



ATTORNEY FOR APPELLANT

Katherine N. Worman
Evansville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Marjorie Lawyer-Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: C.S. (Minor Child),

and

K.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

June 20, 2022

Court of Appeals Case No.
21A-JT-2916

Appeal from the Vanderburgh
Superior Court

The Honorable Brett J. Niemeier,
Judge

Trial Court Cause No.
82D04-2104-JT-555

Weissmann, Judge.

- [1] K.S. (Mother) appeals the termination of her rights as to C.S. (Child), arguing that the trial court violated her right to due process and insufficient evidence supported the order. Finding neither argument successful, we affirm.

Facts

- [2] Child's younger brother, H.S., tested positive for methamphetamine at his birth in April 2019.¹ In response, DCS filed a petition alleging H.S. was a child in need of services (CHINS); however, DCS closed the case when it was unable to locate the family. Seven months later, DCS found the family and filed a new petition alleging Child was a CHINS. Mother and her husband had been using methamphetamine and neither Child nor his brother had received adequate medical care. "[Child's] teeth were black and deteriorating in his mouth." App. Vol. II, p. 69-70. Child was removed from Mother and declared a CHINS.² At the same time, Mother was charged with six counts of Level 6 felony neglect.
- [3] The CHINS court ordered Mother to engage in various services, including a mental health and substance abuse evaluation, random drug screens, parenting education class, and visitation services. She also was ordered to remain drug and alcohol free and to keep in regular contact with her case manager.

¹ H.S. is not subject to this proceeding.

² The trial court never took judicial notice of the underlying CHINS case, No. 82D04-1911-JC-002112, in proceedings against Mother, though it did take notice of the related criminal case, No. 82C01-2002-F6-844, and the first CHINS case, No. 82D04-1904-JC-7. The State does not attempt to justify this omission in its brief. Because of this oversight, the documents from the underlying CHINS case are not before us. *See Tipton v. Marion Cnty. Dep't Pub. Welfare*, 629 N.E.2d 1262, 1266 (Ind. Ct. App. 1994).

- [4] Evidence presented at two termination hearings over the course of almost two months showed that Mother was only partially compliant. Her case manager testified, “I would say . . . the one thing that she remained consistent with was attending visitation.” Tr. Vol. II, p. 26. Mother testified that she and Child continue to share a strong bond.
- [5] Mother did not show progress in other areas, most concerningly addiction treatment. Mother participated in multiple in-patient and out-patient treatment programs but relapsed repeatedly over the life of the underlying CHINS case. These lapses sometimes constituted violations of her bond in the criminal case and resulted in jail time. At the second termination hearing, Mother testified that she last used methamphetamine earlier that same month. *Id.* at 60. Her case manager testified that Mother would make up excuses to miss drug screens and refuse to screen when there was reason to believe she was using. Mother’s drug use was additionally concerning because it may have contributed to domestic violence between her and her husband.
- [6] Mother was unreliable in other ways. She missed the first termination hearing date because she overslept. She was 30 minutes late for the second. Between the two hearing dates, she was evicted from her home. And the case manager testified that there was reason to believe her employment situation was not as stable as she claimed.
- [7] The case manager testified in favor of termination at the first hearing, stating, “There just hasn’t been any long-term consistency with sobriety for us to

determine that she would be fit in order to provide for [Child].” *Id.* at 36. He added,

[O]ver the course of the case she hasn’t maintained that sobriety and I know that can put [Child] in harm’s way. I know Parents have told me when they were using[,] there was domestic violence and there’s certain things that puts [Child] at risk. With her not being able to demonstrate that while we have eyes on her with DCS involved[,] I don’t feel that she would be able to continue to provide for him.

Id. at 37.

[8] After the case manager’s testimony, DCS proposed calling the Court Appointed Special Advocate (CASA) in the case. The trial court responded, “The Court will take judicial notice of the CASA report that’s already been given to the Court. So I don’t think I need to hear testimony.” *Id.* at 46. DCS assented and rested its case. Mother’s counsel made no objection.

[9] Mother testified at the second hearing. Afterwards, the trial court terminated the parent-child relationship. It concluded that:

- Child had been removed from Mother for at least 15 of the last 22 months;

- there is a reasonable probability that the conditions that resulted in removal or the reasons for placement outside the home will not be remedied, citing Mother’s addiction;³
- there is a reasonable probability that continuing the parent-child relationship poses a threat to Child’s well-being, citing Mother’s unstable housing, employment, and addiction;
- termination is in Child’s best interests;
- and adoption is a satisfactory plan for Child’s care and treatment.

App. Vol. II, p. 76.

Discussion and Decision

[10] On appeal, Mother first argues that the trial court violated her right to due process when it took judicial notice of the CASA’s report. She next argues that the evidence is insufficient to support termination. Finding neither of Mother’s claims meritorious, we affirm the trial court.

I. Due Process

[11] Mother claims that she was denied due process when the trial court admitted the CASA’s unsworn report without cross-examination. We find that Mother

³ The trial court stated, “[M]other continues to be addicted to methamphetamine” to justify this conclusion. We remind the trial court that drug addiction is a chronic disease that is treatable and manageable but not necessarily curable. *Understanding Drug Use and Addiction Drug Facts*, Nat’l Inst. Drug Abuse, <https://nida.nih.gov/publications/drugfacts/understanding-drug-use-addiction> (last visited June 7, 2022). We interpret the court’s finding as more properly reliant on Mother’s continued drug use, not the mere existence of her addiction.

has not alleged a cognizable due process violation. Due process requires that parents in termination proceedings receive “fundamentally fair procedures.” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). Cross-examination of witnesses in these proceedings is a statutory requirement “fundamental and essential to a fair trial.” Ind. Code § 31-32-2-3(b)(1); *Lawson v. Marion Cnty. Off. Fam. & Child.*, 835 N.E.2d 577, 580 (Ind. Ct. App. 2005).

