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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the Parent-Child Relationship of J.S. (Minor Child);

L.S. (Mother),

Appellant-Respondent

v.

The Indiana Department of Child Services,

Appellee-Petitioner.

February 28, 2022

Court of Appeals Case No. 21A-JT-1632

Appeal from the Johnson Circuit Court

The Honorable Andrew S. Roesener, Judge

Trial Court Cause No. 41C01-2101-JT-1

Pyle, Judge.

Statement of the Case

[1] L.S. ("Mother") appeals the termination of the parent-child relationship with her son, J.S. ("J.S.").[1] Her sole contention is that there is insufficient evidence to support the termination. Specifically, Mother argues that the Department of Child Services ("DCS") failed to prove by clear and convincing evidence that: (a) there is a reasonable probability that the conditions that resulted in J.S.'s removal or the reasons for placement outside the home will not be remedied; (b) a continuation of the parent-child relationship poses a threat to J.S.'s well-being; and (c) termination of the parent-child relationship is in J.S.'s best interests. Concluding that there is sufficient evidence to support the termination of the parent-child relationship, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support the termination.

Facts

[1] Mother is the parent of J.S., who was born in February 2018. At the time of his birth, J.S. tested positive for marijuana, and Mother admitted that she had

[1] The trial court also terminated J.S.'s father's ("Father") parental rights; however, Father is not a party to this appeal.

smoked marijuana while pregnant with J.S. In addition, J.S. was born with a volvulus, which is a twisted intestine. Specifically, J.S.'s small intestine had twisted, the blood supply to the intestine had been cut off, and the intestinal tissue had died. Shortly after his birth, J.S. had surgery to remove ninety percent of his small intestine. As a result of this surgery, J.S.'s body is unable to break down food and absorb nutrients, a condition known as "short bowel syndrome." (Tr. Vol. 2 at 48). As a result of this medical condition, J.S. will require the administration of total parenteral nutrition ("TPN") for the rest of his life.

[2] Before further discussing the specific facts of this case, we find it helpful to give a brief explanation of the administration of TPN, which is known as intravenous nutrition, and the medical management of short bowel syndrome. The administration of TPN is a delicate and detailed daily process that runs over a period of hours and takes place in the home under the supervision of a parent. The risk associated with TPN is very high and the margin for error is very low. A parent administering TPN must strictly adhere to the daily schedule because a delay in the TPN administration could result in electrolyte or hydration issues. During the administration of TPN, a parent must connect the nutrition to the central line that penetrates the child's chest wall near the clavicle and ensure that: (1) the pump delivering the nutrition is properly set; (2) the components of the pump administering the nutrition are properly connected; (3) the pump delivers the nutrition properly; and (4) there are no occlusions in the catheter that deliver the nutrition. TPN is usually

administered at night and alarms will go off if there is a problem with the equipment. Parents are not expected to stay awake to monitor the entire TPN administration. Rather, it is recommended that parents stay alert during the initial infusion stage and be able to respond during this nighttime process if alarms go off. If there is an occlusion in the catheter or a pump malfunction, the child might need to be taken to the emergency room. Further, the ramifications of improper care are serious. For example, exposure to bacteria at the insertion cite could result in the child's death.

[3] A child who suffers from short bowel syndrome also requires frequent medical follow-up appointments with a team of medical professionals, including a pharmacist, a dietician, a pediatric gastroenterologist, and a pediatric surgeon. If the child does not consistently attend these appointments, there is the possibility that his case will be medically mismanaged.

[4] With a better understanding of J.S.'s medical condition, we turn to the specific facts of this case. In March 2018, shortly after J.S.'s birth, DCS received a report that J.S. had been hospitalized with a life-threatening condition. Further, Mother had recently been incarcerated for possession of marijuana and a separate probation violation, and there was no one available to care for J.S. and his three-year-old sibling. On March 27, 2018, DCS filed a petition alleging that J.S. was a child in need of services ("CHINS"). In early April 2018, Mother and DCS entered into an informal adjustment, and the CHINS matter was resolved. Pursuant to the terms of the informal adjustment, Mother

agreed to abstain from the use of any illegal substances, complete a substance abuse assessment, and follow all of the assessor's treatment recommendations.

[5] Five months later, in August 2018, DCS filed a second CHINS petition alleging that Mother had repeatedly tested positive for marijuana and that J.S. had recently been hospitalized. DCS removed J.S. from Mother's home. Mother and DCS eventually created a safety plan for J.S., which included provisions that Mother would provide J.S. with all necessary medications in the manner prescribed and that she would not leave J.S. in the care of anyone who had not received the necessary training to provide medical care for J.S. In December 2018, following the implementation of this safety plan, DCS dismissed the CHINS petition.

[6] In January 2019, shortly after the dismissal of the second CHINS petition, DCS received a report that J.S. was living in a home with no electricity. The report also alleged that Mother had: (1) failed to take J.S. to scheduled medical appointments; (2) failed to provide J.S. with necessary medication; and (3) left J.S. in the care of a person who had not been trained to care for him. DCS contacted Mother, who explained that J.S. was staying with maternal grandmother ("Maternal Grandmother") for the week. However, Maternal Grandmother had not been trained to administer J.S.'s medication. In addition, she was not eligible for the training because she has a learning disability.

