

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-
Child Relationship of C.F. (Minor
Child) and

E.F. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 19, 2021

Court of Appeals Case No.
20A-JT-1759

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

The Honorable Deborah A.
Domine, Magistrate

Trial Court Cause No.
20C01-2002-JT-14

Mathias, Judge.

- [1] E.F. (“Mother”) appeals the Elkhart Circuit Court’s order involuntarily terminating her parental rights to her youngest child, C.F. Mother argues that the termination of her parental rights is not supported by clear and convincing evidence.
- [2] We affirm.

Facts and Procedural History

- [3] Mother’s and C.M.’s (“Father”) child, C.F., was born on June 27, 2016.¹ In the fall of 2017, when C.F. was approximately sixteen months old, the Indiana Department of Child Services (“DCS”) filed a petition alleging that C.F. was a child in need of services (“CHINS”) due to domestic violence between Mother and Father. DCS alleged that Father hit Mother, threw her into the bathtub, and choked her. On November 7, 2017, Mother admitted that C.F. was a CHINS. Father did not appear and was defaulted.
- [4] The court issued a dispositional order on December 12. C.F. remained in Mother’s care. Both parents were ordered to participate in certain services including random drug screens. Approximately two months later, C.F. was removed from Mother’s care and placed in relative care. DCS requested C.F.’s removal because the twenty-month-old child tested positive for high levels of methamphetamine and THC.

¹ Mother has three other children who are all older than C.F. Two of the children have been removed from her care. The oldest child is eighteen and currently lives with Mother.

- [5] Throughout 2018, Mother continued to test positive for THC, methamphetamine, and amphetamine. She also failed to participate in substance abuse counseling as ordered. In November 2018, the trial court found mother in contempt of court and ordered her to enroll in residential drug treatment on or before November 20, 2018.
- [6] Mother did not enroll in the treatment program, and therefore, on December 10, she was committed to the Elkhart County Correctional Complex for ninety days. The court also ordered her to complete a psychological parenting assessment. On February 13, 2019, the court suspended the remainder of Mother's commitment and ordered her to report to the YWCA Dual Treatment Program in South Bend upon her release. Mother completed her inpatient treatment at the YWCA but continued testing positive for various substances thereafter. And, although she tested negative for THC during her inpatient treatment at the YWCA, Mother admitted to using marijuana during treatment. Tr. pp. 98, 104.
- [7] Dr. Rachel Garcia, a clinical psychologist, evaluated Mother in 2019. Mother reported to Dr. Garcia that she used marijuana, Vicodin, Xanax, Adderall, methamphetamine, cocaine, and heroin. Throughout her life, Mother has suffered significant physical, emotional, and sexual abuse. Mother uses drugs to self-medicate. Dr. Garcia believed "sustained recovery from substance use will be imperative for [Mother] to be able to effectively provide parenting for her children." Ex. Vol. 4, p. 21. In turn, Dr. Garcia recommended that Mother

demonstrate sobriety for a significant period of time before the court should consider reunification with C.F.

- [8] Throughout these proceedings, Mother took 143 random drug screens. In all, 110 screens were positive for substances including methamphetamine, amphetamine, cocaine, heroin, and THC. Although Mother completed the treatment programs, she did not demonstrate progress toward achieving sobriety.
- [9] After Mother left the YWCA inpatient treatment program, she moved to transitional housing. But, in October 2019, she moved out of transitional housing. At some point during the first half of 2020, Mother moved in with a man who is an “avid crack cocaine user.” Tr. p. 76. Mother’s eighteen-year-old son confirmed that Mother’s male roommate used drugs in the home and that Mother continued to use marijuana as a coping mechanism. Tr. p. 139. Due to Mother’s continued substance abuse and lack of stable employment and housing, DCS filed a petition to terminate her parental rights on February 17, 2020. Appellant’s App. Vol. 2 pp. 40-42.
- [10] On June 15, 2020, Mother began a forty-session outpatient counseling program to further address her substance abuse issues. In order to complete the program, she was required to refrain from using marijuana. But she admitted that she continued to use marijuana. Tr. p. 43. Mother’s counselor believed individual trauma therapy would benefit Mother but first wanted Mother to complete her addictions treatment. The counselor testified that Mother’s counseling program

would be extended by four to six weeks due to her continued marijuana use. *Id.* at 48. Mother would not transition to aftercare until she achieved sobriety.

