

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

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

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

March 26, 2024

Court of Appeals Case No.
23A-JT-2571

Appeal from the Hendricks Superior Court
The Honorable Ryan W. Tanselle, Judge

Trial Court Cause No.
32D03-2212-JT-30

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] M.S. (“Mother”) appeals the involuntary termination of her parental rights to her child, M.C. We affirm.

Facts and Procedural History

- [2] Mother and C.C. (“Father”) are the parents of M.C., born in May 2010. Mother is also the mother of S.S., born in December 2017, and A.S., born in July 2020.
- [3] In April 2017, the Department of Child Services (“DCS”) filed a Request for Approval of Program of Informal Adjustment under cause number 32D03-1704-JM-80 related to M.C., which was approved by the court. The informal adjustment was extended three months on August 28, 2017, and was discharged as successful on December 7, 2017.
- [4] In April 2020, DCS filed a petition alleging M.C. was a child in need of services (“CHINS”) under cause number 54C01-2004-JC-107, which was authorized by the court because Mother and M.C. had been homeless, in and out of shelters, and in an unsafe living environment. The case was closed on June 21, 2021, with an approved permanency plan of reunification with Mother.
- [5] On September 1, 2021, DCS investigated reports of physical abuse of S.S. and neglect of Mother’s three children. On September 2, 2021, DCS filed a petition alleging M.C. was a child in need of services in cause number 32D03-2109-JC-53 (“Cause No. 53”). On October 21, 2021, the court adjudicated M.C. as a

CHINS. Mother was convicted of battery resulting in bodily injury to a person less than fourteen years of age. On November 23, 2021, the court entered a Parental Participation Decree under Cause No. 53 ordering Mother to: attend child and family team meetings, visitations, and appointments; contact DCS at least once per week; obtain and maintain safe housing; not associate with anyone who was a party to any child welfare or criminal case unless approved in advance by DCS; not consume or possess any controlled substance without a prescription; obtain and maintain a legal and stable source of income; follow all recommendations from any assessments or evaluations; complete a parenting assessment and all recommendations; complete a psychological evaluation and any recommendations; attend all scheduled visitations; complete a psychiatric evaluation and any recommendations; consistently participate in home-based casework services and home-based counseling/individual therapy; and complete a family functional assessment and all recommended treatment.

[6] On December 30, 2022, DCS filed a petition for the involuntary termination of the parent-child relationship between Mother and M.C.¹ On February 22, 2023, the court held a hearing.² DCS presented the testimony of Family Case Manager Ann Garcia (“FCM Garcia”).

¹ DCS also requested the termination of the parent-child relationship between Father and M.C.

² The court held a consolidated hearing under Cause No. 53, cause number 32D03-2109-JC-52, and cause number 32D03-2109-JC-54.

[7] On June 13, 2023, the court held another fact finding hearing.³ DCS presented the testimony of Jim Dalton, a psychologist, Adair McDonald, a therapist, Tinkia Smith, a home-based case manager, Kylie Cowart, Ellen Grosh, a therapeutic visit supervisor, Nicholas Denney, a therapist, Hanna Thompson, M.C.'s therapist, M.C.'s foster mother, and Court Appointed Special Advocate Laury Jourdan ("CASA Jourdan"). Mother presented her own testimony and that of Cynthia Bey, her home-based case worker since September 2022.

[8] On September 27, 2023, the court entered a fifty-one page order finding that there was a reasonable probability that the conditions that resulted in M.C.'s removal or the continued placement outside the home would not be remedied; there was a reasonable probability that the continuation of the parent-child relationship posed a threat to M.C.'s well-being; termination of the parental rights was in M.C.'s best interests; and there was a satisfactory plan for the care and treatment of the child.

Discussion

[9] Mother challenges the trial court's conclusions that there was a reasonable probability that the conditions that resulted in M.C.'s removal or the reasons for placement outside the home would not be remedied or that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of M.C. and that the termination was in M.C.'s

³ At the beginning of this hearing, the bailiff stated: "We're here on the following cause numbers. 32D03-2212-JT-30." Transcript Volume II at 61.

best interests. She asserts that there was no evidence of physical abuse after the initial DCS report, there was no evidence of her failing to take her medication since starting at Hamilton Center in January, and her home was clean. She also asserts FCM Garcia testified that she had participated in and been compliant with working with her home-based case management provider, Bey, since September 2022 and had been keeping her home clean more consistently. She contends that she has maintained employment.

