

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of L.C., Mother, and J.C., D.C.,
C.C., and S.H., Children,
L.C.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

July 5, 2023

Court of Appeals Case No.
22A-JT-3061

Appeal from the
Fountain Circuit Court

The Honorable
Stephanie Campbell, Judge

Trial Court Cause Nos.
23C01-2202-JT-9
23C01-2202-JT-11
23C01-2202-JT-12

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

- [1] L.C. (“Mother”) is the mother of J.C., D.C., and C.C. (“the Children”),¹ and her parental rights were terminated by the juvenile court. Mother appeals the juvenile court’s judgment and argues that the juvenile court erred because its conclusion that there was a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home of Mother would not be remedied was not supported by the evidence. Because we find no error, we affirm.

¹ We note that Mother’s parental rights to a fourth child, S.H., were also terminated in the same proceedings but by a separate order and under a separate cause number, 23C01-2202-JT-10 (“JT-10”). However, in filing her notice of appeal, Mother did not include JT-10 as one of the cause numbers from which she was appealing, nor did she attach the order terminating Mother’s parental rights in JT-10 as the order from which she was appealing. Almost sixty days later, Mother filed a second notice of appeal that included JT-10 in the caption but still failed to attach the trial court’s order from that cause number, instead filing a group of documents that included the trial court’s order terminating the parental rights to the other three children and an assortment of filings from a LaGrange County case concerning other parties. The trial court’s order from JT-10 was not actually filed with this court until the date that Mother filed her appellate brief, which was almost ninety days after her notice of appeal was filed. In filing her second notice of appeal, we note that Mother failed to do several things to ensure that this court would have jurisdiction over JT-10. She never requested leave to file this second notice of appeal, which we view as a belated appeal of JT-10. Because the notice of appeal as to JT-10 was not timely filed, Mother has forfeited her right to appeal the outcome of that cause number. *See* Ind. Appellate Rule 9(A)(5) (“Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited . . .”). Additionally, as a result of Mother’s failure to include JT-10 in her timely-filed notice of appeal, the Notice of Completion of Clerk’s Record does not include JT-10, and such notice was not noted in the CCS. “The Court of Appeals acquires jurisdiction [of a case] on the date the Notice of Completion of Clerk’s Record is noted in the [CCS].” Ind. Appellate Rule 8. We, therefore, do not have jurisdiction over any attempted appeal of JT-10. Further, due to Mother’s failure to include JT-10 in her notice of appeal, no notice of appeal was ever filed with the trial court for JT-10, and the CCS for JT-10 does not reflect that an appeal has been filed nor have any pleadings been filed subsequent to the final judgment and the appointment of a public defender.

Facts and Procedural History

- [2] Mother is the mother to three minor children subject to this appeal, namely: J.C., born on December 20, 2008, D.C., born on February 21, 2015, and C.C., born on April 30, 2018. The Children’s father was murdered in 2017. Mother is also the mother of S.H., who was born on January 21, 2020; the father of S.H. is D.H. The parental rights of both Mother and D.H. as to S.H. were terminated. However, the propriety of that termination is not before us.
- [3] The Indiana Department of Child Services (“DCS”) initially became involved with Mother in August 2018, and the Children were the subject of an out-of-home child in need of services (“CHINS”) case from August 2018 to December 2019 that had been initiated due to Mother’s substance abuse. During this prior case, Mother relapsed after beginning a trial home visit and suffered from serious depression requiring inpatient mental health treatment. These circumstances extended the time during which Children were involved with DCS. Mother was unsuccessfully discharged from inpatient treatment for substance abuse issues two times during the prior case. At the time of closure of the prior case, the court-appointed special advocate (“CASA”) still had active concerns about Mother’s ability to maintain sobriety, the stability of her lifestyle and living environment, and her decision-making. After the prior CHINS cases closed, Mother began withdrawing from services and missed therapy sessions.
- [4] On March 17, 2020, DCS became involved with Mother in the current case. On that date, DCS investigated a report that Mother was using illegal substances and having suicidal ideations while residing at Hope Springs