[7] A DCS caseworker removed J.S. from Maternal Grandmother's care and took him to the DCS office. Mother went to the office and "took off with J.S. and took him to Riley Hospital." (Tr. Vol. 2 at 81). A Riley physician examined J.S. and determined that J.S. was suffering from dehydration, severe diaper rash, low iron levels, and granulation around his gastrointestinal tube. While J.S. was at Riley, DCS obtained a court order to detain him. DCS then removed J.S. from Mother's care and placed him in foster care.

[8] The following day, DCS filed a third petition alleging that J.S. was a CHINS. The petition alleged the facts as set forth in the previous two paragraphs. In addition, the petition alleged that Mother lacked the medical supplies necessary to address J.S.'s medical needs and had failed to use sterile medical procedures when administering J.S.'s TPN. The petition further alleged that all of Mother's drug tests had been positive for marijuana.

[9] At the end of January 2019, Mother admitted that J.S. was a CHINS. In addition, Mother agreed to the following dispositional goals: (1) maintain appropriate housing free from drug activity; (2) abstain from the use of illegal drugs; (3) demonstrate the ability to meet J.S.'s medical needs; (4) submit to random drug screens; (5) submit to a substance abuse assessment and follow all of the assessor's recommendations; (6) attend supervised visits with J.S.; and (7) participate in home-based case management services.

[10] During the following year, Mother was only partially compliant with the CHINS dispositional goals. Specifically, Mother consistently tested positive for

marijuana, and she occasionally tested positive for cocaine. Although she attended a substance abuse assessment, Mother did not begin the recommended program. Mother was also unsuccessfully discharged from three separate home-based case management programs because she had not been compliant with any of the programs. In addition, Mother had failed to consistently attend J.S.'s medical appointments and had failed to visit him when he was hospitalized for his medical condition. However, Mother attended supervised visits with J.S., and the visitation supervisor noticed that there was a bond between Mother and J.S.

[11] At a case review hearing in September 2019, the trial court told Mother that her "consistent use of marijuana [was] a cause of great concern . . . based upon [J.S.'s] myriad medical conditions and the need of [J.S.'s] custodian to regularly provide medical care in the home." (Ex. Vol. 4 at 55). The trial court repeated its concerns at a December 2019 review hearing when it told Mother that "[d]ue to [J.S.'s] medical condition and the resulting need for near constant care and supervision, Mother's serial drug abuse pose[d] a significant obstacle to reunification." (Ex. Vol. 4 at 58).

[12] Six months later, at a June 2020 case review hearing, the trial court noted that Mother had begun attending J.S.'s medical appointments and had been attending supervised visits with J.S. However, the trial court also noted that Mother was still using marijuana and had failed to participate in a recommended intensive outpatient substance abuse treatment program. In its case review order, the trial court pointed out that Mother had "continue[d] to

use marijuana and continue[d] to fail to avail herself of available professional assistance to address her addiction." (Ex. Vol. 4 at 72).

[13] In September 2020, Cornelia Evans ("Evans") from Hope Housing Associates began supervising Mother's visits with J.S. The visits took place in Mother's home. When Evans arrived for one visit, Mother was sleeping and did not hear Evans. During the visits, Evans consistently smelled marijuana in Mother's home.

[14] Two months later, in November 2020, Mother had successfully completed a substance abuse treatment program and had tested negative on nineteen out of twenty drug tests. Mother had also demonstrated the ability to administer J.S.'s TPN and to complete a sterile dressing change. Based upon Mother's progress, the trial court authorized Mother to begin unsupervised visits with J.S. However, less than three weeks later, at the end of November 2020, Mother twice tested positive for marijuana. DCS filed a motion to return Mother to supervised visitation, which the trial court granted after a hearing. In December 2020, Mother gave birth to her third son.

[15] By early January 2021, Mother had tested positive for marijuana on fifteen different occasions. In addition, Mother's attendance at supervised visits with J.S. had diminished, and Mother was less engaged with J.S. during the supervised visits that she attended. In its January 2021 case review order, the trial court emphasized that it had told Mother on numerous occasions that "her

marijuana use [had to] stop given [J.S.'s] unique and chronic health conditions." (Ex. Vol. 4 at 91).

[16] In January 2021, DCS filed a petition to terminate Mother's parental rights. In March 2021, Mother participated in a TPN administration refresher training with nursing case manager Rachel Konrad ("NCM Konrad"). The goal of the training was for Mother to demonstrate that she had the consistency and organization to remember when to start and stop J.S.'s TPN administration. For seven days, Mother was specifically required to text NCM Konrad at the times that she would have started and stopped the TPN administration had J.S. been in her care. However, Mother only texted NCM Konrad at the scheduled start and stop times on two of the seven training days and, therefore, did not successfully complete the training exercise. NCM Konrad offered Mother another seven-day opportunity to text the nursing case manager at the scheduled start and stop times. However, Mother again only texted NCM Konrad at the scheduled start and stop times on two of the seven training days.

