MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of K.S. (Minor Child) and

C.H. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

September 10, 2021

Court of Appeals Case No. 21A-JT-828

Appeal from the Cass Circuit Court

The Honorable Stephen R. Kitts, II, Judge

Trial Court Cause No. 09C01-2101-JT-2

Mathias, Judge.

[1] J.H. ("Mother") appeals the Cass Circuit Court's order terminating her parental rights to her daughter, K.S. Mother challenges the sufficiency of the evidence supporting the trial court's termination order.

[2] We affirm.

Facts and Procedural History

[3] K.S. was born to Mother and C.S. ("Father")[1] on July 24, 2014. In January 2016, the Indiana Department of Child Services ("DCS") removed K.S. from her parent's care on an emergency basis; but K.S. was later reunited with Father in summer 2017. In the intervening months, and for the next several years, Mother consistently used illegal drugs and spent a significant amount of time either incarcerated or on probation. Father cared for K.S. until January 2019, when DCS intervened on the child's behalf for a second time.

[4] On January 10, 2019, law enforcement responded to a complaint of trespassing on an abandoned property. There, officers found Father and K.S. asleep "in a home with no working utilities including no source of water and no electricity or other source of heat." Ex. Vol. I at 79–80. The temperature in the home was below freezing and K.S. was wearing minimal clothing. *Id.* As a result, law enforcement arrested Father for trespassing, and DCS sought an alternative placement for K.S. The department was unable to locate Mother, and K.S.'s

[1] Father does not participate in this appeal.

grandmother could not care for the child due to health concerns. So, DCS placed K.S. in foster care. Four days later, DCS filed a petition alleging K.S. to be a child in need of services ("CHINS"). That same day, Mother attended the initial hearing on the petition and spent time visiting with K.S. According to Father, that was the first time Mother had seen K.S. in two years. Tr. pp. 16, 22; *see also* Ex. Vol. I at 80. And despite a weekly visitation plan, that was also the last time Mother visited K.S. Tr. p. 13.

[5] At the February fact-finding hearing on DCS's petition, Mother admitted that K.S. was a CHINS. Mother also revealed that she was homeless, she could not provide a home for K.S., and she "continues to struggle with substance abuse, including the use of methamphetamine." Ex. Vol. I at 91. The court subsequently issued an order finding K.S. to be a CHINS.

[6] About a month later, the trial court issued a dispositional order that required Mother to, among other things, maintain consistent contact with DCS, enroll and participate in recommended programs, find and sustain suitable housing, secure and preserve steady employment, refrain from using illegal substances or alcohol, obey the law, complete a substance abuse assessment, successfully complete resulting treatment recommendations, submit to random drug screens, meet all mental health needs, attend scheduled visitations, and receive homebased case management services. *See id.* at 98–100. Though DCS provided Mother with services and assistance to comply with these requirements, she failed to take the steps needed to reunite with K.S. Mother instead chose to continue engaging in criminal activity.

[7] In the fifteen months following the court's dispositional order, Mother was arrested on nine separate occasions and charged with a range of misdemeanor and felony offenses. *See* Ex. Vol. II at 146, 157, 169, 179, 188, 198, 208, 221, 242. She entered various guilty pleas and served time both in the county jail and on probation. During this same time, despite opportunities to do so, Mother did not maintain contact with DCS, she did not successfully complete any services, she did not attend any team meetings, and she did not visit K.S. *See* Conf. Appellant's. App. p. 12; Ex. Vol. I at 102, 106, 108, 110.

[8] In June 2020, after being released from prison, Mother reached out to the family case manager ("FCM") and asked "if she could have visits" with K.S. Tr. p. 19. The FCM responded by advising Mother "what it was that she needed to do in order to" visit K.S. *Id.* That same day Mother was arrested for battery. During a subsequent incarceration, Mother met regularly with her home-based caseworker. But that ended within days of Mother's release from jail when she told the caseworker "to stay out of her business and then refused to meet with [the caseworker]." *Id.* at 32–33.

[9] Meanwhile, K.S. did well in her foster placement. She also maintained, since removal, consistent bimonthly sessions with a therapist. In later sessions, the therapist noticed K.S. becoming more emotional "about seeking permanency." *Id.* at 48. K.S. would often ask "when she is going to be adopted," and she "yearn[ed] for that family life." *Id.* at 17.

[10] Ultimately, on January 8, 2021, DCS filed a petition to terminate Mother's parental rights to K.S. At the April fact-finding hearing, the court heard testimony from the FCM, the home-based case worker, K.S.'s guardian ad litem ("GAL"), and Mother. The FCM recommended termination of Mother's parental rights and adoption by an already identified family. The GAL made the same recommendation. At the end of the hearing, the trial court found DCS met its burden and granted the termination petition. The court issued a written order to the same effect later that day.

