

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
K.P. (Minor Child)
and
K.P. (Mother),
Appellant-Respondent,
v.

Indiana Department of Child
Services,
Appellee-Petitioner.

October 5, 2022
Court of Appeals Case No.
22A-JT-997
Appeal from the Hendricks
Superior Court
The Honorable Mark A. Jones,
Judge Pro Tempore
Trial Court Cause No.
32D03-2110-JT-22

Mathias, Judge.

[1] The Hendricks Superior Court terminated K.P.’s (“Mother”) parental rights to Ki.P., her minor child (“Child”). Mother appeals and argues that the trial court’s order terminating her parental rights is not supported by clear and convincing evidence.

[2] We affirm.

Facts and Procedural History

[3] Mother gave birth to Child in September 2017.¹ Child was removed from Mother’s care in June 2020, when child was almost three years old, because Mother was abusing illegal substances, she lacked stable housing, and she was involved in domestic violence in the presence of Child. On June 8, 2020, Mother was charged with Level 6 felony domestic battery and Class A misdemeanor domestic battery.² In addition, when Child was removed, Mother denied using any substances except THC, yet she tested positive for benzodiazepines, THC, and cocaine. Child was placed with her maternal grandmother for several months but was later moved to a kinship placement.

[4] On September 16, 2020, Child was adjudicated a Child In Need of Services (“CHINS”). On that date, Mother agreed to complete a parenting assessment and a psychological evaluation. One month later, the trial court issued its dispositional decree and ordered Mother to cooperate and communicate with

¹ Father’s whereabouts are unknown, and he did not participate in these proceedings.

² Mother’s criminal charges were resolved by a pretrial diversion agreement and the charges were dismissed.

her service providers and the Court Appointed Special Advocate (“CASA”). The trial court also ordered Mother to complete services, including a substance abuse assessment and treatment, a domestic violence assessment, and participate in supervised visitation with Child.

- [5] For the first several months of the CHINS proceedings, Mother cooperated and communicated with her service providers and consistently participated in visitation with Child. Many of Mother’s visits with Child were positive but other visits caused emotional damage to Child. Some visits were canceled because Mother appeared to be under the influence. Mother’s visitation never progressed beyond supervised, and the court also required a period of therapeutically supervised visitation.
- [6] Mother completed the domestic violence assessment and recommended course work. However, during these proceedings, Mother continued her relationship that involved domestic violence. During visitations, Mother was often on her telephone with her girlfriend Hanna and would argue with Hanna in front of Child. Mother also Facetimed with Hanna during a visit even though Hanna was not allowed to be present during visitation. In August 2021, Mother was injured and hospitalized as a result of domestic violence between herself and Hanna.
- [7] Mother completed a substance abuse assessment but declined to follow the treatment recommendation of in-patient therapy. Mother participated in outpatient therapy and completed the first stage of the program, but failed to

complete the latter stage, Lasting Recovery. She also refused to participate in drug screens as requested by DCS. Mother continued to use marijuana throughout these proceedings. Mother's many years of substance abuse is well-documented, and she has not shown that she can maintain sobriety for any significant period of time.

[8] Mother has two older children who are also no longer in her care. She has been employed at various restaurants but also had periods of unemployment. Mother had stable housing for approximately one year during these proceedings, but her landlord decided to sell the house. Mother lived with her cousin while looking for new housing. She also moved back in with Hanna for a period of time.

[9] On October 22, 2021, DCS filed a petition to terminate Mother's parental rights. Fact-finding hearings were held on March 3 and 11, 2022. On April 4, 2022, the trial court issued its order terminating Mother's parental rights to Child. The following findings are pertinent to the issues presented in this appeal:

20. Mother demonstrated a lack of commitment to remedy the conditions and she is responsible for her failure to engage and/or successfully complete the court-ordered services. Mother did not participate in any parenting education and failed to consistently and adequately engage with DCS and the referred service providers, sometimes failing to appear for appointments, including some of the Child's medical appointments, supervised visitations and Child and Family Team Meetings ("CFTMs"). Though there was confusion by DCS as to the Court's order for continued, therapeutically supervised visitation in the month

leading up to the trial, Mother had previously failed to attend numerous visits, including in December of 2021 and January of 2022. The longer period of time over which the visits did not occur, the less aggression placements experienced with the Child. Mother was never taken off fully supervised visits due to her lack of consistently clean drug screens.

