

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of N.D., C.P., and Li.D. (Minor Children), and L.D. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

November 7, 2022

Court of Appeals Case No.
22A-JT-783

Appeal from the Vigo Circuit Court

The Honorable Daniel W. Kelly,
Magistrate

Trial Court Cause Nos.
84C01-2010-JT-1269
84C01-2010-JT-1270
84C01-2010-JT-1271

Brown, Judge.

- [1] L.D. (“Mother”) appeals the involuntary termination of her parental rights to her children, N.D., C.P., and Li.D. We affirm.

Facts and Procedural History

- [2] Mother’s children are: N.D., born in 2006, C.P., born in 2014, and Li.D., born in 2017.¹ On January 31, 2019, DCS filed a petition alleging N.D. was a child in need of services (“CHINS”). It asserted N.D. was the victim of educational neglect, had missed twenty-seven days of school and been tardy nine days, and was failing all of his classes except band. On April 16, 2019, the court entered an order adjudicating N.D. as a CHINS.
- [3] Meanwhile, on March 7, 2019, DCS filed a petition alleging C.P. and Li.D. were CHINS, that DCS received a report that Li.D. and C.P. were victims of physical abuse and neglect, and all three parents were using marijuana and methamphetamine. It alleged that in January 2019, the furnace and water in Mother’s home were not working and she was using a space heater as the sole source of heat. It further alleged Mother tested positive for methamphetamine in January and February 2019. On March 13, 2019, C.P. and Li.D. were removed from Mother’s care. An affidavit of Family Case Manager Racheal Cox filed on March 14, 2019, stated that Mother had no stable housing, was staying at different locations for days at a time, her home was in disarray with

¹ The termination orders set forth these birth dates, which are supported by Family Case Manager Crystal Butler’s testimony. While Mother testified to different birth years, she does not challenge the trial court’s findings regarding the birth years on appeal.

squalid conditions in the bathroom, a rabbit was running loose in the home, and Mother admitted that the home was not appropriate for the children. She also stated C.P.'s two upper teeth decayed to the point that it was initially believed he had lost those teeth. On April 29, 2019, the court adjudicated C.P. and Li.D. as CHINS.

- [4] On June 28, 2019, the court entered dispositional orders requiring Mother to keep appointments with service providers, maintain suitable, safe, and stable housing, secure a source of income, and refrain from using any illegal substances.
- [5] On July 19, 2019, N.D. was removed from Mother's care. That same day, Mother delivered a child, D.D., who died that day due to cardio-respiratory arrest, fetal infection, and fetal drug exposure of methamphetamine and amphetamines. In April 2021, the court suspended Mother's visitation due to the deleterious effects on C.P. and Li.D.
- [6] On October 26, 2020, DCS filed petitions for the involuntary termination of the parent-child relationship between Mother and N.D., C.P., and Li.D. On September 20, 2021, and January 10, 2022, the court held hearings. DCS presented the testimony of N.D., Jennifer Roach, a mental health counselor, Sara Logsdon, a case manager employed at the Hamilton Center, Mother, Family Case Manager Rachel Belfi ("FCM Belfi"), and Family Case Manager Crystal Butler ("FCM Butler").

[7] Mother agreed that she continuously used methamphetamine and amphetamine before going to Hickory Rehab on July 7, 2021. At the September 20th hearing, she testified that she was residing at Club Soda, a sober living facility, after being asked to leave the Oxford House. She acknowledged that she was unable to successfully complete Family Recovery Court. The court asked: “[S]o you do have seventy-five (75) days now? Do you know since this C.H.I.N.S. case was opened, have you had other periods of sobriety?” Transcript Volume II at 65. Mother stated: “Yes, but they were short” *Id.* When asked what her longest period of sobriety was prior to this current period while the case was open, she answered: “I’m not sure. I never kept track of it before.” *Id.* at 66. Mother asserted: “I guess I do have a history of relapse. But I’d never went to a program then, that showed me that, what to do when that, you know what I mean, to stop that before it happens, until now.” *Id.*

