

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
A.M. and N.M. (Minor Child);
C.M. (Mother),
Appellant-Respondent

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

July 27, 2022

Court of Appeals Case No.
21A-JT-2734

Appeal from the Fountain Circuit
Court

The Honorable Stephanie
Campbell, Judge

Trial Court Cause Nos.
23C01-2105-JT-26
23C01-2105-JT-29

Pyle, Judge.

Statement of the Case

[1] C.M. (“Mother”) appeals the termination of the parent-child relationships with her children, A.M. (“A.M.”) and N.M. (“N.M.”) (collectively “the children”), claiming that the Department of Child Services (“DCS”) failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in the children’s removal or the reasons for placement outside Mother’s home will not be remedied; (2) a continuation of the parent-child relationships poses a threat to the children’s well-being; and (3) termination of the parent-child relationships is in the children’s best interests. Concluding that there is sufficient evidence to support the trial court’s decision to terminate the parent-child relationships, we affirm the trial court’s judgment.¹

[2] We affirm.

Issue

Whether there is sufficient evidence to support the involuntary termination of Mother’s parental rights.

Facts

[3] Mother is the parent of daughter A.M., who was born in September 2018, and son N.M., who was born in August 2019. In May 2019, Mother and Father became involved in a domestic violence incident at their home. After Father

¹ The children’s father (“Father”) voluntarily relinquished his parental rights and is not participating in this appeal.

had slammed Mother's cell phone against a table several times and shattered the cell phone, Mother chased Father up the stairs, grabbed his shirt, ripped it, and left a welt on Father's neck. Police officers arrived at the home, arrested both parents, and contacted DCS because there was no one available to care for eight-month-old A.M., who had been awake and crying during the incident.

[4] When a DCS family case manager arrived at the scene, a law enforcement officer told the case manager that officers had been dispatched to the parents' home for domestic disturbances twelve times in the past month. The case manager noticed that there was no baby formula in the home. In addition, there was dog urine and feces on the floor, and the case manager smelled the strong odor of urine. The case manager also noticed holes that both parents had punched in the walls. The case manager removed A.M. from her parents because of the domestic violence and unsanitary conditions in the home and placed the infant in foster care.

[5] DCS filed a petition alleging that A.M. was a CHINS. That same day, the State charged Mother with Level 6 felony domestic battery because she had two prior convictions for domestic battery. In June 2019, the trial court issued a no-contact order prohibiting Mother from having contact with Father.

[6] In July 2019, following a hearing, the trial court adjudicated A.M. to be a CHINS. The CHINS dispositional order required Mother to: (1) maintain safe and suitable housing for A.M.; (2) obey the law; (3) participate in an Intensive Family Preservation Program; (4) meet all personal and mental health needs in

a timely manner; (5) attend supervised visits with A.M.; (6) complete a mental health assessment and follow all recommendations; and (7) complete Character Restoration, a domestic violence program. Mother completed a mental health assessment and was diagnosed with depression and anxiety.

[7] The following month, August 2019, Mother gave birth to N.M. A DCS family case manager transported Mother and N.M. home from the hospital and arranged for “daily drop-ins” to increase home-based case management services for Mother and N.M. (App. Vol. 2 at 78). Two weeks after Mother had returned home with N.M., the family case manager received information that Mother had threatened to harm herself and N.M. The case manager telephoned Mother, who was acting hysterical and manic, and who stated, “I don’t know what to do anymore, you might as well just come and get [N.M.]” (App. Vol. 2 at 78). While driving to Mother’s home, the case manager received screen shots of the following text message that Mother had sent to a family member: “[K]illing myself he’s blocked me for the last time he either unblocks me or [N.M.] and [A.M.] won’t have a mom.” (App. Vol. 2 at 78).

[8] When two family case managers and law enforcement officers arrived at Mother’s home, Mother admitted that she had attempted to contact Father on social media despite the existence of the no-contact order. After talking to the case managers, Mother agreed to a mental health evaluation and was transported to the hospital emergency room. While in the emergency room, Mother told hospital staff the manner by which she had planned to commit suicide. Shortly thereafter, Mother was transferred to an in-patient mental

health facility. The DCS case workers removed N.M. from Mother because of concerns about Mother's mental health and placed him in foster care.

