

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Kay A. Beehler
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Marjorie Lawyer-Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

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

T.C. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

April 10, 2023

Court of Appeals Case No.
22A-JT-1593

Appeal from the LaGrange Circuit
Court

The Honorable William R. Walz
IV, Judge

Trial Court Cause No.
44C01-2108-JT-19

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

- [1] T.C. (“Mother”) appeals the trial court’s order terminating her parental rights to L.C. (“Child”). Mother argues that the trial court clearly erred by determining that: 1) the conditions that resulted in Child’s removal were unlikely to be remedied; and 2) termination of Mother’s parental rights was in Child’s best interests. We find Mother’s arguments without merit and, accordingly, affirm.

Issues

- [2] Mother raises two issues on appeal, which we restate as:
- I. Whether the trial court clearly erred by determining that the conditions that resulted in Child’s removal were unlikely to be remedied.
 - II. Whether the trial court clearly erred by determining that termination of Mother’s parental rights was in Child’s best interests.

Facts

- [3] Mother gave birth to Child in July 2020. On July 31, 2020, the Department of Child Services (“DCS”) filed a petition that alleged Child was a child in need of services (“CHINS”) after Child tested positive for methamphetamine, amphetamine, methadone, opiates, hydrocodone, and THC at birth. DCS also alleged that Mother: 1) missed Child’s one-week checkup because Mother

lacked transportation; 2) lacked stable housing; 3) refused a drug screen; 4) appeared to be under the influence of drugs; and 5) had been convicted of several drug-related offenses. The trial court ordered Child removed from Mother pending an adjudication of the CHINS petition.

[4] The trial court adjudicated Child a CHINS on September 9, 2020, and granted wardship of Child to DCS. In its October 26, 2020 dispositional order, the trial court ordered Mother to *inter alia* participate in services, maintain stable housing, secure a source of income, abstain from illegal drug use, complete a substance abuse assessment and follow treatment recommendations, submit to random drug screens, maintain contact with DCS, and attend all scheduled visitations with Child.

[5] Mother, however, failed to successfully complete any services. On August 4, 2021, DCS filed a petition for involuntary termination of Mother's parental rights to Child.¹ DCS alleged that Child had been removed from Mother for a period of at least six months and had been under the supervision of DCS for at least fifteen of the most recent twenty-two-month period. DCS further alleged that there was a reasonable probability that the conditions that resulted in Child's removal would not be remedied, that there was a reasonable probability that continuation of the parent-child relationship posed a threat to the well-

¹ J.C. ("Father") voluntarily terminated his parental rights to Child on October 13, 2021. Father does not participate in this appeal.

being of Child, and that termination of Mother's parental rights was in Child's best interests.

[6] The trial court held a fact-finding hearing on the petition for termination of Mother's parental rights on November 10, 2021. At the time of the hearing, Mother was facing several pending charges for drug-related offenses. Regarding Mother's substance abuse, Family Case Manager ("FCM") Justine Warren testified that Mother missed ten percent of her drug screens; failed eighty-five percent of her drug screens, including the one most recent to the hearing; and last tested negative approximately one year before the hearing. FCM Warren further testified that DCS provided Mother with applications for several drug treatment programs but that Mother failed to follow through.

[7] Regarding Mother's participation in services, FCM Warren testified that Mother "did not complete any service," specifically, Mother attended only three out of sixty-four group therapy sessions and eight out of twenty-four individual therapy sessions. Tr. Vol. II p. 42. In addition, FCM Warren testified that Mother missed twenty-four visits with Child; failed to maintain contact with DCS; and lacked employment, transportation, and stable housing.

[8] Dr. Peter Russell, a behavioral health services provider with the Bowen Center, testified that, due to her scant attendance, Mother received no benefit from her group therapy sessions. He further testified that Mother was not dealing with her addiction in an "appropriate manner" and was not "capable right now of letting go of [her] addictions." *Id.* at 56-57. Dr. Russell opined that Mother

would need to “persist” with treatment for at least one year before she would be ready to be reevaluated for reunification and that Mother would need three years of “consistent [] dedication to treatment” to “become clean.” *Id.* at 55, 57.

[9] Child’s foster mother testified that Child has been in her care for longer than six months. Foster mother further testified that Child suffered from withdrawal during the first several weeks of her life but was now healthy and developing on pace. She further testified that Child was bonded with her foster family and refers to her foster parents as “momma and dada.” *Id.* at 66. Foster mother testified that she was prepared to adopt Child.

[10] The Court Appointed Special Advocate (“CASA”) testified that Child does not “recognize [Mother] as [her] mother” and that there is a “night and day” difference between Child’s interactions with Mother and her foster family. *Id.* at 73, 75. The CASA testified that it was in Child’s best interests to terminate Mother’s parental rights and place Child permanently with the foster family.

[11] Mother admitted to using methamphetamine daily and testified that, since she began using methamphetamine, the longest she was sober outside of jail was twenty-four hours. Mother further admitted that she had not begun a drug treatment program but was planning “[t]o go to detox and to the halfway house.” *Id.* at 99. She testified that she made it “as far as in the parking lot” of a halfway house but could not bring herself to go inside. *Id.* at 96. When asked

if she expected to “go through detox in jail,” Mother responded, “I don’t know. Maybe.” *Id.* at 99.

[12] The trial court entered findings of fact and conclusions thereon. The trial court found the DCS witnesses’ testimony credible and incorporated their testimony into its findings. The trial court concluded that Child had been removed from Mother for a period of at least six months and had been under the supervision of DCS for at least fifteen of the most recent twenty-two-month period at the time of the hearing. The trial court further concluded that there was a reasonable probability that the conditions that resulted in Child’s removal would not be remedied. Finally, the trial court concluded that termination of Mother’s parental rights was in Child’s best interests because:

Uncontroverted testimony given has been consistent that Mother has continued to use methamphetamine, has not had stable housing during most of the pendency of the underlying case, Mother has not had stable employment or income and that she has made little to no progress dealing with her addiction by failing to attend therapy or rehab.