[12] Though cross-examination did not occur, Mother makes no assertion that the trial court *denied* her the opportunity. The CASA’s report was admitted at her first hearing date with no objection from her counsel. Tr. Vol. II, p. 46. And there is no indication that the trial court prevented Mother from calling the CASA as a witness herself. Mother could have called the CASA to testify at her final hearing date more than a month later, but she did not. Based on Mother’s own recounting, admission of the CASA report was not a due process violation, but a strategic choice she now regrets.

II. Sufficiency

[13] Mother next claims that the evidence was insufficient to support termination. She first challenges the trial court’s factual findings, arguing that DCS did not introduce evidence from the underlying CHINS petition, did not ask the trial court to take judicial notice of the underlying CHINS proceeding, and did not introduce evidence relating to her pending criminal charge. She then argues that without these findings, DCS could not show that termination was proper.

A. Standard of Review

[14] Parents have a fundamental interest in the care, custody, and control of their children, but that interest is not absolute. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). The State may terminate parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008).

[15] A petition to terminate parental rights must allege, in relevant part:

(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 trial court finds these allegations are true by clear and convincing evidence, it shall terminate the parent-child relationship.

Ind. Code §§ 31-35-2-8, -37-14-2.

[16] In reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (citing *In re I.A.*, 934 N.E.2d at 1132). The judgment will be set aside only if it is clearly erroneous. *Id.* We apply a two-tiered standard of review: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.*

B. Remediating Conditions and Threat

[17] Mother argues the evidence is insufficient to show both that conditions leading to removal were unlikely to be remedied and that her continued relationship with Child posed a threat to his well-being. Because the statute is written in the disjunctive, DCS need only have proven one of these factors by clear and convincing evidence. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014). In this case, we find DCS adequately proved both factors.

[18] We first consider the probability that the conditions leading to removal or placement outside the home will not be remedied. This requires a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we identify the relevant conditions. *Id.* We consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *See In re A.I.*, 825 N.E.2d 798, 807 (Ind. Ct. App. 2005). Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *In re E.M.*, 4 N.E.3d at 643. We trust the trial court to evaluate a parent’s fitness at the time of termination, balancing recent improvements against habitual

patterns of conduct. *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

[19] Mother argues that DCS failed to establish the conditions resulting in removal, rendering it impossible to determine whether they were likely to be remedied. DCS did not introduce documents from the underlying CHINS case, nor did the trial court ever explicitly take judicial notice of the underlying CHINS case. Mother argues that without this evidence, DCS could not show there is a reasonable probability that conditions leading to removal will not be remedied. In this opinion, we have avoided recounting findings that appeared to rely solely on the unadmitted CHINS record. *See supra* n.1. But even without these records, the remaining evidence is sufficient to support termination.⁴

[20] It is evident from the record that Mother’s drug use was the reason for continued placement outside the home. The DCS case manager testified that during the underlying CHINS case, Child had been placed “back in the home.” Tr. Vol. II, p. 45. However, within two weeks DCS “received drug screen results from [Mother] . . . in which she was positive for methamphetamine.” *Id.* Moreover, the CASA report, which was properly admitted, includes Mother’s

⁴ DCS’s failure to present evidence of the underlying CHINS proceedings imposed a strict limitation on review of the trial court’s order. Though the remaining evidence outside of the CHINS record supported the termination order, this might not be true in the next case.

methamphetamine use as a reason for Child's initial removal. App. Vol. II, p. 60.

- [21] Given the evidence, it was within the trial court's discretion to determine that there was not a reasonable probability that this condition would be remedied. At the second termination hearing, Mother testified that she had used methamphetamine earlier that same month. *Id.* at 60. It was not improper for the trial court to weigh Mother's years-long history of drug use more heavily than a few weeks of purported sobriety. *In re E.M.*, 4 N.E.3d at 643.
- [22] Though the termination order can be affirmed based only on conditions resulting in removal, there was also sufficient evidence to support the trial court's finding that continuation of the parent-child relationship poses a threat to Child's well-being. The DCS case manager testified that Mother's drug use not only prevented her from being able to provide for Child; it also increased his exposure to domestic violence. Tr. Vol. II, p. 37. Moreover, the trial court took judicial notice of a criminal case in which Mother pleaded guilty to four counts of Level 6 felony neglect of a dependent. *Id.* at 35. Altogether, this evidence supports the trial court's finding that the continued parental relationship poses a threat to Child.

C. Best Interests

- [23] Finally, Mother argues that termination is not in Child's best interests. She argues that she can provide for Child, especially if given additional time to continue her progress. In evaluating Child's best interests, courts look to the

totality of the evidence. *In re A.I.*, 825 N.E.2d at 811. “[T]he trial court must subordinate the interests of the parents to those of the children.” *Id.*

The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Recommendations of the case manager and court-appointed advocate, 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 at 1005.

[24] Here, the totality of the evidence supports termination. In addition to the trial court’s supportable findings regarding the conditions leading to removal and the threat a continued relationship posed, the CASA supported termination. The trial court took judicial notice of the CASA report, which stated:

CASA believes it is in the child’s best interest for the mother and father’s rights to be terminated. . . . [M]other has not been willing or able to remain a sober caregiver or provide a safe environment for [Child]. [Mother] has been to multiple treatment facilities, and she has not used the steps and skills that were taught during this time.

App. Vol. II, p. 62. Our standard of review dictates that this evidence is sufficient. *See In re A.S.*, 17 N.E.3d at 1005.

[25] Finding that the evidence supports the findings and the findings support the judgment, we affirm the termination of Mother’s parental rights.

Robb, J., and Pyle, J., concur.