

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

R.S. (Minor Child)

and

T.S. (Mother) and J.S. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

September 22, 2023

Court of Appeals Case No.
23A-JT-642

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

Trial Court Cause No.
79D03-2209-JT-51

Memorandum Decision by Judge Mathias

Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] T.S. (“Mother”) and J.S. (“Father”) (collectively, “Parents”) appeal the Tippecanoe Superior Court’s termination of their parental rights over their minor child, R.S. (“Child”). Parents raise five issues for our review, which we consolidate and restate as the following two dispositive issues:

1. Whether the trial court clearly erred when it concluded that the conditions that resulted in the removal of Child from Mother’s care are not likely to be remedied.
2. Whether termination of the Parents’ parental rights is in Child’s best interests.

[2] We affirm.

Facts and Procedural History¹

[3] Mother and Father are married but separated. They are the parents of Child, who was born in 2021. A few days after Child’s birth and while Child was still in the hospital, the Indiana Department of Child Services (“DCS”) received a report that Child was a victim of neglect and that his needs were not able to be met due to “caregiver impairment” relating to his Mother’s mental health. Ex.

¹ Father does not challenge the trial court’s findings of fact. And while Mother states that she “disagrees” with seven of the court’s thirty-seven findings, she does not argue that any of those seven findings are clearly erroneous. *See* Mother’s Br. at 12-13; *see also* [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#). Accordingly, we take the trial court’s findings of fact to be undisputed in this appeal.

Vol. 1, p. 25. DCS investigated Mother's home and found that "there were no materials observed for a new[b]orn baby"; "[t]here was no safe sleeping environment, bottles, diapers, clothing[,] or formula"; and that "the home is a one[-]bedroom apartment [with] four adults living in it." *Id.* Mother's home also "had a very strong smell of body odor." *Id.* A DCS family case manager ("FCM") followed-up with Mother on how she intended to care for Child, and Mother "was unable to walk [the] FCM through an appropriate care routine for a new[b]orn infant." *Id.*

[4] Child was then released from the hospital to Father's care. However, Father struggled to care for Child. Father did not wake up one night, and Child went twelve hours without food or having a diaper change. Father is also unemployed and depends on family and friends to assist him with rent, transportation, and child care. One of those friends, Richard Muller, has a history of child molestation; despite that history and a court order for Child to have no contact with Muller, Father permitted Muller to "visit[] on a regular basis" and "to help with matters . . . such as making bottles." *Id.* at 47. On one occasion, a DCS employee and a service provider gave Father a "drop-in visit"; Muller was at Father's residence at the time and spent approximately two hours "hiding in a closet." *Id.* In June, the trial court ordered Child to be placed in protective custody outside of Mother's and Father's care.

[5] The court adjudicated Child to be a Child in Need of Services ("CHINS") and ordered Parents to participate in services. In particular, the court ordered Parents to participate in a parent family functional assessment, parenting

education, home based case management, individual counseling, medication management, random drug screens, and supervised visitation.

- [6] By September, Mother had had only minimal contact with DCS. She had not attended case management or individual therapy. Similarly, Father had only partially participated in services and had refused to participate in case management services. Father had also been evicted from his residence and remained unemployed.
- [7] By December, Mother had been discharged from case management, visitation, and other services for noncompliance. Father had moved in with his sister but continued to lack stable employment. Father also had attended only fifty percent of his scheduled visits with Child in November.
- [8] By March 2022, Mother had re-engaged with some services and visitations but continued to struggle with consistent attendance and with improving her parenting skills. Father had started participating in case management but continued to lack employment, continued to struggle financially, and had not regularly attended therapy or medication management services. And although Father did attend his supervised visits with Child, he was not always prepared with appropriate supplies for Child's needs.
- [9] By June, Mother was living with her boyfriend. Their home was cluttered and had a foul odor. Mother was unemployed, was not participating in therapy or medication management, and had been discharged from visitation services for failing to improve her home's conditions and for leaving a fan within reach of

Child despite repeated directions not to do so. Mother had no structure in her approach to visits with Child, she relied on a facilitator for guidance, she lacked an emotional connection with Child, and she struggled to stay focused on Child. Child never napped and rarely ate substantive food during Mother's visitations.

[10] Around that same time, Father had obtained HUD housing, but he remained unemployed. He had resumed therapy and medication management, but his visitations were semi-supervised and in a home-setting only, and Father was not permitted to leave that setting with Child without supervision. Further, Father required interventions for identifying Child's cues and maintaining Child's schedule. Child appeared physically and emotionally exhausted after visitations with either Parent.

[11] By September, Mother was still living with her boyfriend. Her boyfriend objected to having providers in his home without his approval, and he became verbally aggressive toward them. Mother missed medication management appointments, canceled or ended visitations early, and had another visit canceled by a facilitator when she and her boyfriend got into an argument. Father, meanwhile, remained unemployed, but he did purchase TikTok coins to buy gifts for other TikTok users.

[12] On September 16, DCS filed its petitions to terminate Parents' relationships with Child. The court held an evidentiary hearing on the petitions in December. Following that hearing, the trial court found in relevant part as follows:

25. Mother has been unable to demonstrate an ability to provide a safe, stable home environment At the time of this termination hearing, Mother reported residing with her boyfriend . . . for the past eight (8) months in a “housing project apartment[.]” Mother is not on the lease agreement. Mother receives monthly disability benefits . . . and is otherwise unemployed. [Her boyfriend] is employed and pays [her] bills except phone and internet. Mother and [her boyfriend] keep two (2) ducks in the home. The ducks are free to roam the apartment during the day but are reportedly caged overnight in a dog crate and when [Child] is present.