[11] Mother now appeals.

Standard of Review

[12] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* 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.*

[13] When determining whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court's findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings;

and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Discussion and Decision

[14] It is well-settled that the parent-child relationship is one of society's most cherished relationships. *See, e.g.*, *In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. Ind. Code § 31-35-2-4(b)(2). Two of those elements are at issue here: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal from the home will not be remedied; and (2) whether termination is in the child's best interests. I.C. § 31-35-2-4(b)(2)(B)(i), (C).[2]

[15] In terminating Mother's parental rights, the trial court concluded that DCS met its burden on each element. *See* Conf. App. p. 71. Mother argues that DCS

[2] Mother argues that the court erred in concluding that continuation of the parent-child relationship posed a threat to K.S.'s well-being under Indiana Code section 31-35-2-4(b)(2)(B)(ii). *See* Appellant's Br. at 11–13. But the court did not make such a conclusion; it instead determined that there was a reasonable probability of unchanged conditions under subsection (B)(iii). Conf. App. p. 71. By failing to challenge that conclusion, Mother has waived any argument that it is clearly erroneous. Nevertheless, because of the fundamental liberty interests involved, we will address whether the trial court clearly erred in concluding that DCS met its burden under subsection (B)(iii).

failed to present sufficient evidence to support the court's termination decision. We thus address, in turn, whether the evidence supports the trial court's conclusions.

I. The trial court did not clearly err in concluding that there is a reasonable probability of unchanged conditions.

[16] In reviewing whether there is a reasonable probability that the conditions that resulted in the K.S.'s removal will not be remedied, our courts engage in a two-step analysis. *See 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." *Id.* 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)). In making the latter determination, we "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

[17] K.S. was removed from Father's care because the child was endangered due to his failure to provide for K.S.'s basic needs. Law enforcement found K.S. with Father in an abandoned home that had no heat, water, or food. Also, the temperature in the home was below freezing and K.S. was not dressed appropriately. Father was arrested at the time, and Mother's whereabouts were unknown. And when Mother was located three days after removal, she tested positive for methamphetamine and amphetamine. Mother had a documented history "of failing to maintain sobriety from illegal substances and failing to

treat her mental health conditions." Ex. Vol. I at 80. At several hearings in the months following K.S.'s removal, the trial court consistently found that Mother could not provide for K.S.'s basic needs. *See* Conf. App. p. 12; Ex. Vol. I at 100, 102, 106, 110, 120–21. In concluding that these circumstances would not change, the court identified Mother's continuing problems with drug addiction, her habitual criminal activity, and her lack of cooperation with DCS. Ample evidence in the record supports those findings, which in turn supports the court's conclusion that conditions were unlikely to change.

[18] At the CHINS fact-finding hearing, Mother admitted that she "struggle[s] with substance abuse, including the use of methamphetamine." Ex. Vol. I at 91. Yet, throughout the pendency of these proceedings, Mother never took any steps to address her substance abuse issues, and she continued to regularly use illegal drugs, including methamphetamine. *See* Ex. Vol. II, pp. 120, 170, 179, 189, 199; Tr. p. 15. During this same time, Mother was arrested nine times for offenses ranging from misdemeanor public intoxication to felony criminal intimidation. Though she was either incarcerated or on probation for a lot of the time K.S. was in foster care, Mother had several opportunities to work with DCS and comply with the court-ordered requirements necessary to reunite with K.S. *See* Tr. pp. 14, 19, 21. But she did not.

[19] Mother never maintained consistent contact with DCS, she never took advantage of the services offered to her, she never secured a stable residence or employment, she never participated in any family team meetings, and she never visited K.S. Conf. App. p. 12; Ex. Vol. I at 102–03, 106, 108, 110; Tr. pp. 13–

16, 18, 27, 32–33. The last time Mother spent time with K.S. was at the January 2019 CHINS initial hearing, four days after K.S. was removed from Father's care. Tr. p. 13. And according to Father, that was the first time Mother had seen her daughter in two years. *Id.* at 16, 22.

[20] In short, evidence of Mother's habitual pattern of illegal conduct and unwillingness to even visit K.S., let alone take the necessary actions to reunite with the child, indicate a substantial probability of future neglect or deprivation. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in K.S.'s removal from and continued placement outside the home will not be remedied by Mother. We now address whether the evidence also supports the court's conclusion that termination of Mother's parental rights is in K.S.'s best interests.

II. The trial court did not clearly err in concluding that termination of Mother's parental rights is in K.S.'s best interests.

[21] Deciding whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification."

E.M., 4 N.E.3d at 648. Further, the recommendation from both the FCM and the GAL to terminate parental rights accompanied by evidence that the conditions resulting in removal will not be remedied can be sufficient to establish that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*.

