MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of J.H. (Minor Child) and

A.H. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

December 29, 2023

Court of Appeals Case No. 23A-JT-1540

Appeal from the Delaware Circuit Court

The Honorable Amanda Yonally, Magistrate

Trial Court Cause No. 18C02-2302-JT-6

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] A.H. (Mother) appeals the trial court's order involuntarily terminating her parent-child relationship with J.H. (Child), who was born in 2012. F.J. (Father) does not participate in this appeal. We affirm.

Facts and Procedural History

[2] Mother struggled with heroin and did not "have a history of caring for [Child] on a regular basis" throughout his life. Ex. Vol. 2 at 55; Tr. Vol. 2 at 31, 42. After his birth, Child resided in a household that included T.S. (Uncle). In January 2021, when Uncle was Child's primary caregiver, the Indiana Department of Child Services (DCS) received a report that Uncle possessed child pornography and that sexual abuse had occurred in the home. Two of Child's siblings also lived with Uncle. Thereafter, Uncle was arrested, and DCS filed a petition alleging that Child was a child in need of services (CHINS).

[3] Following an April 2021 hearing at which Mother did not appear but was represented by counsel, Child was found to be a CHINS. In support of its CHINS determination, the trial court found as follows: (1) Mother's drug use and homelessness prevented her from providing clothing, shelter, medical care, education, or supervision for Child; (2) she had not visited Child since January 2021; (3) she failed to communicate with DCS; and (4) she knew or should have known that Uncle, with whom she had entrusted Child, possessed child pornography. Ex. Vol. 2 at 50-51.

[4] After a May 2021 hearing at which Mother failed to appear but was represented by counsel, the trial court issued a dispositional order. The order outlined a case plan, stated that Mother "shall participate in a treatment program" or pay for services consistent with DCS recommendations, and listed two dozen requirements for her. *Id*. at 68-70. Following a November 2021 hearing, the trial court entered an order, which found that Mother had not complied with the case plan. Specifically, the order noted that, while in jail, Mother met with a DCS family case manager (FCM), but that upon release from jail, Mother had not contacted DCS, had not seen Child, and was "not engaged in any services." Appealed Order at 7; Ex. Vol. 2 at 80-81. Mother's housing situation and employment status were unknown, and she had not completed either a substance abuse assessment or a psychological evaluation.

[5] In January 2022, the trial court held a permanency hearing in the CHINS case. Mother was absent but represented by counsel. In the resulting order, the trial court found that Mother had not complied with the case plan, her whereabouts were unknown, and she had not communicated with DCS, engaged in services, or visited Child. Father, though incarcerated, had been cooperative with DCS and had partially complied with the case plan. Child was found to be progressing well in a foster placement that was open to adopting him. The trial court approved a permanency plan of adoption with a concurrent plan of appointment of a guardian.

[6] In June 2022, Father executed a consent to adoption. In July, Mother was incarcerated but attended a review hearing. Following the hearing, the trial

court found that Mother continued her noncompliance with the case plan, was in contact with DCS only when she was incarcerated (on "substantial drug use" charges), was otherwise "on the run to avoid getting arrested again," did not ask to visit Child, and had not engaged in services to address her substance abuse. Ex. Vol. 2 at 142. By then, adoption was the permanency plan, yet fully supervised visitation would be permitted if requested by Mother.

[7] In September 2022, Mother's parental rights to Child's sibling were terminated. The following month, Mother was incarcerated. In December, Mother was placed on work release. A few months later, Mother was removed from the program due to "horseplay." Appealed Order at 11.

[8] In a January 2023 order, the trial court found that during the previous eight months Child had been doing well in placement with a relative, who was able to provide a safe and stable home environment. The trial court also approved a permanency plan of adoption, finding it appropriate and in Child's best interests. DCS filed a termination petition in February. In April, Mother was released from incarceration. The trial court held a termination hearing in May and, in June, issued a fifteen-page order terminating Mother's parental rights. Mother appeals.

