

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

David W. Stone, IV
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

M.W. and R.W. (Minor Children),

And

T.L. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

July 27, 2023

Court of Appeals Case No.
23A-JT-347

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester,
Judge

The Honorable T. Grey Chandler,
Magistrate

Trial Court Cause No.
48C02-2209-JT-147 & 48C02-2209-JT-148

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, T.L. (Mother), appeals the trial court’s Order terminating her parental rights to her minor children, M.W. and R.W. (collectively, Children).

[2] We affirm.

ISSUE

[3] Mother presents this court with one issue, which we restate as: Whether the trial court’s order terminating her parental rights to Children is clearly erroneous.

FACTS AND PROCEDURAL HISTORY

[4] M.W., born on November 20, 2015, and R.W., born on October 3, 2017, are the biological children of Mother and B.W. (Father).¹ Beginning on March 3, 2020, Children were under a guardianship in the care of M.T. (Guardian), who had other children in her care. On June 30, 2020, the Indiana Department of Child Services (DCS) removed Children from Guardian’s care due to concerns

¹ Father executed a consent to Children’s adoption. Father does not participate in this appeal.

that Children were living in the same household as a child who was the victim of a sex offense and/or that they were victims of a sex offense. On July 1, 2020, DCS filed a petition that it amended on August 21, 2020, alleging that Children were children in need of services (CHINS). On October 7, 2020, the trial court adjudicated Children to be CHINS but returned Children to Guardian's care.

[5] On October 27, 2020, in the CHINS proceeding, DCS filed its Verified Petition for Parent Participation pertaining to Mother.² On November 25, 2020, the trial court entered the CHINS dispositional decree in which it found that the allegations contained in the Petition for Parental Participation were true. The trial court ordered Mother to, among other things, forego the use of all illegal controlled substances, undergo a substance abuse assessment and successfully complete all treatment recommendations, keep all appointments with service providers, submit to random drug screens, undergo a parenting assessment and complete all recommended programs, and maintain suitable, safe, and stable housing. On January 14, 2021, the trial court removed Children from Guardian's home at Guardian's request. The trial court modified the CHINS dispositional decree to include home based counseling and casework services for Mother, and it ordered Mother to secure a legal and stable source of income. Shortly after being removed from Guardian's care, Children were placed with their current foster family.

² A copy of this petition is not part of the record on appeal.

- [6] Mother completed a DCS-referred substance abuse assessment but did not follow through on recommended treatment. Mother failed to comply with all random drug screens, missing forty-one screens between July 25, 2022, and January 5, 2023, alone. From September 29, 2021, to October 12, 2022, Mother tested positive for methamphetamine and/or amphetamine on ten occasions, and three of those positive drug screens also indicated fentanyl. Mother was charged with possession of paraphernalia in April and May of 2022.
- [7] In addition, Mother did not complete a DCS referred parenting assessment or classes, and those referrals were closed out for non-compliance. Mother had not had parenting time with Children during their guardianship, and she did not participate consistently in supervised parenting time after Children's removal from Guardian and the entry of the trial court's dispositional order. In April 2021, Mother's supervised parenting time with Children was suspended after she exhibited inappropriate behavior. Mother understood that DCS would restore her parenting time with Children if she completed a drug rehabilitation program, but she never did. As a result, Mother had no parenting time with Children after April 12, 2021.
- [8] On May 8, 2022, Children's permanency plan was altered to add adoption. On September 23, 2022, DCS filed its petition seeking to have Mother's parental rights to Children terminated. On January 17, 2023, the trial court held a fact-finding hearing on DCS' petition. Mother admitted that she had continued to use methamphetamine for the past one and a half years, her positive drug

screens were the result of her drug use, and that she had last ingested methamphetamine a couple of weeks before the fact-finding hearing. Mother agreed that it would be fair to characterize her methamphetamine use as “about once a week on average.” (Transcript p. 88). Mother’s two separate cases for possession of paraphernalia were still pending. Mother had two certificates of completion for drug/alcohol and parenting classes admitted into evidence to show her initiative at addressing these issues, even though she had not engaged with DCS service providers. The trial court determined that the certificates were not authentic and that Mother had attempted to obstruct justice by having them admitted at the hearing.

