

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jon J. Olinger
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika Prekopa Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
N.W.B., E.T.B., and M.O.B.;
J.A.F. (Mother),
Appellant-Respondent,

v.

The Indiana Department of
Child Services,
Appellee-Petitioner.

November 9, 2021

Court of Appeals Case No.
21A-JT-465

Appeal from the Allen Superior
Court

The Honorable Charles Pratt,
Judge

Trial Court Cause Nos.
02D08-2007-JT-199
02D08-2007-JT-200
02D08-2007-JT-201

Pyle, Judge.

Statement of the Case

[1] J.A.F. (“Mother”) appeals the termination of the parent-child relationships with her three sons, N.W.B. (“N.W.B.”), E.T.B. (“E.T.B.”), and M.O.B. (“M.O.B.”) (collectively “the Children”), claiming that the Department of Child Services (“DCS”) failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside Mother’s home will not be remedied; (2) a continuation of the parent-child relationship poses a threat to the Children’s well-being; and (3) termination of the parent-child relationship is in the Children’s best interests. Concluding that there is sufficient evidence to support the trial court’s decision to terminate the parent-child relationships, we affirm the trial court’s judgment.¹

[2] We affirm.

Issue

Whether there is sufficient evidence to support the involuntary termination of Mother’s parental rights.

Facts

[3] Mother is the parent of four sons: N.W.B., who was born in December 2006; E.T.B., who was born in August 2009; M.O.B., who was born in September

¹ The Children’s father (“Father”) died in November 2015.

2012; and H.W. (“H.W.”), who was born in March 2018. This appeal concerns Mother’s three oldest sons.

[4] In July 2014, DCS removed the Children from Father’s care because Father had physically abused them and had failed to provide them with appropriate living conditions. Specifically, when angry, Father grabbed the Children by their throats and necks and pushed them. Father also broke a glass bowl over N.W.B.’s head when Father could not find his alcoholic beverage. In addition, food littered the floor of Father’s home, the Children’s bedroom was filthy, and the Children’s mattresses were soaked with urine. The mattresses were so soiled that the Children chose to sleep on the floor. At the time of the removal, Mother, who was incarcerated in the Department of Correction (“the DOC”) for a felony drug charge, was unable to care for the Children. DCS placed the Children in foster care.

[5] In August 2014, Mother admitted that the Children were Children in Need of Services (“CHINS”). In September 2014, the trial court issued a CHINS dispositional order requiring Mother to: (1) refrain from all criminal activity; (2) maintain stable, suitable, and appropriate housing; (3) obtain a diagnostic assessment at an approved licensed agency within thirty days of her release from the DOC and follow all recommendations; (4) obtain a drug and alcohol assessment within thirty days of her release from incarceration and follow all recommendations; and (5) submit to random drug screens and refrain from the use of illegal drugs.

- [6] During the next two years, Mother failed to maintain contact with DCS or participate in the court-ordered services. The State charged Mother with another felony drug offense at some point in 2016. DCS recommended terminating Mother's parental rights in late 2016 and eventually filed a termination petition.
- [7] The trial court held a three-day hearing on the termination petition in June 2017. Three months later, in September 2017, the trial court issued an order finding that Mother had been released from incarceration and had stable housing and employment. The trial court's order further found that Mother had been participating in an intensive outpatient treatment program and had been sober for eleven months. In addition, the trial court's order found that Mother had been visiting the Children and had a bond with them. Based upon these facts, the trial court concluded that DCS had failed to prove by clear and convincing evidence both that there was a reasonable probability that the conditions that had resulted in the Children's removal or the reasons for placement outside Mother's home would not be remedied and that termination was in the Children's best interests. The trial court therefore denied DCS' petition to terminate Mother's parental rights.
- [8] In November 2017, the trial court issued a modified parental participation plan and ordered Mother to: (1) refrain from criminal activity; (2) maintain safe, suitable, and appropriate housing; (3) obtain specific evaluations and assessments by December 13, 2017; and (4) submit to drug screens and refrain from the use of illegal drugs.

