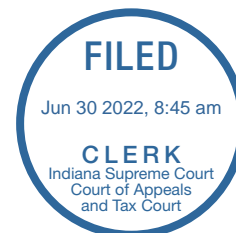


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of Br.S., Be.S., and P.S. (Minor
Children), and C.S.W. (Mother)
and J.S. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 30, 2022

Court of Appeals Case No.
22A-JT-48

Appeal from the Tippecanoe
Superior Court

The Honorable Hunter J. Reece,
Special Judge

Trial Court Cause Nos.
79D03-2103-JT-36
79D03-2103-JT-37
79D03-2103-JT-38

Brown, Judge.

- [1] C.S.W. (“Mother”) and J.S. (“Father” and, together with Mother, “Parents”) separately appeal the involuntary termination of their parental rights to their children, Br.S., Be.S. and P.S. (the “Children”). Parents raise issues which we consolidate and restate as whether the trial court erred in terminating their parental rights. We affirm.

Facts and Procedural History

- [2] Parents are the parents of Be.S., who was born in July 2016, Br.S., who was born in November 2017, and P.S., who was born in May 2019. On September 20, 2016, a court adjudicated Be.S. to be a child in need of services (“CHINS”) under cause number 23C01-1607-JC-131 after it found Be.S. had tested positive for methamphetamine, amphetamine, and aminoclonazepam at birth and Mother had admitted using Adderall during her pregnancy and was intoxicated when she arrived at the hospital for Be.S.’s birth.
- [3] On January 22, 2020, the Department of Child Services (“DCS”) filed a petition alleging the Children were CHINS. DCS alleged that: Br.S. overdosed on some sort of drug on January 18, 2020, and had to be treated at the hospital; Mother stated that her mother might have dropped Klonopin on the floor, which Br.S. might have mistaken for candy; Br.S. later tested positive for benzodiazepines; Mother was arrested that same day on suspicion of stealing items out of the hospital emergency room; and Father did not visit Br.S. during her stay in the hospital and did not attempt to pick her up from the hospital

when she was released on January 21, 2020. DCS alleged that: it received a report of possible drug use and domestic violence between Parents on January 21, 2020; Father has a history of drug issues; Parents were both on probation; and Father stated to DCS that he would not communicate with them. It asserted Parents had previous CHINS cases for their two older children, D.S. and M.S.; Br.S. had a custody proceeding under cause number 23C01-1804-JP-73; and Be.S. had a custody proceeding under cause number 23C01-1803-JP-57. On July 13, 2020, the court entered an order finding the Children to be CHINS. On July 29, 2020, the court entered a dispositional order and parental participation decree.

[4] On March 24, 2021, DCS filed petitions for the involuntary termination of the parent-child relationship between Parents and the Children. On October 29, 2021, the court held a hearing and heard testimony from multiple witnesses including Harry Heyer, the Director of Abuse, Awareness, and Accountability, Laura Bivens, the regional manager at Lifeline Youth and Family Services (“Lifeline”), Lafayette Police Officer Shai Parrett, Family Case Manager Stephanie Bloyd (“FCM Bloyd”), Mother, and Court Appointed Special Advocate Cadi Bean (“CASA Bean”).

[5] On December 9, 2021, the court entered an order terminating Parents’ parental rights. It found that there was a reasonable probability that the conditions which resulted in the Children’s removal or the reasons for placement outside the Parents’ home would not be remedied, the continuation of the parent-child

relationship posed a threat to the well-being of the Children, and termination of the parent-child relationship was in the best interest of the Children.

Discussion

[6] The issue is whether the trial court erred in terminating Parents' parental rights. Mother argues that DCS did not demonstrate a reasonable probability that the conditions resulting in the Children's removal would not be remedied or that the continuation of the parent-child relationship posed a threat to the Children's well-being. She asserts that, at the time of the termination hearing, she had ended her relationship with Father, was looking for housing, and employed, engaged in therapy, domestic violence services, and groups recovery. She asserts that the drug treatment program and a negative drug test proved she was remedying the reasons for the Children's removal. Parents contend DCS did not show that termination of the parent-child relationship was in the Children's best interest.

[7] In order to terminate a parent-child relationship, DCS is required to 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 child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence." *Id.* at 640.

