

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of L.G. (Minor Child);

C.R. (Mother) and D.G.
(Father),

Appellants-Respondents,

v.

September 21, 2022

Court of Appeals Case No.
22A-JT-711

Appeal from the Huntington
Circuit Court

The Honorable Amy C. Richison,
Magistrate

Trial Court Cause No.
35D01-2107-JT-13

Indiana Department of Child
Services,
Appellee-Petitioner.

Tavitas, Judge.

Case Summary

- [1] C.R. (“Mother”) and D.G. (“Father”) (collectively “Parents”) appeal the termination of their parental rights with respect to L.G. (“Child”). Child was declared a child in need of services (“CHINS”) on the basis of Parents’ drug use and incarceration. The trial court ordered services with which Parents only sporadically complied, and the trial court terminated Parents’ parental rights to the Child. Because the trial court’s conclusions are not clearly erroneous, we affirm.

Issues

- [2] Parents raise a single issue: whether the trial court clearly erred in terminating their parental rights.

Facts

- [3] Child was born October 11, 2015. In March of 2019, the Department of Child Services (“DCS”) filed a CHINS petition alleging that Parents were arrested for neglect of a dependent and were abusing drugs. Police were called to the home after a report of someone overdosing on drugs and discovered drugs and

paraphernalia in the home. Mother and Father both admitted to consistent abuse of illegal drugs, including methamphetamine and opiates. Parents were both incarcerated at the time of the initial hearing. On May 24, 2019, Parents admitted that Child was a CHINS.

[4] That same day, the trial court held a dispositional hearing and ordered Parents to do the following: (1) maintain open communication with the family case manager (“FCM”); (2) enroll in any programs or services recommended by the FCM or any other service provider; (3) maintain housing suitable for the safe care of a child; (4) maintain a stable source of income; (5) not consume any illegal drugs; (6) obey the law; (7) complete a parenting assessment and comply with all resulting recommendations; (8) complete psychological evaluations; (9) submit to random drug screens; and (10) participate in supervised visitation.

[5] Parents, however, made little progress, were repeatedly incarcerated, and continued abusing illegal substances. DCS filed a petition to terminate their parental rights on June 21, 2021. At the time of the October 1, 2021 fact-finding hearing, Father was incarcerated after committing battery against Mother. A therapist from Bowen Center, who treated Mother beginning in 2019, testified that her primary concern for Mother was: “Just maintaining long-term sobriety and stability, you know, establishing that stable environment of recovery, not just for herself but for her child.” Tr. Vol. II p. 104. The therapist further testified that Mother’s compliance with services was sporadic, that Mother had made no efforts to secure stable housing, and that Mother appeared uninterested in securing a consistent and reliable mode of

transportation.¹ Mother's sporadic engagement with services was partly attributable to her being incarcerated.

- [6] A behavioral health service provider testified that Father's attendance with intensive outpatient treatment sessions was inconsistent—sometimes because Father was incarcerated—and that the primary focus of the sessions was Father's consistent substance abuse. She testified that Father would claim not to be using drugs in the therapy sessions, but his drug screens would be positive.
- [7] A skills coach testified to an incident during supervised visitation in which both Parents became confrontational and yelled at Child. The visit occurred at the library, and Parents were cautioned by the library staff for being too loud and disruptive. The skills coach had to terminate the visit and suspend visitation due to "physical intimidation." Tr. Vol. II p. 148. Finally, the skills coach testified that she would have significant concerns about Mother's ability to maintain a safe and suitable environment for Child due to use of illegal substances and an absence of stable housing and reliable transportation.
- [8] The FCM testified regarding multiple periods of time during which Mother completely stopped engaging with services, which culminated in the termination of services in November 2021. The FCM further testified that, from 2019 until the date of the hearing, Father only attended nine individual

¹ Throughout the proceedings, there were several hearings for which Mother did not appear or appeared via Zoom, apparently because she could not find transportation.

sessions with his therapist. During visitations, Father would be on his phone, rather than engaging with the Child. The majority of Parents' drug screens were positive, and Parents did not consistently submit to drug screens. According to the FCM, Parents' case had been in a "downward spiral since October of 2020." Tr. Vol. II p. 168.

[9] With respect to Child, the FCM testified that Child had been in foster care for thirty-eight months as of the date of the termination hearing and that Child is happy, talkative, and bonded with her foster parents. The FCM recommended that Parents' parental rights be terminated and opined that such termination was in the best interest of the Child. Finally, the FCM explained that the plan for Child is adoption by foster parents who have provided a safe and nurturing environment.

