

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of M.M. Jr. and T.H. (Minor
Children), A.H. (Mother), and
M.M. Sr. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 5, 2021

Court of Appeals Case No.
20A-JT-2069

Appeal from the Allen Superior
Court

The Honorable Charles F. Pratt,
Judge

The Honorable Sherry A. Hartzler,
Magistrate

Trial Court Cause Nos.
02D08-1912-JT-557
02D08-1912-JT-558

May, Judge.

- [1] M.M. Sr. (“Father”) and A.H. (“Mother”) (collectively, “Parents”) appeal the involuntary termination of their parental rights to M.M. Jr. and T.H. (collectively, “Children”). Parents argue the trial court’s findings do not support its conclusions that the conditions under which Children were removed from Parents’ care would not be remedied, that termination was in Children’s best interests, and that the Department of Child Services (“DCS”) had a satisfactory plan for Children’s care following termination of Parents’ parental rights. Additionally, Mother argues the trial court erred when it terminated her parental rights to Children because the trial court did not conclude, or make findings to support concluding, that the continuation of the parent-child relationship would pose a threat to Children’s well-being. We affirm.

Facts and Procedural History

- [2] M.M. Jr. and T.H. were born to Parents on December 12, 2016, and October 22, 2018, respectively. Parents have a third child, K.M., who was born on July 26, 2014, and is not part of this appeal. In 2014, the trial court adjudicated K.M. as a Child in Needs of Services (“CHINS”) because of Parents’ illegal drug use. K.M. was in foster care at all times relevant to this case.
- [3] Shortly after T.H.’s birth in 2018, DCS began an investigation into Mother’s use of marijuana while pregnant because Mother tested positive for marijuana after T.H.’s birth and T.H.’s umbilical cord tested positive for THC. Children

remained in Parents' care following this investigation. On December 9, 2018, DCS filed petitions alleging Children were CHINS based on Mother's illegal drug use. On December 17, 2018, the trial court held an initial hearing on Children's CHINS petitions and adjudicated Children as CHINS on the same day. Children remained in Parents' home.

[4] On January 17, 2019, the trial court entered its dispositional order and required Parents to participate in services. Specifically, the trial court ordered Parents to, among other things, complete drug and alcohol abuse and psychological assessments and follow all recommendations therefrom; obtain and maintain suitable employment; participate in homebased services; refrain from the use of illegal substances and alcohol; and submit to random drug screens. In addition, the trial court ordered Father to refrain from criminal activity and maintain suitable housing. Children were to remain in placement with Parents.

[5] On February 20, 2019, the trial court issued an order removing Children from Parents' care and placing Children in licensed foster care, where Children have stayed for the remainder of the proceedings. As part of the placement order, the trial court ordered Parents to participate in supervised visitation with Children. DCS filed an amended CHINS petition regarding Children on March 20, 2019, alleging Parents continued to test positive for illegal substances and referencing the proceedings involving K.M.¹ On April 1, 2019, the trial court issued a

¹ The record indicates K.M.'s CHINS case was, for some time, merged with Children's CHINS cases. However, the termination petitions before us do not include K.M.

second dispositional order reiterating the services required of Parents from the earlier dispositional order and ordering Parents to attend scheduled supervised visitations with Children.

- [6] At a review hearing on May 23, 2019, the trial court issued an order noting Parents had not cooperated with homebased services, had not completed a “[d]iagnostic assessment[,]” had tested positive for illegal substances during the reporting period, and had “not demonstrated an ability to benefit from services.” (Ex. Vol. at 138.) On November 19, 2019, the trial court issued an order changing Children’s permanency plans from reunification with Parents to adoption. On January 23, 2020, DCS filed petitions to terminate Parents’ parental rights to Children. The trial court held evidentiary hearings on the matter on July 7 and 14, 2020, and issued its orders terminating Parents’ parental rights to Children on October 13, 2020.

Discussion and Decision

1. Standard of Review

- [7] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court’s unique position to assess the evidence, we will set aside a judgment terminating a

parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*, *cert. denied* 534 U.S. 1161 (2002).

- [8] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

- [9] To terminate a parent-child relationship, the State must allege and prove:

(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). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[10] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Parents do not challenge specific findings, and thus they must be accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

2. Reasonable Probability Conditions Would Not Be Remedied

[11] A trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010).

Evidence 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 conditions will not change. *Lang v. Starke Cty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Parents argue the trial court's findings do not support its conclusion that the conditions under which Children were removed from Parents' care would not be remedied.