[9] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See E.M.*, 4 N.E.3d at 642-643. First, we identify the conditions that led to removal, and second, we determine

whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* 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. *Id.*

[10] To the extent Parents do not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind.

Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[11] The trial court's order states:

11. On 1/23/2020 a hair follicle drug screen was performed on [P.S.], which later tested positive for methamphetamine.

* * * * *

14. On 01/30/2020, the Court in the CHINS Proceedings found that the Mother had the following substantiated CPS History:

11/17/2017: Neglect – Environmental Life/Health Endangering, Fountain County
10/03/2016: Neglect – Lack of Supervision and Environmental Life/Health Endangering, Fountain County
07/24/2016: Neglect: Environment Life/Health Endangering, Fountain County
10/28/2008: Neglect: Environmental Life/Health Endangering, Tippecanoe County
02/09/2007: Neglect: Environmental Life/Health Endangering, Tippecanoe County

15. On 01/30/2020, the Court in the CHINS Proceedings found that the Father had the following substantiated CPS History:

11/17/2017: Neglect – Environmental Life/Health Endangering, Fountain County
10/03/2016: Neglect – Lack of Supervision and Environmental Life/Health Endangering, Fountain County
07/24/2016: Neglect: Environment Life/health Endangering, Fountain County
10/28/2008: Neglect: Environmental Life/Health Endangering, Tippecanoe County

02/09/2007: Neglect: Environmental Life/Health
Endangering, Tippecanoe County

16. Father has the following criminal convictions:

54D01-0501-FD-12 for Possession of a Controlled
Substance and Possession of Marijuana
06C01-0701-CM-18 For Possession of Marijuana
54D01-1110-FD-3573 For Possession of a Controlled
Substance, Possession Of Paraphernalia, and Possession of
Synthetic Cannabinoid
79D06-1412-F6-95 for Operating While Intoxicated with a
Prior, Operating While Suspended, and Resisting Law
Enforcement
79D05-1209-FD-462 for Theft
54D01-1608-F6-2298 for Unlawful Possession of a
Syringe, Possession of Marijuana, and
Possession of a Controlled Substance
54D01-1705-F6-1356 for Resisting Law Enforcement,
Operating a Vehicle While Intoxicated, Driving while
Suspended, Possession of Methamphetamine, Possession
of a Controlled Substance, and Possession of a Narcotic
Drug
79D06-2103-F6-212 for Driving While a Habitual Traffic
Offender

17. Mother has the following criminal convictions:

72D01-0311-FD-312 for Theft
79D04-0703-CM286 for Possession of Marijuana
79D05-0811-FD-618 for Theft
54D01-1110-FD-3573 for Possession of a Controlled
Substance, Possession of Paraphernalia and Possession of
Synthetic Cannabinoid
79D05-1207-FD-329 for Theft with a Habitual Offender
Enhancement
79D01-1304-FC-18 for Forgery
54D01-1608-F6-2297 for Possession of a Syringe

49G09-1806-F6-24038 for Theft

18. While the CHINS Proceedings have been pending and while this instance [sic] case was pending, Father battered and strangled mother at a hotel room in Tippecanoe County. Mother reported this domestic violence to police and criminal charges are pending in 79D04-2109-F6-794 for Strangulation against Father. At the time of his arrest, Father was wanted on a warrant for violation of his probation in Montgomery County where he remained incarcerated at the time of this hearing.

19. While the CHINS Proceedings have been pending, Father has failed to comply with his probation in Montgomery County, Indiana by failing to report to probation, failing to engage in good and lawful behavior, failing to submit to drug screens, providing diluted samples for drug screens, and using controlled substances and alcohol.

20. Father and Mother were ordered to complete the Abuse Awareness & Accountability Program, as a part of the CHINS Proceedings, but they have failed to fully complete the program, due to attendance issues by both which violate the program[']s rules.

21. Mother and Father were engaged in services with Lifeline for supervised visitation with the Children, but those services were cancelled due to excessive “no shows” and cancellations by the parents in violation of Lifeline’s policy. In February 2020, Bau[e]r Family Resources filed a Closing Report due to Father canceling 4 of 6 supervised visits with the children, during the month. In November 2020, on a new referral, Bauer filed a report indicating no contact from the parents during [the] reporting period, other than a family team meeting. Visitation was later suspended by this Court in the CHINS Proceeding.