[8] FCM Butler testified that DCS learned that drug screens at Club Soda were “being . . . faked essentially,” that she explained to Mother at a hearing on November 8th that DCS could no longer accept drug screens from Club Soda and she would “need to screen through Cordant,” and that Mother had not screened through Cordant since that November discussion. *Id.* at 92. She stated that Mother said she did not have transportation and blamed her for not following up. She also asserted she “tried to explain to [Mother] that home-based casework and therapy could have taken her to those drug screens” and she “could have called [her] on drug screens days that she couldn’t get to, and

[she] would have came [sic] and screened her.” *Id.* at 93. When asked about her concerns with Mother, FCM Butler stated that Mother “has approximately been about six (6) months sober, which is amazing; however, our concern is that’s the longest period to the Department’s knowledge that she has been able to maintain her sobriety . . . and it is questionable whether or not she’ll be able to maintain that once she’s not in a . . . strict setting like Club Soda or some other health treatment center.” *Id.*

[9] The court asked FCM Butler: “[Y]ou have two (2) or three (3) times in your testimony expressed that you are very proud of [Mother], that you believe she’s maintained sobriety for six (6) months, so it sounds like you believe she has maintained sobriety from what you can tell?” *Id.* at 105-106. FCM Butler answered: “I believe . . . she was sober, and I would hope that she’s still sober until recently, but I had no drug screens to go off of that she’s actually sober or not.” *Id.* at 106. The court asked if anything occurred, besides the lack of drug screens, that caused her to believe that Mother was using. FCM Butler answered: “So since [November 8th] she has not met with her therapist, or she has not met with home-based casework, and . . . both have been closed out, and they have reached out to her many times.” *Id.* FCM Butler testified that Mother had been closed out of home-based casework since November “due to lack of compliance and meeting.” *Id.* at 108.

[10] After DCS rested, Mother presented her own testimony and that of the grandmother of H.R., one of Mother’s other children. After Mother rested, the court discussed the importance of drug screens and indicated that it would be

helpful to hear from the director of Club Soda with respect to the drug screens. Over an objection by DCS's counsel, the court heard testimony from the director and the women's coordinator at Club Soda and admitted thirty-one negative drug screen results for Mother from Club Soda dated August 25, 2021, to December 27, 2021.

[11] During the presentation of DCS's rebuttal evidence, FCM Butler testified that the screens at Club Soda did not alleviate Mother's obligation to continue to screen with Cordant and that she expressed that to Mother several times. The court also admitted a Client Compliance Report from Cordant that detailed the dates of the missed calls and the lack of received tests. FCM Butler explained that the screens conducted by Club Soda had a "much higher" threshold "because it is an instant screen, which means they could be using little amounts and not coming back positive because of the cutoff ratio." *Id.* at 192.

[12] On January 25, 2022, the court entered separate orders terminating Mother's parental rights with respect to N.D., C.P., and Li.D. In its order related to N.D., which was similar to the other orders, the court found that Mother was admitted into intensive services offered by the Vigo County Family Recovery Court but continued to be non-compliant with services and was closed out of drug screening by Redwood Toxicology in October 2019. It found Mother entered inpatient substance abuse but failed to complete it in 2020. The court found the children's dental needs had been seriously neglected prior to their removal and Mother's supervised visits were described as chaotic without Mother being able to apply appropriate discipline and control. It found:

19. In the summer of 2021, approximately nine (9) months after the present termination proceedings were filed and two and one-half years after DCS present involvement with Mother began, [Mother] entered and completed a 28-day inpatient substance abuse treatment program at Hickory, and then spent approximately ninety (90) days at Club Soda, a sober living environment in Terre Haute. DCS believes Mother did maintain sobriety for approximately six (6) months between the time she entered Hickory and the time she was graduated from Club Soda on December 31, 2021. However, DCS was concerned that while Mother was screening clean for Club Soda and that she may well have maintained sobriety while in that facility, she was not screening for Cordant as requested by DCS. The FCM also testified to having concerns about Mother's ability to maintain sobriety outside of a treatment facility or sober living environment, given her lengthy substance abuse history and lack of support[].

