

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child relationship of:

G.M. and S.T. (Minor Children),
and

S.T. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

September 20, 2022

Court of Appeals Case No.
22A-JT-458

Appeal from the Lawrence Circuit
Court

The Honorable Nathan G. Nikirk,
Judge

Trial Court Cause Nos.
47C01-2109-JT-324, 47C01-2109-
JT-325

Appellee-Petitioner.

Altice, Judge.

Case Summary

[1] S.T. (Mother) appeals the termination of her parental rights as to her minor children, G.M. (born February 9, 2013) and S.T. (born August 11, 2010) (collectively, Children). Mother contends that the termination order must be set aside because the Indiana Department of Child Services (DCS) failed to prove by clear and convincing evidence that the reasons for Children’s removal are unlikely to be remedied and that termination of her parental rights was in Children’s best interests.

[2] We affirm.

Facts and Procedural History

[3] In March 2020, Children, Mother, and G.M.'s father—R.M.—were residing together in Springville. Early that month, DCS removed S.T. from the residence on an emergency basis after receiving reports that Mother and R.M. were abusing and neglecting her. The reports indicated that Mother left S.T. in the care of a cousin who had molested S.T. on prior occasions. DCS had also received reports that S.T.'s father, T.T., had molested her on several occasions. Mother had also allegedly failed to comply with school attendance laws, and it was reported that she and R.M. were using illegal substances in Children's presence.¹ G.M. was removed from Mother's care two months later following similar reports of neglect and abuse. Children have remained in foster care since their removal.

[4] DCS filed CHINS petitions as to Children on March 4, 2020, citing instances of neglect and abuse. DCS further noted in the petitions that Mother had failed to comply with various informal adjustment and safety plans since March 2019, including the refusal to complete an intake assessment at Centerstone Recovery Center (Centerstone) and her failure to schedule and attend therapy sessions. The CHINS petition also alleged that Mother and R.M. kept drugs and a "snort tube" at the residence in plain view of Children. *Exhibit 2* at 160.

¹Children were previously removed from the home in November 2015 and adjudicated CHINS because of illegal drug use. That case was closed in November 2017 with reunification.

- [5] Mother underwent random drug screening and, at various times, tested positive for fentanyl, tramadol, oxycodone, and methamphetamine. She subsequently admitted the allegations in the CHINS petitions, and Children were adjudicated CHINS on June 29, 2020.
- [6] The trial court conducted a dispositional hearing on July 27, 2020, at which time neither T.T. nor R.M. appeared. The trial court entered a decree with an initial plan of reunification. Mother was ordered, among other things, to participate in supervised visits and homebased case work, engage in therapy, and submit to random drug screens. The plan was subsequently amended, however, on August 16, 2021 to include adoption because Mother failed to comply with various directives set forth in the dispositional decree.
- [7] Thereafter, on August 24, 2021, Mother went to Centerstone, where she admitted to using methamphetamine and heroin on a daily basis beginning sometime in 2019 until July 2020. Mother told counselor Sherri Marcum that she had used lortabs and oxycontin intermittently between 2014 and 2018. As a result of that visit, Marcum diagnosed Mother with “opioid and amphetamine-type use disorder.” *Transcript Vol. 2* at 156. Marcum also determined that Mother suffered from depressive and anxiety disorders and recommended that Mother participate in individual and group therapy and other recommended DCS services. Mother attended only four out of ten therapy sessions.
- [8] On September 7, 2021, DCS filed verified petitions for the involuntary termination of the parent-child relationship with respect to Mother, R.M., and

T.T. During the factfinding hearing that commenced on December 3, 2021,² it was established that Mother had been living with her fiancé, N.K. Mother knew that N.K. had prior convictions for domestic battery and was a fentanyl user. N.K. had also been a party to CHINS proceedings that involved his own children, and N.K. ultimately signed consents for their adoptions. Mother claimed that N.K. was financially supporting her, as she had been unemployed since November 2021.

[9] DCS also presented evidence that when Mother and Children were living with R.M., possession and use of illegal substances in front of Children was commonplace. When Mother and R.M. separated, Mother took Children to a cousin's home to stay, and she knew that the cousin had previously molested S.T.

