

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 M.T., Mother, A.M., Jr.,
Father, and A.M. and M.M.,
Children,

M.T. and A.M., Jr.,
Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

September 18, 2023

Court of Appeals Case No.
23A-JT-434

Appeal from the
Grant Superior Court

The Honorable
Dana J. Kenworthy, Judge

Trial Court Cause Nos.
27D02-2204-JT-17
27D02-2204-JT-18

Memorandum Decision by Judge Foley

Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] M.T. (“Mother”) and A.M., Jr. (“Father”) are the parents (together, “Parents”) of A.M. and M.M. (“the Children”), and their parental rights were terminated by a judgment issued by the trial court. Parents appeal, claiming the trial court erred because its conclusions were not supported by clear and convincing evidence, namely: (1) that there was a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home would not be remedied; and (2) that termination of parental rights was in the best interests of the Children. Finding no error, we affirm.

Facts and Procedural History

[2] Parents have three children together,¹ but only A.M., born June 13, 2013, and M.M., born November 20, 2008, are subject to the present termination proceedings. Prior to the present proceedings, Parents had a history of involvement with the Indiana Department of Child Services (“DCS”) regarding the Children. On July 19, 2013, DCS filed a Child in Need of Services (“CHINS”) petition concerning A.M., alleging Father left A.M. home alone for an extended period of time, was under the influence, and had a domestic

¹ Parents have an older daughter, G.M., who has a companion child in need of services case. However, because her permanency plan is Another Planned Permanent Living Arrangement (APPLA), she is not part of this termination proceeding.

violence incident with Mother. Parents admitted the allegations, and the trial court adjudicated A.M. a CHINS but later transferred venue to another county. On April 24, 2018, DCS filed CHINS petitions alleging the Children were without a caregiver when Father was arrested for possession of marijuana and Mother was already incarcerated; the CHINS petitions were later dismissed. In total, DCS has substantiated abuse or neglect of a child by Mother and Father on five separate occasions.

- [3] The underlying CHINS proceedings began when family case manager Roxanna Fields (“FCM Fields”) received a report that the police had responded to Father’s home for a domestic violence disturbance between Father and his then-girlfriend on April 27, 2020. Father was arrested, and a no-contact order was issued preventing him from having contact with the Children. At that time, Mother reported living in California. FCM Fields removed the Children from the home and placed them in foster care, and DCS filed CHINS petitions concerning the Children. On August 20, 2020, the trial court adjudicated the Children as CHINS based on a written waiver, submitted by Mother’s attorney as Mother did not appear at the hearing, and Father’s admission. After the dispositional hearing, the trial court issued its dispositional order, which required Parents to complete various services, including random drug screens, supervised parenting time, and various court-ordered programs. Parents were also ordered to allow announced and unannounced visits to their home to monitor progress, maintain safe and stable housing, obey the law, and assist in formulating and implementing a protection plan. Because Mother reported

living in California at that time, no referral for in-person visitation was submitted.

[4] A review hearing was held in December 2020, and neither Parent appeared virtually or in person. The trial court found that Mother had not cooperated with DCS, had not allowed DCS to make visits to her home, and had not obtained employment. She had participated in some virtual visits with the Children but declined offers of in-person supervised visits. The trial court found that Father had not maintained contact with DCS or allowed DCS to make visits to his home. Father also failed to complete a clinical interview or to provide paperwork to confirm he had participated in classes on his own. Because of the active no-contact order, Father had not had any visits with the Children. Father violated the protection plan when he attempted to obtain information about the Children. Parents had not enhanced their ability to fulfill their parental obligations at that time.

[5] At a permanency hearing on April 30, 2021, the trial court approved DCS's recommendation to change the permanency plan to adoption. The trial court found that Father had not maintained regular contact with DCS, had not kept all appointments with DCS and service providers, and had missed parenting education classes, individual therapy and a child and family team meeting. Although Father had stable housing and income and had completed a substance abuse assessment, he had not followed the safety plan, completed a parenting assessment, or followed the recommendations from his substance abuse assessment. Mother had attended weekly virtual visitation but had not

maintained regular contact with DCS, and it was not known if she had stable housing or income, and she failed to provide an updated address. Additionally, Mother had been arrested on April 23, 2021, on an outstanding warrant.

[6] After a review hearing in October 2021, the trial court found that Father had a pending criminal charge, had not been engaging in services, refused to sign releases, refused a drug screen, and had not completed the clinical interview. On September 9, 2021, he tested positive for amphetamine and THC; he was not able to provide a valid prescription for amphetamine. Father also refused visits with the Children because he did not like the distance to the center where the visits took place or the center's rules. Mother was still incarcerated and had not participated in reunification services during the reporting period. Again, the trial court found that Parents had not enhanced their ability to fulfill their parental obligations.