22. A service report from JDI Counselling for January 2021 for substance abuse counseling with the parents reported no progress because appointments could not be scheduled until Father had a

clean screen, but he had tested positive on [a] drug screen. A report from May 2021 reported the family was not cooperative and Mother made no progress towards her DCS goals.

23. DCS has provided three different providers to Mother for home based case management, because Mother was twice discharged from services by providers.

24. Mother and Father had no contact with DCS from about July 2020 until December 2020, because they reported to DCS they “needed a break” from all the Court’s Orders.

25. Mother and Father have had unstable housing during the CHINS proceeding, including living with friends, family, hotels, and for some period of time their whereabouts were [sic] unknown. At the time of the hearing, Mother was in a domestic violence shelter and Father was incarcerated.

26. Mother and Father have had unstable employment during the CHINS proceedings, including periods of unemployment. At the time of the hearing, Mother was employed with Arby’s and Father was unemployed.

27. At [the] time that her daughter ingested the Klonopin, Mother was abusing benzodiaz[e]pines and methamphetamine. She reports that she has abused drugs since she [was] about fourteen (14) years old and has been with Father since she was about seventeen (17) years old, although her plan is to end their relationship now.

28. Mother tested positive for the following controlled substance[s], for which she did not have a prescription, in connection with the CHINS Proceedings:

01/18/2020: Amphetamine, Methamphetamine, and Benzodiazepines

10/5/2020: Methamphetamine

1/28/2021: Methamphetamine and THC

03/17/2021: THC

09/21/2021 : Methamphetamine

29. During visits, Mother and Father exhibited short tempers with each other, exercised poor parenting decisions and display safety concerns, and at times the older children ([D.S. and M.S.]) would take on parenting roles with the younger children.

30. During the CHINS Proceedings, Mother was arrested and incarcerated on [an] outstanding failure to appear warrant from a matter that predated the filing of CHINS, but resulted in her being incarcerated for about 20 days in [] July 2021, when the warrant was finally served.

31. In the Order on Permanency Hearing from March 23, 2021, the Court in the CHINS Proceedings ordered that it would consider a motion to reinstate parenting time, “upon receipt of a hair and urine drug screen negative for methamphetamine and fentanyl and confirmation of buprenorphine.” The parents point to no [sic] in the record that the parents complied with providing this information to the Court to allow the Court to rule on the request to reinstate parenting time.

32. After the filings of the CHINS Proceedings and DCS involvement, Father tested positive for THC, amphetamine and methamphetamine, controlled substances for which he did not have a prescription, and he has admitted to consuming alcohol while on probation. Mother tested positive for Benzodiazepine, THC, amphetamine and methamphetamine, controlled substances for which she did not have a prescription.

33. The Family Case Manager, Stephanie Bloyd, testified creditably. She believes it is [in] the best interest of these three children to terminate the parental rights of Mother and Father.

34. The Court Appointed Special Advocate, Cadi Bien testified creditably. CASA believes it is in the best interests of the children to terminate the parental rights of Mother and Father with respect to these three children. CASA gave persuasive testimony and did so creditably. The parents have engaged in [a]

cycle of engaging and disengaging from their Children during the pendency of the CHINS Case. At one point substantially checking out from the case for a few months hiatus from services and parenting time. CASA has had little to no contact with Father and most of the contact with Mother has come only recently.

Father's Appendix at 48-51.

[12] The record reveals that Heyer, the Director of Abuse, Awareness, and Accountability, testified that Father quit attending as of May 16, 2020, returned on January 28, 2021, and he “again violated out for excessive absences on July 10, 2021.” Transcript Volume II at 89-90. He testified that Parents have not successfully completed the program and “[t]here have been violations for failed drug tests and quit [sic] attending.”¹ *Id.* at 94. When asked if he had been able to interact with Father at all since he stopped attending or had seen him at any child family team meetings or any other meetings, he answered in the negative.

