

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

D.W. & Da.W. (*Minor Children*)

and

J.H. (*Mother*),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

April 18, 2022

Court of Appeals Case No.
21A-JT-2065

Appeal from the St. Joseph Probate Court

The Honorable Ashley Colborn,
Magistrate

The Honorable Jason A.
Cichowicz, Judge

Trial Court Cause No.
71J01-2004-JT-38
71J01-2004-JT-39

Robb, Judge.

Case Summary and Issues

- [1] J.H. (“Mother”) is the mother of D.W. and Da.W. (“Children”). In early 2019, the Children were each adjudicated a child in need of services (“CHINS”) and in April 2020, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Mother’s parental rights.¹ On August 25, 2021, after a hearing, the juvenile court issued an order making findings and concluding Mother’s parental rights should be terminated. Mother now appeals, raising multiple issues, which we restate as: (1) whether certain findings of fact made by the juvenile court were erroneous; and (2) whether sufficient evidence supported the termination of Mother’s parental rights. Concluding that the challenged findings were not erroneous and that clear and convincing evidence supports the termination, we affirm.

Facts and Procedural History

- [2] In December 2018, DCS received a report that D.W. was a victim of educational neglect. Specifically, it was reported that D.W. had numerous unexcused school absences and late arrivals. DCS attempted to contact Mother to discuss the issue but was unsuccessful. In January 2019, the number of D.W.’s unexcused absences and late arrivals grew to twenty-three and forty-one

¹ The Children’s alleged father is D.A.W. (“Father”). Father was an original party to the termination proceedings. Father was served by publication for a fact-finding hearing held on October 7, 2020. However, Father did not appear, and the juvenile court found DCS had made a prima facie case that his parental rights should be terminated. *See* Appellant’s Appendix, Volume 2 at 50-51. He does not participate in this appeal.

respectively and he was failing every subject. Accordingly, DCS filed a verified petition alleging D.W. to be a CHINS. An initial hearing was held on the petition and in February 2019 the juvenile court adjudicated D.W. a CHINS. D.W. was not removed from Mother's care at that time.

[3] Later that month, DCS met with Mother so that family case manager ("FCM") Justina Barkley could conduct an assessment of D.W. The meeting was conducted at the apartment of Mother's friend.² During the meeting, Mother made several statements that caused FCM Barkley to become concerned for Mother's mental health, including: Mother is an empress of angels, trees, and flowers; Mother had been impregnated by her girlfriend; Mother's girlfriend is the father of all five of her children; D.W. can read Mother's mind; Mother can control the weather; Mother's food stamps were cut due to her ties with President Trump; and President Trump was going to give Mother a large sum of cash to help him build the wall. *See* Exhibit Index, Volume 1 at 34, 149-50, 153. Several days after the meeting, the manager at Mother's apartment complex provided DCS with photos of the inside of Mother's apartment. The photos displayed trash, spoiled food, and feces throughout the apartment.

[4] In early March 2019, DCS requested custody of both Children due to concerns for Mother's mental health and filed a verified petition alleging Da.W. to be a CHINS. On March 7, 2019, the juvenile court granted DCS temporary custody

² Mother and Children were living with her friend. Mother rented an apartment in the same complex but was having trouble paying her heating bills.

of the Children³ and in April adjudicated Da.W. to be a CHINS. In late spring 2019, dispositional hearings were held and the juvenile court ordered Mother, among other things, to complete a psycho-parenting assessment and follow all recommendations; complete a psychiatric evaluation and follow all recommendations; participate in medication management and follow all recommendations; remain in consistent contact with the FCM; participate in and successfully complete individual counseling and follow all treatment recommendations; participate in home based services and follow all recommendations; and participate in visits with the Children. The permanency plan was reunification.