* * *

34. At the onset of the . . . CHINS case, Father was unable to correctly prepare bottles and required extensive instruction to do so. When [Child] was ready for toddler food, nutrition declined. After months of instruction with visual charts, Father has made some improvement [in] preparing meals within the past six (6) weeks or so. Father is affectionate with [Child,] who appears comfortable with Father. Father has been able to provide basic care for [Child] during semi-supervised visits lasting up to about five (5) hours at a time. However, Father has never progressed to unsupervised or overnight visits. Father must be continuously prompted with regard to [Child’s] feeding and nap schedule. Father struggled for a long time to get [Child] to sleep solo in a Pack-n-Play. Father often leaves [Child] in a highchair or Pack-n-Play much longer than necessary. Father has not demonstrated he recognizes [Child’s] developmental needs without prompting. Most recently, [Child] is completely inconsolable after returning to the foster home following visitations and cries for hours even after napping or eating.

* * *

37. Although Mother and Father love [Child], neither [P]arent can consistently meet [Child's] current or long-term needs. Both [P]arents require assistance to meet their own basic needs. It is not safe for [Child] to be in the sole care of either [P]arent. The long-standing history of instability and insufficient parenting displayed by Mother and Father continues today. All imaginable services have been offered to the [P]arents across several years to address those difficulties with stability and parenting. While Mother and Father have made some improvements in their own daily functioning, neither has demonstrated the ability to independently meet [Child's] medical, developmental, and emotional needs. It is unreasonable to expect that either [P]arent is or will be able to safely manage or provide for [C]hild's needs in addition to their own. . . . To continue the parent-child relationships would be detrimental to [Child] Further efforts to reunify would have continued negative effects on [Child].

Mother's App. Vol. 2, pp. 15, 17-18. The court then ordered that Parents' rights over Child be terminated. This appeal ensued.

Standard of Review

[13] 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.*

[14] To determine 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; 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*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[15] 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)* (2021). We need only discuss two of those elements in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside of Parents’

homes will not be remedied;² and (2) whether termination of Parents' parental rights was in Child's best interests. I.C. § 31-35-2-4(b)(2)(B)(i), (C).

[16] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that a child's emotional and physical development are put at risk by a parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

1. The trial court's conclusion that the conditions that resulted in the Children's removal from Mother's care will not be remedied is not clearly erroneous.

[17] We first address Mother's argument on appeal that the trial court erred when it concluded that the conditions that resulted in the removal of Child from her care will not be remedied.³ Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other

² DCS needed to prove only one of the elements listed in [Indiana Code § 31-35-2-4\(b\)\(2\)\(B\)](#). Thus, given our disposition as to the conditions that resulted in the Children's removal under [subsection \(B\)\(i\)](#), we need not address Parents' additional argument under the "threat" prong of [subsection \(B\)\(ii\)](#).

³ Father does not challenge the trial court's findings and conclusions on this issue as to him.

words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[18] Mother argues that the trial court's conclusion on this issue is clearly erroneous because she did make some progress with services and visitation between June 2022 and the termination hearing. Mother also asserts that she had been in a stable relationship with her boyfriend for about one year by the time of the termination hearing, and that that relationship has likewise led to an improvement in her housing and her payment of rent and utilities. And Mother states that the trial court's conclusion here was ultimately based only on her mental-health issues, which, by itself, is not a sufficient basis upon which to terminate her parental rights.

[19] We cannot agree with Mother's assessment of the record. Child was removed from Mother's care while Child was still in the hospital following his birth. The initial reasons for Child's removal included Mother's inappropriate living conditions and her apparent inability to care for Child. Throughout the underlying CHINS proceeding, Mother struggled with fully participating in services and with visitation. She repeatedly struggled with meeting Child's needs without intervention. And Mother's boyfriend, with whom she lived, objected to having providers in his home without his approval and became verbally aggressive toward providers on at least one occasion. Further, on

another occasion, Mother had a visitation with Child canceled due to an argument with her boyfriend. Mother's home with boyfriend was also observed to be cluttered and to have a foul odor, and ducks roamed freely inside the home.

[20] Mother's additional assertion that the trial court based its judgment solely on her mental health is not well-taken. The court's findings and conclusions are based on Mother's long-standing inability to fully comply with services and visitation, to provide an appropriate home environment for Child, and to care for Child. The trial court did not err when it concluded that the conditions that resulted in the removal of Child from Mother's care will not be remedied, and Mother's arguments to the contrary are merely a request for this Court to reweigh the evidence, which we will not do.

2. The trial court's conclusion that the termination of Parents' parental rights is in Child's best interests is not clearly erroneous.

[21] Mother and Father also each assert that termination of their parental rights is not in the Children's best interests. A trial court's consideration of 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. *E.M.*, 4 N.E.3d at 647. 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.

- [22] Testimony from both the case manager and an advocate for the child, combined with evidence that there is a reasonable probability that the reasons for a child's removal are not likely to be remedied, has regularly been found to be sufficient to support a trial court's determination that termination is in a child's best interests. See *A.D.S.*, 987 N.E.2d at 1158-59. Here, both an FCM and Child's CASA agreed that termination of Mother's and Father's parental rights was in Child's best interests. And, as explained above, DCS presented sufficient evidence to show that there is a reasonable probability that the reasons for Child's removal from the Mother's care is not likely to be remedied, and Father does not dispute the trial court's conclusion on that issue as to him. Accordingly, the trial court's judgment on this issue is affirmed.

Conclusion

- [23] For all of the above-stated reasons, we affirm the trial court's termination of Mother's and Father's parental rights over Child.
- [24] Affirmed.

Vaidik, J., and Pyle, J., concur.