21. There was a history of visits not occurring as scheduled, and Mother was frequently on her phone during visits, even though that was not allowed under the visitation rules. Sometimes the Child would be playing by herself during a visit because Mother wasn't paying attention to her. There were also times on the way to the visits that the Child did not want to see Mother; she sometimes had stomach aches in the mornings when a visit was planned, and there were a lot of behaviors after parenting time, including defiance and anger. Child's therapist consequently set up a process to help the Child process her anger and other emotions by meeting afterward. The therapist also advised Placement not to tell the child in advance when visits were scheduled in order to reduce both the stress in anticipation and the disappointment afterward if the visit didn't occur. The visitation supervisor does not see a bond from the Child's perspective.

22. Mother had a hard time separating her parenting time from her adult activities, especially in regards to Hanna, Mother's paramour and the victim of the domestic violence in the case giving rise to the CHINS case, and the alleged perpetrator of the domestic violence in the second domestic violence case. When Hanna would call Mother or come by the house during visits, Mother would answer the phone calls and engage in a conversation – sometimes an argument, or go out to the car and talk with and argue with Hanna, in front of the Child. On one such occasion, Mother "FaceTimed" with Hanna though Hanna was not supposed to be at the visits. The August 3rd and 5th, 2021, visits were canceled because Mother had been injured in another

physical altercation with Hanna, with whom she was again living; the injuries were the result of Hanna bashing Mother's head against a refrigerator.

23. When therapeutically supervised visits were first referred, they were unsuccessfully discharged due to Mother's lack of compliance. It appeared that Mother was having withdrawals at certain times during visits during that first referral. The last visit under the first referral was ended early as Mother got sick and it appeared that she was "coming off of something". Mother didn't tell the visitation supervisor that she wasn't coming to the visits after that, but she didn't show and didn't respond to calls or texts, so that is when she was unsuccessfully discharged from the first referral.

24. Mother has decades of addiction to various controlled substances, including Xanax and heroin. Though she has indicated on numerous occasions an interest to get sober or "clean", it has usually been because of a court order.

25. In her 2017 case, [] Mother pled guilty to Count 1, Possession of a Narcotic Drug, a level 6 felony, on May 15, 2017, pursuant to a Plea Agreement. Probation terms included "Substance abuse evaluation and treatment, abide by curfew, and no alcohol . . .", and allowed her to "petition for Alternative Misdemeanor Sentencing after serving the full duration of probation and completing all terms without any violations . . .".

26. On May 16, 2018, Mother filed her Petition To Have Sentence Reduced To An Alternative A Misdemeanor in which she stated she had successfully completed her probation and the probation officer stated that she had no objection "as the Defendant has successfully completed 327 days of probation." The Court granted the Petition and amended the judgment to a class A misdemeanor on May 18, 2018. Presumably, then,

Mother successfully completed substance abuse evaluation and treatment under that case, a little over two years prior to the Child's removal from her care in the underlying CHINS.

27. It is highly probable that these conditions will not be remedied, even if Mother were given additional time to remedy the conditions. The Child's CHINS case has been open 21 months. Mother's housing and employment remain unstable, and she did not consistently engage with the services that could have helped her with housing, parenting skills, substance abuse and mental health. Though early on she successfully completed home-based case management and domestic violence classes – the latter to satisfy the requirements of her diversion [], she was again involved in domestic violence with the same individual in August of 2021 when they were again living together. Moreover, though there is a no-contact order currently in place [], they have remained in communications as recently as two weeks prior to trial.

28. Mother has previously voluntarily surrendered her parental rights in regards to her son, who is still in therapy four times a week due to Mother's use of cocaine while she was pregnant with him. Mother gave custody of the Child's sister to Maternal Grandmother previously "to get Ohio DCS out of the way"; that sister is now in the custody of another person in Ohio, and Mother says she is in the midst of a custody case regarding that sister.

29. Maternal Grandmother was placement for [Child] from the date of removal in June 2020 to March 2021, when the Child was placed with current foster parents. Maternal Grandmother has seen no improvement in Mother since DCS' involvement in June of 2020.