[11] The trial court held a fact-finding hearing on August 24, 2020. C.F. was four-years old on that date and had been removed from Mother's care for nearly three years. At the hearing, DCS presented evidence concerning Mother's ongoing and continuous substance abuse issues. Mother again admitted that she has not been able to stop smoking marijuana. Tr. p. 161. Mother also did not have a stable, safe home. DCS service providers testified that terminating Mother's parental rights was in C.F.'s best interests. *Id.* at 84, 126.

[12] On August 26, 2020, the trial court issued its order terminating Mother's parental rights.² Mother now appeals.

Standard of Review

[13] Indiana appellate courts have long had 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 do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment. *See, e.g., In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*. We will affirm a trial court's judgment terminating parental rights unless it is clearly erroneous. *Id.* A judgment is clearly erroneous

² Father's parental rights were also terminated but he does not appeal.

if the court's factual findings do not support its legal conclusions, or if the legal conclusions do not support the ultimate decision. *See id.*

- [14] Mother does not challenge any of the trial court's factual findings as being clearly erroneous. We therefore accept the trial court's findings as true and determine only whether these unchallenged findings are sufficient to support the judgment. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied*; *see also T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012) (holding that when the trial court's unchallenged findings support termination, there is no error), *trans. denied*.

Discussion and Decision

- [15] Mother claims the trial court's order involuntarily terminating her parental rights is not supported by clear and convincing evidence. [Indiana Code section 31-35-2-4\(b\)\(2\)](#) provides that a petition to terminate parental rights must allege:

(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.

- [16] DCS must prove each element by clear and convincing evidence. [Ind. Code § 31-37-14-2](#); *In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). Because [Indiana Code subsection 31-35-2-4\(b\)\(2\)\(B\)](#) is written in the disjunctive, the trial court is required to find that only one prong of subsection [4\(b\)\(2\)\(B\)](#) has been established by clear and convincing evidence. *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010).
- [17] 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 Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to clearly and convincingly 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\(a\)](#).
- [18] The purpose of terminating parental rights is not to punish parents but instead to protect the child. *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Although parental rights have a constitutional dimension, the law allows for their termination when the parties are unable or unwilling to meet their responsibilities as parents. *Id.* Indeed, parental interests must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. *G.Y.*, 904 N.E.2d at 1259.

[19] Here, Mother argues that the trial court clearly erred by concluding there was a reasonable probability that the conditions resulting in C.F.’s removal from her care, or the reasons for C.F.’s continued placement outside her home, would not be remedied.³ When considering whether DCS has proven this factor by clear and convincing evidence, the trial court must determine a parent’s fitness to care for the child at the time of the termination hearing while also taking into consideration evidence of changed circumstances. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156–57 (Ind. Ct. App. 2013), *trans. denied*.

[20] A parent’s habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). Habitual conduct may include criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.D.S v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The services offered to the parent, and the parent’s response to those services, is also be evidence of whether conditions will be remedied. *Id.* A trial court’s findings concerning the probability of future neglect “must be founded on factually-based occurrences as documented in the record—not simply speculative or

³ Because [Indiana Code subsection 31-35-2-4\(b\)\(2\)\(B\)](#) is written in the disjunctive, we do not address whether DCS proved that continuation of the parent-child relationship threatens C.F.’s well-being. *In re A.K.*, 924 N.E.2d at 220. Also, Mother vaguely asserts DCS failed to prove that termination of her parental rights was in C.F.’s best interests. But because Mother does not support her claim with specific argument or citation to the record, her claim is waived. See [Ind. Appellate Rule 46\(a\)\(8\)\(A\)](#).

possible future harms.” *In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016). But DCS need not “provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change.” *In re I.A.*, 903 N.E.2d 146, 154 (Ind. Ct. App. 2009).