Domestic Violence Shelter. At that time, Mother, who had responsibility for the care of the Children, was observed sleeping constantly, and was difficult to wake. Mother had a long history of substance abuse, which added to DCS's concern for the Children's wellbeing. On March 19, 2020, DCS filed its CHINS petition based on the allegations that Mother had been leaving the Children unsupervised at night, using illegal substances, and having suicidal ideations. On the same day, the juvenile court held the detention and initial hearing and found that it was in the best interest of the Children to be removed from Mother's care. Shortly after the hearing, Mother left the shelter where she had been residing for over a year. On May 18, 2020, Mother was arrested, charged with Level 4 felony burglary and Level 6 felony theft, and was incarcerated from May 18 to June 4, 2020.

[5] On May 27, 2020, and on June 8, 2020, the CHINS factfinding hearing was held, and the following evidence was heard. Since the CHINS case was initiated, Mother had completed only one drug screen despite being ordered by the juvenile court to complete them as requested. Mother declined all services on multiple occasions, stating she did not need DCS's assistance. Although she had gone to a hospital on March 17 for suicidal ideations, Mother made no further efforts to obtain mental health services. At the time of the hearing, Mother had no stable home and was unable to provide for the Children's needs. On July 14, 2020, the juvenile court issued its order adjudicating the Children to be CHINS.

[6] The dispositional hearing was held on August 11, 2020, and the juvenile court entered its dispositional order on August 23, 2020. In the dispositional order, Mother was ordered to participate in among others, the following reunification services:

- (1) If a program is recommended by the family case manager (“FCM”) or service provider, enroll in that program within thirty days and participate in that program without delay or missed appointments;
- (2) Keep all appointments with any service provider, DCS, or CASA/GAL, or give advance notice and good cause for the missed appointment;
- (3) Maintain suitable, safe, and stable housing;
- (4) Secure and maintain a legal and stable source of income;
- (5) Do not use, consume, manufacture, trade, distribute, or sell any illegal controlled substances;
- (6) Obey the law;
- (7) Complete a parenting assessment and follow all recommendations;
- (8) Complete a substance abuse assessment and follow all recommendations of the assessment;
- (9) Submit to random drug screens;

(10) Complete all scheduled visitations with Children;

(11) Meet her personal medical and mental health needs in a timely and complete manner;

(12) Participate in home-based case management to address issues related to relapse, parenting, budgeting, housing, employment, and stability; and

(13) Enroll in and successfully complete a minimum ninety-day inpatient substance use treatment program.

[7] At a review hearing on November 10, 2020, Mother was found to be noncompliant with the case plan. She had not completed random drug screens, signed a release for service providers, or called a doctor to gain clearance to participate in inpatient treatment as directed. Mother had not enhanced her ability to fulfill her parental obligations because she made no substantive progress in recovery from substance use, in gaining stability, or in maintaining her mental health. Further, Mother was uncooperative with DCS.

[8] Mother went to a drug and alcohol treatment program called Club Soda from October 2020 through January 2021. She left the program and failed to notify the treatment team. Further, she relapsed twice in her substance abuse after she left. At a permanency hearing held in February 2021, the juvenile court found that Mother partially complied with the case plan and had engaged in services but was not consistent with attendance and that her housing was not stable. After her relapse, Mother went to a treatment program through the Volunteers of America from April 2021 through July 2021. At a permanency hearing in

July 2021, the juvenile court found that Mother was complying with the case plan, was continuing to test negative for illegal substances, and had found employment. Between the months of July 2021 and the November 2, 2021 review hearing, Mother continued to comply with the case plan, participated in all court ordered services, and continued to have negative drug screens.

