MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of P.R., J.B., and N.B. (Minor Children) and

Ni.B. (Mother) and L.B. (Father),

Appellants-Respondents

v.

Indiana Department of Child Services,

Appellee-Petitioner

September 27, 2023

Court of Appeals Case No. 23A-JT-52

Appeal from the Marion Superior Court

The Honorable Diana J. Burleson, Magistrate

Trial Court Cause Nos. 49D16-2107-JT-5779, -5782, -5783

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

[1] Ni.B. (Mother) and L.B. (Father) (collectively the Parents) appeal the trial court's orders involuntarily terminating their relationships with their children J.B. and N.B. Mother also appeals the trial court's order involuntarily terminating her relationship with her child P.R. We affirm and remand for correction of a scrivener's error in the order regarding N.B.

Facts and Procedural History

[2] Mother and Father are married and are the parents of J.B., born in January 2017, and N.B., born in August 2018. Mother and R.R. are the parents of P.R., born in April 2006; R.R. consented to P.R.'s adoption and is not involved in this appeal. In August 2018, the Indiana Department of Child Services (DCS) removed P.R., J.B., and N.B. (collectively the Children) from the Parents "due to allegations of abuse and/or neglect" and placed them in foster care. J.B. Order at 1. That same day, DCS filed petitions alleging that each of the Children was a child in need of services (CHINS). At that time, the Parents were homeless.

[3] In November 2018, the Children were adjudicated CHINS. In February 2019, DCS was granted wardship of the Children pursuant to a dispositional decree. The Parents were granted supervised visitation, and they were "ordered to

participate in and follow the recommendations of home based therapy, home based case management, a parenting assessment, and family therapy if recommended." *Id.* at 2. At that time, the permanency plan was for reunification. In June 2020, the Parents "were ordered to participate in a psychological evaluation and follow the recommendations." *Id*. In June 2021, the permanency plan was changed from reunification to adoption.

[4] In July 2021, DCS filed petitions for the involuntary termination of the Parents' relationships with the Children. The matter was "continued a number of times in order to give the [Parents] more time to complete services." *Id*. at 4. A two-day final hearing was held in October 2022, at which the Parents failed to appear but were represented by counsel. The trial court asked Father's counsel, "Are we expecting him?" Tr. Vol. 2 at 5. Counsel stated that Father had "attended most of the CHINS proceedings" and that counsel had "tried to contact him, but […] really didn't know what to expect." *Id*. at 5. DCS family case manager (FCM) Eric McDonald testified that he sent the Parents "a text message and reminded them" about the hearing and "gave them the location." *Id*. at 40. According to McDonald, Mother responded "that she wasn't going to be engaging in any of this," and Father did not respond. *Id*. McDonald also testified that DCS sent notices of the hearing to the Parents at their "last known address." *Id*. Neither Mother's counsel nor Father's counsel requested a continuance.

[5] In December 2022, the trial court issued substantially similar orders for each of the Children. The trial court found that there had been fifty-six referrals for

services for the Parents "since the CHINS case opened in 2018. The [Parents] have been discharged due to their inconsistent participation. Engagement in services is sporadic, [Parents] have continued a cycle of engaging for a month or so, then participation will drop off with no consistent period of engagement." J.B. Order at 2. This lack of participation occurred despite DCS and service providers assisting the Parents with transportation, housing, and cell phone service. According to the trial court, "Mother says that she will not be participating in services and that DCS is not getting the hint." *Id*. at 4. Also, "Mother does not want Father to participate in services, because she does not want their funds to be used to go to visits." *Id*. at 3.

[6] The trial court further found that the Parents never obtained stable housing. They lived in numerous hotels, with friends and relatives, in a shelter, and out of their car for varying lengths of time, and they were not forthcoming with either DCS or service providers about where they were living. The Parents also lived in various locales, including Chicago, Illinois, and Boone County, Indiana. "Months ago Parents said that they had gotten an apartment but when FCM McDonald asked to see the apartment, Mother became combative and said she did not have time. FCM McDonald has not seen the apartment. No service providers have seen the apartment." *Id*. at 2. "DCS, the [guardian ad litem] and providers were concerned that because of moving to different parts of town, that instability would be difficult to enroll the children in school should they be returned to their mother's care." *Id*. at 3. "In addition, it was becoming expensive to stay in different hotels which made it hard to establish a budget for

the family." *Id*. The Parents' marriage was also unstable; they "did not know if they were going to stay together and procrastination was an issue." *Id*. at 2.

[7] Regarding the Children, P.R.'s therapist diagnosed her as "suffering from anxiety, depression, and trauma." P.R. Order at 3. The trial court found that P.R. "was neglected in her mother's care – she lived in cars, did not have a stable home, was left to care for her younger brother, and she was sometimes hungry." *Id*. One year earlier, P.R. disclosed that Mother saw Father kiss another woman and that Mother "took [P.R.] to a man's house, [Mother] had sex with him and asked [P.R.] to touch the man inappropriately." *Id*. P.R. "is lower functioning and has mental health needs that need to be addressed." *Id*. She is "tired and angry and wants to be adopted" after spending four years in foster care. *Id*. at 4. The trial court found that J.B. "is on the autism spectrum and has special needs" and that the Parents "did not acknowledge his issues and needs." J.B. Order at 3. "During the CHINS case, DCS tried to increase parenting time but Mother became combative and hostile and they were unable to schedule." *Id*. at 2. After a parenting time session in June 2022, "Mother said she was not going to participate and would get her kids back with or without DCS." *Id*. at 5.