[21] Mother argues that when the trial court concluded the conditions resulting in C.F.’s continued placement outside her home would not be remedied, the court ignored evidence of Mother’s recent successful employment⁴ and her consistent participation in services, including substance abuse programs. In addition, Mother asserts that she is bonded with C.F., and that the supervised visitation reports documented Mother’s appropriate interactions with C.F. and improved parenting skills.

[22] However, Mother lacked stable, suitable housing throughout these proceedings. For the several months leading up to the August 2020 fact-finding hearing, she shared an apartment with an “avid crack cocaine user.” Tr. p. 76. Mother had plans to obtain her own apartment but did not have the financial means to do so.

[23] Mother also lacked stable employment during this time. Although Mother presented evidence that she obtained a job at Burger King in May 2020, we cannot fault the trial court for concluding that Mother’s recent four-month

⁴ Commendably, Mother was promoted to lead crewmember at Burger King three weeks before the August 2020 fact-finding hearing, and the store manager anticipated that Mother would be promoted to assistant manager. Tr. pp. 131–32.

employment at Burger King does not demonstrate stability in light of the fact the CHINS and termination proceedings commenced in November 2017 and Mother lacked stable employment throughout the vast majority of the proceedings.

[24] Moreover, Mother's drug use throughout the CHINS and termination proceedings is well-documented. As a result of drug use in the home, when C.F. was only twenty-months old, his exposure to illegal substances resulted in positive test results for high levels of methamphetamine and THC. And Mother never achieved sobriety—110 out of her 143 drug screens were positive. Indeed, she last used cocaine in May 2020, just three months before the fact-finding hearing. Tr. p. 176.

[25] Mother admits that she uses marijuana as a coping mechanism and continues to do so despite nearly three years of substance abuse treatment. Due to her continued substance abuse and poor decision making, Dr. Garcia, the psychologist who evaluated Mother, recommended that C.F. not be placed in Mother's care unless she could maintain sobriety.⁵ Mother has not achieved sobriety. And she has not been able to provide a safe and stable home for C.F.

⁵ Dr. Garcia reported that "the greatest consequence of parental addiction is the loss of effective, substantive and stable parental involvement that is essential for child development." Ex. Vol. 4, p. 20. She further stated that addicts' children "experience interrupted, damaged or slowed cognitive, emotional and behavioral growth." *Id.* Because the child's needs are unmet, the child suffers "emotional wounds and/or overt behavioral deficits." *Id.*

for nearly three years. On the date of the fact-finding hearing, she was still unable to do so.

[26] This evidence supports the trial court's finding that the conditions that resulted in C.F.'s removal from Mother's care have not changed and are "unlikely to be changed at any foreseeable future date." Appellant's App. Vol. 2 p. 19. The court further found: "[Mother] asks for more time. She argues that after nearly three years of her 4-year-old child being involved in the child welfare system, she is now on track. But her drug screens, 110 of 143 screens positive for illegal substances suggest otherwise." *Id.* We agree.

[27] In short, the trial court weighed the evidence of Mother's habitual and continuing substance abuse against the recent, positive changes she made in her employment and parenting skills in the four months leading up to the fact-finding hearing. C.F. needs stability that the evidence reveals Mother has not shown an ability to provide, and likely will not be able to provide in the foreseeable future. For all of these reasons, we conclude the trial court's conclusion that there was a reasonable probability the conditions that resulted in C.F.'s removal from Mother's care or the reasons for his continued placement outside her home would not be remedied is supported by clear and convincing evidence.

Conclusion

[28] The trial court's evidence-backed findings support the court's conclusion that there is a reasonable probability that the reasons for C.F.'s removal from

Mother's care will not be remedied. The court's decision to terminate Mother's parental rights is not clearly erroneous.

[29] We affirm.

Riley, J., and Crone, J., concur.