[13] Heyer testified that the court appointed special advocate brought up a concern regarding a failed drug test at an October 21, 2021 child family team meeting and Mother became angry, raised her voice, and “said some cuss words.” *Id.* at 98. He indicated Mother had shared that Father was at a location where she did not expect him and that he considered that to be stalking. When asked if anything about Mother's comments about Parents' interactions or relationship

¹ On recross-examination by Mother's counsel, Heyer indicated that his reference to failed drug screens could indicate either “[f]ailed or missed drug screens.” Transcript Volume II at 101.

caused him any concern, he answered: “Absolutely.” *Id.* at 102. He answered affirmatively when asked if he was concerned about the safety of either party.

[14] Bivens, the regional manager at Lifeline, testified that she became involved in April 2021 and that she was asked to be “an additional person during the visits” due to safety concerns regarding Father’s demeanor toward providers. *Id.* at 117. She testified that Parents sometimes showed strong parenting skills and other times would be defensive with providers, not follow their redirection, and threaten to end the visits early if the Children were misbehaving. She testified that it did not appear that Parents were able to manage all three of the Children effectively and that it could be “very chaotic” at the visits. *Id.* at 120. She also stated Parents were unsuccessfully discharged from Lifeline due to “three (3) no shows and cancellations.” *Id.* at 122.

[15] According to the testimony of Officer Parrett, she responded to a call involving Parents on September 5, 2021, regarding a well-being check. She spoke to staff members of a hotel when she first arrived and identified Father in the doorway of the room where Mother was located. Officer Parrett detained Father because there was a warrant for his arrest. Mother was very upset and said she was arguing with Father and “things did not get physical.” *Id.* at 131. Officer Parrett noticed some red marks and small scratching on the back of Mother’s neck and asked Mother about them. Mother told her they must have been injuries she sustained when Father strangled her the previous night. Mother told her that she almost lost consciousness, had difficulty breathing, and tried to pull away. Father yelled down the hall and told Mother not to say anything.

Mother told Officer Parrett that Father has a history of being physical with her and that the Children did not witness the strangulation incident but they had witnessed other incidents in the past.

[16] FCM Bloyd indicated that Parents had not been able to obtain and maintain stable housing throughout the case. She testified that there was a period between mid July 2020 to October 2020 when Parents did not have contact with DCS and reported to their prior family case manager that they needed to take a break just because they were overwhelmed by the court's orders. When asked if Parents had remedied the conditions resulting in the underlying CHINS case, she answered: "No. Mother is starting to." *Id.* at 153. When asked how Parents had failed, she stated: "Throughout the case they have been inconsistent, haven't addressed their substance abuse needs. With case review the most positive methamphetamine screen for both parents was in October of 2020 and they have not been able to obtain and maintain stable housing." *Id.* at 153. When asked if the reasons for involvement would be remedied, she answered: "Before September, no. But Mother has shown great progress since then. But if I had to look at it as, 'Can I place these kids tomorrow back in her care?' And that would be no. And for Father too because he is incarcerated." *Id.* at 153. She also testified that there is a long history of substance abuse that does not appear to be fully addressed.

[17] CASA Bean testified that she routinely made attempts to contact Parents which have been unreciprocated throughout the case. She testified it was routinely difficult to have Parents engage at all in any services. When asked if she

recalled when and what, she answered: “Therapy throughout the case. Home-cased [sic] case management. For sure drug screens. Lots of documentation on that. All assessments, visitations. In July alone I did the percentage on my own. In July of 2020 82% of that month’s visitations were cancelled.” *Id.* at 193. She indicated Parents were aggressive with her and she had difficulty finding out where Parents resided throughout the case. When asked how she would rate Parents’ progress, she answered: “With the exception of [Mother] recently, no progress.” *Id.* at 194. She testified that Parents would “disappear for weeks and weeks at a time” and that she “could look on a calendar and tell right before the next hearing they would show up and then engage in services and then disappear.” *Id.* at 195.

[18] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the Children’s removal and the reasons for placement outside Parents’ care will not be remedied.

[19] To the extent Parents challenge the trial court’s finding that termination of the parent-child relationship is in the best interests of the Children, we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental

rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[20] FCM Bloyd indicated that she believed termination of Parents' parental rights was in the best interests of the Children. CASA Bean recommended that Parents' parental rights be terminated. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the Children's best interests is supported by clear and convincing evidence.

[21] For the foregoing reasons, we affirm the trial court.

[22] Affirmed.

Mathias, J., and Molter, J., concur.