[5] Prior to June 2019, Mother was largely absent from the Children's case plan. She was incarcerated in April 2019, failed to attend the Children's dispositional hearings, failed to attend Da.W.'s CHINS hearing, and did not maintain contact with DCS. However, between June 2019 and December 2019, Mother began engaging with DCS and was mostly compliant with the Children's case plan. Although Mother was late for or missed multiple visitations, Mother consistently visited with the Children and demonstrated appropriate parenting skills. Mother also engaged in psycho-parenting and medication management assessments. The psycho-parenting assessment revealed that Mother was dealing with symptoms of PTSD with residual personality problems that take

³ The Children were initially placed in relative care and at the time of the termination hearing were in a foster placement. The Children have never been returned to Mother.

the form of narcissistic and paranoid ideation. *See id.* at 13. Individual psychotherapy was recommended to address Mother’s past traumas and the impact those traumas have had on her functioning, thinking, and belief systems. *See id.* at 14. Mother began participating in individual therapy in October 2019. The medication assessment recommended Mother complete a subsequent psychiatric assessment which would allow her to receive the proper medication for her mental health issues. The psychiatric assessment was scheduled for January 2020.

[6] Mother’s initial therapist, Julian Anderson-Martin, worked with Mother from October 2019 through early December 2019 and testified that prior to beginning work with him, Mother was diagnosed with adjustment disorder, adolescent onset related to past traumas. Mother’s disorder is the result of trauma disrupting normal developmental processes and arresting the brain in being able to function and adhere to reality. *See* Transcript, Volume 2 at 128. Anderson-Martin indicated that Mother exhibited many symptoms during their sessions. For instance, Mother’s speech did not always match her chronological age; Mother’s speech was erratic; Mother’s eyes would change while she was speaking showing that although she was physically present, she was neither mentally nor emotionally present; and Mother would make concerning statements including that she was pregnant, she did not need a man to get pregnant, and that sometimes the “baby lump is there, and sometimes not.” *Id.* at 140-41.

- [7] Anderson-Martin articulated that proper treatment of Mother's disorder included a combination of medication and therapy. *See id.* at 137-38. Therapy is meant to change behavior, unlearn habits, learn new habits, and address past traumas. However, Mother never got to a point where she was willing to address her past traumas. Additionally, Mother refused to take medication because she was fearful she was going to be poisoned and that medication was going to kill her. *See id.* at 130, 137. In late 2019, Mother stopped attending therapy with Anderson-Martin and discontinued the service. Anderson-Martin opined that based on Mother's performance in therapy, Mother would not be able to prioritize, properly parent, or protect the Children. *See id.* at 141-42.
- [8] Between late 2019 and May 2020, Mother completely disassociated from DCS and the Children's case plan. Mother stopped visiting the Children, communicating with DCS and its service providers, and attending therapy. Additionally, Mother did not attend the scheduled January 2020 psychiatric assessment. During these months, Mother's whereabouts were unknown for significant stretches of time. In March 2020, the permanency plan was changed to adoption, and in April 2020, DCS petitioned to involuntarily terminate Mother's parental rights.
- [9] Mother reinitiated contact with DCS in May 2020, began visiting with the Children in June, and restarted individual therapy in September. However, during this time, Mother missed nine of her scheduled visits and she again

stopped visiting the Children altogether in October 2020.⁴ That same month she ended her therapy sessions without addressing any of her therapeutic goals. In November 2020, Mother finally completed a psychiatric assessment with Dr. Roohi Sualeh, and Mother was diagnosed with unspecified schizophrenia.⁵ The basis for Dr. Sualeh's diagnosis was delusional thinking and auditory hallucinations exhibited by Mother. *See id.* at 239-40. As a result of the diagnosis, Mother was recommended therapy and prescribed multiple anti-psychotic medications. Mother continued therapy with Dr. Sualeh through the end of termination proceedings. However, Mother did not always keep her appointments and her compliance with taking medication as prescribed could never be verified. Mother failed to pick up one of the prescribed medications from the pharmacy which resulted in the prescription being canceled. Although Mother picked up the other prescriptions, Dr. Sualeh was unable to get Mother to submit to a blood test which would have confirmed whether she had taken her medications as prescribed. Dr. Sualeh testified that Mother's compliance with her medication was questionable, *see id.* at 243, she had not been keeping her most recent therapy appointments, *see id.* at 245, and her insight into her illness was poor, *see id.* at 249.

⁴ Mother restarted visits again in early 2021 after the fact-finding hearing on DCS' petition to involuntarily terminate Mother's parental rights had begun.

⁵ This was the psychiatric assessment Mother had failed to attend in January 2020 and that was necessary to provide Mother with the appropriate medication for her particular issues.