[7] Mother was released from incarceration in December 2021. At the time of the January 2022 review hearing, Father had not maintained consistent contact with DCS. In November, Father had yelled at the FCM over the phone and hung up on her. Father had completed no services during the reporting period, including the previously ordered parenting assessment, psychological evaluation, updated substance abuse assessment, and a psychiatric evaluation. He refused two drug screens and told the FCM to get off his property when she attempted to talk to him. He had only attended one visit with the Children during the reporting period. When Mother was released from incarceration, she contacted DCS, but no services had been resumed.

[8] On April 5, 2022, approximately two years after the Children had been removed from Parents' care, DCS filed petitions to terminate Parents' parental rights as to the Children. Mother did not appear at the May 2022 review hearing. At that time, Father continued to not maintain contact with DCS and had told DCS to not make any unannounced visits to his home. The visitation provider removed Father from the schedule after he cancelled four visits in a row. At a child and family team meeting, Father stated that transportation issues were the barrier to his visits with the Children, so DCS offered to transport him and to provide gas cards. Father tested positive for THC in March and failed to submit any subsequent drug screens. He did not participate in any other services. Mother tested positive for Oxycodone in March, which she claimed she was given by the hospital but failed to provide any medical records; she also had not called the drug screen number for random screens. Moreover, it was discovered that Mother was living with Father in his home during the period despite the domestic violence history between the two.

[9] On June 29, 2022, a fact-finding hearing was held on the termination petitions. Mother did not appear in person but had counsel present. Father appeared in person but arrived one hour late.

[10] FCM Alexandra King ("FCM King"), who began working with the family in April 2021 and continued for the duration of the case, testified that she submitted several referrals for services for Mother after she was released from incarceration in late 2021, including parenting and substance abuse assessments, supervised visitation, and drug screens. FCM King testified that

Mother failed to maintain regular contact with DCS, was inconsistent in her visitation, never completed a substance abuse assessment or parenting assessment, tested positive for drugs on two occasions, and never had stable housing or employment. Mother never met any of the goals in her home-based case management and instead used the appointments for transportation to places she wanted to go. Mother had her first visitation with the Children in February 2022, having not seen the Children for the two years prior, and then missed several visitations after that for unconfirmed health reasons. During the proceedings, Mother stayed at several hotels, slept on friends' couches, was homeless for awhile, and lived with Father briefly; however, she was again homeless at the time of the termination hearing.

[11] FCM King testified that she submitted several referrals for Father's court-ordered services, including three for a parenting assessment, drug screens, five referrals for substance use assessments, a psychological evaluation, and therapeutic visits. Although he claimed to have completed services, records from the service providers revealed that he had not. Father maintained contact with DCS initially, but his contact diminished over time. FCM King stated that Father was sometimes verbally aggressive to her, which resulted in her ending conversations with him. Father left several aggressive voicemails for FCM King after business hours and on holidays. Father's participation in supervised visits was inconsistent with his first referral being terminated for non-compliance, and the second referral being delayed several months because the service provider could not reach Father. When the visits began in December

2021, Father missed several visits despite being provided gas cards and a referral for assistance with transportation.

[12] FCM King testified that Father refused to call the drug screen number, stating he was “not on probation.” Tr. Vol. 2 p. 58. He also refused drug screens for FCM King without notice, which was contrary to the dispositional order, and tested positive for amphetamines and THC in September 2021 and THC in March 2022. Father never completed the following court-ordered services: clinical interview; parenting assessment; psychological evaluation; updated substance use assessment; updated medication evaluation; and random drug screens. Father did attend parenting classes earlier in the case but still continued to display concerning behaviors. Father maintained housing through most of the CHINS proceedings, but at the time of the termination hearing, he was also homeless after being evicted from his home.

[13] FCM King testified that the Children were never returned to Parents’ care during the proceedings because Parents failed to show they were stable and could “provide a safe[,] stable environment” for the Children and because they had not completed “any of the [c]ourt[-]ordered services to ensure [they had] improved their parenting abilities.” *Id.* at 64. FCM King stated that Parents would not likely remedy the problems that led to Children’s removal and continued placement out of the home because Parents “seem[ed] to be more unstable . . . than they were before [DCS] got involved.” *Id.* at 65.