[10] Throughout the pendency of the case, Mother appeared for approximately 80% of the scheduled supervised visits with Children. Regarding missed visits, Mother claimed that most were due to illness and the symptoms she experienced were "consistent with the side effects of fentanyl use." *Transcript Vol. 3* at 22. At times, Mother required assistance with Children's emotional outbursts and other behavioral issues during the supervised visits. Mother's

² R.M. did not appear at the termination hearing and is not a party to this appeal. T.T., also not a party to this appeal, appeared at the factfinding hearing and was represented by counsel. At some point during the hearing, T.T. consented to S.T.'s adoption. The trial court then excused him from the hearing. Given these circumstances, we confine our discussion of the facts and evidence as they relate to Mother.

cancellation of the scheduled visits or her failure to appear for the visits aggravated Children's emotional and behavioral issues.

[11] DCS family case manager (FCM) Rachel Eckstein testified that although Mother completed court-ordered assessments, she failed to follow the caseworkers' recommendations, including inpatient drug treatment. And even though Mother tested positive for methamphetamine and fentanyl use on many occasions throughout the pendency of the CHINS and termination proceedings, Mother initially testified at the termination hearing that she had never used fentanyl. Later in her testimony, however, Mother admitted that her fentanyl use had caused the removal of G.M. from her care.

[12] Mother also counseled with Kirstie Garrison at Centerstone in September 2021. Garrison screened Mother for drug use at that appointment and again on November 22, 2021. Mother tested positive for Suboxone on both occasions and positive for fentanyl at the November 22 appointment. Garrison recommended that Mother continue with therapy because Mother's mental health "significantly impacts her thought process and decision-making." *Transcript Vol. 2* at 188. Although Garrison was of the belief that inpatient drug treatment would benefit Mother, she was not sure whether Mother would be a candidate for such treatment because Mother continued to deny that she had ever used drugs.

[13] Mother began homebased casework and therapy with another treatment facility in December 2021. Mother's counselor, Sophie Frazier, testified that Mother

refused to submit to random drug screens and Mother told her that there was no need for inpatient drug treatment.

[14] Children received mental health treatment at several facilities for the trauma they experienced while in Mother's care. The mental health centers focused on anger management in light of Children's behavioral and angry outbursts. The evidence showed that S.T. is autistic and undergoes therapy for separation anxiety and post-traumatic stress syndrome. Dr. Lia Kettenis, a child psychologist, testified that S.T. requires a care provider who places safety as a "huge priority," can provide stability, and can be emotionally available to help S.T. process her emotions. *Id.* at 174. A therapist with Jordan Family services testified that it is in S.T.'s best interest to have permanency so she will not have to worry about any future removals from Mother's care.

[15] The evidence also established that G.M. requires a regular routine or he will continue to have uncontrollable outbursts of anger. One of the therapists testified that G.M. continues to have impulse control issues. While G.M. has made some progress, his counselor opined that therapy will be a "long-term" need. *Id.* at 214. Mother did not know what services Children were receiving and she was unaware of their mental health diagnoses.

[16] Dr. Kettenis expressed concern that Mother has not made decisions to keep S.T. safe because S.T. has been harmed on many occasions while in Mother's care. Dr. Kettenis specifically testified about the time that Mother moved in

with the cousin who had sexually abused S.T., as well as Mother's current decision to live with N.T., who has a history of domestic violence.

- [17] FCM Eckstein testified that it is in Children's best interest to terminate Mother's parental rights with a permanent plan of adoption because Mother has failed to show that she could protect S.T. from trauma and future sexual abuse. FCM Eckstein acknowledged that Mother did not have a suitable home or stable source of income, and that Mother did not accept responsibility for her challenges. FCM Eckstein was also of the belief that Mother was still using fentanyl.
- [18] Melissa Kelley—Children's CASA—visited with Children at least monthly and agreed that termination of parental rights was in Children's best interests and that adoption should be the plan. Kelley noted the length of time that the case had been ongoing, Mother's continued denials of illegal drug use, and Children's special needs that were beyond Mother's ability to manage, as the bases for her opinion.
- [19] Following the hearing, the trial court entered findings of fact and conclusions and determined that termination of parental rights is in Children's best interests because they need "stability and permanency in their lives." *Appellant's Appendix Vol. III* at 50. The trial court observed that Mother has failed to accomplish the necessary steps to have Children returned to her care since the entry of the dispositional decrees in 2020.