[8] As to all three Children, the trial court found that they had been removed from the Parents for at least six months under a dispositional decree; that there is a reasonable probability that the conditions that resulted in their removal or the reasons for placement outside the Parents' home will not be remedied; that termination of parental rights is in the Children's best interests; and that there is

a satisfactory plan for the Children's care and treatment, which is adoption. Both Mother and Father now appeal.

Discussion and Decision

[9] "[A] parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.' " *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005)). "[A]lthough parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008). Involuntary termination of parental rights is the most extreme sanction a court can impose, and therefore "termination is intended as a last resort, available only when all other reasonable efforts have failed." *Id*. The trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id*. at 807.

[10] "We have long had a highly deferential standard of review in cases involving the termination of parental rights." *In re C.A.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

> In considering whether the termination of parental rights is appropriate, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and any reasonable inferences therefrom that support the judgment, and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. Where a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. [Ind. Trial

> Rule 52(A)]. In evaluating whether the trial court's decision to terminate parental rights is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment.

In re K.T.K., 989 N.E.2d 1225, 1229-30 (Ind. 2013) (citations and quotation marks omitted). Unchallenged findings of fact are accepted as true. *In re S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). If the unchallenged findings clearly and convincingly support the judgment, we will affirm. *Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015), *trans. denied*; *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*.

[11] Among other things, a petition to terminate a parent-child relationship 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.

Ind. Code § 31-35-2-4(b)(2). DCS must prove each element by "clear and convincing evidence." *R.S.*, 56 N.E.3d at 629; Ind. Code § 31-37-14-2. If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

Section 1 – Mother has failed to establish that the trial court's orders are clearly erroneous, but we remand for correction of a scrivener's error in the order regarding N.B.

[12] Mother challenges the trial court's ultimate finding, per Indiana Code Section 31-35-2-4(b)(2)(B)(i), that there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside the Parents' home will not be remedied. "[T]he court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions." *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). "Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* A court may properly consider evidence of lack of adequate housing and the parent's response to services offered by DCS. *Id.* "In addition, '[w]here 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*. (quoting *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005)).

[13] Mother was homeless when the Children were removed from her care, and she never obtained stable housing.[1] Moreover, she never consistently engaged with the numerous services offered by DCS. By the time of the final hearing, Mother was refusing to participate in services altogether. Under these circumstances, it was reasonable for the trial court to find that the problematic situation would not improve, and thus we find no clear error in this regard. We also find no merit in Mother's related due process claim.

[14] Mother's only meritorious contention is that the trial court's order regarding N.B. mistakenly refers to J.B. in its final substantive paragraph. *See* N.B. Order at 4 ("That the parent-child relationship between [J.B.] and her parents … is hereby terminated.). We affirm the trial court's orders as to Mother and remand for correction of this scrivener's error.

Section 2 – Father has waived his ineffective assistance of counsel claim.

[15] Father asserts that he "was not provided actual notice of the Termination Trial resulting in his absence from the trial" and that his counsel was ineffective in

[1] Mother's assertion to the contrary is an invitation to reweigh the evidence and judge witness credibility, which we may not do. As mentioned above, the Parents claimed that they had gotten an apartment, but Mother rejected the FCM's requests to see it. *See* Tr. Vol. 2 at 57, 76 (FCM McDonald testifying that Mother repeatedly rejected his requests to see Parents' apartment).

failing to raise a due process objection and request a continuance. Father's Br. at 10. Father offers nothing to support his assertion that he did not receive actual notice of the hearing, aside from the fact that he failed to appear at the hearing,[2] and he does not present a cogent argument on the ineffectiveness issue, so that claim is waived. *See Mann v. Arnos*, 186 N.E.3d 105, 118 (Ind. Ct. App. 2022) (citing, inter alia, Ind. Appellate Rule 46(A)(8)(a)), *trans. denied*.

[16] Waiver notwithstanding, our supreme court has explained that "[w]here parents whose rights were terminated upon trial claim on appeal that their lawyer underperformed, we deem the focus of the inquiry to be whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination." *A.M. v. State*, 134 N.E.3d 361, 367 (Ind. 2019) (quoting *Baker v. Marion Cnty. Off. of Fam. & Child.*, 810 N.E.2d 1035, 1041 (Ind. 2004)), *cert. denied* (2020). We observe that a parent does not have a constitutional right to be present at a termination hearing, *In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011), that Father has not established that the hearing was unfair, and that he has not challenged the trial court's factual findings, so we must accept them as true. That being the case, we find no grounds for reversing the trial court's orders as to Father.

[2] As previously stated, FCM McDonald testified that notice was sent to Father's last known address, and there is no indication that the notice was returned as undeliverable.

[17] Affirmed and remanded.

Brown, J., and Felix, J., concur.