[14] The evidence at the termination hearing demonstrated that Parents have criminal histories and were incarcerated during some portions of the underlying CHINS proceedings. In 2016, Mother pleaded guilty to Level 6 felony possession of a narcotic drug and Class C misdemeanor possession of paraphernalia. She was sentenced to probation, which she violated a few months later. In 2018, Mother was charged with Level 6 felony theft. She failed to appear for her initial hearing, and the trial court issued a warrant, which remained outstanding until her arrest on April 23, 2021, during the CHINS case. Mother pleaded guilty to theft in September 2021 and was sentenced to 912 days with time served and the balance suspended to probation. At that time, she had a pending charge in Howard County. At the time of the termination hearing, Grant County probation had submitted a request for an arrest warrant for Mother's failure to comply with probation.

[15] There was evidence that Father had multiple interactions with the criminal justice system, with a 2014 conviction for Class D felony operating a vehicle with an alcohol concentration equivalent to at least .08 but less than .15 with a prior conviction. He was given a partially suspended sentence and later violated his probation, and his suspended sentence was revoked. In 2015, Father was charged and convicted of Level 6 felony residential entry, and he was sentenced to 912 days in jail. In April 2020, Father was charged with Level 6 felony battery against a public safety official, Level 6 felony domestic battery in the presence of a child, Class A misdemeanor resisting law enforcement, and Class B misdemeanor disorderly conduct, but the case was later dismissed. In

April 2021, Father was charged with Class B misdemeanor disorderly conduct, and the charge was still pending at the time of the termination hearing.

[16] Court appointed special advocate Jacqueline Sheets (“CASA Sheets”) testified that she has been the Children’s CASA since November 2020. She noted that M.M. was “extremely unstable” and that A.M. “doesn’t know what stability is” because she has been in foster care for most of her life as a result of the various CHINS cases. *Id.* at 80. CASA Sheets stated that Mother will “tell you whatever you want to hear . . . but doesn’t have the mental strength to carry through with those plans.” *Id.* She stated she believed that Father’s goal was to “beat the system” and not to be the best father he can be. *Id.* at 81. CASA Sheets testified that she believed that termination was in the best interests of the Children because the Children have never had a stable life and they needed that stability in their lives that Parents cannot give them.

[17] Evidence was presented that M.M. struggled with anxiety about whether she wanted to see Parents due to their inconsistent visitation, and M.M. exhibited behavior issues at school that include self-harming incidents. Her anxiety and behavior issues got worse after Parents’ sporadic visits, and she was admitted for inpatient treatment due to her self-harming. M.M.’s therapist testified that M.M.’s mental health would significantly decline if she were placed back with Parents.

[18] On October 25, 2022, the trial court issued its written order terminating Parents’ parental rights to the Children. It found that Parents “failed to comply

with the [o]rders in the CHINS proceedings, have a demonstrated history of instability, and have not improved their ability to safely and permanently parent the [C]hildren.” Appellants’ App. Vol. 2 pp. 95–96. Specifically, the trial court found that both Parents were homeless at the time of the termination hearing, had criminal histories, rarely complied with random drug screenings, had substantiated reports of abuse and neglect of the Children on multiple occasions, and had not completed the treatment and services ordered to help them reunify with the Children. Parents now appeal.

Discussion and Decision

[19] While the Fourteenth Amendment to the United States Constitution protects the traditional right of parents 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 of 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 trial 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.*

[20] 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). In evaluating the trial court’s 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 A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *Id.* If the evidence and reasonable inferences support the trial 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*.

[21] 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

² Parents do not challenge the trial court’s findings of fact, so they have 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).

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.

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 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. Conditions Not Remedied

[22] Parents first argue that the trial 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.*

[23] In the second step, the trial 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, "[trial] 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).

[24] 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 [trial] 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 resulting in removal would be remedied, the trial court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[25] Here, the reasons for Children's removal from the home and adjudication as CHINS were Father's arrest, domestic violence, and substance abuse, and Mother's absence from the state. In its order terminating the parental rights of Parents, the trial court found that, over the two-and-one-half-year duration of this case, Parents failed to comply with the orders in the CHINS proceedings, demonstrated a history of instability, and failed to improve their ability to safely and permanently parent the Children. The evidence and findings revealed that at the time of the termination hearing, both Parents could not presently care for children because they were homeless, and, although Father completed parenting classes in 2020, neither of them had completed treatment services designed to assist them in reunifying with Children. Both Parents had criminal histories and had spent time incarcerated during the CHINS proceedings, which impeded their abilities to visit the Children and complete services. Parents rarely complied with random drug screening, and the evidence demonstrated that Mother missed 119 drug screen calls, with 46 unforgiven missed screens, and Father missed 172 drug screen calls, with 61 unforgiven missed screens. Mother tested positive for Oxycodone on one occasion, and Father tested positive for amphetamine and THC in September 2021 and THC in March 2022. Both Parents tested positive as recently as March 2022. Additionally, Parents did not consistently attend visitations with Children, and the visitations remained supervised throughout the case and never became less restrictive. At the commencement of the CHINS case, there was a no-contact order in place that restricted Father from visiting the Children, and Mother was not in Indiana. Later, the evidence revealed that Father only attended nine of