[22] Both the FCM and the GAL recommended termination of Mother's parental rights. Tr. pp. 19, 48. And for reasons provided above, there is ample evidence that Mother will not remedy the conditions that resulted in K.S.'s removal from and continued placement outside the home. Though these circumstances alone are sufficient to support the trial court's best-interests conclusions, that conclusion is further supported by the court's evidence-based findings.

[23] In concluding that termination of Mother's parental rights is in K.S.'s best interests, the trial court found that K.S. needs permanency, that Mother has failed to successfully complete any offered services or provide any evidence that she could care for K.S.'s basic needs, and that Mother has consistently engaged in criminal activity. *See* Conf. App. p. 70. Ample evidence in the record supports those findings, which in turn supports the court's best-interests conclusion.

[24] As set out in detail above, Mother has been either incarcerated or on probation for much of K.S.'s life, and the record indicates that Mother has not spent any significant time with the child since 2017, four years before the termination hearing. When Mother was not incarcerated, she did not take steps to reunite

with her daughter; she instead continued to engage in criminal behavior, which included using marijuana and methamphetamine. In fact, Mother did not participate in any court-ordered services when she was outside the county jail. And though Mother has not visited K.S. since January 2019, she now asks for more time to demonstrate her fitness to parent the child. Sadly, that ship has sailed. As the trial court observed, K.S deserves the stability and security that has eluded her for most of her life.[3]

[25] The court emphasized K.S.'s need for permanency, finding that "[t]he child . . . deserves stability and is entitled to closure in this matter." Conf. App. p. 71. Indeed, at the time of the termination hearing, K.S. had been in foster care for over two years. Yet, Mother maintains that "[t]here is no evidence presented to show that permanency through adoption would be beneficial to the child or that remaining in temporary placement until Mother could be reunited with [K.S.] would be harmful." Appellant's Br. at 13. In support, she contends that she "was continuing to make progress" and has an "undisputed . . . bond with her minor child." *Id.* at 14. The evidence belies each assertion.

[26] Evidence of K.S.'s expressed desires reveal that continued temporary placement would be detrimental to the child. The GAL explained that K.S., in therapy

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[3] The circumstances outlined in this paragraph make the facts of this case vastly different than the facts in *G.Y.*, 904 N.E.2d 1257, on which Mother relies. Appellant's Br. at 11–13; *cf. G.Y.*, 904 N.E.2d at 1262–65 (recognizing that the mother in that case, while incarcerated, took several "positive steps" to provide permanency for her son upon release, "made a good-faith effort to complete the required services available to her," and "maintained a consistent, positive relationship" with her son).

sessions, had "become [] emotional recently about seeking permanency." Tr. p. 48. And the FCM similarly observed that K.S. "yearns for that family life and she [] wants to be kept in one." *Id.* at 17.

[27] As for Mother's "continuing progress," she has failed to successfully complete a single service offered to her during the two-plus years since her dispositional order. Though it is true that Mother participated in home-based case services while incarcerated in fall 2020, she ended that participation within days of being released from jail. Mother told the caseworker to "stay out of her business and then refused to meet with [her]." *Id.* at 32–33. Mother reinitiated contact with the caseworker in March 2021, but this occurred only after she was once again incarcerated and just weeks before the termination hearing. As for Mother's "undisputed bond" with K.S., we find no evidence of any bond. Mother visited K.S. only once, four days after the child was removed from Father's care. And the record indicates that this was the only time Mother spent with K.S. in the four years preceding the termination hearing.

[28] Mother also argues that "[w]ithout [her] mental health issues, it is likely that this case would not have ended in termination." Appellant's Br. at 14. We disagree, as there is no support for this argument in the record. Throughout the pendency of these proceedings, the court consistently recognized Mother's failure to "treat her mental health conditions." Ex. Vol. I at 80, 86. Mother testified at the termination hearing that she began treatment in 2014 but "never really followed through with it." Tr. p. 41. As the FCM aptly observed, Mother's "mental health is never going to be fixed . . . . However, treatment

gives her the tools . . . to help her with her mental health so she doesn't have risky behaviors from her mental health." *Id.* at 27. But, despite over two years to do so, Mother neither complied with the treatment services offered by DCS, nor did she seek treatment on her own. While we agree with Mother that "[m]ental illness should not be the cause of termination," Appellant's Br. at 14, the trial court did not terminate her parental rights because she suffers from mental health issues.

[29] In short, the evidence supports the trial court's conclusion that termination of Mother's parental rights is in K.S.'s best interests.

Conclusion

[30] Mother has failed to demonstrate that the trial court clearly erred in terminating her parental rights to K.S. We affirm.

[31] Affirmed.

Tavitas, J., and Weissmann, J., concur.