[17] At the two-day June 2021 hearing on the termination petition, the trial court heard the evidence as set forth above. In addition, Dr. Charles Vanderpool ("Dr. Vanderpool"), a pediatric gastroenterologist who has been J.S.'s physician since J.S. was an infant, testified that J.S.'s medical condition "requires a level of attention to detail . . . and . . . adhering to [medical] recommendations that is not required in other diagnoses." (Tr. Vol. 2 at 54). Dr. Vanderpool further testified that because J.S. was too young to participate in his medical care, the responsibility for his care fell upon J.S.'s caretaker.

According to Dr. Vanderpool, a caretaker using marijuana "would increase the risk of something going wrong." (Tr. Vol. 2 at 55).

[18] Also at the hearing, Mother admitted that she regularly used marijuana. However, she further testified that her use of marijuana did not impair her ability to care for J.S. In addition, Mother testified that her sister had been trained to administer J.S.'s TPN and would be available when needed to act as a second caregiver for J.S. Mother further identified an agency that would provide in-home nursing care for J.S. for up to eight hours each day when Mother was at work.

[19] However, DCS Family Case Manager Jake Campbell ("FCM Campbell"), who had been on the case since June 2020, testified that mother's sister had indicated that, due to her work schedule, it would be very difficult for her to provide consistent medical care for J.S. In addition, FCM Campbell testified that he had contacted the agency that Mother had identified and was informed that the agency did not provide in-home nursing services. FCM Campbell also testified that during the period of time that Mother had tested negative for marijuana, Mother had been extremely engaged in J.S.'s care and had asked thoughtful questions at J.S.'s doctor's appointments. However, according to FCM Campbell, when Mother had tested positive for marijuana, Mother had not been communicative. FCM Campbell further testified that J.S. had been placed with his current foster parents since August 2020. Foster mother is a registered nurse and foster father has completed medical training to administer J.S.'s TPN. According to FCM Campbell, J.S. is very bonded with his foster

parents, who plan to adopt J.S. Lastly, FCM Campbell testified that termination was in J.S.'s best interests.

[20] CASA Kimberley Rhoades ("CASA Rhodes") also testified that termination was in J.S.'s best interests. In addition, CASA Rhodes testified that, when Mother was testing positive for using marijuana, Mother had difficulty focusing and remembering things.

[21] Following the hearing, the trial court issued a detailed thirty-eight-page order terminating Mother's parental relationship with J.S. Mother now appeals the termination.

Decision

[22] Mother's sole argument is that there is insufficient evidence to support the termination of her parental relationship with J.S. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* at 1188. Termination of the parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

[23] Before an involuntary termination of parental rights may occur, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K. v. Indiana Department of Child Services,* 989 N.E.2d 1225, 1230 (Ind. 2013).

[24] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[25] Mother argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in J.S.'s removal or the reasons for placement outside the home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to J.S.'s well-being. However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.,* 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in J.S.'s removal or the reasons for his placement outside the home will not be remedied.

[26] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.,* 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment.

A.D.S. v. Indiana Department of Child Services, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*.

[27] Here, our review of the evidence and any reasonable inferences to be drawn therefrom that support the judgment reveals that J.S. was removed from Mother's home in January 2019 because Mother was unable to meet J.S.'s medical needs. At the time of the June 2021 termination hearing, Mother was still unable to meet J.S.'s medical needs. Specifically, Mother's continued use of marijuana significantly increased the risk of deleterious effects in the delicate and detailed process of administering J.S.'s TPN. Further, just three months before the termination hearing, during a TPN refresher training, Mother needed only to demonstrate that she had the consistency and organization to remember to start and stop J.S.'s TPN. Specifically, Mother needed only to text NCM Konrad for seven days at the times that Mother would have started and stopped the TPN administration had J.S. been in her care. However, Mother only texted NCM Konrad two of the seven days during two separate training sessions. Lastly, we note that Mother testified that she had identified an agency that would provide in-home nursing care for J.S. while she was at work and that her sister would be available when needed to act as a second caregiver to J.S. However, according to FCM Campbell, the identified agency does not provide in-home nursing care and Mother's sister's work schedule made it difficult for her to provide consistent medical care for J.S. This evidence supports the trial court's conclusion that there was a reasonable probability that

the conditions that had resulted in J.S.'s removal would not be remedied. We find no error.

[28] Mother also argues that there is insufficient evidence that the termination was in J.S.'s best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parent to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. Further, the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[29] Here, our review of the evidence reveals FCM Campbell and CASA Rhoades both testified that termination was in J.S.'s best interests. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in J.S.'s best interests.

[30] We reverse a termination of parental rights "only upon a showing of 'clear error'—that which leaves us with a definite and firm conviction that a mistake has been made." *Egly v. Blackford County Department of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

[31] Affirmed.

May, J., and Brown, J., concur.