[10] In order to terminate a parent-child relationship, DCS is required to allege and prove, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[11] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[12] In determining whether the conditions that resulted in a child’s removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of

future neglect or deprivation. *Id.* 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 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 future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's prior criminal history, drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[13] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[14] The trial court's fifty-one page order detailed Mother's lengthy history with DCS and her multiple mental health issues including diagnoses for persistent depressive disorder, post-traumatic stress disorder, and borderline personality disorder. It found that Mother has a lengthy history of struggling with anger

management, emotional regulation, and negative trauma responses. It also described Mother's partial compliance with services and stated that she was "mostly defiant and confrontational with CASA during the life of the case." Appellant's Appendix Volume II at 122. The court also observed Mother's testimony as to her progress and stated that it did not find her testimony credible. It found that "Mother's habitual pattern of conduct reveals that she is unable or unwilling to take care of her own housing and mental health needs, let alone her child's." *Id.* at 126.

[15] The record reveals that FCM Garcia testified at the June 2023 hearing that Mother had not had a consistent therapist, she "had consistency with Cummins . . . [b]ut she was discharged from them last . . . April of 2022," she was also discharged by the psychiatrist at Cummins for medication management, she did not restart until she started at Hamilton Center in December, her first appointment there was in January or February 2023, and she "didn't do medication management for that entire time." Transcript Volume II at 194. She testified that Mother had "done visitation but there's been a lot of different providers" and "a lot of instability." *Id.* She stated that Mother has had multiple jobs and does not report when she changes jobs. She acknowledged that Mother had been doing home-based case management and keeping her home clean "but the budgeting part of it, she's not really worked very hard on" and "she's also had multiple times when she couldn't pay her rent." *Id.* She testified that there had been some providers Mother did not "get along with" and did not "want anymore" and providers who "refuse to work with her

anymore.” *Id.* at 195. She stated that Mother was not “taking accountability that she has a job and she only keeps it for a month or two” resulting in a completely different schedule. *Id.* She testified that Mother’s mental health “has been brought up time after time.” *Id.* She further testified that Mother’s “mood is not stable at all” and she “does not have mood regulation the majority of the time.” *Id.* at 196.

[16] On cross-examination by Mother’s counsel, FCM Garcia acknowledged that Mother had been compliant with medication management for six months, she was currently compliant with home-based case work, she had not lost her housing since she had known her, and she was partially compliant with supervised visitation. On cross-examination by CASA Director Lee Anne Owens, FCM Garcia indicated that Mother had yet to make enough progress in individual therapy to begin family therapy. She indicated Mother had had multiple therapists and disclosed to her that she “refuses to open up to her therapists because she feels like they’re going to use it against her in Court.” *Id.* at 206-207. FCM Garcia stated that M.C. told her that Mother stabbed him in the head in the kitchen at the apartment where Mother currently resided. On redirect examination, FCM Garcia indicated that Mother “is going to need a lot more help . . . to get her where she can be a safe parent to her children” and has had “a lot of trauma and a lot of things that she needs to work through.” *Id.* at 210. When asked if “no progress has been [made] on that then,” she answered: “No progress at all.” *Id.* On recross-examination by Mother’s counsel, FCM

Garcia testified that Mother was “still in denial that she even needs the help that [they are] trying to give to her.” *Id.* at 211.

[17] On recross-examination, CASA Director Owens asked if Mother had almost two years of opportunities to work on her own trauma and become a safe parent. FCM Garcia answered: “Um, just during this case. But she’s also had opportunities for years through DCS for opportunities to work on her trauma.” *Id.* at 211-212. She also answered affirmatively when asked if it was “safe to say that there is a pattern of behavior [if] a case opens. [Mother] checks the required boxes. The case closes. And we have another case open.” *Id.* at 212. When asked if she had ever seen Mother “put her all into it and do what she needs to do,” FCM Garcia answered: “Um, very inconsistently. I mean, I’ve . . . had some conversations. I’ve done visits with her . . . where we really had some good moments. But it’s not consistent. It doesn’t follow through the next time I see her with a visit. [S]he does things when she wants to do them.” *Id.* On redirect examination, when asked if Mother had applied anything that she learned from the multiple providers, FCM Garcia answered: “No. She has not.” *Id.* at 213.