[12] To support its conclusion that the conditions under which Children were removed from Parents' care would not be remedied, the trial court found:

15. The Court finds that in October 2018 the Department of Child Services initially became involved [with Parents] when their child, [T.H.] was born marijuana exposed. At the time of the birth of [T.H.], [Parents] were also already involved in a CHINS proceeding involving an older sibling. As stated herein, the Department of Child Services requested a finding of probable cause. The Court finds through the testimony of family case manager, Rachel Deford that multiple attempts were made to gain compliance and improvement through safety planning and the provision of services prior to the Department requesting the intervention of the Court. However, due to the continued use of illegal substances, the removal of [Children] was requested by the Department.

16. On February 20, 2019, the Department of Child Services requested removal of [Children] citing that [Parents] failed to comply with provisional services and tested positive for marijuana and cocaine. A writ for removal was granted by the Court.

17. Over the course of the underlying juvenile proceedings, [Parents] were referred to multiple agencies to complete their assessments and court ordered services.

18. Initially, Mother and Father were referred to Headwaters Counseling to obtain their diagnostic and substance abuse assessments. The Court finds that Father completed his substance abuse assessment which recommended group counseling; however, he never participated and services with Headwaters were closed. Mother never completed her assessments despite several attempts by the agency to engage her and her referral was closed.

19. [Parents] were then referred to Bowen Center for their assessments in March 2019. Mother completed her substance abuse use assessment which recommended individual therapy, substance abuse services and recovery. Father never completed his assessments. Mother participated in three individual sessions [at] the Bowen Center and failed to participate further resulting in the closure of her services.

20. The Court finds that [Parents] cited numerous barriers to participating in services to the Department of Child Services and service providers for which the Department referred them to homebased service with Promising Futures to assist with parenting and community resources. However, despite demonstrating these issues as a barrier to participation, both [Parents] refused to participate in services. The Court would note that the DCS could not refer [Parents] to certain agencies as they had been unsuccessfully discharged from prior referrals.

21. The Court finds that [Parents] were granted supervised visitation with [Children] after their removal. A referral for supervised visitation was sent to Whittington Homes and was

initiated in February of 2019 as visitation with the parties' older child in a companion CHINS matter was at Whittington.

22. The Court finds that Mother's participation in supervised visitation with [Children] was sporadic and Father's was sparse as he often only dropped Mother off for her visits. Mother frequently missed [or] did not appear for her visitation and Father rarely appeared. Out of sixty-four opportunities to see [Children] from February 2019 through March 2020, Mother attended only forty-three and Father attended twenty-five. Although supervised visitation services were not discharged due to noncompliance, the Court finds this is the result of the agency allowing Mother to appear late or end the visitation early. Visitation services were placed on probation and hours were reduced to attempt [to] accommodate [Parents]. After brief periods of compliance [Parents] would return to their prior habits. The Court would note that in March 2020, visitations were made virtual due to the COVID 19 pandemic; however, by April, Whittington offered face-to-face visitation with increased sanitizing measures. However, [Parents] did not participate in visitation resulting in visitation being placed on hold. Further, in May 2020, [Parents'] visitations were placed on hold as they were not attending.

23. The Court finds that [parents] refused to comply with hygiene measures at Whittington when face-to-face visits were offered. On one occasion, Father refused to wear a mask, forced his way into the building, screamed and shouted foul language at the caregivers of [Children] resulting in the visitation being placed on hold. Further, Mother refused to be redirected during visitation when she engaged in an inappropriate conversation in front of [Children].

24. Whittington consistently attempted to engage [Parents] to work through barriers to attending visitation. Upon discussion with Mother, it was mutually agreed that she participate in

homebased services to address transportation, budgeting, parenting and time management. Homebased services were offered virtually or in the community to [Parents]. Despite constant encouragement and accommodation, Mother did not follow through with meetings. Father never attended.

25. Among other things, Whittington provided bus passes to assist with transportation. Services were referred in July 2019 and Mother participated in five sessions and then failed to participate in any more sessions resulting in the closure of her case in September 2019. Father never participated in homebased services.

26. The Court also notes that even through [Parents] cited transportation as a burden, their participation did not even improve when they obtained a vehicle. The Court finds through the testimony of Whittington that even when Mother appeared for homebased services, it never amounted to more than simply transporting [Mother] around.