[9] At a review hearing on December 14, 2021, the juvenile court found that Mother had partially complied with the case plan by participating in all court-ordered services and maintaining negative drug screens. The juvenile court remained concerned about Mother's choices and priorities due to an incident that occurred during one of her visitations with the Children. At that point, Mother was permitted to have unsupervised visits but was not permitted to have anyone else attend these visits. On her first unsupervised visitation, Mother allowed a family member (her sister's son) to be with the Children unsupervised. This family member was reported to have sexually abused the Children when he inappropriately touched them prior to the visit and had solicited sexual acts from D.C. previously. Despite this history, Mother did not believe he was a threat to the Children. D.C. became mute after this visit, which the juvenile court determined indicated that he was traumatized by the contact with the family member.

[10] On February 18, 2022, DCS filed petitions to terminate Mother's parental rights to the Children. At a February 22, 2022, review hearing, Mother had partially complied with the case plan and had participated in random drug screens. Mother informed the treatment team that she was pregnant, but she had

previously withheld this information and openly denied it before eventually disclosing. This lack of candor created obstacles for the treatment team, including efforts to coordinate appropriate parenting time. Additionally, she had not fully engaged in therapy and missed appointments. If she missed any more appointments, it was determined that she would be unsuccessfully discharged from the service. Little progress has been made on altering her decision-making to ensure the safety and wellbeing of the Children was prioritized. Mother admitted that she made poor choices about who she surrounds herself with and not focusing on the needs of the Children.

[11] The termination hearing was held on August 22, 2022. At the hearing, testimony was given that Mother had a chronic lack of housing and employment. To address this, she was required to complete home-based casework. At the time of the termination hearing, Mother was employed at McDonald's and had housing provided to her through her church at a discounted rent. She routinely refused, however, to provide budgets or allow the treatment team to view her financial situation. Financial stability was imperative to ensure Mother could maintain utilities and provide food for her family. Mother admitted she would not be able to afford her home and support the Children without the rental assistance from her church and additional assistance.

[12] Mother had a twenty-year history with substance abuse. She had numerous criminal convictions related to illegal substances and surrounded herself with individuals who used methamphetamine. Mother left Club Soda unsuccessfully

without informing the treatment staff and then relapsed. She turned in several positive drug screens in the early stages of the underlying CHINS case.

Throughout her substance abuse history, Mother failed to remove individuals who used illegal substances from her life. Mother admitted to the FCM that being around people who are users was triggering for her. During the pendency of the case, Mother was romantically involved with two men who both abused illegal substances, including methamphetamine. Further, Mother's sponsor recommended she participate in a twelve-step program and the juvenile court ordered her to do so. Despite having more than twelve months to work on her steps and progress, Mother was only on the second step at the time of the termination hearing.

[13] Mother was referred to individual therapy to address past trauma and help her progress toward reunification. However, Mother had not progressed meaningfully in individual therapy, and instead, in her sessions, she blamed DCS, CASA, and the juvenile court for the Children's removal, rather than demonstrating accountability for her actions. Additionally, Mother missed enough sessions to be terminated from the therapy, but DCS requested that the provider keep the referral open and continue to serve her, policy notwithstanding. Mother had also asked to stop individual therapy because she no longer wanted to participate. Mother was unwilling to address long-term trauma or work on her harmful thought processes.

[14] The Children's FCM and CASA recommended termination of Mother's parental rights. The Children's FCM reasoned that Children were thriving in

their current homes and Mother failed to prioritize the Children or change her mentality to ensure their safety over her own wants. The Children's CASA recommended termination of Mother's parental rights because it was in their best interest to be adopted. DCS's plan for the Children was adoption.

[15] On December 4, 2022, the juvenile court issued its order, terminating Mother's parental rights to the Children. The juvenile court based its decision on, among other things, Mother's failures to engage in services, including the twelve-step program, to address her drug use; to progress in her individual therapy; to remove the influence of individuals who use illegal substances from her life; and to exercise good judgment when participating in visitation. Mother now appeals.