[9] DCS filed a petition alleging that N.M. was a CHINS. Following a hearing, the trial court adjudicated N.M. to be a CHINS in January 2020. The CHINS dispositional order required Mother to: (1) maintain safe and suitable housing for N.M.; (2) obey the law; (3) participate in an Intensive Family Preservation Program; (4) meet all personal and mental health needs in a timely manner; (5) attend supervised visits with N.M.; (6) complete a mental health assessment and follow all recommendations; and (7) complete Character Restoration, a domestic violence program.

[10] Also in January 2020, Mother pleaded guilty to the Level 6 felony domestic violence charge, which had resulted in A.M.'s removal from Mother's home in May 2019. The trial court sentenced Mother to 545 days in the Department of Correction and suspended the sentence to probation. The trial court also vacated the no-contact order that had prohibited Mother from having contact with Father, and Father moved back into Mother's house.

[11] A January 2020 periodic case review order in A.M.'s case noted that Mother had been participating in services to address the issues of domestic violence and her mental health. The order further noted that Mother needed to continue with her progress in those services. Mother had also been participating in supervised visitation.

- [12] In May 2020, DCS family case manager Jerion Denny (“FCM Denny”) was assigned to the case. At that time, Mother and Father were living together and, “for the most part[,]” had been participating in services. (Tr. Vol. 3 at 11). A June 2020 periodic case review order noted that although both parents had been engaging in services, the parents needed to continue to address the underlying issue of domestic violence in their relationship because those incidents had continued to occur.
- [13] In November 2020, DCS approved a trial home visit for A.M. and N.M. If the visit went well, DCS planned to close the case and return the children to their parents. At the time, Mother and Father were still living together. One month later, in December 2020, DCS learned that Father’s former girlfriend, D.E., had moved into the house with Mother, Father, and the children.
- [14] In January 2021, Mother became upset when Father and D.E. told her that they were moving out of the house together because they were in love with each other. When FCM Denny learned that Mother had become emotional and was yelling at Father and D.E., FCM Denny and another case manager went to Mother’s home to check on the children. Mother told the case managers that she had not been taking her prescribed medication for her mental health conditions. When the case managers told Mother to take the medication at that moment, Mother complied. The case managers were also able to assist Father and D.E. in leaving the house.

[15] After Father and D.E. had left, the case managers helped Mother put the children to bed. Mother told the case managers that she was also going to bed. However, after the case managers had left, Mother, who had just taken a medication that she knew caused drowsiness, took the children out of bed, put them in the car, and drove to Illinois with the children to confront Father and D.E. about their relationship. When FCM Denny learned what had happened, the case manager drove to Illinois to check on the children. However, by the time FCM Denny had arrived in Illinois, Mother and the children had already left. FCM drove back to Indiana to Mother's home and found Mother and the children sitting in the car in front of Mother's house. Both children were awake. FCM Denny confronted Mother about taking a medication that she knew made her drowsy and driving the children to Illinois to confront Father and D.E. when Mother knew that it could have turned into a violent situation. Further, FCM Denny told Mother that any similar behavior would result in the removal of the children for their safety.

[16] Following a February 2021 periodic case review, the trial court ordered that, "[n]either parent [was] to be in a vehicle with the children with the intent to look for or follow the other parent. Failure to abide by this instruction w[ould] constitute contempt of court." (App. Vol. 2 at 131). Nevertheless, in March 2021, Mother, with the children in the car, drove to the house where Father lived with D.E. Mother then took N.M. out of the car and stood across the street from the house with N.M. in her arms. When FCM Denny learned what

Mother had done, the case manager removed the children from Mother for their safety and placed them together in foster care.