[10] On March 17, 2022, the trial court terminated the parental rights of both Mother and Father. The trial court made the following pertinent findings:

2. Parents are unwilling or unable to meet their parental responsibilities. Neither parent is fit to care for the child.

3. These deficiencies on the part of the Father and Mother, summarized as their continued substance abuse, incarcerations, failure to participate or benefit from reunification services, and ongoing inability to provide for the Child's basic needs, as demonstrated by the prior recitation of facts, both individually and cumulatively, found in this Order, all clearly and convincingly demonstrate that there is a reasonable probability that the conditions that resulted in the child's removal or reasons

for placement outside the home will not be remedied by Mother or Father.

4. These same deficiencies also demonstrate that the continuation of the parent-child relationship poses a threat to the well-being of the Child.

5. DCS's plan for Child is that she be adopted. This plan is satisfactory for the Child's care and treatment and an adoptive family has been identified.

* * * * *

8. Termination is in the best interests of the child.

Appellant's App. Vol. II p. 41. Parents now appeal.

Discussion and Decision

[11] Parents contend that the trial court clearly erred by terminating their parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dept. of Child Servs., Dearborn Cnty. Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*,

134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[12] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.² Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Parents’ parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

² Indiana Code Section 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

[13] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[14] Mother concedes that termination of her parental rights was in the Child’s best interest and that there was a satisfactory plan for the Child’s care and treatment. Father, however, argues that the trial court’s conclusion regarding a satisfactory

plan is clearly erroneous.³ Mother and Father both argue that the trial court's conclusion that 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 is clearly erroneous.⁴

A. Remedy of Conditions

[15] Mother and Father both challenge the trial court's conclusion that 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." I.C. § 31-35-2-4(b)(2). "In determining whether 'the conditions that resulted in the [Children's] removal . . . will not be remedied,' we 'engage in a two-step analysis.'" *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). "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.* In analyzing this second step,

³ Father very briefly contends that DCS failed to prove by clear and convincing evidence that termination of his parental rights is in the best interest of the Child. Father, however, does not offer an argument supported by cogent reasoning or citation to authority. The argument is, accordingly, waived. *See* Ind. Appellate Rule 46(A)(8); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding that the failure to present a cogent argument waives the issue for appellate review), *trans. denied*.

⁴ Mother and Father also challenge the trial court's finding that the continuation of the parent-child relationship poses a threat to the Child. Indiana Code Section 31-25-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) the conditions that resulted in the Child's removal or the reasons for placement outside the home of the parents will not be remedied; *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child. *See, e.g., Bester v. Lake Cnty. Office of Fam. & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005). The trial court here found the conditions that resulted in the Child's removal or the reasons for placement outside the home of the parents will not be remedied, and there is sufficient evidence to support that conclusion. Accordingly, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Child.

the trial court judges the parent's fitness "as of the time of the termination proceeding, taking into consideration evidence of changed conditions." *Id.* (quoting *Bester*, 839 N.E.2d at 152). "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 parents' past behavior is the best predictor of their future behavior." *Id.*

[16] To the extent that Mother challenges specific findings of facts made by the trial court, she asks us to reweigh the evidence, which we will not do. Her arguments amount to selecting the facts favorable to her and contending that they should outweigh the facts which are unfavorable to her.⁵

[17] We see no reason to disturb the trial court's determination that the conditions leading to removal of the Child will remain unremedied. Over the course of three years, Parents both consistently demonstrated an inability or unwillingness to meaningfully participate in visitation, reunification services, or the services offered to address Parents' drug abuse. Father continues to be incarcerated. Mother, though now attempting to address her drug addiction in a facility, has consistently shown an inability or unwillingness to secure stable transportation or housing that would be suitable for the care of a child. Drug

⁵ We agree with Mother that she partially complied with services and that she voluntarily admitted herself to a treatment facility at the time of the termination hearing. She is certainly to be commended for the latter. We do not, however, engage in the fact-sensitive balancing act that a trial court faces in termination hearings.

abuse has been a consistent issue for both Parents. We cannot say that the trial court's determination here was clearly erroneous.

B. Satisfactory Plan for the Child

[18] Father challenges the trial court's finding that there is a satisfactory plan for the care and treatment of the Child. Indiana courts have held that for a plan to be “satisfactory” for the purposes of the termination statute, it “need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014) (quoting *Lang v. Starke Cnty. Office of Family and Children*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*), *trans. denied*.

[19] Father concedes that “a plan for treatment and care of the Child post termination need only give a general direction, and the pursuit of adoption satisfies this general direction[.]” Father’s Br. p. 17. Father contends that DCS has not been consistent throughout the proceedings with respect to a permanency plan for Child. This is of no moment. The relevant inquiry is whether, at the time of termination, a satisfactory plan is in place.

[20] Here, the plan for the Child was adoption. She is thriving in her foster placement, and the adoptive family has been identified. Under Indiana case law, DCS has clearly identified a satisfactory plan to adopt her, and, accordingly, Parents’ arguments on this score must fail.

Conclusion

[21] The termination of Mother and Father's parental rights was not clearly erroneous. We affirm.

[22] Affirmed.

Riley, J., and May, J., concur.