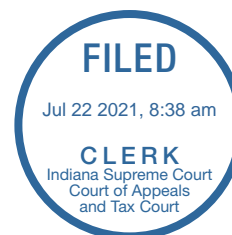


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of A.P., M.P., and
P.P. (Minor Children) and
T.P. (Mother) and J.P. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

July 22, 2021

Court of Appeals Case No.
21A-JT-296

Appeal from the Lawrence Circuit
Court

The Honorable Nathan G. Nikirk,
Judge

Trial Court Cause Nos.
47C01-2001-JT-45, -46, -47

Crone, Judge.

Case Summary

- [1] T.P. (Mother) and J.P. (Father) (collectively the Parents) appeal the involuntary termination of their parental rights to their minor children, A.P., M.P., and P.P. (collectively the Children). We affirm.

Facts and Procedural History

- [2] A.P. was born in April 2014, and M.P. was born in April 2015. In February 2017, the Indiana Department of Child Services (DCS) removed A.P. and M.P. from the Parents' home due to reports of poor home conditions, substance use by both Parents, and domestic violence. A.P. and M.P. were initially placed with Father's mother, who is raising Father's three older children from another relationship, but they were later placed in foster care. The Parents were allowed supervised visitation.
- [3] In March 2017, DCS filed petitions alleging that A.P. and M.P. were children in need of services (CHINS). In May 2017, the trial court issued orders finding that A.P. and M.P. were CHINS and noting that Father admitted "to ongoing substance abuse issues and having tested positive for amphetamine, methamphetamine, and marijuana" in February 2017; that Mother admitted "to frequent and ongoing use of marijuana"; and that both Father and Mother admitted "to having had a physical altercation" in the presence of the Children, "that the living conditions of the home were unsafe and unsuitable for the" Children, that services were "necessary and of benefit to both" the Parents

and the Children, and “that there was care, treatment, or rehabilitation that the [Children had] not been receiving and which would not be provided or accepted without the coercive intervention of the Court.” Ex. Vol. at 151.

[4] Also in May 2017, the trial court entered dispositional orders requiring the Parents to allow the DCS family case manager (FCM) or other service providers to make announced or unannounced visits to their home; enroll and participate in programs recommended by the FCM or other service provider; maintain suitable and stable housing; obtain and maintain a stable and legal source of income; refrain from possessing or using illegal substances; complete a substance abuse assessment, follow all treatments, and complete all treatment recommendations; submit to random drug screens, any request for which was “not completed in a timely manner [would] result in a positive result indication”; refrain from committing any acts of domestic violence, participate in a domestic violence assessment, and successfully complete all recommendations; and attend all scheduled visitations with the Children and comply with all rules and procedures, among other things. *Id.* at 157.

[5] In September 2017, unbeknownst to DCS, Mother gave birth to P.P. Someone made a call to the DCS hotline, and the FCM involved in the CHINS cases found P.P. in the Parents’ home. P.P. was removed from the home and placed in foster care. In October 2017, DCS filed a petition alleging that P.P. was a CHINS. In February 2018, the trial court found P.P. to be a CHINS. In its order, the court noted that the FCM found P.P. in Parents’ home, which had no electricity, and also found a drug pipe, which Father asserted “belonged to a

friend”; that both Parents had “been largely non-compliant in submitting to the random urine drug screens”; that Father’s most recent screen was positive for THC, amphetamines, and methamphetamine; and that both Parents had submitted to substance abuse evaluations but had “failed to follow through with the recommended rehabilitation services.” *Id.* at 183. In March 2018, the court issued a dispositional order as to P.P.

[6] In February 2019, the trial court issued an order finding that Father had tested positive for methamphetamine in January and that the permanency plan was a concurrent plan of reunification/adoption. The trial court issued a subsequent order finding that Mother had missed drug screens and that Father had “continued positive screens” and “refus[ed] to participate in therapy[.]” *Id.* at 202. The Parents were allowed monitored, as opposed to fully supervised, visits with the Children, but that policy was reversed in June 2019, after Father slapped M.P. and left a handprint on his face.