- [17] In March 2021, following the children’s removal from Mother, home-based case manager Elizabeth Boener (“CM Boener”) began facilitating supervised visits between Mother and the children. Boener noticed that the children did not appear to be bonded to Mother. According to Boener, “it [was] not a natural thing for [Mother] to interact with [the children].” (Tr. Vol. 2 at 131). In addition, CASA Amanda Shoaf (“CASA Shoaf”) did not see a bond between Mother and the children.
- [18] Also in March 2021, Mother’s mental health issues escalated. Mother continued to contact and harass Father and D.E. and threatened to kill herself because Father was not with her. One month later, in April 2021, Mother began dating S.C. and soon became pregnant. When S.C. ended the brief relationship with Mother, Mother threatened to commit suicide if S.C. would not stay with her.
- [19] In May 2021, DCS filed petitions to terminate Mother’s parental relationships with A.M. and N.M. At the two-day August 2021 termination hearing, the trial court heard the evidence as set forth above. In addition, FCM Denny testified that, based upon Mother’s continuing mental health issues and behavior, there was a reasonable probability that the conditions that had resulted in the children’s removal would not be remedied. According to FCM Denny, Mother was still at the same point where she had been two years ago at the beginning of

A.M.'s case. FCM Denny believed that “enough [was] enough” because the children needed stability and permanency. (Tr. Vol. 3 at 32). FCM Denny also testified that then-almost-three-year-old A.M. and then-two-year-old N.M. were “doing really, really well” in foster care.” (Tr. Vol. 2 at 156).

[20] Further, CASA Shoaf testified that Mother had taken no accountability for the children’s removal and believed that DCS was “picking at her.” (Tr. Vol. 2 at 156). In addition, CASA Shoaf testified that the children had been in the court system for two years and deserved a home where they were loved and had stability. According to CASA Shoaf, termination was in the children’s best interests. CM Boehner testified that as recently as the day before the hearing, Mother’s home had been infested with roaches.

[21] In December 2021, the trial court issued detailed orders terminating Mother’s parental relationships with A.M. and N.M. Mother now appeals the terminations.

Decision

[22] Mother argues that there is insufficient evidence to support the termination of her parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Office*, 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. *Bester v. Lake County Office of Family and Children*, 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*.

[23] When reviewing the termination of parental rights, we will not weigh 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.

[24] 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.

[25] 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 that there is a reasonable probability that: (1) the conditions that resulted in the children's removal or the reasons for placement outside Mother's home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to the children's well-being.

[26] At the outset, 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 the children's removal or the reasons for their placement outside Mother's home will not be remedied.

[27] 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 parents' 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*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of her future behavior. *E.M.*, 4 N.E.3d at 643.

[28] Here, A.M. was removed from Mother's home because of domestic violence issues with Father and unsanitary conditions in the home. N.M. was removed from Mother's home because of Mother's mental health issues as demonstrated by her threats to commit suicide and harm N.M. Our review of the evidence reveals that Mother and Father have had a long history of domestic violence, which continued throughout the two-year pendency of the CHINS proceedings. Indeed, at the time of the termination hearing, Mother had recently harassed and threatened Father and D.E. when she knew that she could be instigating a violent situation. Also, at the time of the termination hearing, Mother's home

was infested with roaches. Furthermore, Mother had recently become pregnant by another man and had threatened to commit suicide when he ended their relationship. This evidence, as well as FCM Denny's testimony that Mother was still at the same point where she had been at the beginning of the CHINS proceedings, supports the trial court's conclusion that there was a reasonable probability that the conditions that had resulted in the children's removal would not be remedied. We find no error.

[29] Mother also argues that there is insufficient evidence that the termination was in the children'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 parents 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*. "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that continuation of the parent-child relationship is contrary to the child's best interest." *In re B.D.J.*, 728 N.E.2d 195, 203 (Ind. Ct. App. 2000) (quoting *Matter of Adoption of D.V.H.*, 604 N.E.2d 634, 638 (Ind. Ct. App. 1992), *trans. denied, superseded by rule on other grounds*). 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).

[30] Here, our review of the evidence reveals that because of her mental health issues, Mother has historically been unable to provide stability and supervision for her children and was unable to provide the same at the time of the termination hearing. In addition, both CM Boener and CASA Shoaf testified that they had not seen a bond between Mother and the children, who needed stability and permanency. In addition, CASA Shoaf testified that termination was in the children's best interests. The testimony of CASA Shoaf, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the children's best interests. There is sufficient evidence to support the terminations.

[31] Affirmed.

Robb, J., and Weissmann, J., concur.