MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of: G.T. (Child) and

A.G. (Mother) and T.T. (Father),

Appellant-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

April 11, 2022

Court of Appeals Case No. 21A-JT-2350

Appeal from the Randolph Circuit Court

The Honorable Jay L. Toney, Judge

Trial Court Cause No. 68C01-2101-JT-5

Mathias, Judge.

[1] A.G. ("Mother") and T.T. ("Father") appeal the Randolph Circuit Court's order terminating their parental rights to their child, G.T. In her appeal, Mother argues that the trial court's order is not supported by clear and convincing evidence. Father argues only that the trial court erred when it failed to consider whether the COVID-19 pandemic had an impact on the Parents' ability to remedy the conditions that resulted in G.T.'s removal.

[2] Concluding that neither parent has established reversible error, we affirm the judgment of the trial court.

Facts and Procedural History

[3] Mother and Father have one child, G.T., born in June 2008. G.T. lived with his maternal grandmother for several years until she died in February 2019. Father did not see G.T. very often while he was in the care of his maternal grandmother. After his grandmother's death, ten-year-old G.T. returned to Mother's care for approximately eight days. He was removed from Mother's care on February 19, 2019, due to Mother's methamphetamine addiction. Father was incarcerated when G.T. was removed from Mother's care.

[4] DCS filed a Child in Need of Services ("CHINS") petition on February 21, 2019. Mother and Father admitted that G.T. was a CHINS. The court placed G.T. in kinship care.

[5] Throughout these proceedings, Mother and Father continued to use methamphetamine, lacked stable housing and transportation, and failed to consistently attend scheduled supervised visitations with G.T. On three or four

visitations, while Father participated in visitation with G.T., Mother remained in her vehicle. From September 2020 to December 2020, Father missed six visitations and Mother missed fourteen. When Mother did participate in visitation with G.T., she was often under the influence of methamphetamine. Parents often could not be located for drug screens and most of the drug screening took place at supervised visitations.

[6] All of Mother's drug screens during the underlying CHINS proceedings were positive for methamphetamine. Mother also tested positive for Fentanyl on one occasion and THC on seven occasions. Father testified positive for methamphetamine on six out of ten drug screens. Father also tested positive for Fentanyl on one drug screen and THC on two drug screens. Parents did not participate in all drug screens as ordered.

[7] Parents did not complete substance abuse assessments or psychological assessments as ordered. Mother previously received suboxone treatment through Clean Slate Clinic. But the services she received at that facility did not help her address her methamphetamine addiction. She also participated in in-patient rehabilitation but left the program early.

[8] Parents failed to attend Child and Family Team meetings. And Parents' only stable source of income is Mother's social security disability payments. Parents generally failed to maintain consistent communication with their DCS service providers, which hindered service providers' attempts to assist Parents with obtaining stable housing and employment.

[9] In January 2021, the court suspended Parents' visitations with G.T. until they could submit four consecutive clean drug screens. Parents failed to comply with DCS's continued requests for drug screens. Parents were also homeless or stayed in various hotel rooms throughout these proceedings. DCS only had reliable addresses for Parents when they were incarcerated.

[10] On January 29, 2021, DCS filed a petition to terminate Mother's and Father's parental rights to G.T. The court held fact-finding hearings on April 7, May 12, and May 25, 2021. Both Mother and Father were incarcerated on the dates of the fact-finding hearings and had criminal charges pending in multiple counties. Father admitted that he has not made any progress toward improving his ability to parent G.T. Tr. p. 148. A DCS service provider testified that termination of Mother's and Father's parental rights was in G.T.'s best interests. Tr. p. 135. And G.T.'s foster family intends to adopt him.

[11] On October 4, 2021, the trial court issued detailed findings of fact discussing Parents' drug use, their criminal activity, their inability to meet their own basic needs, and their general lack of progress during the proceedings. The trial court then terminated Mother's and Father's parental rights to G.T.

[12] Mother and Father now appeal.

Standard of Review

[13] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court's

decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* 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. *Id.*

[14] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court's findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and second, we determine 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." *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, in their Appellants' Briefs, Parents do not challenge the trial court's findings of fact as clearly erroneous; therefore, we will accept the unchallenged findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[15] It is well-settled that the parent-child relationship is one of society's most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by

requiring DCS to prove four elements by clear and convincing evidence. Ind. Code § 31-35-2-4(b)(2) (2021). Two of those elements are at issue here: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied; and (2) whether termination is in the child's best interests. I.C. § 31-35-2-4(b)(2)(B)(i), (C).

[16] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

I. Clear and convincing evidence supports the trial court's finding that the conditions that resulted in G.T.'s removal or reasons for placement outside Mother's home will not be remedied.