[9] Mother had been closed out of two referrals for homebased case services due to non-engagement. At the time of the hearing, Mother had been living in her mother’s one-bedroom apartment for over a year, but Mother was not on a lease. Mother received SNAP benefits and government sponsored health insurance, but she had not been employed for approximately two years and was being financially supported by her mother, who was self-employed. Mother testified at the hearing that she was not “asking the [c]ourt to give me my kids back today” and that she just wanted “a little bit [] more time” to prove herself. (Tr. p. 86).

[10] Children’s guardian ad litem (GAL) and their foster mother testified regarding Children’s difficulties regulating their emotions. When M.W. first came to her foster family, she had virtually no ability to regulate her emotions and would have fits that would last up to six hours. R.W. also had difficulty regulating his

emotions and behavior. Both children had been kicked out of day care. M.W. had been diagnosed with ADHD and PTSD, and R.W. had been diagnosed with ADHD. Children were both on medication and were improving. In addition to these issues, M.W. exhibited a profound sense of insecurity about her source of food, often beginning to question at breakfast whether she would be eating lunch and dinner that day. M.W. seemed to expect to lose meals as a form of punishment. Children's foster mother had been consistent in ensuring Children's attendance at therapy, and Children had been referred by their therapist to a clinician to better address their issues. Children's family case manager (FCM) had concerns for Children's safety if they were to be returned to Mother's care. Children's FCM and GAL recommended termination of Mother's parental rights so that Children could achieve stability and permanency.

[11] On January 24, 2023, the trial court entered its Order terminating Mother's parental rights to Children, entering detailed findings of fact and conclusions thereon in support consistent with the aforementioned facts, including the following:

6. Mother has failed to consistently engage in the services or demonstrate ongoing improvement in her ability to care for [Children].

* * *

17. Mother testified that she continues to use methamphetamine weekly, as recently as since the beginning of 2023.

* * *

32. In sum, Mother’s behavior throughout both the CHINS case and this termination action show that she is unwilling or unable to provide [Children] a safe and stable home, with stable parenting, now or in the immediate future.

* * *

There is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of [Children.]

(Appellant’s App. Vol. II, pp. 7-9).

[12] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[13] Mother challenges the evidence supporting the trial court’s Order terminating her parental rights to Children. It is well-settled that when reviewing the evidence supporting the termination of parental rights, we neither reweigh the evidence nor determine the credibility of witnesses. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. *Id.*

[14] In addition, where, as here, the trial court has entered special findings of fact and conclusions thereon in support of its determination, “[w]e confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment.” *Id.* We must give due regard to the trial court’s opportunity to

judge the credibility of witnesses firsthand, and we do not set aside the trial court's findings or judgment unless it is clearly erroneous. *Id.*

II. *Finding*

[15] Mother contends that there was no evidence supporting the trial court's finding that "Mother testified that she continues to use methamphetamine weekly, as recently as since the beginning of 2023." (Appellant's App. Vol. II, p. 7). However, when asked at the fact-finding hearing whether her admitted use of "once or twice every couple weeks" could be fairly characterized as "once a week on average," Mother replied, "Fair[,] yeah." (Tr. p. 88). The trial court could have reasonably inferred from this testimony that Mother was using methamphetamine on a weekly basis, and, therefore, the finding is not clearly erroneous. *See In re K.S.*, 750 N.E.2d 832, (Ind. Ct. App. 2001) (holding that "[f]indings of fact are clearly erroneous only when the record lacks any evidence or reasonable inferences to support them"). Mother's argument that we should ascribe some other meaning to her testimony essentially requests that we reweigh the evidence, something that we do not do as part of our review. *In re E.M.*, 4 N.E.3d at 642.