Discussion and Decision

[9] We have long applied a "highly deferential standard of review in cases" involving the termination of parental rights. *In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). We neither reweigh evidence nor assess witness

credibility. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence and reasonable inferences favorable to the trial court's judgment. *Id.* Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* Unchallenged findings stand as proven. *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*; *In re De.B.,* 144 N.E.3d 763, 772 (Ind. Ct. App. 2020). In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Clear error is that which "leaves us with a definite and firm conviction that a mistake has been made." *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied*. "[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal." *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[10] "Parents have a fundamental right to raise their children–but this right is not absolute." *In re Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). When parents are unable or unwilling to meet their parental responsibilities, their parental rights may be terminated. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). A petition to terminate a parent-child relationship 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) (emphasis added). DCS must prove the elements by "clear and convincing evidence." *In re R.S.*, 56 N.E.3d 625, 629 (Ind. 2016). DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[11] In seeking reversal of the termination, Mother contends that DCS failed to establish by clear and convincing evidence that (1) there was a reasonable probability that the conditions that resulted in Child's removal from and placement outside of home would not be remedied; (2) there was a reasonable probability that the continuation of the parent-child relationship posed a threat

to the well-being of Child; and (3) it was in Child's best interests to have the relationship between Mother and Child terminated. In essence, she challenges three of the eighty-four findings and conclusions within the termination order.

Section 1 – The trial court did not clearly err in concluding that there is no reasonable probability that the conditions that led to Child's removal will be remedied.

[12] First, Mother challenges the finding that there is no reasonable probability that the conditions "that led to Child's removal will be remedied. *See* Appealed Order at 14 (finding 78). Mother notes that Child was removed from Uncle's home and argues that she has "remedied that situation by becoming drug free, completing her period of incarceration, participating in services, and finding employment and housing." Appellant's Br. at 14. She focuses upon the short time between her most recent release from incarceration and the factfinding hearing. She maintains that during those three weeks, she passed her drug screens, began living at the YWCA, visited Child, started working at a fast food restaurant, and began services.

[13] In determining whether the conditions that resulted in Child's removal will not be remedied, we "engage in a two-step analysis." *K.T.K.*, 989 N.E.2d at 1231. "First, we identify the conditions that led to removal," and second, we decide whether there is a reasonable probability that those conditions will not be remedied. *E.M.*, 4 N.E.3d at 643. In the second step, the court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent's recent

improvements versus "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id*. (citations omitted). "We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *Id*. Requiring that trial courts "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.*

[14] The trial court heard Mother's testimony about, and we appreciate, the strides that Mother has made during twenty-one days of Child's eleven years of life. However, such very recent positive actions do not alter the following facts, which we summarize from the trial court's dozens of undisputed findings. Within two months of Child's release from the neonatal intensive care unit of the hospital after Child's birth, Mother was incarcerated. After her release from that period of incarceration, Mother resided in her great grandmother's home along with Child, Child's sibling, and Uncle. Mother provided some care for Child, but great grandmother and Uncle provided all financial support. In 2017, Mother left Child and his sibling at great grandmother's home so she could share a residence with a romantic partner. When great grandmother and Mother's grandmother died, Mother failed to return to the home, thus leaving Child and sibling with Uncle. DCS removed Child upon allegations of sexual abuse and Uncle possessing child pornography in the home. During the pendency of the CHINS case, Mother did not complete any court-ordered services or requirements. Throughout the CHINS case, Mother was periodically

incarcerated at three different county jails as well as at the Indiana Department of Correction. Despite being provided with a tablet from which she could access educational and skills topics while incarcerated and the opportunity to attend self-help groups, Mother did not advise her case worker that she completed any informal courses, services, or programs. Even after the termination of Mother's rights to Child's sibling, Mother's engagement with DCS and involvement with services or programming did not improve. Mother currently resides at a YWCA shelter, is not able to provide housing for Child, believes there may be programs that would allow Child to reside with her, but does not know details and had not applied for programming. Though the YWCA offers several services, Mother was unable to provide details of her engagement in services. Since Mother's April 2023 release from incarceration, she has engaged in fully supervised parenting time with Child. Mother has never been solely responsible for Child's care or support. *See* Appealed Order at 3, 4, 10-12.