[7] In July 2019, the trial court issued an order finding that both Parents had failed to comply with the case plan and that the permanency plan was adoption. In October 2019, the trial court issued an order finding that Mother had partially complied and that Father had not complied with the case plan, and that the permanency plan was still adoption. In January 2020, the trial court issued an order finding that Mother “continue[d] to have positive drug screens” and that Father had “multiple positive drug screens this review period[.]” *Id.* at 211. The court also reduced the Parents’ supervised visits from six hours per week to

four hours per week; the FCM supported this reduction because of the “emotional toll” that the visits were taking on M.P. Appealed Order at 9.

[8] Later that month, DCS filed petitions to terminate the Parents’ parental rights to all three Children. M.P. had been diagnosed with ADHD, and P.P. had been diagnosed as being on the autism spectrum. A three-day hearing was held in July, October, and November 2020. In February 2021, the trial court issued a sixteen-page order with numerous findings regarding both Mother and Father.

[9] With respect to Mother, the trial court found that she “tested positive for marijuana at least 26 times and positive for methamphetamine at least three times during the underlying CHINS cases.” *Id.* at 3. Indeed, Mother tested positive for methamphetamine in May 2020, only a couple months before the first hearing date. Mother did not disclose the positive result to her home-based counselor, who had been working with her on substance-abuse issues, and the court found it “alarming that Mother did not disclose, or at the very least, self-report to the counselor in such a manner that her counselor would address her relapse use of methamphetamine.” *Id.* at 4. The court further noted Mother’s “inconsistency” in attending appointments with another counselor, as well as that counselor’s testimony that “Mother had ‘stints’ of sobriety but that there were times when she had difficulties due to outside stressors.” *Id.* at 5. Also, the court mentioned an FCM’s testimony that “Mother struggled to parent three children at one time” and “struggled with daily basic needs such as changing diapers and recognizing when it was necessary to change a diaper.” *Id.* at 7.

[10] With respect to Father, the trial court noted that service providers testified that he “was ambivalent to the fact that his parenting needed any improvement or help[,]” was resistant to and refused to participate in therapy until the summer of 2019, denied slapping M.P., and “adamantly denied” that he used illegal substances, despite numerous positive test results for both THC and methamphetamine. *Id.* at 6. The most recent drug screen was conducted in April 2020, and Father tested positive for THC. Ex. Vol. at 9. The court was “deeply troubled by Father’s lack of ability to take responsibility for his actions, repeated denial of drug use with repeated positive screens, and lack of acceptance of domestic violence toward Mother and the children.” Appealed Order at 12. The court also found that “Father has demonstrated a pattern of unwillingness to deal with parenting problems and to cooperate with social service providers.” *Id.* at 15.

[11] Ultimately, the trial court found that the Parents have had several years

to accomplish the steps necessary to have [the Children] returned to their care. Mother and Father have continued to have substance abuse issues throughout the pendency of the underlying CHINS cases. Additionally, Mother and Father have both demonstrated a pattern of conduct that leads the Court to believe a substantial probability of future neglect or deprivation will occur.

Id. The trial court found that there is a reasonable probability that the conditions that resulted in the Children’s removal and continued placement outside the home will not be remedied, that continuation of the parent-child

relationship poses a threat to the Children’s well-being, that termination of parental rights is in the Children’s best interests, and that there is a satisfactory plan for the Children’s care and treatment, that being adoption. Accordingly, the trial court granted DCS’s petitions to terminate the Parents’ parental rights. Both Parents now appeal. Additional facts will be provided below.

Discussion and Decision

[12] “[T]he involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children.” *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008).

“Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.* The purpose of termination is not to punish the parents, but to protect the children. *Id.* “Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.” *Id.*

[13] Indiana Code Section 31-35-2-4(b)(2) provides in relevant part that a petition to terminate parental rights must allege that one of the following is true: (1) there is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the parents’ home will not be remedied; (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the child’s well-being; or (3) the child has, on two separate occasions, been adjudicated a CHINS. Ind. Code § 31-35-

2-4(b)(2)(B). The petition must also allege that termination is in the child’s best interests and that there is a satisfactory plan for the child’s care and treatment. Ind. Code § 31-35-2-4(b)(2)(C), -(D). DCS must prove its allegations by clear and convincing evidence. Ind. Code § 31-37-14-2. If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[14] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *In re C.A.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. 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. at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005). The Parents do not challenge any of the trial court’s findings of fact, so we accept those findings as true. *In re C.C.*, 153 N.E.3d 340, 348 (Ind. Ct. App. 2020), *trans. denied* (2021).

