

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
Sa.S., Sy.S., and Sm.S. (Minor
Children) and J.W. (Mother)

J.W. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

September 10, 2021

Court of Appeals Case No.
21A-JT-660

Appeal from the
Lake Superior Court

The Honorable
Thomas P. Stefaniak, Jr., Judge

Trial Court Cause Nos.
45D06-2006-JT-73
45D06-2006-JT-74
45D06-2006-JT-75

Vaidik, Judge.

Case Summary

- [1] J.W. (“Mother”) appeals the termination of her parental rights to her children, Sa.S., Sy.S., and Sm.S. We affirm.

Facts and Procedural History

- [2] Mother and D.S. (“Father”) (collectively, “Parents”) are the biological parents of Sa.S, born in 2015, Sy.S., born in 2017, and Sm.S., born in 2018. In October 2018, the Department of Child Services (DCS) in Lake County received a report alleging six-month-old Sm.S. was the victim of neglect by Parents. Sm.S. was born at only 24 weeks and had “extensive” medical needs, including “cataracts of the right eye,” “chronic Lyme disease,” “poor weight gain,” “a hemorrhage,” and “[r]etinopathy of prematurity.” Tr. Vol. II pp. 36, 40-41. The report alleged Parents had not been taking Sm.S. to his medical appointments. DCS located Parents to conduct an assessment and found that besides Parents failing to take Sm.S. to his medical appointments, the children had poor hygiene, the family did not have a “regular place to stay at night,” and Parents did not have necessities for the children, such as food or diapers. Appellant’s App. Vol. II p. 8. DCS removed the children and filed petitions alleging the children were in need of services (CHINS). Pursuant to Parents’ admissions, the children were adjudicated CHINS in November.
- [3] Soon after the assessment, Parents moved from Indiana to Illinois, and then from Illinois to Wisconsin. The frequent out-of-state moves made it difficult for

DCS to offer them services or visitation. In April 2019, Parents obtained housing in Wisconsin, and the two older children were placed with them for a trial visit. Sm.S. was also placed with Parents for a trial visit in July once he was medically stable. In August, Parents moved again, this time to an apartment in Illinois, which they shared with several other adults, one of whom was a convicted sex offender. In September, DCS removed Sm.S. from the home after Parents found him “unresponsive” and took him to the hospital, where doctors determined he had bruising to the face and back attributed to “not accidental” trauma. *Id.* at 64.

[4] DCS caseworker Ashonda Riddell then began providing home-based services to Parents to work on their housing instability and parenting skills and to supervise visits with Sm.S. However, Parents’ progress in services was “minimal” due to their lack of participation, and they eventually declined all services to help them obtain housing and employment. *Id.* at 62. Regarding visitation, Parents were “inconsistent” in their progress, needing reminders from Riddell to feed the children, change their diapers, and administer Sm.S.’s medication. *Id.* at 71. Parents were often on the phone or sleeping during the visits and had to be reminded that the children should be supervised in the common areas of the shared apartment. Riddell also expressed concern about the safety of the family’s housing due to the proximity of a convicted sex offender and noted it would not be a suitable long-term placement for the children, but Parents continued to reside there. In December, Parents contacted

DCS and requested the children be removed because the family was being evicted.

- [5] DCS removed the children and arranged for twice-weekly supervised visits. Parents were “inconsistent” with visits, often “cancel[ing] right before” the visit or “cut[ting] it short.” *Id.* at 80. When they did attend visits, Parents were often not “prepared” or “focused.” *Id.* at 72. In March 2020, Mother requested that all visits stop due to the COVID-19 pandemic, but she also refused to participate in virtual visits with the children. In May, the trial court suspended visitation due to Mother’s refusal to participate.
- [6] In June 2020, DCS filed petitions to terminate Parents’ rights. The termination hearing occurred in February of this year. Mother testified she’d gotten an apartment a month before the hearing and was on a month-to-month lease, although she remained unemployed. She then testified about Sm.S.’s medical needs, saying the “only issue that [he] has now is asthma.” *Id.* at 22. Family case manager (FCM) Elizabeth Bathurst later testified Sm.S. needs breathing treatments “8 to 10” times daily, suffers from cataracts, and had been diagnosed with autism for which he needs therapy four times a week. *Id.* at 79. Mother later responded she was not “aware” of the autism diagnosis or his cataracts and did not understand “his daily needs” “as it relates to asthma.” *Id.* at 120-21.
- [7] FCM Megan Mayo testified Parents’ lack of “stable housing had been an issue” for the “entirety” of the CHINS case, noting Parents did “the bare minimum.” *Id.* at 52, 58. FCM Bathurst testified that although Parents had obtained

housing about a month before the termination trial, generally DCS does not consider housing “stable” until it is held for six months. *Id.* at 76. She also testified that because Mother is unemployed and Father’s employment is “sporadic,” she “can’t say for sure that they would have [the housing] one month to the next.” *Id.* at 77, 88. She stated the children are doing “very well” in their pre-adoptive home, and she believes termination is in their best interests so they’ll have “stable housing” and “medical care” and can “remain together.” *Id.* at 85, 86. Riddell testified she had concerns Mother could not “engage with the children” during visits and that she “had to be prompted to meet [the children’s] basic needs.” *Id.* at 72.