30. Mother appears unable to understand what is in the best interests of the Child and therefore unable to put the interests of the Child first. Mother had issues with supervised visits, sometimes giving reasons for missing them and other times not. When one supervisor of a visit told Mother that she couldn't lie in bed with Child during the visit, Mother refused to work with that supervisor. More recently, at the visit that occurred on 2/8/22, Mother overwhelmed the Child with thirty-four presents; though Child knows that Mother is her Mother, Child looks at her more as a playmate than a mother figure.

31. Mother did not want the Child to attend any therapy, and Mother did not attend any Zoom meetings with the Child's therapist or reach out to the therapist after the scheduled meetings. Because she was opposed to the therapy, the therapist did not do any joint sessions with Mother and the Child. Continuing therapy for the Child is still recommended but there is no indication that Mother sees any value in joint therapy.

* * *

35. A recurring problem was that Mother would tell the Child that she (the Child) would be coming home soon, even though there was no such plan. When CASA asked Mother not to tell the Child that because it would confuse her, Mother stated that she would tell the Child whatever she wanted to. Though CASA saw periods where Mother made progress, it never continued as Mother never followed through. CASA has seen continuing improvement in Child the longer she is with Placements, and in her words, the Child is "thriving".

Appellant's App. pp. 178-82. The trial court also issued conclusions of law concerning each statutory factor enumerated in [Indiana Code section 31-35-2-4\(b\)](#).

- [10] Mother now appeals the trial court's order terminating her parental rights to Child.

Standard of Review

- [11] 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.*
- [12] 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, we will accept unchallenged factual findings as true. See *In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Challenged Findings

- [13] First, we address Mother's argument that two of the trial court's findings are not supported by the evidence. Mother challenges findings numbers 20 and 27.
- [14] Finding number 20 discusses Mother's missed visitation with Child, and Mother challenges the following statement: "Mother had previously failed to attend numerous visits, including in December 2021 and January 2022." Appellant's App. P. 178. Mother does not dispute that she missed visitations with Child but observes that during the two months specifically referred to in the finding she missed visits because she had COVID and the child's therapist had COVID. We agree that Mother cannot be faulted for missing these visits if she had COVID, but the trial court also found that Mother's testimony was not credible. Appellant's App. P. 183. Mother's testimony was the only evidence that she had COVID.
- [15] The therapeutic visit supervisor testified that Mother stopped attending visitations in the second week of December. Tr. Vol. 2, pp. 158-59. Mother did not communicate with the supervisor to let her know that she would not attend the visit or her reason for missing the visit. *Id.* The visit supervisor testified that visits resumed on February 1. *Id.* at 160. This evidence supports the challenged finding of fact.
- [16] Mother also challenges the following statement of fact in finding number 27: "Mother's housing and employment remain unstable, and she did not consistently engage with the services that could have helped her with housing,

parenting skills, substance abuse and mental health.” *Id.* at 180. This finding is supported by testimony from the family case manager, maternal grandmother, and CASA. Mother lived in at least four separate homes throughout these proceedings. Tr. Vol. 2, p. 241. Maternal grandmother testified that Mother’s housing situation was “probably the worst” that Mother has had throughout her life. *Id.* at 194. The CASA also testified that Mother has not consistently lived “anywhere for a long period of time. Her housing has been inconsistent.” *Id.* at 241. Maternal grandmother and the CASA testified that Mother’s employment has been erratic and she has been unemployed at various times. *Id.* at 194, 241. Mother worked at several different restaurants but never provided pay stubs to DCS. Finally, Mother refused to comply with requests for drug screens, refused to complete in-patient therapy, did not complete intensive outpatient treatment, and would not allow DCS to make unannounced home visits. This evidence supports the challenged finding of fact. To the extent Mother relies on her own testimony to support her argument, we reiterate that the trial court found that Mother’s testimony was not credible. *See* Appellant’s App. p. 183.

Clear and Convincing Evidence Supports the Trial Court’s Termination Order

- [17] 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).* Only two of those elements are at issue in this

case: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside Mother's home will not be remedied, and 2) whether termination of Mother's parental rights was in the child's best interests.³ I.C. § 31-35-2-4(b)(2)(B)(i) & (C).