20. While residing in Club Soda in the fall of 2021, Mother filed a petition to reinstate visitation, pointing to her recent sobriety. While noting Mother's recent apparent success at maintaining sobriety during her inpatient stay and in her subsequent sober living environment, the court denied the request, following the hearing. Although the court acknowledged Mother's recent success with achieving sobriety in her structured environment, the court could not ignore the very compelling testimony of the children's therapist, Jennifer Roach, who had been counseling the children for years and had seen the changes in their behavior and emotional health during that time. She testified that [N.D.] had refused visits with [Mother] for a long time before the court officially suspended supervised visits with [C.P.] in April 2021. Ms. Roach said that [N.D.] had become very frustrated with the chaotic nature of the visits and of his Mother's long-term inability or refusal to deal with her substance abuse issue and parenting deficiencies.

Ms. Roach testified that until visits with Mother were suspended, [C.P.] had extreme anger and frequently destroyed toys in the foster home. He would not listen to redirection and was generally uncontrollable. With the suspension of Mother's supervised visits and the ongoing therapy, these behaviors have largely vanished. Ms. Roach fears risking the substantial progress that [C.P.] has made by subjecting him to visiting again with [Mother].

Until visits were suspended, [Li.D.] had similar anger control problems. She had daily anger outbursts which were much worse following visits. While still possessing a very strong personality, [Li.D.'s] behaviors too have largely normalized in the past nine (9) months.

* * * * *

21. The six months prior to the conclusion of the termination fact-finding hearing appeared to represent a significant positive step forward for [Mother] in that she achieved and maintained sobriety. The evidence indicated that she had abused substances she [sic] was thirteen (13) years old; therefore, this is [a] very big and important accomplishment. If (a) Mother's substance abuse had been the only barrier to reunification and (b) if the children's behavior did not indicate such extreme traumatization through visits with Mother, [Mother's] recently achieved sobriety might well have thwarted DCS's ability to make their case for termination of parental rights. Unfortunately, the court must consider all of the evidence and conclude both that (a) there is a reasonable probability that the conditions which resulted in the removal of the child from his parents will not be remedied or that the reasons for placement outside of the home of the parents will not be remedied *and* that the continuation of the parent-child relationship poses a threat to the well-being of the child.

By waiting until DCS had been involved in this third and latest CHINS case for two and a half years before completing rehab, the court did not have an opportunity to see whether Mother

would be able to maintain sobriety outside of the rehab facility and sober living environment. And even if she had, sobriety was really the first prerequisite to be able to address the other areas that had jeopardized the children's well-being: inadequate parenting skills, unstable employment and housing and coping skills that would allow her to resolve these challenges and care for her several, traumatized and behaviorally challenging children. As of this date, the court does not know when [Mother] would be able to accomplish these necessary objectives so that reunification might occur. The children appear to be doing better than they ever have before – academically, behaviorally, socially, medically and by every other measurable means imaginable. The evidence indicates that these children, whose prospects at a normal life appeared bleak just a year ago, are well on their way to leading normal, stable and happy lives.

g. Termination is in the best interests of the minor child as testified to by the Family Case Manager, foster parent, therapist and CASA. [N.D.] offered poignant testimony about the contrast between the lives he and his siblings lived before removal over a period of many years and at present. All three children are doing well and appear to be poised to lead normal lives in their current home. In order to return the children to [Mother], she would have to maintain sobriety for at least a year, show a pattern of stability with housing and employment, and learn parenting skills that she was not able to demonstrate during this and prior DCS involvement. In addition, the children would have to be monitored to determine whether the reintroduction to [Mother] would further traumatize them as her last visits in early 2021 clearly did. The current foster parents want to adopt all three children and continue to provide them the stability and security they enjoy today.

Appellant's Appendix Volume II at 39-42.

Discussion

[13] The issue is whether the trial court erred in terminating Mother's parental rights. Mother states that DCS presented no evidence disproving her six-month sobriety. She argues the trial court's determination that termination was in the children's best interests is clearly erroneous. She points to the trial court's following statement: "In order to return the children to [Mother], she would have to maintain sobriety for at least a year, show a pattern of stability with housing and employment, and learn parenting skills that she was not able to demonstrate during this and prior DCS involvement." Appellant's Appendix Volume II at 52. She asserts the court "placed the burden on [her] to overcome a presumption that termination was in the best interest the [sic] children and the only way to overcome that burden was to continue her successes for another six months past the final day of the termination hearing." Appellant's Brief at 13.