[15] The trial court was well within its discretion to heavily weigh Mother's yearslong inconsistency with services while she was in and out of jail and the DOC. Indeed, even the termination of her parental rights of Child's sibling did not change Mother's noncompliance. In addition, the trial court was clearly struck by the fact that Mother had never been solely responsible for Child's care or support during Child's life of more than a decade. Mother's assertion that she had changed was belied by her own testimony at the termination hearing that she did not have a place for Child to live and had not started the steps required to attempt to secure such housing. Given these circumstances, Mother

has not demonstrated clear error in the trial court's finding that there is no reasonable probability that the conditions that led to Child's removal will be remedied.

Section 2 – We do not address the sufficiency of the evidence supporting the finding that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Child's well-being.

[16] Mother also disputes the finding that there is a reasonable probability that the continuation of the relationship between her and Child poses a threat to Child's well-being. *See* Appealed Order at 14 (finding 77). However, Mother's one-sentence argument is not developed. *See* Appellant's Br. at 15. While we could deem the argument waived, we reiterate that DCS need only prove one of the options listed under Indiana Code Section 31-35-2-4(b)(2)(B). Because DCS presented more than sufficient evidence to support finding 78 (no reasonable probability that the condition which led to Child's removal will be remedied), we need not address the challenge to finding 77.

Section 3 – The trial court did not clearly err in concluding that termination was in Child's best interests.

[17] Mother complains that there was "no" or "only summary" evidence presented that termination was in Child's best interests. Appellant's Br. at 15; *See* Appealed Order at 14 (finding 83).

[18] A decision regarding whether termination is in a child's best interests is

> perhaps the most difficult determination the trial court must make. To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children. Central among these interests is children's need for permanency. Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.

Ma.H., 134 N.E.3d at 49 (citations and internal quotations omitted).

[19] Here, the totality of the evidence included testimony from two FCMs and the staff advocate supervisor of the court appointed special advocate county office (CASA). The FCM who was assigned to Child's case during most of the first two years testified that she recommended adoption due to Mother's multiple incarcerations (for drug charges), long noncompliance with services, and lack of history of caring for Child on a regular basis. Tr. Vol. 2 at 40, 42. Child's most recent FCM agreed that adoption "is in the best interest" of Child. *Id*. at 24. She added that as DCS tried to reintroduce Mother "into the picture" with visitation, Child "has been referred back to therapy for some self-harming behaviors, and some outbursts that we did not see prior." *Id*. at 25. CASA testified that she had "not seen any progress made by [M]other to improve her ability to parent her children, or improve her situation to have a stable home, or employment. [Mother] has continued illegal activity. From my knowledge, I have not seen any evidence that she's ever provided for her child." *Id*. at 47. CASA further testified:

> I think [Child] has, in the last two years, has spent a lot of time, and been involved in a lot of services to help process the trauma

> that he's experienced as a child. I think he's in a stable placement where he feels loved and safe. He's not had continued contact with either of his parents, and I believe to remove him from that environment, which has been safe and stable, and possibly the first stable placement he's been in would be harmful for his mental health.

Id. at 48. Thereafter, CASA unequivocally stated that termination and adoption were in Child's best interests. *Id*.

[20] Where, as here, the testimony of service providers supports a finding that termination is in Child's best interests, we will not second-guess the trial court. *See McBride v. Monroe Cnty. Off. of Fam. & Child*., 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Because the evidence does not positively require the conclusion contended for by Mother, and we have not been left with a definite and firm conviction that a mistake has been made, we find no basis for reversal. Accordingly, we affirm the termination.

[21] Affirmed.

Riley, J., and Mathias, J., concur.