MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: L.D. (Minor Child), and A.D. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

September 29, 2023

Court of Appeals Case No. 23A-JT-767

Appeal from the St. Joseph Probate Court

The Honorable Ashley Mills Colborn, Magistrate

Trial Court Cause No. 71J01-2203-JT-34

Memorandum Decision by Judge Brown
Judges Crone and Felix concur.

Brown, Judge.

[1] A.D. ("Mother") appeals the involuntary termination of her parental rights with respect to her child, L.D. We affirm.

Facts and Procedural History

[2] Mother is the parent of L.D., who was born on December 4, 2020. On December 5, 2020, Mother and L.D. tested positive for methamphetamine and amphetamine, and the Department of Child Services ("DCS") detained L.D. and later placed her with relative placement. DCS filed a petition alleging that L.D. was a child in need of services ("CHINS"). Mother admitted that L.D. was a CHINS. On May 6, 2021, the trial court entered a dispositional order finding L.D. to be a CHINS.

[3] On March 7, 2022, DCS filed a Verified Petition for Involuntary Termination of Parent-Child Relationship. On March 24, 2022, the court held a hearing, and Mother failed to appear.[1] That same day, the court entered an order that noted proper notice was provided to Mother and she failed to appear, took the termination of Mother's parental rights under advisement, and scheduled a hearing for June 2022.

[4] On May 26, 2022, Mother filed a Motion to Set Matter for Hearing which requested "a hearing in order to schedule a fact-finding hearing on the Petition

[1] The record does not contain a transcript of this hearing.

for Termination" and asserted she was entitled to present evidence and that she recently completed an inpatient drug treatment program at the Indiana Center for Recovery. Appellant's Appendix Volume II at 8. On July 20, 2022, the court held a hearing.[2] On August 26, 2022, the court entered an Order Vacating Default Judgment which ordered that "[t]he default judgment entered on March 24, 2022 is . . . vacated." *Id.* at 26.

[5] On November 22, 2022, the court held a hearing at which Mother was present and represented by counsel. DCS presented the testimony of multiple witnesses including Dr. Aaron Brown, the scientific director at Cordant Health Solutions, Renee DeRosa, a social worker and home-based therapist, Janet Mantle, a therapist, Marilyn Dodd, a counselor, Anthony Eldridge, a family consultant, Family Case Manager Stephani Miller ("FCM Miller"), Scott Wilson, the Clinical Director at Hickory House Recovery, Vanessa Hoskins, a therapist, Dr. Michael Kane, the medical director of Indiana Center for Recovery, and Court Appointed Special Advocate Jennifer Busk ("CASA Busk").

[6] Mother testified that she had a "very unpredictable" work schedule, she worked "pretty consistently" but "there'd be a couple weeks at a time [she] was unemployed occasionally." Transcript Volume V at 156-157. She testified that she "had just recently been going very consistently the past couple months" to meetings at Celebrate Recovery, a recovery program. *Id.* at 162. She stated she

[2] The record does not contain a transcript of this hearing.

had taken initiative and "been aware of the progression of [her] addiction . . . ." *Id.* On cross-examination, when asked if it was fair to say that she had attended and been discharged from at least five inpatient rehabilitation facilities since 2014, Mother answered: "I don't know what you mean by five of them, been discharged from. I successfully completed the very first one I ever went to in 2014." *Id.* at 164. Mother acknowledged that she was discharged in 2014 from Transitions inpatient treatment for bringing heroin into the facility, she was discharged from the Y in 2014 after relapsing following an accident and testing positive for heroin, she was discharged from the same Y facility in February 2021 after testing positive for methamphetamine, she was discharged from Hickory House in March 2022 for "breaking a boundary," and she was discharged from the Indiana Center for Recovery in May 2022 for bringing contraband into the IOP house. *Id.* at 165. Mother also disputed a positive result for methamphetamine occurring eight days prior to the hearing.

[7] On March 10, 2023, the court entered a twenty-two page order finding: there was a reasonable probability that the conditions that resulted in L.D.'s removal and her continued placement outside of the home would not be remedied; there was a reasonable probability that the continuation of the parent-child relationship posed a threat to L.D.'s well-being; and termination of the parent-child relationship was in L.D.'s best interests.

Discussion

[8] Mother argues that "[p]ending criminal cases does not mean guilty and the Court gave too much weight to the pending charges in deciding to terminate the

parent child relationship." Appellant's Brief at 7. She asserts that certain evidence was contrary to the trial court's finding regarding her sobriety. She contends she has been continuously employed and was employed at the time of the termination hearing and the conditions that existed at the time of L.D.'s removal no longer exist. She also asserts that DCS chose not to provide any services after March 2022 which violated her right to due process.

