and DCS failed to provide the parent “with the support and services he so desperately needed”).

2. Reasons for Child’s Removal

[16] Mother contends that DCS failed to prove that there is a reasonable probability that the conditions that resulted in Child’s removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child’s continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[17] Here, Child was removed from Mother’s care due to Mother’s substance abuse. During the three years that this case was pending, Mother missed several drug screens and, while she engaged in services, she did not keep DCS apprised of much of her treatment. Mother’s most recent drug screen was in March 2021, and she tested positive for cocaine. Mother’s visits with Child remained supervised, including her most recent visit with Child, which was in December 2020. The trial court suspended Mother’s visits with Child in January 2021 pending a psychological evaluation, which Mother did not submit to DCS until December 2021. And that psychological evaluation, performed by a therapist of Mother’s choosing, did not meet the basic requirements needed to assess Mother’s ability to parent Child.

[18] Still, Mother asserts on appeal that the trial court improperly focused on her history of substance abuse and ignored her “recent successes” in her “attempts at sobriety” and in her maintaining stable employment and housing. Appellant’s Br. at 59. But Mother’s arguments on appeal simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s finding that the conditions that resulted in Child’s removal will not be remedied are supported by the record. We therefore affirm the trial court’s judgment on this issue.

3. Best Interests

[19] Mother next contends that DCS failed to prove that termination of her relationship with Child is in Child’s best interests. In determining what is in a child’s best interests, a court is required to look beyond the factors identified by

DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[20] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental rights, coupled with 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. *Id.*

[21] In her brief on appeal, Mother asserts that the evidence "raised concerns about [T.T.]'s abilities to raise a young child should [T.T.] adopt BH." Appellant's Br. at 59. In particular, Mother directs us to testimony that T.T. does not want Child to attend preschool, Child has had tantrums while in T.T.'s care, and T.T. overlooked years of abuse Mother suffered at the hands of T.T.'s ex-husband. And Mother stresses that "the existence of a better home and more financial security is not the standard for terminating parental rights." *Id.* at 60 (citing *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001)).

[22] Once again, Mother asks that we reweigh the evidence. At the time of the 2022 termination hearings, Child had been removed from Mother’s care for three years. And Mother’s visits had not progressed beyond supervised visits before the court suspended Mother’s visits with Child in January 2021. Mother has not visited with Child since December 2020. Mother’s home-based case manager testified that Child’s placement with T.T. is in Child’s best interests. We affirm the trial court’s conclusion on this issue.

4. Satisfactory Plan

[23] Last, we address Mother’s argument that DCS failed to show a satisfactory plan for the care and treatment of Child. On this issue, DCS is only required to establish that “there is a satisfactory plan for the care and treatment of the child” in termination proceedings. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009) (citation omitted). And this Court has held that adoption is a “satisfactory plan” for the care and treatment of a child under the termination of parental rights statute. *Id.* (citation omitted). Here, the court found that DCS had a satisfactory plan in place for the care and treatment of Child because T.T. plans to adopt Child. We affirm the trial court’s conclusion on this issue.

Conclusion

[24] For all of these reasons, we affirm the trial court’s termination of Mother’s parental rights.

[25] Affirmed.

May, J., and Bradford, J., concur.