- [10] A fact-finding hearing on DCS' petition to involuntarily terminate Mother's parental rights began in December 2020, and due to multiple continuances was not concluded until April 2021. At the hearing, Mother testified on her own behalf and acknowledged that she had disengaged from the Children's case plan for an extended period of time. Mother explained that she felt "disrespected" and as a result, "fell off the radar[.]" Tr., Vol. 3 at 135. She also articulated that during the same timeframe she believed someone was out to get her and that she needed to be put into a safehouse. *See id.* at 140. Further, she testified that she does not believe that her mental health has interfered with her ability to parent the Children. *See id.* at 134. Testimony offered by DCS outlined Mother's extensive pattern of noncompliance with the case plan and disengagement from DCS and service providers. Further, FCM Barkley, the court appointed special advocate, and the Children's therapist each testified that termination of Mother's parental rights was in the best interests of the Children.
- [11] On August 25, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Mother's parental rights. Mother now appeals.

Discussion and Decision

I. Standard of Review

- [12] The right of a parent to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). However, these constitutionally protected

rights are not absolute and may be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* at 1259-60. The purpose of terminating parental rights is not to punish the parent, but rather to protect the child. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. When reviewing the termination of parental rights, we do not reweigh the evidence or determine witness credibility. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016). Rather, we only consider the evidence and reasonable inferences most favorable to the juvenile court's judgment. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013).

[13] The juvenile court entered findings of fact and conclusions of law as required by Indiana Code section 31-35-2-8(c). This court will not set aside the decision unless it is clearly erroneous. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In determining whether a decision is clearly erroneous, we apply a two-tiered standard of review. *In re G.Y.*, 904 N.E.2d at 1260. First, we must decide whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record contains no facts to support them directly or by inference. *Id.* A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment. *Id.*

II. Findings of Fact

[14] Mother challenges nine of the juvenile court's findings of fact as unsupported by the evidence. Specifically, Mother challenges findings 16, 17, 21, 34, 35, 36, 37,

39, and 40. We accept the remaining unchallenged findings as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[15] Finding 16 provides: “Mother was not involved in services, in contact with DCS, or involved with her children’s CHINS matter after the Detention Hearing. FCM Barkley credibly testified that Mother ‘disappeared’ until May or June 2019.” Order on Termination of Parental Rights at 5. Mother argues that because dispositional orders were not entered for D.W. until April and Da.W. until June there were no services for her to participate in until approximately that time and therefore, her disappearance cannot be related to her participation in the Children’s case plan. *See* Appellant’s Brief at 9. However, Mother’s argument misses the mark. Finding 16 is not solely focused on Mother’s involvement in services. Rather, the juvenile court identified that there were ample chances for Mother to participate in the Children’s case plan as a whole and she quite simply failed to be present at or partake in those opportunities. FCM Barkley testified that Mother “disappeared after the CHINS initial hearing” in early spring 2019 and “didn’t resurface until about May or June . . . of 2019.” Tr., Vol. 2 at 39. Further, the record buttresses FCM Barkley’s testimony in that after the initial detention hearing, Mother failed to attend D.W.’s April 2019 dispositional hearing, *see* Ex., Vol. 1 at 240, Da.W.’s April 2019 CHINS hearing, *see id.* at 125, and Da.W.’s June 2019 dispositional hearing, *see id.* at 104. DCS also reported in May 2019 that Mother had not been in contact with them despite Mother having been ordered

to participate in services specific to D.W.'s case plan. *See id.* at 123. Finding 16 is supported by the record.

[16] Finding 17 provides: “From June 2019 to December 2019, Mother was partially compliant with services. Mother participated in individual counseling, supervised visitation with [the Children], and completed a psychological assessment and a domestic violence assessment per the credible testimony of FCM Barkley.” Order on Termination at 6. Mother argues that “[n]o finding of ‘noncompliance’ was entered by the court between October and December 2019.” Appellant’s Br. at 10. However, the record shows that although Mother had started to engage in services between June 2019 and December 2019, she was just beginning her individual therapy that she never successfully completed, *see Tr.*, Vol. 2 at 143-44, and she had not completed the recommended psychiatric assessment necessary for providing Mother with proper medication, *see id.* at 138. Further, Mother’s visits with the Children were only consistent between October 2019 and November 2019 and Mother terminated visitation services at the end of November 2019. *See Ex.*, Vol. 1 at 65. Accordingly, finding 17 that Mother was partially compliant with services during this time is supported by the record.