27. Further, although [Parents] maintained housing over the course of these proceeding, they also appeared to be in constant financial crisis resulting in the utilities being shut off from time to time. Homebased services were put in place; however, they failed to participate in completing a budget with Whittington to assist them in this goal. Further, over the course of these proceedings, neither Mother [n]or Father were [sic] consistently employed despite [] there existing not [sic] evidence that that [sic] were incapable of maintaining employment.

28. The use of illegal substances was also a consistent barrier to reunification of these proceedings. The Court finds that although [Parents] were ordered to submit to drug testing, they did not comply. Referrals were made for a drug screening service with Redwood Toxicology; however, after two referrals those services

were closed due to noncompliance. The parties stipulated to the admission of exhibits 25 and 26 which contained the drug screen results the Department was actually able to obtain from [Parents] despite multiple refusals to submit at other times. Those drug screen[s] were collected by the case manager, Faith Benson and demonstrated that [Parents] were positive for marijuana each time and cocaine on two occasions during the course of this matter. The parties did stipulate and the Court finds that Mother was negative for all substances in March 2020. The Court also find [sic] that Mother tested negative for all substances in July 2019 but later that month tested positive for cocaine as did Father. The Court finds through the testimony of case manager Faith Benson that Father was observed intoxicated during a court proceeding.

29. The Court finds through the testimony of the family case manager Faith Benson that the use of marijuana, for which the Court takes judicial notice of the fact it is an illegal substance in Indiana, slows down an individual's response and ability to appropriately supervise a child, operate a vehicle, maintain stability, [and] follow through with services such as service for reunification.

(Mother's App. Vol. II at 113-16.) Based on those findings, the trial court concluded:

35. The Court concludes that the reason for the removal of [Children] resulted from the use of illegal substances and the refusal to participate in services to preserve the placement of [Children] in their care. Over the course of these proceedings, recommendations were made for [Parents] to participate in services related to their substance abuse; however, they refused to comply. Further [Parents] failed to comply with submitting to drug screens as ordered, and when they did, they tested positive for illegal substances.

36. Despite the provision of services over the course of the underlying juvenile matter, [Parents] never reached a level of stability to assume the care and custody of [Children], most concerning is their failure to maintain consistent visitation in the face of multiple services to aid them in doing so. Although they maintained housing over the course of these proceedings, their utilities were often not in service despite the provision of homebased services to assist with budgeting, employment and the access to community resources. Further, also citing transportation as a barrier, they never improved their attendance at reunification services despite the provision of bus passes and eventually securing a vehicle. Further although [Parents] were consistently unemployed, there was no evidence admitted to demonstrate that they were not capable of maintaining gainful employment.

37. The Court concludes that [Parents] were consistently using illegal substances. Although some emphasis has been placed on the fact that a majority of their drug screens were “marijuana” the Court would note that they did not screen as ordered and they did not complete services to address their substance abuse. Therefore, they never demonstrated sobriety despite having ample opportunity to do so. Further, the level of use and failure to participate in service [sic] designed to remedy this issue does not signify the causal [sic] user assuming *arguendo* that this Court would find that acceptable. The Court concludes that the instability demonstrated by [Parents] are symptomatic of their consistent intoxication. Further, the root of [Parents’] issues were never fully discovered as they failed to participate in services.

(*Id.* at 116-7.)

[13] While Parents do not challenge any of the trial court’s findings, Father argues that the trial court did not take into account the barriers to his compliance with

services, such as alleged lack of transportation and the evidence regarding the progress he had made during the proceedings. Additionally, Mother contends the trial court did not give her credit for the progress she made toward substance abuse treatment and efforts toward reunification with Children, including proper housing for and parenting of Children. Children were removed from Parents' care because of Parents' continued drug use and, at the time of termination, Parents had not completed substance abuse training, had not complied with homebased services, and had not visited with Children due to supervised visitation being suspended secondary to Parents' noncompliance with safety requirements related to the COVID-19 pandemic. Parents' arguments are invitations for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court will not reweigh evidence and judge the credibility of witnesses). Therefore, we hold the trial court's findings support its conclusion that the conditions under which Children were removed from Parents' care would not be remedied. *See In re G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (affirming the trial court's conclusion that the conditions under which child was removed from mother's care would not be remedied based on mother's continued drug use and noncompliance with services).

3. Children's Best Interests

[14] In determining what is in Children's best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*.

A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in Child's best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[15] Regarding Children's best interests, in addition to the findings quoted *supra*, the trial court found:

31. The Court finds that [Children] have been appointed Stephen Griebel as a Guardian Ad Litem to represent the best interests of [Children]. The Court finds through the testimony of Griebel that [Children] have remained placed in licensed foster care over the duration of these proceedings and that the pattern of illegal drug use and the failure to participate in reunification services has not remedied the reasons for involvement and the continued placement outside of the care of [Parents]. [Children] require safe, stable and permanent housing which they do not have and for which a plan for adoption would provide.

