MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

L.J. (Mother),

Appellant-Respondent,

v.

The Indiana Department of Child Services,

Appellee-Petitioner.

December 21, 2021

Court of Appeals Case No. 20A-JT-2305

Appeal from the Madison Circuit Court

The Honorable G. George Pancol, Judge

Trial Court Cause No. 48C02-2004-JT-89

Pyle, Judge.

Statement of the Case

[1] L.J. ("Mother") appeals the termination of the parent-child relationship with her daughter, C.J. ("C.J."), arguing that there is insufficient evidence to support the termination. Concluding that there is sufficient evidence to support the trial court's decision to terminate the parent-child relationship, we affirm the trial court's judgment.[1]

[2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationship.

Facts

[1] Mother is the parent of C.J., who was born in July 2005. On November 10, 2018, when C.J. was thirteen years old, an Anderson Police Department officer responded to a call regarding an incident at Mother's home. When the officer arrived at Mother's home, Mother told the officer "to get th[at] 'bitch' [C.J.] out of her home . . . or [Mother] would hurt her." (App. Vol. 2 at 120). Mother further told the officer that she was "going to the courthouse to sign her rights

[1] Father ("Father") is not a party to this appeal. He voluntarily relinquished his parental rights and consented to C.J. being adopted by his sister ("Paternal Aunt").

away for [C.J.]." (App. Vol. 2 at 120). C.J. left Mother's house to stay with a friend.

[2] Three days later, DCS received a report that C.J. had been molested in the past and that Mother had refused to give permission for C.J. to receive mental health counseling. The report further stated that Mother had threatened to kill C.J. and would not allow her to return to Mother's home.

[3] The following week, Mother told a DCS case manager that "if [C.J.] c[ame] back to [Mother's] house[,] [o]ne of them w[ould] leave in a body bag." (App. Vol. 2 at 120). C.J. told the case manager that she did not feel safe at Mother's home and was afraid to return there. Based upon Mother's threats and C.J.'s concerns regarding her safety, DCS removed C.J., who was still staying with a friend, from Mother's home and placed her with Paternal Aunt.

[4] At the end of November 2018, DCS filed a petition alleging that C.J. was a child in need of services ("CHINS"). Mother admitted the allegations in the CHINS petition, and the trial court adjudicated C.J. to be a CHINS in December 2018. In January 2019, the trial court issued a dispositional order requiring Mother to: (1) maintain consistent contact with DCS; (2) allow the DCS family case manager and service providers to make both announced and unannounced visits to her home; (3) sign releases necessary for the DCS family case manager to monitor compliance with the terms of the trial court's order; (4) participate in family counseling and follow all recommendations; (5) attend supervised visits with C.J.; (6) complete all assessments within thirty days; (7)

enroll in and participate in all programs recommended by both DCS and other service providers; and (8) successfully complete parenting education classes.

[5] For the next fifteen months, Mother's compliance with the CHINS dispositional order was minimal. Specifically, Mother failed to maintain consistent communication with DCS and refused to allow the DCS family case manager and service providers to make either announced or unannounced visits to her home. Mother threatened to file harassment charges against the DCS family case manager if the family case manager attempted to visit Mother's home or telephone Mother. Mother also refused to sign releases to allow the DCS family case manager to monitor Mother's compliance with the CHINS dispositional order. In addition, Mother failed to participate in family therapy with C.J., and Mother's supervised visits with C.J. were inconsistent. After visits with Mother, C.J. suffered from pseudo-seizures, which lasted approximately five minutes, and involved muscle shaking and eye contractions. Mother also refused to participate in parenting education classes.

[6] In April 2020, based upon Mother's lack of compliance with the CHINS dispositional order, DCS filed a petition to terminate Mother's parental relationship with C.J. The trial court held a factfinding hearing in September 2020. At the hearing, the trial court heard the evidence as set forth above. In addition, DCS Family Case Manager Iris Hamilton ("FCM Hamilton") testified that she did not believe that there was a reasonable probability that the conditions that had led to C.J.'s removal would be remedied because the case had been open for twenty-one months and the reasons for DCS' initial

involvement still existed. According to FCM Hamilton, termination and adoption by Paternal Aunt were both in C.J.'s best interests.