[17] Finding 21 provides: “Mother participated in individual therapy from October 2019 until December 2019 with Julian Anderson-Martin[]. Mr. Anderson-Martin[] credibly testified that Mother was diagnosed with Adjustment Disorder with adolescent onset.” Order on Termination at 6. Mother acknowledges that Anderson-Martin testified that she was diagnosed with

adjustment disorder with adolescent onset. *See* Appellant’s Br. at 10. However, Mother argues that the finding is not supported by the evidence because Anderson-Martin could not recall who made the diagnosis, did not review any mental health records, and was not aware of Mother completing her initial psychological assessment. Mother’s argument is a request to reweigh the evidence, which we will not do. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 149 (Ind. 2005). Anderson-Martin testified that prior to Mother starting to work with him, she had already been diagnosed with “adjustment disorder, adolescent onset related to past traumas.” Tr., Vol. 2 at 127. He also testified that Mother exhibited multiple symptoms consistent with such a diagnosis. *See id.* at 128-129. Finding 21 is supported by the record.

[18] Mother also challenges “the [juvenile] court’s findings of fact concerning her interaction with Dr. Roohi Sualeh[.]” Appellant’s Br. at 10. Those findings are findings 34, 35, 36, 37, 39, and 40. However, Mother fails to articulate what she specifically challenges in each finding. “[P]oints raised by an appellant not ‘argued’ in the argument section of his brief are deemed waived.” *Shuee v. Gedert*, 182 Ind. App. 432, 437, 395 N.E.2d 804, 807 (1979). An argument means a clear presentation of the appellant’s contentions and the reasons in support of those contentions with any applicable citation to authorities, statutes, and parts of the record relied upon. *Id.* On appeal, we will not search for reversible error, and we are not inclined to brief the case and serve as a proponent for the appellant. *Id.* at 437-38. Because Mother does not explain

how the findings concerning her interaction with Dr. Sualeh are not supported by the record, we conclude she has waived such an argument on appeal.

[19] There is evidence to support findings 16, 17, and 21. Further, Mother has waived her challenge to findings 34, 35, 36, 37, 39, and 40 because she has failed to offer any argument as to why these findings are not supported by the record. As a result, we now turn to Mother's challenge to the sufficiency of the juvenile court's conclusions.

III. Termination

[20] To terminate a parent-child relationship, Indiana Code section 31-35-2-4(b)(2) provides the DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * *

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

* * *

(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.

The State must prove each element by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231; *see also* Ind. Code § 31-34-12-2.

[21] On appeal, Mother only challenges that sufficient evidence was presented that there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside her home will not be remedied. Mother does not challenge the juvenile court's separate conclusion that clear and convincing evidence established that the continuation of the parent-child relationship poses a threat to the well-being of the Children. Because the provisions of Indiana Code section 31-35-2-4(b)(2)(B) are written in the disjunctive, DCS needed to prove only one of those statutory elements. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. Therefore, standing alone, the unchallenged conclusion that the parent-child relationship

poses a threat to the well-being of the Children satisfies the requirement listed in subsection (B). *Id.*

[22] Nevertheless, sufficient evidence supports the conclusion that there is a reasonable probability that the conditions resulting in the Children's removal or the reasons for the Children's placement outside the home of Mother will not be remedied. To determine whether the conditions resulting in a child's removal will not be remedied, we conduct a two-step analysis. *In re E.M.*, 4 N.E.3d at 642-43. First, we identify the conditions that led to removal. *Id.* at 643. Second, we determine whether a reasonable probability exists that those conditions will not be remedied. *Id.*

[23] When considering whether there is a reasonable probability that the conditions will not be remedied, we evaluate a parent's fitness as of the time of the termination proceeding while taking into account evidence of changed circumstances. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). Due to the permanent nature of termination, we must also evaluate the parent's habitual patterns of conduct to determine the probability of future harm to the child. *Id.* Past patterns may be considered the best predictor of future behavior. *In re E.M.*, 4 N.E.3d at 643. Further, our review not only focuses on the initial basis for the child's removal from the parent's care, but also on those factors that have led to continued placement outside of the home. *In re N.Q.*, 996 N.E.2d at 392. In doing so, we may consider 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, this court may reasonably find that the problematic situation will not improve. *Id.*