- [9] In March 2018, Mother gave birth to H.W., who tested positive for TCH at birth and was adjudicated to be a CHINS shortly thereafter. H.W. was placed in foster care in June 2018 and subsequently returned to his parents in August 2018. DCS closed H.W.'s case in November 2018.
- [10] In January 2019, because Mother had begun participating in services, including substance abuse treatment, and had begun regularly visiting the Children, DCS approved a trial home placement for the Children with Mother. Mother and the Children began attending family therapy with Lifeline therapist Vanessa Kelleybrew ("Therapist Kelleybrew") in January 2019 in preparation for the trial placement.
- [11] The Children were returned to Mother in March 2019. However, during the trial home placement, Mother tested positive for methamphetamine and stopped attending therapy with Therapist Kelleybrew. In September 2019, DCS removed the Children from Mother and placed them back in foster care.
- [12] At the time of their removal, the Children were confused about the removal and no longer trusted Mother. The two oldest children became verbally and physically abusive, and all three children exhibited behavioral issues.
- [13] Mother continued to attend supervised visits with the Children. However, when Mother's attendance at the visits became irregular, DCS reduced the visits from twice a week to once a week and then discontinued the visits in December 2019. Also in December 2019, H.W. tested positive for methamphetamine, and DCS removed him from Mother and filed a second CHINS petition.

- [14] A March 2020 permanency plan order noted that Mother had had a drug relapse after completing treatment but had not re-engaged in services. The order further noted that the Children were struggling emotionally and psychologically with the lack of permanency.
- [15] Three months later, in June 2020, Mother again tested positive for methamphetamine. In July 2020, DCS filed a petition to terminate Mother's parental relationships with N.W.B., E.T.B., and M.O.B.
- [16] The trial court held a hearing on the termination petition in December 2020. At the hearing, the trial court heard testimony about the facts as set forth above. The testimony at the hearing further revealed that Mother had not visited the Children in one year, since December 2019. In addition, Mother had not participated in any services in the past year.
- [17] Also at the hearing, Therapist Kelleybrew testified that the Children's behavioral issues had improved because of their foster family's consistency and support. Therapist Kelleybrew further testified that she would not recommend that the Children re-engage in family therapy with Mother because Mother had been inconsistent and the Children had been on "an emotional roller coaster." (Tr. Vol. 2 at 51).
- [18] In addition, DCS Family Case Manager Supervisor Yolanda Turner ("DCS Supervisor Turner") testified that, in the past six years, the Children had been in eight placements, either with relatives or foster families. According to DCS Supervisor Turner, the Children had only lived with Mother six months out of

the past six years. In addition, DCS Supervisor Turner testified that, at the time of the hearing, Mother had two pending misdemeanor charges for domestic violence and disorderly conduct and that she was in the process of being evicted from her home.

[19] Lastly, Guardian Ad Litem Catherine Christoff (“GAL Christoff”) testified that termination was in the Children’s best interests. GAL Christoff specifically testified that the case had been ongoing for more than six years, and the Children deserved permanency.

[20] In March 2021, the trial court issued a detailed order terminating Mother’s parental rights. Mother now appeals the termination.

Decision

[21] Mother argues that there is insufficient evidence to support the termination of her parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *In re Bester*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[22] When reviewing the termination of parental rights, we will not weigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229.

Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[23] A petition to terminate parental rights must allege:

(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.

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.

[24] Here, Mother argues that there is insufficient evidence to support the termination of her parental rights. Specifically, she contends that the evidence is insufficient to show that there is a reasonable probability that: (1) the conditions that resulted in the Children's removal or the reasons for placement outside Mother's home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to the Children's well-being.

[25] At the outset, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for their placement outside Mother's home will not be remedied.

[26] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts 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. *Id.* Habitual conduct may include

parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. 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 her future behavior. *E.M.*, 4 N.E.3d at 643.

[27] Here, DCS removed the Children from Father's care in 2014 because Father had physically abused them and had failed to provide them with appropriate living conditions. At that time, Mother was unable to care for the Children because she was incarcerated in the DOC for a felony drug charge. Over the next six years, Mother was given multiple opportunities to participate in services. The Children were even returned to her care for six months in 2019. However, Mother continued to use drugs, including methamphetamine. At the time of the hearing, Mother was not participating in services and had not seen the Children in one year. In addition, she had pending legal charges and was in the process of being evicted from her home. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the Children's removal or continued placement outside the home would not be remedied. We find no error.

[28] Mother also argues that there is insufficient evidence that the termination was in the Children's best interests. In determining whether termination of parental rights is in the child's best interests, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parent to those of the child involved. *Id.* In addition, a child's need for permanency is a central consideration in determining the child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[29] Here, GAL Christoff testified that, after six years, the Children deserved permanency. In addition, GAL Christoff testified that termination was in the Children's best interests. The testimony of GAL Christoff, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the Children's best interests. There is sufficient evidence to support the terminations.

[30] Affirmed.

Bailey, J., and Crone, J., concur.