[18] When asked if Mother’s mental health had been a concern or an ongoing concern for DCS with respect to her ability to safely parent her children, FCM Garcia answered: “Yes. It’s a concern because she needs to have consistent mental health help.” *Id.* at 196. She testified that Mother had not been going to mental health treatment consistently, she “also has not worked on treatment goals or plans,” and “[i]t seems as if when she gets to the part where it’s really

hard . . . she decides that she wants to try [to] find a new provider.” *Id.* at 197. When asked if Mother had successfully completed any therapeutic services, FCM Garcia answered in the negative. She also testified that Mother had never progressed from therapeutically supervised visits with M.C. When asked if Mother’s mental health was “any more well-addressed today than it was when this case first opened in September of 2021,” FCM Garcia answered: “I don’t think it is. And I think it’s a . . . barrier. Because we can’t even get to the point where we can start working family therapy with her and [M.C.]. Because she’s not even doing anything with her own individual therapy.” *Id.* at 200.

[19] Dalton, the psychologist, testified that he completed an evaluation of Mother in July 2022 and diagnosed her with persistent depressive disorder, post-traumatic stress disorder, and “some borderline features to her functioning as well.” *Id.* at 73. He indicated “those diagnoses are challenging diagnoses,” it was possible for those diagnoses to be treated and stabilized, and that when he diagnosed Mother he had “concerns about her being able to overcome and manage those symptoms with supports enough to safely parent her children in the near future.” *Id.* at 73-74. On cross-examination, Mother’s counsel asked if the treatment that Mother was doing in therapy was ineffective, and Dalton answered: “I didn’t see some – any stability based on the history of her engaging in those. So, my conclusions were it lacked sufficient efficacy at that point.” *Id.* at 75.

[20] McDonald, the therapist, testified that Mother came to her in January 2021 via a referral from DCS and she saw Mother for only a few months in 2021 because

“it was sporadic and then [Mother] ended up . . . leaving,” she “just wasn’t coming to therapy very often,” and Mother “either chose to be discharged or was discharged due to lack of engagement.” *Id.* at 80. In October 2021, Mother was referred again by DCS, and McDonald began working with her. She indicated that the general reason for the referral was Mother had been in trouble for abusing her child. She testified that “there started to be a lot of inconsistency with engagement,” “[t]here were a lot of missed appointments,” and “maybe half way through that process it started to fall apart.” *Id.* at 83. She also indicated that she stopped working with Mother in the summer of 2022.

[21] Smith, Mother’s home-based case manager between April 2022 and September 2022, testified that her services ended because of Mother’s request for another provider. When asked about barriers Mother had to completing the goals, she answered: “[J]ust feeling – she expressed feeling overwhelmed with everything that she was going through. So, there were days that she wasn’t feeling well. Or she just wasn’t up to . . . meeting.” *Id.* at 95.

[22] Cowart testified that Mother completed the home-based therapeutic visits in Spring of 2022. When asked if there was progress made between Mother and M.C. “as far as rebuilding that bond and respecting boundaries,” she answered: “At times there were. But then it would backtrack. So, I can’t really say there was real progress in the time that we had together in those visits.” *Id.* at 104. When asked for the reason for her service ending, she explained that an altercation during a visit with A.S. occurred in which Mother became upset and

“yelled several explicit[sic]” and “a lot of things that were awful to hear . . . [e]specially for the child” including Mother calling her “a c---” and a “f----- b----” and that she hoped she dies. *Id.* at 105, 109.

[23] When asked to describe the progression of how therapeutically supervised visits had been going between M.C. and Mother since September 2022, Grosh, the therapeutic visit supervisor, answered that she previously testified in December about a visit that “really went awfully,” Mother was working individually with a therapist, “[f]rom about end of December through April sometime, things went significantly better on the visits,” and “[t]heir relationship has improved significantly.” *Id.* at 119-120. However, she also indicated that there had been some inappropriate communications between M.C. and Mother. She also described a visit at the end of April in which Mother “yelled in [M.C.’s] face” and she had to end that visit. *Id.* at 122.

[24] Denney, the therapist, testified that he worked with Mother between December 2022 through April 2023, Mother at one point felt that he “was pushing accountability too hard” and requested a different provider, which resulted in a gap between mid-March through mid-April before he left Hamilton Center on May 3, 2023. *Id.* at 133. When asked if he observed Mother applying therapeutic skills that he had taught her during the one or two sessions she attended between April and May 3, 2023, he answered in the negative.