[9] To the extent Mother asserts DCS did not afford her due process, it has been established that, as a matter of statutory elements, DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship. *In re T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. However, parents facing termination proceedings are afforded due process protections. *Id.* CHINS and termination of parental rights proceedings "are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter," and procedural irregularities in a CHINS proceeding may deprive a parent of due process with respect to the termination of his or her parental rights. *Id.* (citing *Matter of D.H.*, 119 N.E.3d 578, 588 (Ind. Ct. App. 2019), *aff'd in relevant part on reh'g*, *trans. denied*). *See also In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015) (holding "when the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process") (quoting *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (alteration and internal quotation marks omitted)).

[10] "Due process requires 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting

Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893 (1976)). The Indiana Supreme Court has held that "the process due in a termination of parental rights action turns on balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure." *Id.* (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). "In balancing the three-prong *Mathews* test, we first note that the private interest affected by the proceeding is substantial – a parent's interest in the care, custody, and control of her child." *In re C.G.*, 954 N.E.2d at 917. "We also note the countervailing *Mathews* factor, that the State's *parens patriae* interest in protecting the welfare of a child is also substantial." *Id.* Thus, we turn to the risk of error created by the actions of DCS and the trial court. *See id.*

[11] The trial court found:

> 39. On March 24, 2022, Mother failed to attend an Initial Hearing/Fact Finding Hearing on the Termination of Parental Rights Petition filed by DCS. Mother received notice of the hearing on March 9, 2022. The termination of Mother's parental rights was held under advisement pending resolution of Alleged Father and Unknown Alleged Father's parental rights. DCS did not present evidence to support the termination of Mother's parental rights on March 24, 2022.
>
> 40. Two (2) months later on May 26, 2022, Mother filed to have the default judgment reconsidered. The Court granted the Motion, after multiple hearings, on August 26, 2022. During that time period, Mother was not offered services by DCS.

Appellant's Appendix Volume II at 65. We note that the court found: "During the duration of [L.D.'s] CHINS matter, Mother participated in multiple substance abuse programs using her own insurance. Mother declined to use services referred by the DCS per the credible testimony of FCM Stephani Miller." *Id.* at 60.

[12] Mother does not argue that DCS failed to provide services between the time that it filed the petition alleging that L.D. was a CHINS and March 24, 2022, when Mother failed to appear at the hearing. FCM Miller testified that she made referrals, Mother would start services, "there was always issues, it seems like, with almost every provider with scheduling," and she would learn "after the fact there were periods of incarceration that [Mother] hadn't informed [her] of prior to them happening or after." Transcript Volume V at 62. FCM Miller testified that she offered Mother treatment at local facilities and Mother refused them. On cross-examination, Mother's counsel asked FCM Miller: "Isn't it true that aside from Dockside, that the referrals for services effectively ended when [Mother] didn't show up for the termination hearing on March 24th?" *Id.* at 140. FCM Miller answered: "Correct. We – we received a default TPR, yes." *Id.* When asked, "and even after August, there have not been any services in place," she answered: "At the status hearing, the magistrate stated if [Mother] wanted to initiate those services that she could, and [Mother] did not request that [she] make any new referrals, with the exception of the visitation."[3]

[3] The record does not contain a transcript of any status hearing.

Id. She also stated that she "did do a separate home-base case management referral for court testimony for Lifeline." *Id.* Under these circumstances, we cannot say that Mother's due process rights were violated.

[13] 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).

[14] 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.

[15] 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.*

[16] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, a 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*.

[17] The court's order found that Mother had a "lengthy history of substance abuse," and had two other children who were previously removed from her care and adopted by another family due to her substance abuse. Appellant's Appendix Volume II at 60. The court detailed the multiple treatment programs Mother entered and from which she was unsuccessfully discharged. It also found Mother tested positive for methamphetamine, amphetamine, and THC on multiple occasions. It further found that Mother's substance abuse had contributed to her substantial criminal history including pending charges from July 8, 2022, for operating a vehicle while intoxicated, charges on April 5, 2022, for possession of methamphetamine, unlawful possession of a syringe,

possession of paraphernalia, possession of heroin, possession of methamphetamine, and possession of a syringe, as well as a convictions for unlawful possession of a syringe, possession of a synthetic drug, and possession of a narcotic drug.

[18] The record reveals that Dr. Brown, the scientific director at Cordant Health Solutions, testified that eighteen of twenty-four drug screens tested positive and that, "[o]verall, the three main substances that were confirmed positive were amphetamine, methamphetamine, and THC." Transcript Volume V at 15. He indicated that Adderall "would account for the amphetamine by itself" but "there are no provided medications or prescriptions that would account for the methamphetamine or the THC." *Id.* He indicated that Mother's most recent positive test for methamphetamine occurred on November 14, 2022.

