MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Jessica L. Richert
Richmond, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of Bra.G. and Bry. G. (Minor Children) and C.G. (Mother)

C.G. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

January 17, 2024

Court of Appeals Case No. 23A-JT-1813

Appeal from the Wayne Superior Court

The Honorable Darrin M. Dolehanty, Judge

Trial Court Cause Nos. 89D03-2305-JT-19 89D02-2305-JT-20

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

[1] C.G. appeals the termination of her parental rights to her children. We affirm.

Facts and Procedural History

[2] C.G. ("Mother") and R.G. ("Father") (collectively, "Parents") are the biological parents of Bra.G., born in July 2019, and Bry.G., born in December 2020. Father's parental rights were also terminated, but he does not participate in this appeal.

[3] The Department of Child Services (DCS) first became involved with the family in August 2020 because of an act of domestic violence by Father while Bra.G. was present and Mother was pregnant with Bry.G. The trial court initially approved an informal adjustment, but the children were eventually removed from Parents' care in January 2021 after Parents were found under the influence of multiple drugs while caring for them. DCS filed a petition alleging the children were in need of services (CHINS), and the trial court authorized DCS to take the children into custody. In May, the court found the children to be CHINS. In its dispositional order, the court ordered Mother to, among other things, contact the Family Case Manager (FCM) every week, attend visitation, submit to random drug screens, and complete any recommended treatment.

[4] Mother was referred to Meridian Health Services for behavioral services and community resources. She underwent a psychiatric evaluation and engaged in services at first but gradually stopped attending. Within a few months of the dispositional order, Mother had attended only half of her service appointments, tested positive for methamphetamine, hadn't submitted to all requested drug tests, and refused to attend residential substance-abuse therapy. In November, Mother was diagnosed with tuberculosis and ordered to quarantine for several weeks, so she couldn't participate in services during that period. After she was released from quarantine, she continued missing appointments at Meridian and was ultimately discharged in March 2022 due to her unexcused absences. Later that month, the trial court found Mother in indirect contempt of court for failing to complete substance-abuse treatment and submit to all drug screens as required by the dispositional order. Mother had also stopped taking her mental-health medication against medical advice.

[5] In May, DCS petitioned to terminate Parents' parental rights to both children. After a fact-finding hearing in August, the trial court denied the petitions, concluding DCS failed to meet its burden of proof.

[6] The next month, Mother was referred to Centerstone for a substance-abuse assessment and individual counseling. She completed her intake and attended some services but was discharged around February 2023 for non-engagement. Then Mother was again referred to Meridian for services, but she never attended. She kept missing some of her drug screens and again tested positive

for methamphetamine. She also had stopped attending visitation in December 2022.

[7] DCS filed new termination petitions in May 2023, and a fact-finding hearing was held in July. Before the presentation of evidence, counsel for Mother objected to the use of any evidence from the fact-finding hearing on the initial termination petition, arguing the State shouldn't be able to "re-litigate facts and issues that were presented at the prior trial" because of "[r]es judicata type issues." Tr. p. 14. The State responded that it had new facts and evidence since the prior fact-finding hearing. The trial court concluded that because there were additional facts, the State could present evidence from the first fact-finding hearing "to show a continuing pattern of non-compliance, or inability to remedy the issues that led to the children being removed." *Id.* at 15.

[8] FCM Brittaney Sawyer testified that Mother reached out to her only 43 of the 106 weeks she was assigned to the case, and there would be weeks and months at a time that she couldn't reach Mother at all. FCM Sawyer also said she hadn't filed case plans with the court because Parents wouldn't engage with her to provide input or sign the plans. Jessica Strayer, who took over as FCM in June, testified that despite calling Mother multiple times, visiting her house, and mailing her a letter, the first time she reached Mother was that day (the day of the fact-finding hearing). During their conversation, Mother "mentioned she wanted to sign her rights over to [Father], and that she was done; she no longer wanted to deal with DCS." *Id.* at 117. When FCM Strayer asked about her failure to engage in visitation since December, Mother said she didn't have a

phone to contact the visit provider, yet Mother had been calling in for drug screens. FCM Strayer explained that if Mother didn't have a phone, she could've contacted DCS by visiting the office, which was only a few blocks from her house.

[9] Karen Bowen, the children's Court Appointed Special Advocate (CASA), expressed concern about Parents' lack of commitment to their required services. She said Mother missed all but one child and family team meeting, and Mother wouldn't let her inside the house any of the times she stopped by. CASA Bowen testified that termination was in the children's best interests because they were thriving in their foster placement and deserved permanency.

[10] Following the hearing, the trial court issued an order terminating Parents' rights to both children.

[11] Mother now appeals.