[17] First, we address Mother's argument that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in G.T.'s removal or reasons for placement outside of Mother's home will not be remedied. When we review whether there is a reasonable probability that the conditions that resulted in the child's removal or reasons for placement outside the parent's home will not be remedied, our courts engage in a two-step analysis. *See In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention

in foster care." *Id.* Second, we "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

[18] G.T. was removed due to neglect resulting from Mother's methamphetamine use. By her own admission, Mother continues to use methamphetamine. But Mother claims that she will continue to seek help to address her methamphetamine addiction and relies on her participation in Clean Slate to support her claim. Mother testified that Clean Slate was a suboxone treatment program that helped her address her opiate addiction. She also admitted that the Clean Slate program has not been effective at addressing her methamphetamine addiction. Tr. pp. 175-76, 202.

[19] Mother participated in in-patient rehabilitation but left the program early. She often used methamphetamine before her visitations with G.T. On the dates of the fact-finding hearings, Mother was sober but her sobriety was a consequence of her incarceration. Tr. p. 172.

[20] Mother also claims her housing situation will be remedied when she is released from jail because she has been saving her disability income while she has been incarcerated. Mother's argument is speculative at best. Mother failed to take advantage of any of the services offered during the proceedings to improve her

ability to parent G.T. And DCS proved by clear and convincing evidence that Mother is not "prepared to provide a safe, structured, and stable home for" G.T. Mother's App. p. 123.

[21] For all of these reasons, the trial court's finding that the reasons for G.T.'s removal or reasons for placement outside Mother's home will not be remedied is supported by clear and convincing evidence. Next, we turn to Mother's argument that DCS did not prove that termination of her parental rights was in G.T.'s best interests.

II. Clear and convincing evidence supports the trial court's finding that termination of parental rights is in G.T.'s best interest.

[22] A court's consideration of whether termination of parental rights is in a child's best interest is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648. Further, the recommendation from service providers to terminate parental rights accompanied by evidence that the conditions resulting in removal will not be remedied can be sufficient to

establish that termination is in the child's best interest. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*.

[23] Mother claims that the evidence presented at the fact-finding hearings established that she was concerned about G.T. and they shared a strong parent-child bond. In support of her argument, Mother cites to evidence that when she attended supervised visitation she asked G.T. about his school days and activities and engaged in appropriate conversation with him. But Mother ignores the evidence of numerous missed visitations, causing G.T. to "shut down," *see* Tr. p. 117, her methamphetamine addiction, and lack of stable and safe housing.

[24] Mother also argues that she did not have "time or opportunity to care for" G.T. prior to his removal because G.T. only lived with Mother for approximately a week after his maternal grandmother died. Mother's Br. at 18. In total, Mother has not cared for G.T. or provided a safe and stable home for him for at least seven years. G.T. was removed from Mother's care for over two years before the fact-finding hearings in these proceedings and he lived with his maternal grandmother for at least five years before her death.

[25] Mother, who was incarcerated on the dates of the fact-finding hearings, has not demonstrated an ability to parent or provide a stable and safe home for G.T. The trial court found that Mother had not made any progress during the underlying CHINS case and Mother is "doing worse now than [she was] doing when the underlying CHINS case was initiated." Mother's App. p. 121.

Finally, a DCS service provider testified that termination of Mother's parental rights was in G.T.'s best interest. Tr. p. 135.

[26] For all of these reasons, the trial court's finding that termination of Mother's parental rights is in G.T.'s best interest is supported by clear and convincing evidence.

III. Father's COVID-19 Argument

[27] Turning now to the argument Father has raised on appeal, we first observe that Father does not challenge the trial court's findings of fact or conclusions of law. Father argues only that the trial court's judgment "failed to rule on whether extenuating circumstances, especially of a state, nation, or global emergency that lasts multiple months, significantly impaired the ability of parents to remedy the conditions that created the need for a CHINS case." Father's Br. at 11.

[28] Essentially, Father argues that the trial court should have *sua sponte* issued findings of fact and conclusions of law addressing the COVID-19 pandemic's impact on the Parents' ability to remedy the conditions that led to the CHINS case.[1] Because Father did not raise this argument in the trial court, it is waived. *See Showalter v. Town of Thorntown*, 902 N.E.2d 338, 343 (Ind. Ct. App. 2009)

[1] The trial court specifically found that the COVID-19 pandemic did not impact one DCS service provider's ability to provide services. Mother's Appellant's App. p. 140.

(explaining that arguments raised for first time on appeal are waived for appellate review).

[29] Waiver notwithstanding, the only evidence of the impact the pandemic had in this case was virtual visitation between Parents and G.T. Tr. pp. 41, 58. And Parents' continuous methamphetamine use and repeated incarcerations were not caused by the pandemic. Parents failed to communicate with their service providers and failed to take advantage of the services offered to them. They also missed several scheduled visitations with G.T. There is no evidence that would support a finding that the COVID-19 pandemic impacted the Parents' ability to participate in services and attend visitation with G.T.

[30] Even if Father had raised his argument in the trial court, his claim is not supported by the record before us.

Conclusion

[31] Clear and convincing evidence supports the trial court's judgment terminating Mother's and Father's parental rights. And Father waived his claim concerning the trial court's lack of consideration for the effect the COVID-19 pandemic had on Parents' ability to remedy the conditions that led to G.T.'s removal from their care.

[32] Affirmed.

Bailey, J., and Altice, J., concur.