[8] The following month, the trial court issued an order terminating Parents’ rights to all three children.

[9] Mother now appeals.¹

Discussion and Decision

[10] Mother argues DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has

¹ Father does not appeal.

entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[11] A petition to terminate parental rights must allege, 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 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. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the

allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

A. Conditions Remedied

[12] Mother first challenges the trial court’s conclusion there is a reasonable probability the conditions resulting in the children’s removal and continued placement outside the home will not be remedied. On this element, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child’s placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[13] Here, the children were removed from Mother’s care due to her housing instability and her inability to provide basic necessities, including medical care for Sm.S. Mother argues she “remedied” these issues. Appellant’s Br. p. 10. We disagree. In the two-and-a-half years after the children’s removal, Mother failed to demonstrate a willingness or ability to provide a stable home for the children. Mother’s housing instability continued throughout the CHINS case, making it difficult for her to engage in DCS services, visit the children, and eventually causing the older children to be removed from the trial visit. When she did have housing, it was considered unsuitable for the children by DCS due to the

presence of a convicted sex offender. While she did eventually gain housing about a month before termination, the lease was month-to-month, and DCS did not believe she had the means to maintain the lease. It is within the trial court's discretion to "disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother's history of conduct prior to those efforts." *In re K.T.K.*, 989 N.E.2d at 1234.

[14] Nor did Mother show much willingness to work on providing a stable environment for the children. Despite her lack of housing, she declined DCS's services to help her with housing and employment. She inconsistently attended visits, rarely was prepared or engaged during visits, and eventually requested visits stop altogether. During visits, Mother had to be prompted to provide food and medical care for the children, and her engagement in services to improve this performance was "minimal." She showed little knowledge of Sm.S.'s medical needs, stating she was unaware of several of his diagnoses and did not understand his asthma treatment. None of this suggests she is any closer to providing the children with a safe and stable home than she was at the beginning of the case.

[15] Mother also argues her "economic instability in regards to housing and employment is not sufficient to terminate" her parental rights, citing *In re D.B.*, 942 N.E.2d 867 (Ind. Ct. App. 2011). Appellant's Br. p. 10. There, the father's parental rights were terminated based "solely" on his lack of a consistent source of income and stable housing, despite the father participating in DCS services and DCS reporting no parenting concerns. *In re D.B.*, 942 N.E.2d at 874. We

reversed, holding the father's lack of housing and income alone were insufficient to terminate parental rights. Mother's case is distinguishable. Unlike in *D.B.*, Mother shows no willingness to work toward providing a safe and stable environment for the children by engaging in DCS services or visitation. It is clear from the record that while Mother's economic instability contributed to the children's removal and continued placement outside the home, it was not the only reason for her inability to provide a safe and stable home for the children.

[16] The trial court did not err when it concluded there is a reasonable probability the conditions leading to the children's removal will not be remedied.²

B. Best Interests

[17] Mother also challenges the trial court's conclusion that termination is in the best interests of the children. We note Mother broadly argues DCS failed to prove by clear and convincing evidence that termination is in the children's best interests. However, Mother makes no argument challenging the trial court's conclusion, nor does she cite to any legal authority or the record. Therefore, she has waived this argument for our review. Ind. Appellate Rule 46(A)(8)(a); *see*

² Mother also argues the trial court erred in concluding there is a reasonable probability the continuation of the parent-child relationship poses a threat to the well-being of the children. However, we need not address this argument because the trial court correctly found there is a reasonable probability the conditions leading to the children's removal will not be remedied. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the two requirements of subsection (b) has been established by clear and convincing evidence), *trans. denied*.

also *In re A.D.S.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (holding Mother waived her “broad argument” that the trial court’s conclusion was erroneous because she did not support it with a “cogent argument”).

[18] Waiver notwithstanding, the evidence supports the trial court’s determination that termination of Mother’s rights is in the children’s best interests. In determining the best interests of a child, the trial court must look at the totality of the evidence. *See In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of the child. *Id.*

[19] As noted above, Mother has not shown the ability to provide the children with a safe and stable environment. At no point in the two-and-a-half years before termination did she maintain suitable, stable housing for the children or engage in services to improve this. Nor did she provide a stable presence in the children’s lives—inconsistently attending visits, being unprepared and unfocused when she did attend, and eventually stopping visits altogether for the year leading up to termination. Ultimately, as FCM Mayo noted, Mother did the bare minimum throughout the case. This constant instability is not in the

children's best interests. *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (“[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests.”). Furthermore, FCM Bathurst testified the children are doing well in their pre-adoptive placement, where they can be together and Sm.S.'s medical needs are met, and she believed it in their best interests to terminate.

[20] For these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in the children's best interests.

[21] Affirmed.

Kirsch, J., and May, J., concur.