Section 1 – The trial court did not clearly err in concluding that there is a reasonable probability that the conditions that resulted in the Children’s removal will not be remedied.

[15] The Parents contend that the trial court erred in concluding that there is a reasonable probability that the conditions that resulted in the Children’s removal will not be remedied.¹ “We engage in a two-step analysis to determine whether the conditions that led to the Children’s placement outside the home will not be remedied.” *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). “First, we must ascertain what conditions led to their placement and retention in foster care. Second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). The second step requires a court “to judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re R.S.*, 158 N.E.3d 432, 439-40 (Ind. Ct. App. 2020). “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.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) “Habitual conduct may include a parent’s prior criminal history, drug and

¹ The Parents also argue that the trial court erred in concluding that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the Children’s well-being. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not address those arguments.

alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment.” *R.S.*, 158 N.E.3d at 440. “The trial court may also consider services offered to the parent by DCS and the parent’s response to those services as evidence of whether conditions will be remedied.” *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 his future behavior.” *Id.*

[16] Here, the Parents point to evidence that the poor home conditions and domestic violence concerns that led to the Children’s removal have been remedied, and they suggest that they have put their substance abuse issues behind them, noting that their last positive screens occurred a few months before the first hearing date.² The trial court was not convinced that the Parents had conquered their drug problem, and we see no basis for second-guessing that determination. Both Parents used illegal drugs throughout the CHINS proceedings, and they continued to do so even after DCS petitioned to terminate their parental rights. Mother did not reveal her relapse to her counselor so that it could be addressed, and Father repeatedly denied having a drug problem despite his multiple positive screens. Based on the foregoing, we cannot conclude that the trial court erred in concluding that there is a reasonable probability that the Parents’

² The record suggests that the Parents were not tested for drugs while the hearing was pending.

drug problem, which contributed to the Children’s removal from their home, will not be remedied.

Section 2 – The trial court did not clearly err in concluding that termination is in the Children’s best interests.

[17] The Parents also contend that the trial court erred in concluding that termination is in the Children’s best interests. “To determine whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence.” *In re S.K.*, 124 N.E.3d 1225, 1234 (Ind. Ct. App. 2019), *trans. denied*.

In so doing, the court must subordinate the interests of the parents to those of the child involved. Termination of the parent-child relationship is proper where the child’s emotional and physical development is threatened. The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. In addition, a child’s need for permanency is a central consideration in determining the child’s best interests. Further, the testimony of the service providers may support a finding that termination is in the child’s best interests.

Id. (citations omitted).

[18] In this case, the totality of the evidence shows that although the Parents might have made some progress with respect to home conditions and domestic violence, they continued to struggle with substance abuse and parenting after three years of DCS involvement and counseling. As already noted, Mother

struggled with basic parenting duties and failed to notify her counselor that she had relapsed, and Father was uncooperative with service providers and repeatedly denied having a drug problem. Father also slapped M.P. during one of the visits, which were curtailed due to their emotional toll on M.P.

[19] In its order, the trial court noted former FCM Corey Abramowicz’s belief that adoption is in the Children’s best interests “due to lack of accountability related to Father’s substance abuse, Mother[’s] substance abuse during the CHINS proceedings, the parents[’] struggle to manage the children, and the lack of progress made toward parenting skills considering the services provided and duration of the CHINS cases.” Appealed Order at 8. The court also mentioned current FCM Felicia Helvey’s support of adoption due to the Parents’ inability “to maintain consistency” after three years. *Id.* at 9. And the court referenced the testimony of court-appointed special advocate Melissa Kelly, who believes that termination is in the Children’s best interests, that “the children deserve permanency[,], and that while the parents have made some improvement there is no indication that after the length of time that the improvements will last.” *Id.* at 14. She also “has safety concerns for the children if they were returned to Mother and Father.” *Id.* In light of all this, we cannot say that the trial court clearly erred in concluding that termination is in the Children’s best interests. Therefore, we affirm.

[20] Affirmed.

Riley, J., and Mathias, J., concur.