Discussion and Decision

[16] While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise their children, the law allows for the termination of parental rights based on the inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child's interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is

proper where the child’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[17] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). Where, as here, the juvenile court enters specific findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn from it that support it. *Id.* If the evidence and inferences support the juvenile court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

² Mother only challenges four of the trial court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

[18] Before an involuntary termination of parental rights may occur, the State must allege and prove, 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 [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.³

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, "if the court finds that the allegations in a

³ Mother only challenges the juvenile court's conclusion that there was a reasonable probability that the conditions resulting in the removal of the Children and the reasons for placement outside of the home would not be remedied. Mother waives any challenge as to the court's legal conclusions under subsection B, by failing to challenge both disjunctive legal conclusions. *See, e.g., In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied, cert. denied.*

petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship.” I.C. § 31-35-2-8(a) (emphasis added).

A. Findings Supported by the Evidence

[19] Initially, Mother argues that four of the juvenile court’s findings were not supported by the evidence. Mother first asserts that the juvenile court’s finding that she “left Club Soda unsuccessfully,” Appellant’s App. Vol. 2 p. 60, was not supported by the evidence because she claims that the evidence showed that she completed the Club Soda program. However, the evidence actually showed that, while she may have completed the residential program, she failed to comply with the program rules and treatment recommendations. Ex. Vol. 5 p. 173. Mother left the program without notifying staff and failed to follow the recommendation to transition to a sober living residence upon leaving the program. Tr. Vol. 3 p. 69. The evidence supports the trial court’s finding that Mother “left Club Soda unsuccessfully.”

[20] Mother next challenges the finding that she “was ordered not to allow the Children to have any unsupervised contact with her sister’s son” as not being supported by the evidence. Appellant’s App. Vol. 2 p. 61. She maintains that the “visit supervisor testified that she was unaware of any such directive, and did not know of any ‘safety plan,’ and could not say Mother had been told her children could have no contact with her sister or nephew.” Appellant’s Br. p. 19 (citing Tr. Vol. 2 pp. 126–27). Again, the evidence presented supported this finding. Mother herself testified that she knew that there was “a rule or an

expectation that nobody else besides [her] and the kids be present during this [unsupervised] visit.” Tr. Vol. 3 p. 100.

[21] Mother next takes issue with the findings by the juvenile court that she “ha[d] not found [the effort to complete more than two steps of the twelve-step program] to be worthy of her attention” and that her “lack of progress [in her individual therapy] to be indicative of her unwillingness to change.” Appellant’s App. Vol. 2 p. 64. We find that the challenged findings may be more correctly characterized as conclusions of the juvenile court based on the other findings contained in the numbered paragraphs in which they are located in the order.

[22] However, even if we conclude that these two statements are error, because the remaining unchallenged findings, along with the evidence and reasonable inferences arising therefrom, support the juvenile court’s order, any error would be harmless. *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (erroneous finding is merely harmless surplusage when additional findings, supported by the evidence in the record, provide sufficient basis for trial court’s ultimate conclusion), *trans. denied*; see also Ind. Appellate Rule 66(A) and Ind. Trial Rule 61.

B. Conclusion Supported by Sufficient Evidence

[23] Mother also contends that the juvenile court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of the Children and the reasons for placement outside of the home would not be

remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child's removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must determine what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[24] In the second step, the juvenile 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." *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, "[juvenile] courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).

[25] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "We entrust th[e] delicate balance to the [juvenile] court, which has [the] discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *E.M.*, 4 N.E.3d at 643. When determining whether the

conditions for the removal would be remedied, the juvenile court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[26] On March 17, 2020, the Children were removed after DCS investigated Mother based upon a report that Mother was using illegal substances and having suicidal ideations while residing at Hope Springs Domestic Violence Shelter. At that time, Mother had responsibility for the care of the Children and was observed sleeping constantly and was difficult to wake. Mother had a long history of substance abuse, which added to DCS's concern for the Children's wellbeing. The Children were thereafter removed from Mother's care.