Discussion and Decision

I. The trial court did not err in considering evidence of Mother's conduct before the denial of the initial termination petition

[12] To begin, Mother contends the trial court erred in allowing DCS to present evidence of her conduct before the initial termination petition was denied "because the claim preclusion branch of res judicata applies." Appellant's Br. p. 8. Mother relies on *In re Eq.W.*, 124 N.E.3d 1201 (Ind. 2019), where our

Supreme Court held that the doctrine of claim preclusion applies to CHINS proceedings. In the CHINS context, claim preclusion prevents "repeated filings by DCS with no new factual basis" and "repetitive litigation of issues that have been or could have been decided in an initial CHINS filing." *Eq.W.*, 124 N.E.3d at 1211. When DCS seeks to refile after a CHINS petition is dismissed, to avoid preclusion, it must show that the new petition alleges material facts that couldn't have been included in the initial action. *Id.* at 1208. However, the allegations in a subsequent petition are not limited to these new facts, as "DCS must necessarily rely on the past actions of parents to give a trial court the full story of why a CHINS petition was filed in the first place." *Id.* at 1212.

[13] Mother's reliance on *Eq.W.* is misplaced. She highlights the holding that DCS can't file a new petition based solely on the same evidence as the initial petition, but she ignores the Court's clarification that this "does not mean the State is forever barred from filing a subsequent CHINS petition or even from using a parent's prior actions as evidence in support of a new filing," as long as the new petition also includes evidence of conduct that took place after the initial proceeding. *Id.* Since the denial of the initial termination petition in August 2022, Mother stopped engaging in visitation, was discharged from Centerstone for noncompliance, and attended no services at Meridian. She also tested positive for methamphetamine and failed to submit to at least seven other drug tests. Because this conduct took place after the initial termination proceeding, DCS was permitted to file a second petition that included Mother's conduct before the denial of the initial petition. *See id.* Also, this past conduct was

properly considered by the trial court in terminating Mother's parental rights.[1] *See id.* at 1211 ("[P]ast acts by parents can be relevant to new CHINS filings involving the same parents and children.").

II. The trial court did not err in terminating Mother's parental rights

[14] Mother also contends there is insufficient evidence to meet the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When 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. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[15] A petition to terminate parental rights must allege, among other things:

> (B) that one (1) of the following is true:

[1] It is worth noting that much of Mother's argument that the statutory requirements for termination were not met relies on her conduct before August 2022.

> (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 the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the trial court finds the allegations are true, the court "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

A. Conditions Remedied

[16] Mother first challenges the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In making such a determination, the trial court engages in a two-step analysis. First, the court must determine what conditions led to the child's placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must

determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[17] The children were removed due to Parents' use of controlled substances while caring for the children and Mother's failure to adequately address her mental-health issues. After the trial court issued the dispositional order, Mother refused to attend residential substance-abuse therapy, stopped taking her medication against medical advice, and missed appointments at Meridian. While some of these absences were during her quarantine for tuberculosis, Mother's noncompliance with the dispositional order continued. Even after she was held in indirect contempt of court for failing to submit to drug tests and complete substance-abuse treatment, Mother still missed drug tests, was discharged from treatment at Centerstone for noncompliance, and tested positive for methamphetamine. When Mother was again referred to Meridian for services, she never attended. Mother has not shown an ability or willingness to remedy her mental-health issues or substance abuse.

[18] Despite her repeated failures to comply with the dispositional order, Mother contends "it is impossible to determine habitual patterns that would lead one to conclude there is no reasonable chance conditions will be remedied" because she was "significantly hindered from participating in services." Appellant's Br. p. 10. Mother is essentially asking us to give more weight to these "hindrances" than the trial court did, *id.* at 11, which we will not do, *see K.T.K.*, 989 N.E.2d

at 1229. The evidence supports the trial court's conclusion that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied.[2]

B. Best Interests

[19] Mother next challenges the trial court's conclusion that termination is in the best interests of the children. Deciding whether termination is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted), *reh'g denied*. The court must look at the totality of the evidence and subordinate the parent's interests to those of the child. *Id.* Central among these interests is the child's need for permanency, as "children cannot wait indefinitely for their parents to work toward preservation or reunification." *Id.*

[20] In arguing termination is not in the children's best interests, Mother highlights her participation in visitation and notes that none of the visit supervisors had concerns about her behavior or ability to bond with the children. But Mother doesn't acknowledge her failure to participate in other services. And while the visit supervisor noted in 2021 that Mother showed love and bonding during visits, Mother hasn't engaged in visitation since December 2022, and she told

---

[2] Mother also contends DCS failed to show there is a reasonable probability that continuation of the parent-child relationship poses a threat to the children's well-being, and DCS did not present evidence that the children have been adjudicated as CHINS on two separate occasions. Appellant's Br. pp. 11-12. But because the trial court only concluded that there is a reasonable probability that the conditions resulting in the children's removal will not be remedied, *see* Appellant's App. Vol. II p. 29, we do not address these additional arguments.

FCM Strayer "she was done" and "no longer wanted to deal with DCS." In contrast, the children are thriving with their foster family, to whom they are bonded and who wish to adopt them. As CASA Bowen noted, the children "have been allowed to create their own permanency" with their foster family and deserve to not have to move anymore. Tr. p. 133. The totality of the evidence supports the trial court's conclusion that termination is in the children's best interests.

[21] Affirmed.

Bradford, J., and Brown, J., concur.