[24] Here, the Children were removed from Mother's care in March 2019 due to concerns regarding Mother's mental health. Specifically, Mother made several concerning statements regarding the powers she allegedly possessed, her ability to get pregnant by another woman, D.W.'s ability to read her mind, and her ties to President Trump. *See Ex.*, Vol. 1 at 34, 149-50, 153. These statements combined with unclean living conditions caused DCS to file for temporary custody of the Children which the juvenile court granted. Mother was subsequently diagnosed with adjustment disorder, adolescent onset related to past traumas, and individual therapy was recommended. However, Mother has spent the previous three years failing to participate in services designed to treat her diagnosis and reunite her with the Children. In the fall of 2019, Mother briefly attended individualized therapy, but discontinued the service in December 2019. Based upon her performance in therapy, Mother's therapist at the time, Anderson-Martin, opined that Mother would not be able to prioritize, properly parent, or protect the Children. *See Tr.*, Vol. 2 at 141-42. Mother subsequently completely disconnected from DCS, her service providers, and the Children because she felt "disrespected." *Tr.*, Vol. 3 at 135. She refused to take medication for fear of being poisoned and failed to appear at a recommended psychiatric assessment in January 2020 which was necessary to prescribe Mother proper medication.

[25] Mother resurfaced in May 2020, and intermittently began to address her mental health issues. Mother reengaged in therapy in September 2020, but only participated in three sessions. Her therapist was unable to address any therapeutic goals before Mother stopped participating in October 2020. Mother did attend the necessary psychiatric assessment in November 2020, was diagnosed with unspecified schizophrenia characterized by delusions and hallucinations, was prescribed medication, and restarted therapy with a new therapist. However, her therapist, Dr. Sualeh, testified that Mother's engagement with therapy appointments had recently been lacking and her compliance with medication was questionable. *See Tr.*, Vol. 2 at 243, 245. Mother was not keeping all of her therapy appointments, failed to pick up one of her three anti-psychotic prescriptions, and had not completed a blood test which would determine whether Mother was taking her other medications. Dr. Sualeh indicated that Mother's insight into her illness was poor, and Mother testified that she did not believe her mental health negatively impacted her ability to parent the Children. *See Tr.*, Vol. 3 at 134. Such an habitual inability to address her mental health issues and acknowledge that she has a problem is not indicative of Mother's ability to successfully remedy the conditions that led to the Children's removal. *See In re J.T.*, 742 N.E.2d at 513-14 (reasoning that failure to address and acknowledge mental health problems supports a conclusion that a mother would not likely remedy the conditions that resulted in her child's removal).

[26] Additionally, other factors have also kept the Children from returning to Mother's care. Mother's involvement in the Children's case is peppered with periods of partial compliance followed by extensive stretches where Mother cannot be reached, her whereabouts are unknown, or she completely disengages from services. As a result, the Children have remained outside of Mother's care. Where there are only temporary improvements and a pattern of conduct shows no overall progress, the juvenile court may conclude that problematic conditions will not improve. *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Further, Mother's regular disassociation from the Children's case plan has resulted in long stretches where she has not visited with her Children. *See Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007) (reasoning that a Father's failure to visit his children is not indicative of remedying conditions that led to their removal), *trans. denied*. Mother stopped visiting the Children between December 2019 and May 2020, she missed numerous visits in the summer of 2020, and again stopped seeing the Children in October 2020 before reinitiating visitations in early 2021. Such a pattern is not evidence of wanting to remedy her current situation and reunite with the Children.

[27] For three years, Mother has failed to properly address her mental health issues or consistently participate with DCS, service providers, or the Children. Accordingly, we agree with the juvenile court that clear and convincing evidence proves there is a reasonable probability that the conditions resulting in the Children's removal will not be remedied.

Conclusion

[28] We conclude that the challenged findings of fact are supported by the record. Further, sufficient evidence showed that there is a reasonable probability that the reasons for the Children's removal will not be remedied. Therefore, we conclude the juvenile court's decision was not clearly erroneous, and we affirm.

[29] Affirmed.

Riley, J., and Molter, J., concur.