[20] The trial court further concluded that DCS presented clear and convincing evidence that there is a reasonable probability that the conditions which resulted in Children’s removal and continued placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to Children’s wellbeing. Further, it determined that adoption is a satisfactory plan for the care and treatment of Children.

[21] Mother now appeals.

Discussion and Decision

I. Standard of Review

[22] The Fourteenth Amendment to the United States Constitution protects a parent’s right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests[,]’” parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, the parent-child relationship may be terminated when a parent is unable or unwilling to meet their parental obligations. *Id.* We are cognizant that involuntary termination of parental rights is the most severe sanction a court can impose because it severs all rights of a parent to his or her

child. *Matter of D.G.*, 702 N.E.2d 777, 780-81 (Ind. Ct. App. 1998). Therefore, termination is considered a last resort, “available only when all other reasonable efforts have failed.” *Id.* at 781.

[23] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re G.F.*, 135 N.E.3d 654, 660 (Ind. Ct. App. 2019). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re G.F.*, 135 N.E.3d at 660.

[24] Relevant here is Ind. Code § 31-35-2-4(b)(2), which provides that before terminating a parent’s rights to his or her child, DCS must 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. . . .

DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). If the juvenile court finds that the allegations in the termination petition are true, it “shall” terminate the parent-child relationship and enter findings supporting its conclusions. I.C. § 31-35-2-8.

II. Mother’s Contentions

A. Conditions Not Remedied

[25] Mother challenges the trial court’s determination that there is a reasonable probability that she would not remedy the reasons for Children’s removal. Mother maintains that the termination order cannot stand because the evidence demonstrated that she had made “significant improvement” in her parenting ability since Children’s removal, completed a parenting assessment and substance abuse evaluation as ordered, and “made continued efforts to address her drug abuse. . . .” *Appellant’s Brief* at 11.

[26] We initially observe that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, and “the trial court need only find one of the two elements by clear and convincing evidence”—either that (1) there is a reasonable probability that the

conditions that resulted in the Children’s removal or the reasons for placement outside the home of Mother will not be remedied or (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Children. *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 n.4 (Ind. 2015). Here, the trial court concluded that DCS presented sufficient evidence under both prongs. Because Mother challenges only one of these, i.e., that the conditions resulting in removal would not be remedied, she effectively concedes that the trial court properly determined that continuing the parental relationship posed a threat to Children’s well-being. Thus, we must conclude that DCS established by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to Children’s well-being, and we need not reach the alternate ground. *See In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (holding that when a parent “does not specifically challenge the trial court’s findings or conclusions,” the parent waives argument “by failing to make a cogent argument”), *trans. denied*.

[27] Although Mother has waived the issue, we will address her arguments. In determining whether there is a reasonable probability that the conditions that led to Children’s removal will not be remedied, we engage in a two-step analysis. First, we identify the conditions that led to Children’s removal or continued placement outside the home, and second, whether there is a reasonable probability that those conditions will not be remedied. *In re the Involuntary Termination of the Parent-Child Relationship of K.E.*, 39 N.E.3d 641,

647 (Ind. 2015). Under the second part of the inquiry, the trial court balances any parental improvements against parental “habitual patterns of conduct” to determine “whether there is a substantial probability of future neglect or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (citations omitted).

[28] When evaluating a parent’s fitness, the trial court may properly consider, among other things, a parent’s substance 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 trial court may also consider the services offered by DCS and the parent’s response to those services. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In balancing current circumstances and historical patterns of conduct, the trial court can disregard recent efforts. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). Moreover, we have held that a pattern of unwillingness to deal with parenting problems and to cooperate with counselors and those providing services, in conjunction with unchanged and unacceptable home conditions, supports a finding that there is no reasonable probability the unacceptable conditions in the home will be remedied. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). DCS need not rule out all possibilities of change; rather, it must establish that there is a reasonable probability that the parent’s behavior will not change. *In re B.J.*, 879 N.E.2d 7, 18-19 (Ind. Ct. App. 2008), *trans. denied*. Also, the trial court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social

growth is permanently impaired before terminating the parent-child relationship.” *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009).