[27] The juvenile court made very detailed findings in support of its conclusion that there was a reasonable probability that the conditions for removal and continued placement outside the home would not be remedied. The evidence showed that Mother had a twenty-year history with substance abuse and had numerous criminal convictions related to illegal substances, and surrounded herself with individuals who used drugs, specifically methamphetamine. At the outset of the CHINS case, Mother was dating a man who was facing substance abuse related charges, and Mother had recently given birth to his child. In February 2022, she became pregnant with the child of another man who has substance abuse related convictions. These men represented negative influences on Mother's long-term sobriety, and while Mother admitted that it was a poor decision to have a sexual relationship with yet another man involved with

drugs, she did not recognize how important it was to remove herself from situations where she may be tempted to use drugs.

[28] The evidence also showed that, although Mother testified that she had been sober for over fifteen months at the time of the termination hearing, she had not completed several of the programs that had been recommended by her service providers to assist Mother in maintaining her sobriety. As part of the dispositional order, Mother had been ordered to participate in “case management to address issues related to relapse” Ex. Vol. 5 p. 152. Specifically, she did not successfully complete Club Soda because although she completed the program, she left without notifying the treatment staff and did not transition to sober living residence as recommended by her provider. Further, although her sponsor recommended that she participate in a twelve-step program to address her substance abuse, after more than twelve months, Mother has only completed two of the steps. Her failure to see the substance abuse treatment to its successful end showed a lack of motivation to complete long-term change in her substance abuse history.

[29] Mother had been referred to individual therapy to address past traumas, and the evidence showed that she had not progressed meaningfully in her therapy and blamed others, including DCS, for the removal of the Children rather than taking responsibility for her actions. She missed enough sessions to be removed from the service, but DCS requested that the referral remain open so that Mother could continue utilizing the service. Mother had also asked to terminate her therapy and expressed her wish not to participate. These actions

showed that Mother had failed to address her long-term traumas and work on her mental health to stave off further harmful thought processes.

[30] Further, despite the evidence that she was employed and had stable housing at the time of the termination hearing, Mother was still not fully complying with the home-based casework. To address her past chronic lack of housing and employment, DCS required Mother to provide budgets and allow her treatment team to view her financial situation, which she routinely refused to do. Maintaining financial stability was important to ensure that Mother could independently provide and care for the Children.

[31] The evidence also showed that, in November 2021, Mother violated the terms and conditions of her unsupervised visitation. Mother allowed third parties to visit and remain in her home even though she was aware that she was not to have anyone else in the home during her visits. In fact, she allowed her sister and her sister's son to be in the home and allowed her sister's son to be upstairs unsupervised with the Children even though she was aware of his history with the Children in that he had solicited sexual acts from D.C. At the termination hearing, Mother testified that she did not believe that her sister's son posed a threat to the Children. This incident and Mother's testimony at the hearing showed a profound lack of judgment by Mother and demonstrated the potential for danger the Children could face in Mother's care.

[32] Mother also showed a lack of honesty with DCS and her treatment team when she lied to them about her pregnancy in early 2022. Specifically, while she

informed DCS about her pregnancy in February 2022, she had previously withheld this information and openly denied it before eventually disclosing it. Her lack of candor created obstacles for the treatment team, including efforts to coordinate appropriate parenting time. The trial court noted that Mother had displayed the same behavior in her prior CHINS case where she lied about another pregnancy. Doing so again showed that Mother had not changed her pattern of behavior.

[33] At the time of the termination hearing, it had been over two years since the Children were removed from Mother's care. When the instant CHINS case commenced, Mother had only recently had a previous CHINS case closed a few months prior. Therefore, Mother has had well over two years to remedy the factors that resulted in the Children being removed, and the evidence showed that there was a reasonable probability that the factors would not be remedied. Although Mother had attained sobriety for a period of many months, there was evidence that she had not completed treatment programs successfully in order to ensure that she maintains that sobriety. There was also evidence that she had not made other life changes necessary to demonstrate that she prioritizes the Children's needs over her own desires. The juvenile court did not err in its conclusion that the conditions for removal and continued placement outside the home would not be remedied. We, therefore, conclude that the juvenile court's judgment terminating Mother's parental rights was supported by clear and convincing evidence.

[34] **Affirmed.**

Altice, C.J., and May, J., concur.