Appellant’s App. Vol. II p. 39. The trial court, accordingly, ordered Mother’s parental rights terminated. Mother now appeals.

Discussion and Decision

[13] Mother argues that the trial court erred in determining that: 1) there was a reasonable probability that the conditions that resulted in Child’s removal

would not be remedied; and 2) termination of Mother’s parental rights was in Child’s best interests. We disagree.

[14] 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. Indiana Dept. of Child Services, Dearborn County 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 rights 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 In re 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.

[15] 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

² Indiana Code Sections 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.

trial court did enter findings of fact and conclusions thereon in granting DCS's petition to terminate Mother's parental rights. We will 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 do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment. *Id.*

[16] 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.

(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

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

I. Reasonable Probability of Remedying Conditions

- [17] Mother challenges 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.”³ I.C. § 31-35-2-4(b)(2). “In determining whether ‘the conditions that resulted in the [child’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

³ Mother also appears to challenge the trial court’s finding that Mother lacked stable housing. Testimony revealed that Mother does not rent or own a home, stays at friends’ houses in Angola and Wolcottville, and “could be kicked out . . . at any second.” Tr. Vol. II p. 35. The trial court, accordingly, did not clearly err in finding that Mother lacked stable housing. As Mother does not challenge any of the trial court’s remaining findings of facts, they are deemed admitted. See *In re C.C.*, 170 N.E.3d 669, 675 (Ind. Ct. App. 2021).

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.* (quoting *K.T.K.*, 989 N.E.2d at 1231). In analyzing this second step, 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 v. Lake Cnty. Off. of Family and Child.*, 839 N.E.2d 143, 152 (Ind. 2005)). “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.*

[18] Mother argues that Child was removed because Child was born with methamphetamine and other illegal substances in her system and that these conditions were remedied when Child no longer suffered withdrawal symptoms. Mother misconstrues the conditions that resulted in Child’s removal. Child was not removed solely because Child was born with illegal substances in her system; rather, Child was removed because Mother used illegal substances when pregnant with Child and because Mother: 1) missed Child’s one-week checkup because she lacked transportation; 2) lacked stable housing; 3) refused a drug screen; 4) appeared to be under the influence of drugs; and 5) had been convicted of several drug-related offenses.

[19] The trial court’s findings of fact, furthermore, clearly establish that Mother’s substance abuse was unlikely to be remedied. Mother admitted to using

methamphetamine daily, failed or missed ninety-five percent of her drug screens, and had not tested negative in approximately one year. Further, over the fifteen-month period between the filing of the CHINS petition and the termination hearing, Mother failed to make progress with any of her substance abuse treatment recommendations and services. *See In re C.D.*, 141 N.E.3d 845, 853 (Ind. Ct. App. 2020) (holding that trial court did not err in concluding that there was a reasonable probability that conditions that led to child's removal or the reasons for child's continued placement outside mother's home would not be remedied where mother did nothing to address her substance abuse problem, missed multiple drug screens, tested positive for marijuana when she did submit to screens, and declined to participate in substance abuse treatment offered to her).

[20] Testimony further established the Mother would need at least one year of consistent treatment to even be reevaluated for reunification and would need three years of consistent treatment to “become clean.” Tr. Vol. II p. 55. Though Mother stated that she intended to “detox” and participate in drug treatment, *id.* at 99, the trial court had no obligation to believe her and had discretion to weigh Mother's history of failing to treat her addiction more heavily than Mother's stated future intentions. Ultimately, Mother asks us to reweigh the evidence, which we cannot do. Accordingly, the trial court did not clearly err in determining that the conditions that resulted in Child's removal were unlikely to be remedied.

II. Best Interests of the Child

[21] In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Ma.H.*, 134 N.E.3d at 49. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[22] Here, Child was born with methamphetamine and other dangerous substances in her system and suffered the first several weeks of her life in withdrawal. Despite the consequences of Mother's substance abuse on Child's health, as described above, Mother has done little to address her addiction. Mother also lacks employment, transportation, and stable housing. Put simply, Mother is not in a position to provide the care, support, safety, and stability Child needs. Meanwhile, Child has spent almost her entire life with her foster family, with whom she shares close bonds. Child recognizes her foster parents as her mother and father, and her foster family is prepared to adopt her. *See In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (recognizing that "children have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships"). Furthermore, the CASA

testified that terminating Mother's parental relationship was in Child's best interests.

- [23] Mother argues that Child was in no danger from Mother. Mother's methamphetamine addiction, however, has already harmed Child, and Mother's continued substance abuse would expose Child to dangerous substances and impair Mother's ability to supervise Child. *Cf. In re J.L.*, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009) (holding, in context of CHINS proceeding, that mother's exposure of child to "an environment of illegal drug use" endangered child and impaired mother's ability to supervise child). Moreover, the trial court was not obligated to wait until Mother's substance abuse harmed Child again before terminating Mother's parental rights. Under these facts and circumstances, the trial court did not clearly err in concluding that termination of Mother's parental rights was in Child's best interests.

Conclusion

- [24] The trial court did not err by determining that the conditions that resulted in Child's removal were unlikely to be remedied, nor did it err by determining that termination of Mother's parental rights was in Child's best interests.

Accordingly, we affirm.

- [25] Affirmed.

Vaidik, J., and Foley, J., concur.