[19] Dodd, a counselor employed by the YWCA, testified that she worked with Mother beginning on February 3, 2021, and Mother "entered with addiction," tested positive for methamphetamine when she came into the program, was placed in a dual program addressing domestic violence, and left on February 25, 2021. *Id.* at 40. She testified "one of our support staff said they noticed that [Mother] was going out to her car and on the 24th they gave her another drug screen and she tested positive for methamphetamine. And then that was when she was asked to leave." *Id.* at 42. When asked if she felt that Mother made any progress towards sobriety during her stay, she answered: "Not with the last positive drug screen." *Id.* at 45.

[20] FCM Miller testified that DCS originally became involved in the case because L.D. was born with her urine testing positive for methamphetamine and amphetamine. According to FCM Miller's testimony, Mother had two children removed in 2013 due to substance use and conditions in the home, Mother initially had some compliance but later tested positive, services were suspended, and Mother signed a voluntary termination of parental rights. FCM Miller testified that she believed there was a reasonable probability that the conditions that resulted in L.D.'s removal would not be remedied because "there has been this established pattern of behavior," "[w]ith informal and formal supports in place, [Mother] has continued to use," she has continued to accrue criminal charges, and her housing has been unstable.[4] *Id.* at 129. With respect to keeping appointments with service providers, FCM Miller testified "one constant theme throughout the life of the case is phone calls from service providers lamenting about [Mother] not returning phone calls or not being willing to schedule with them." *Id.* at 62. She testified that Mother received positive results for methamphetamine and marijuana "[t]hroughout the life of the case." *Id.* at 64. She testified Mother failed to obey the law and had seven pending criminal charges in three different counties. Mother's participation in home-based case management "was sporadic at best." *Id.* at 65. She testified

[4] FCM Miller stated: "I'm very proud of her that she did get her apartment last week, and I think it's a great step for her. I just think that we haven't – there hasn't been a period of sobriety for her yet." Transcript Volume V at 129.

that Mother blaming service providers for not being available or completing her services was a common theme.

[21] Wilson, the Clinical Director at Hickory House Recovery, testified that Mother entered treatment on February 14, 2022, and tested positive for methamphetamine, amphetamine, MDMA, and THC. He testified that Mother was administratively discharged on March 1, 2022 due to "boundary violations" and had violated a rule that had been explained during intake. *Id.* at 85.

[22] Hoskins, a therapist employed by the Indiana Center for Recovery, testified that Mother arrived on March 26, 2022, her initial drug screen that day was positive for THC, methamphetamine, amphetamines, and MDMA. She testified that, after fifty-six days, Mother was administratively discharged for violating the rules by bringing "alcohol into her sober living" and bringing medications prescribed to someone else into the house. *Id.* at 100.

[23] Dr. Kane, the medical director of the Indiana Center for Recovery, testified that Mother went there for treatment for methamphetamine use disorder, marijuana use disorder, major depressive disorder, generalized anxiety disorder, and attention deficit hyperactivity disorder. He testified that the impact of methamphetamine on the brain "would completely hijack one's ability to parent" and "[t]here are no parental instincts when a person is high on methamphetamine or really craving methamphetamine." *Id.* at 115.

[24] CASA Busk testified that she was concerned Mother's drug use could impact her parenting because she did not think "as a parent you can make decisions that would keep your . . . child safe if you are using meth." *Id.* at 145. She also expressed concern with Mother's criminal allegations because "it was in a car, and I've driven around with children in my car for the last 30 years, and if you're impaired, it's . . . very dangerous." *Id.* She testified that she believed there was a reasonable probability that the conditions that resulted in L.D.'s removal would not be remedied because, "in getting in the recent drug tests, there's only been one negative." *Id.* at 147.

[25] 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 L.D.'s removal and the reasons for placement outside Mother's care will not be remedied.

[26] 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*.

[27] FCM Miller testified she believed that termination of Mother's parental rights was in L.D.'s best interest. When asked why, she stated she was concerned for Mother's continued substance use and her "pending criminal charges and just the general instability that she's established over the past, almost, decade since her first involvement with DCS in 2013." Transcript Volume V at 129. She also testified that "[t]erminating the parent-child bond can provide [L.D.] with the opportunity to be adopted where she can achieve that permanent, stable home environment that she's currently thriving in." *Id.* CASA Busk testified that termination of parental rights was in L.D.'s best interests because "she deserves a stable drug free home." *Id.* at 146.

[28] Based on the totality of the evidence, we conclude the trial court's determination that termination is in L.D.'s best interests is supported by clear and convincing evidence.

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

[30] Affirmed.

Crone, J., and Felix, J., concur.