the fourteen offered visits; when Father at one point reported that transportation was causing him to miss visitations, DCS offered transportation and gas cards, but Father still failed to attend scheduled visits. Mother was incarcerated for several months after returning to Indiana, and after her release, she was inconsistent in visiting the Children, blaming her absences on health issues but failing to provide medical proof or verification. Further, DCS had substantiated reports of abuse and neglect of the Children on multiple prior occasions. Based on the unchallenged findings, the trial court reasoned:

Parents have not demonstrated a commitment or ability to effectively care for the [C]hildren. Rather, Parents' pattern of conduct over the past [two-and-one-half] years, as well as many prior years of CHINS and criminal involvements, demonstrates they are not capable of being full-time or long-term parents for the [C]hildren.

Appellants' App. Vol. 2 p. 98.

[26] Parents' arguments challenging the trial court's conclusion that the conditions that resulted in the Children's removal and continued placement outside the home will not be remedied are merely requests to reweigh the evidence, which we do not do. *E.M.*, 4 N.E.3d at 642. Here, Parents had many opportunities over the two-and-one-half-year duration of this case to engage in services and participate in visitations with the Children but failed to maintain contact with DCS, continued to use drugs, failed to consistently visit the Children, committed crimes, and failed to complete treatment services to assist them in reunification with the Children. Children "cannot wait indefinitely for their

parents to work toward preservation or reunification.” *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quoting *E.M.*, 4 N.E.3d at 648), *cert. denied*. We, therefore, conclude that the trial court’s conclusion that there was a reasonable probability that the conditions which resulted in Children’s removal and continued placement outside the home would not be remedied was supported by sufficient evidence.³

B. Termination in Best Interests of Children

[27] Parents also argue that the trial court’s conclusion that termination was in the best interests of the Children was not supported by clear and convincing evidence. In determining what is in the best interests of the child, a trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent’s historical inability to provide

³ We need not address whether the trial court properly concluded that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Children’s well-being because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the trial court need only find that one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See* Ind. Code § 31-35-2-4(b)(2)(B); *A.D.S. v. Ind. Dep’t Child Servs.*, 987 N.E.2d 1150, 1157 n.6 (Ind. Ct. App. 2013), *trans. denied*. Because we have concluded that the trial court’s determination that the conditions for Children’s removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence, we do not need to reach this argument.

a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In re A.P.*, 981 N.E.2d at 82. Testimony of the service providers, in addition to 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. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[28] Our review of the totality of the evidence, at the time of the termination hearing, leads to the inescapable conclusion that Parents remained on the same trajectory as when the CHINS cases commenced two-and-one-half years ago. Parents had sporadic compliance with portions of the trial court's orders but remained far from any reasonable measure of compliance. The same patterns, behaviors, attitudes, and conduct that resulted in the removal of the Children persisted throughout this case. Parents simply failed to make the changes necessary to provide the Children with a safe and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Parents would not remedy the reasons for the Children's removal from their care. Additionally, both CASA Sheets and FCM King

testified that termination was in the best interests of the Children because Parents were not able to provide the stability that the Children needed and deserved. CASA Sheets testified that M.M. was unstable and could not continue to live the way she had been and that, because A.M. had been in foster care most of her life, she did not even really know what stability was. Both CASA Sheets and FCM King opined that Parents were not able to provide the needed stability to the Children because Parents could not stabilize their own lives. Further, M.M.'s therapist testified that M.M.'s mental health would significantly decline if she were placed back with Parents, including her self-harming behaviors and shutting down emotionally from stress and anxiety.

[29] The trial court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Children should not have to wait any longer for Parents to be able to provide them with the opportunity to enjoy the stability and permanency that is essential to their development and overall well-being. The trial court’s conclusion that termination of Parents’ parental rights was in the Children’s best interests was supported by clear and convincing evidence.

[30] Affirmed.

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