- [18] 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).
- [19] First, we address Mother's argument that DCS failed to prove that there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the juvenile court judges a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent

³ DCS must only prove one of the elements listed in Indiana Code subsection 31-35-2-4(b)(2)(B). For this reason, we do not address Mother's separate argument under the "threat" prong enumerated in subsection 31-35-2-4(b)(2)(B)(ii).

improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the juvenile court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

- [20] Child was removed from Mother's care due to domestic violence in the home, Mother's substance abuse issues, and her lack of safe and stable housing. Mother argues that she has made consistent progress in her ability to parent and remedy these conditions throughout this case. In support of her argument, she asserts that she completed numerous assessments and programs, including domestic violence classes, she no longer has contact with her ex-girlfriend Hanna, and she has housing and is employed.
- [21] Mother completed domestic violence classes but demonstrated that she did not benefit from that program. After completing the program, she continued her relationship with Hanna. In August 2021, Hanna slammed Mother's head into a refrigerator. Mother was injured and required hospitalization. Mother also would speak to Hanna on the phone during visitations with Child and argued with Hanna in Child's presence. And on occasion, Mother FaceTimed with Hanna during a visit even though Hanna was not permitted to attend visitations. Maternal grandmother also testified that she had seen communication between Mother and Hanna on Facebook just weeks before the termination fact-finding hearing. Tr. Vol. 2, p. 199.

- [22] Mother also continued to use marijuana and refused to participate in drug screens. She did not attend the recommended substance abuse treatment. Mother completed the first part of an intensive outpatient program but did not complete the Lasting Recovery portion of that program. In August 2021, the visit facilitator observed that Mother appeared to be under the influence. The facilitator asked Mother to drug screen, but she refused. Ex. Vol., p. 184. The therapeutic visit supervisor also believed that Mother was exhibiting symptoms of withdrawal during one of her last visits with Child. *Id.* at 157. Because Mother consistently refused to drug screen and did not complete substance abuse treatment, her visitation with Child never progressed beyond supervised visitation.
- [23] Throughout these proceedings, Mother lived in various residences and resided with her girlfriend Hanna for at least a few months. She was threatened with eviction near the date of the fact-finding hearings. Mother also was employed at several different restaurants but had periods of unemployment. Mother seemed to continually find housing and employment, but neither was stable.
- [24] DCS presented clear and convincing evidence that Mother did not benefit from the services provided, even those that she participated in and completed. For all of these reasons, we conclude that the trial court's determination that there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside Mother's home will not be remedied is supported by clear and convincing evidence.

[25] Therefore, we turn to Mother’s argument that termination of her parental rights was not in Child’s best interest. A court’s consideration of whether termination of parental rights is in a child’s best interests 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. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. 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.

[26] Mother claims that she and Child have a strong bond and it is not in Child’s best interest to sever that bond. There is evidence to support Mother’s claim that she and Child share a strong bond. *See* Tr. Vol. 2, pp. 149, 227. But Child’s therapist testified that Child struggles with processing her emotions and needed “more trauma-focused therapy” because “she’s been through a lot of trauma.” *Id.* at 100. And the source of the trauma was Child’s lack of a stable home and not “having that bond and attachment.” *Id.* Also, the therapeutic visit supervisor expressed her opinion that Child does not share a bond with Mother. *Id.* at 167.

[27] Moreover, we observe that testimony from both the case manager and CASA combined with evidence that there is a reasonable probability that the reasons

for a child's removal will not likely be remedied has regularly been used to support a juvenile court's determination that termination is in a child's best interest. *See A.D.S. v. Ind. Dep't. of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*. DCS case managers and the CASA believed that termination of Mother's parental rights was in Child's best interests. Tr. Vol. 2, p. 246; Tr. Vol. 3, pp. 3, 17, 19.

- [28] For these reasons, we conclude that clear and convincing evidence supports the trial court's finding that termination of Mother's parental rights is in Child's best interests.⁴

Conclusion

- [29] Contrary to Mother's arguments on appeal, the challenged findings are supported by evidence and clear and convincing evidence supports the trial court's judgment terminating her parental rights. We therefore affirm the judgment of the trial court.

- [30] Affirmed.

Robb, J., and Vaidik, J., concur.

⁴ We are not persuaded that Mother was denied an opportunity to establish a current ability to provide adequate housing and stability because DCS stopped providing services in error shortly before the termination fact-finding hearings were held. The interruption in Mother's services was brief and she was not compliant with services before they were stopped.