(Mother's App. Vol. II at 116.) Based thereon, the trial court concluded, "In this case the Guardian ad Litem has concluded that termination of parental rights is in [Children's] best interests. . . . It is therefore in [Children's] best interest that the petition to terminate parental rights to be granted." (*Id.* at 118.)

[16] Father argues “the right of parents to raise their children should not be terminated solely because there is a better home available” and “a child’s need for immediate permanency is not reason enough to terminate parental rights where the parent has established a relationship with his child and has taken positive steps in accordance with a Parent Participation Plan towards reunification as was done here.” (Br. of Father at 20.) Similarly, Mother contends “there was virtually no evidence” that termination was in Children’s best interests. (Br. of Mother at 21.) Further, Mother asserted that she was “working to better herself and her situation” and that she and her children “had a strong bond, and sanctity should be given towards that bond” and thus it “is certainly not any child’s best interest to terminate a relationship with a parent who is communicating and making noticeable steps towards bettering him or herself for the benefit of his or her child[.]” (*Id.*)

[17] In addition to the trial court’s findings regarding the conditions under which Children were removed from Parents’ care, specifically that Parents had not completed services and continued to use illegal drugs, the trial court also relied upon the Guardian ad Litem’s recommendation that Parents’ parental rights be terminated to Children. Parents’ arguments are requests for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court will not reweigh evidence and judge the credibility of witnesses). Therefore, we hold the trial court’s findings regarding the conditions under which Children were removed and Children’s best interests support its conclusion that termination of Parents’ parental rights

to Children was in Children's best interests. *See In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000) (termination in child's best interest based on service provider recommendations that parental rights be terminated and evidence that the conditions under which child was removed from parents' care would not be remedied), *abrogated on other grounds by In re G.P.*, 4 N.E.3d 1158, 1163 (Ind. 2014).

4. Satisfactory Plan for Children's Care Following Termination

[18] Pursuant to Indiana Code section 31-35-2-4(b)(2)(D), parental rights cannot be terminated unless DCS provides sufficient evidence of a satisfactory plan for the care and treatment of the children following termination. Parents argue DCS did not present a satisfactory plan for Children's care and treatment following the termination of Parents' parental rights because there was no evidence that DCS's plan for Children's adoption was "satisfactory." (Br. of Father at 21.) Mother further argues that there existed a satisfactory plan for Children's care prior to the court's order terminating her parental rights, that being "continued placement in foster care and re-unification with [Mother] upon the completion of her services." (Br. of Mother at 22.)

[19] However, the trial court concluded the plan for Children's future care and treatment was adoption. Adoption is a sufficient plan for children's care following termination of a parent's rights. *See In re S.L.H.S.*, 885 N.E.2d 603, 618 (Ind. Ct. App. 2008) (adoption is satisfactory plan for child's care and treatment after termination). Additionally, such a plan "need not be detailed,

so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *In re D.D.*, 804 N.E.2d at 268. We find no error in the court’s conclusion.

5. Continued Parent-Child Relationship Posed Risk to Children’s Well-Being

[20] Mother also argues the trial court erred when it terminated her parental rights to Children because the trial court did not make findings regarding or conclude that the continuation of the parent-child relationship would pose a risk to Children’s well-being. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court may, in accordance with other statutory requirements, terminate a parent’s rights to their children based on one of the three requirements of that portion of the statute. *See In re L.S.*, 717 N.E.2d at 209 (because statute written in disjunctive, court needs find only one requirement to terminate parental rights). Because the trial court’s findings supported its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied, the trial court did not err when it did not conclude, or make findings to support a conclusion that, the continuation of the parent-child relationship posed a risk to Children’s well-being.

Conclusion

[21] The trial court’s findings supported its conclusions that the conditions under which Children were removed from Parents’ care would not be remedied, that

termination of Parents' parental rights was in Children's best interests, and that there existed a satisfactory plan for Children's care following termination.

Additionally, the trial court did not err when it did not make findings to support a conclusion that the continuation of the parent-children relationship posed a threat to Children's well-being because the trial court had already made the required findings and conclusions to support termination pursuant to the controlling statute. Accordingly, we affirm the decision of the trial court.

[22] Affirmed.

Bailey, J., and Robb, J., concur.