[7] C.J.'s therapist, Sandra Duncan-Hardin ("Therapist Duncan-Hardin"), who had been seeing C.J. for over a year, testified that C.J. had been diagnosed with anxiety disorder, major depression, and adjustment disorder. Therapist Duncan-Hardin further testified that the symptoms of C.J.'s depression and anxiety were in remission at the time of the hearing and that C.J. was doing well behaviorally and academically. Therapist Duncan-Hardin also testified that Mother had told her that Mother "didn't need anyone telling her how to parent [C.J.]" and that Mother "would beat [C.J.'s] ass if she wanted to[.]" (App. Vol. 2 at 28).

[8] In addition, C.J. testified that she did not feel safe in Mother's home because C.J. had been molested there. According to C.J., Mother did not believe that C.J. had been molested, even after the perpetrator had admitted to the molestation. C.J. further testified that she wanted to live with Paternal Aunt because she felt safe at Paternal Aunt's house and Paternal Aunt took care of her.

[9] Mother testified that she had just wanted C.J. "out of her home for a cooling period" and that she now wanted C.J. back home. (App. Vol. 2 at 31). Mother further testified that she did not need to complete any services because C.J. was "the issue[.]" (App. Vol. 2 at 33). Mother also testified that C.J. suffered from

depression, anxiety, and, more recently, pseudo-seizures because she had been vaccinated after her removal from Mother's home.

[10] In November 2020, the trial court issued a termination order, which concluded that DCS had met its burden of proving that there was a reasonable probability that the conditions that resulted in C.J.'s removal would not be remedied. Specifically, the trial court stated that "[t]here [was] no reasonable probability the conditions which led to [C.J.'s] removal w[ould] be remedied because Mother [had] not believe[d] services [were] necessary and ha[d] not complied with services." (App. Vol. 2 at 14).

[11] Mother now appeals the termination.

Decision

[12] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *In re Bester*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[13] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support

the judgment. *Id*. Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[14] A petition to terminate parental rights must allege:

> (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.*, 989 N.E.2d at 1231.

[15] Here, Mother argues that there is insufficient evidence to support the termination of her parental rights. Specifically, she contends that the evidence is insufficient to show both that there is a reasonable probability that the conditions that resulted in C.J.'s removal or the reasons for placement outside the parent's home will not be remedied and a continuation of the parent-child relationship poses a threat to C.J.'s well-being.

[16] 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). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in C.J.'s removal or the reasons for her placement outside Mother's home will not be remedied.

[17] 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, 642-43 (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.* at 643. 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.* DCS need not rule out all possibilities of change. *In re Kay. L.,* 867 N.E.2d 236, 242 (Ind. Ct.

App. 2007). Rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *Id.* We further note that "[e]vidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services demonstrates the requisite reasonable probability that the conditions will not change." *Matter of G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (internal quotation marks and citation omitted).

[18] Here, our review of the evidence reveals that C.J. was removed from Mother because Mother had threatened to kill C.J. and C.J. did not feel safe at Mother's home. After C.J. had been adjudicated to be a CHINS, Mother refused to maintain consistent contact with the DCS family case manager and threatened to file harassment charges against her if she attempted to visit Mother's home or telephone Mother. Mother also refused to participate in parenting education classes and family therapy with C.J. In addition, Mother's visits with C.J. were inconsistent, and, after visits with Mother, C.J. suffered from pseudo-seizures. Mother did not believe that she needed to participate in any services because, according to Mother, C.J. was the problem. Further, Mother believed that C.J. suffered from mental health issues because she had been vaccinated following her removal from Mother's home. In addition, Mother neither believed that C.J. had been molested nor took any effort to contact law enforcement when the molestation allegation was made. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that had resulted in C.J.'s removal would not be

remedied. There is sufficient evidence to support the termination of Mother's parental rights.[2]

[19] Affirmed.

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

[2] Mother also argues that "DCS failed to show that it used reasonable efforts to perfect the permanency plan of reunification." (Mother's Br. 8). Mother is correct that DCS must "make reasonable efforts to preserve and reunify families." IND. CODE § 31-34-21-5.5(b). However, a parent may not sit idly by and then successfully argue that she was denied services to assist her with her parenting. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Further, our review of the record reveals that DCS offered Mother the following services when the trial court issued the CHINS dispositional order in C.J.'s case: (1) supervised visitation; (2) family counseling; and (3) parenting education classes. DCS offered Mother sufficient services in its attempt to reunify her with C.J. It was Mother who chose not to participate in the services. We find no error here.