[29] In this case, the trial court originally ordered Children’s removal from Mother’s care because of her drug use and exposure of Children to other drug users, the neglect of Children’s education, and her failure to protect S.T. from sexual abuse. Other issues arose as the case progressed.

[30] For instance, at the time of the termination hearing, Mother was living with N.K. who had a history of domestic violence and drug abuse. N.K. was previously involved in CHINS proceedings as to his own children, and he eventually consented to their adoption in light of his refusal to address his domestic violence issues, his failure to participate in DCS services, and his continued drug use. This circumstance added concern that Children would be exposed to domestic violence and other criminal activity if Children were returned to Mother while she was living with N.K.

[31] During the supervised visits, Mother was unable to manage Children’s emotional behaviors, and she remained unaware of Children’s behavioral and mental health needs. Mother never attended the inpatient detoxification and treatment program that DCS initially recommended in May 2021. The evidence also showed that, at the time of the termination hearing, Mother lacked stable income and acceptable housing to provide for Children.

[32] Although Mother urges that the termination order must be set aside because she “made continued efforts to address her drug abuse and made significant

improvements since [Children's] removal, *appellant's brief* at 11, it is not enough to only engage in services, as the parent must show improvement. *See In re J.T.*, 742 N.E.2d 509, 512-13 (Ind. Ct. App. 2001), *trans. denied*. Indeed, this court may consider a parent's response, or lack thereof, to the services that are offered. *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. As Mother continued to test positive for fentanyl use until she stopped screening in November 2021, it was reasonable for the trial court to infer that Mother continued to use drugs and was unlikely to remedy her addiction.

[33] The evidence further established that Mother was either unable or unwilling to provide Children with a safe and suitable home free from neglect and abuse. Mother continued to live in homes where Children were at risk for further abuse and trauma. Mother could not understand Children's emotional, behavioral, and mental health needs, and Mother never demonstrated an ability to keep S.T. safe from sexual abuse. After the sexual abuse accusations had surfaced—but before Children's removal in the CHINS case—Mother failed to protect S.T. from further sexual abuse and G.M. from the trauma of living at the residence.

[34] In light of the evidence presented at the termination hearing, there is ample support for the trial court's conclusion that DCS proved by clear and convincing evidence that there is a reasonable probability that the conditions that led to Children's removal will not be remedied. Thus, Mother's claim fails.

B. Best Interests of Children

- [35] Mother next claims that the termination order must be set aside because the evidence does not support the trial court's conclusion that termination of the parent-child relationship is in Children's best interests. When deciding whether termination of parental rights is in a child's best interests, the trial court must look beyond the factors identified by DCS and consider the totality of the evidence. *Z.B. v. Indiana Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, interests of the parents must be subordinated to those of the children involved. *Id.* Recommendations by case managers, the CASA, and/or service providers 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 child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 Ind. Ct. App. 2013), *trans. denied*.
- [36] In this case, DCS caseworkers, counselors, and the CASA all recommended termination of the parent-child relationship and adoption for Children. FCM Eckstein testified that there were multiple attempts with Mother to address S.T.'s sexual abuse but, because Mother failed to follow the safety plans that were implemented, additional incidents of abuse occurred. While Mother participated in some of DCS's offered services, she never completed the recommendations or fully engaged in counseling. FCM Eckstein was also of the belief that Mother was still using fentanyl. Accordingly, FCM Eckstein

opined that termination of Mother’s parental rights was in Children’s best interests.

[37] CASA Kelley testified that termination of parental rights was in Children’s best interests because of the “length of the case and [Mother’s] multiple positive drug screens for fentanyl.” *Exhibit 1* at 20. DCS also presented evidence that Children’s current foster parents provided nurturing homes and stable environments for them. Both sets of foster parents planned to adopt Children.

[38] These recommendations, along with the evidence demonstrating Mother’s lack of progress, her inability or unwillingness to keep Children safe from further abuse, her continued drug use, lack of employment, her inability to provide adequate housing for Children, and her unwillingness to regularly participate in drug screens and court-ordered family services, more than adequately support the trial court’s conclusion that termination of Mother’s parental rights are in Children’s best interests. *See A.D.S.*, 987 N.E.2d at 1158-59.

[39] For all these reasons, we conclude that the juvenile court did not err in terminating Mother’s parental rights.

[40] Judgment affirmed.

Vaidik, J. and Crone, J., concur.