[25] CASA Jourdan testified that DCS was involved with M.C. due to abuse and neglect in the home. She testified that she observed at least twelve visits

between Mother and M.C. and she observed inappropriate conversation between them during “[a]lmost all of” the visits except for those visits in the two or three prior months. *Id.* at 226. When asked about Mother’s response to her recommendations for what she needs to do to improve her situation with M.C., CASA Jourdan answered: “For the most part, she’s pretty defiant with any recommendations. Um, confrontational with us. I think that she perceives she’s making . . . more progress . . . than what she is. And not really taking accountability for . . . no[t] being compliant.” *Id.* at 228. She testified that M.C. “doesn’t want to go back” to Mother, he “feels like . . . he’s been through it for most of his life” and “it’ll go right back to the way it was before,” and “he has not waived [sic] in the almost 2 years we’ve had this case that he does not want to go back to [Mother].” *Id.* at 229. She indicated she had not been provided with any evidence that Mother had made progress to safely parent M.C. citing: “[H]er inability to control her emotions. Um, a therapeutic visit had to be ended early . . . a couple of months ago, after 15 minutes because of her anger. [T]he job changes. Frequent job changes. Instability in her housing. [T]hose would all be concerns.” *Id.* at 230.

[26] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the child’s removal and the reasons for placement outside Mother’s care will not be remedied.

[27] While the involuntary termination statute is written in the disjunctive and requires proof of only one of the circumstances listed in Ind. Code § 31-35-2-

4(b)(2)(B), we note that the trial court also found that continuation of the parent-child relationship posed a threat to the child's well-being. "Clear and convincing evidence need not reveal that 'the continued custody of the parents is wholly inadequate for the child's very survival.'" *In re G.Y.*, 904 N.E.2d 1257, 1261 (Ind. 2009) (quoting *Bester v. Lake Cnty. Office of Family & Child.*, 839 N.E.2d 143, 148 (Ind. 2005) (quoting *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1233 (Ind. 1992))), *reh'g denied*. "Rather, it is sufficient to show by clear and convincing evidence that 'the child's emotional and physical development are threatened' by the respondent parent's custody." *Id.* (quoting *Bester*, 839 N.E.2d at 148 (quoting *Egly*, 592 N.E.2d at 1234)).

[28] On redirect examination of Thompson, M.C.'s therapist since September 2021, DCS's counsel asked: "[W]ithout further progress, and again we're almost 2 years in, between [M.C.] and [Mother], but especially [M.C.], is there a threat to his well-being if he's continued to be exposed to that – to his abusive relationship?" Transcript Volume II at 161. Thompson answered affirmatively. When asked about triggers that threatened M.C.'s progress, she answered: "[G]enerally, discussion of visitation or [Mother]." *Id.* at 149. When asked about barriers in M.C.'s life that placed a strain on his ability to process his trauma, she answered: "I would say he struggling [sic] just with the lack of stability. Um, you know, lack of progress. Just kind of not knowing what his – his future looks like." *Id.* at 150.

[29] FCM Garcia testified that Mother had been in multiple relationships with men "that are not stable," "there's been domestic violence," the children "have

watched domestic violence,” and in one relationship M.C. “was actually learning how to fight war from that person” who was a sex offender. *Id.* at 198. She testified that M.C. reported that Mother hurt him when he did not take care of the children correctly, it had been reported that Mother “would smack him if he didn’t do his homework correctly,” there had been inappropriate physical discipline, and “it’s just been very chaotic” for M.C. *Id.*

[30] CASA Jourdan indicated that continuing the parent-child relationship would be a threat to M.C.’s well-being. She explained: “I think [M.C. is] just really emotionally unstable. And he’s lived with this his whole life. It’s time for him to have a normal life and to be a boy. And to move on. And not have this threat of this happening again and going back. And happening again.” *Id.* at 231-232. We conclude that clear and convincing evidence supports the trial court’s determination that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the child’s well-being.

[31] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that

termination is in the children's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[32] FCM Garcia testified that DCS's recommendation for the permanency plan for M.C. would be that Mother's rights be terminated and he be adopted. CASA Jourdan testified that her recommendation for a permanency plan for M.C. was adoption and that termination of the parent-child relationship was in M.C.'s best interests. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the child's best interests is supported by clear and convincing evidence.

[33] For the foregoing reasons, we affirm the trial court.

[34] Affirmed.

Riley, J., and Foley, J., concur.

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