[14] 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).

[15] 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.

[16] 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 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.*

- [17] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 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*.

[18] The record reveals that, while Mother testified that she had been sober since July 7, 2021, she also acknowledged there had been a pattern of her relapsing during the course of the case. N.D., who was fifteen years old, requested that the court terminate Mother's parental rights and testified that "we've been doing this for awhile now, I mean, since I was like nine (9)" and that Mother had been "in and out of . . . rehabilitations" and had not "really . . . changed at all." Transcript Volume II at 8. FCM Butler testified that the instant screens at Club Soda did not alleviate Mother's obligation to continue to screen with Cordant and that she expressed that to Mother several times.

[19] Logsdon, the case manager who provided home-based casework services and supervised visitation services, testified that Mother would interact with the children and "there were concerns . . . with some of those interactions . . . as far as appropriate conversations, . . . the use of appropriate discipline," and "struggling to manage behaviors." *Id.* at 29. She testified that the visits were stopped in February 2021 because "the judge ruled just based on the concerns that were reported . . . and the concerns for the impact that the visits were having on specifically [C.P.] and [Li.D.]." *Id.* at 30. When asked if Mother had a problem with following through "with regard to her willingness to do certain things," she answered affirmatively. *Id.* at 31. She also indicated that she had continued concerns regarding Mother being able to utilize services on her own. She also testified that Mother had not been able to maintain employment for any long period of time.

[20] FCM Butler testified that the children had not been placed back in Mother's care since their removal due to Mother's lack of stability with housing and her issues with sobriety. She stated that, throughout the case, she discussed with Mother her inability to admit her problem and maintain sobriety and stable housing and that Mother denied drug use and asserted that her house was not dirty when the children were removed. She stated that it was "questionable whether or not she'll be able to maintain [sobriety] once she's not in a . . . strict setting like Club Soda or some other health treatment center." *Id.* at 93. She expressed concerns including Mother's parenting abilities, incomplete parenting classes, judgment skills, and stability regarding employment and housing. When asked if the problems that led to the children's removal were likely to be remedied, FCM Butler answered: "[DCS] doesn't believe so, no. [W]e are extremely proud of [Mother's] persistency and ability to get clean at this time, but we still have concerns of her ability to maintain that sobriety, as well [as] keep stable housing and be one hundred percent (100%) there for the children." *Id.* at 94. When asked if Mother's lack of follow through with services concerned her, she answered: "It does, because previously [Mother] throughout the case would work with us for two (2) or three (3) months and then essentially I guess, fall off, end up using again, and then go back to not visiting, not doing home-based casework and not doing therapy." *Id.* at 109. She indicated that the closing out of services for home-based casework and therapy and Mother's failure to provide drug screens to DCS in the previous several months was a recurring issue. 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 the children's removal and the reasons for placement outside Mother's care will not be remedied.

[21] To the extent Mother challenges the trial court's finding that termination of the parent-child relationship is in the best interests of the children, we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *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 child'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*. Roach, the mental health counselor, testified that the children had gained stability in the previous two and one-half years and that it would be in their best interests to maintain that stability. When asked if DCS believed termination was in the best interests of the children, FCM Butler answered affirmatively. Based on the totality of

the evidence, we conclude the trial court's determination that termination is in the children's best interests is supported by clear and convincing evidence.²

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

[23] Affirmed.

Altice, J., and Tavitas, J., concur.

² To the extent Mother cites *In re K.E.*, 39 N.E.3d 641 (Ind. 2015), we find that case distinguishable. There, the father "made extensive efforts to better himself by learning parenting skills, addressing his problems with substance abuse, and establishing a bond with both of his children." 39 N.E.3d at 643-644. The Court observed "there is seemingly nothing else that Father could have been doing to demonstrate his dedication to obtaining reunification." *Id.* at 649. Unlike in *K.E.*, the record reveals concerns with Mother's visitation, visitation was stopped in February 2021 due to the impact the visits were having on the children, and Mother did not follow through with the provided services.