II. *Threat to Children's Well-Being*

[16] Mother also contends that insufficient evidence supported the trial court's conclusion that there is a reasonable probability that the continuation of her parental relationship with Children poses a threat to Children's well-being. As the United States Supreme Court and the Indiana Supreme Court have reiterated many times, parents' right to raise their children is "perhaps the

oldest of the fundamental liberty interests.” *Matter of Bi.B.*, 69 N.E.3d 464, 466-67 (Ind. 2017) (quoting *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005), in turn quoting *Troxel v. Granville*, 120 S.Ct. 2054, 2060 (2000)). However, the traditional right of parents to raise their children, although cherished and protected, is not absolute, and that right may be terminated when parents are unable or unwilling to meet their parental responsibilities. *In re N.G.*, 51 N.E.3d 1167, 1169 (Ind. 2016). Termination of parental rights is an extreme sanction that is intended as a “last resort” and is available only when all other reasonable efforts have failed. *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 91 (Ind. Ct. App. 2014). As such, before a termination of parental rights is merited, our legislature has required DCS to allege and prove certain facts by clear and convincing evidence, including that “there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.” Ind. Code § 31-35-2-4(b)(2)(B)(ii).

[17] Mother’s first challenge to the sufficiency of the evidence is to argue that, because DCS must prove its CHINS allegations by a preponderance of the evidence while its burden of proof in a termination proceeding is by clear and convincing evidence, the “evidentiary findings in the CHINS case cannot properly be relied on in this case since they were made under a lower standard of proof.” (Appellant’s Br. p. 9). Mother did not raise this argument when DCS offered the records of Children’s CHINS proceedings into the evidence at the fact-finding hearing, and, therefore, the argument is waived. *See Perry v. Ind.*

Dep't of Child Servs., 196 N.E.3d 1264, 1272 (Ind. Ct. App. 2022) (“It is well-settled that arguments raised for the first time on appeal are waived for our consideration.”), *trans. denied*. Mother has additionally waived this argument because she has not identified the findings and conclusions thereon that she contends demonstrate the trial court’s improper reliance on any findings from the CHINS proceedings. Ind. Appellate Rule 46(A)(8)(a); *see also A.D.S. v. Ind. Dept’ of Child Servs.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (finding Mother had waived her appellate arguments by failing to make specific contentions pertaining to the trial court’s conclusions), *trans. denied*.

[18] Mother also asserts that the trial court’s conclusion regarding the continuing threat her relationship with Children posed to their well-being was undercut by the finding in the CHINS proceeding that Children “did not suffer any injuries before removal[,]” citing a March 11, 2021, order on periodic case review from the CHINS proceeding. (Exh. Vol., p. 74). In support of this argument, Mother relies on *Tipton v. Marion Cnty. Dep’t of Pub. Welfare*, 629 N.E.2d 1262, 1270 (Ind. Ct. App. 1994), in which this court observed that “DPW offered no evidence that the children had ever been harmed by the relationship which existed with their fathers” in assessing whether the evidence supported the trial court’s conclusion that termination was in the children’s best interests. We are not persuaded that this isolated portion of *Tipton* made in a different context requires reversal here, as we have recognized that a “court need not wait until a child is irreversibly harmed before terminating the parent-child relationship.” *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans.*

denied; see also *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (holding that a trial court “need not wait until the child is irreversibly harmed such that her physical, mental, and social development is permanently impaired before terminating the parent-child relationship”), *trans. denied*. In addition, the record reflects that Mother’s substance abuse, lack of stable income, and housing instability were addressed by the trial court’s CHINS dispositional order and, thus, were identified as issues that merited Children’s continued placement outside of her care during the CHINS proceedings, regardless of the fact that these were not the reasons for removal of Children from Guardian’s care in January 2021. It is unclear from the record whether these issues existed before Children were placed in the guardianship.

[19] Mother also asserts that the trial court’s finding that she had tested positive for methamphetamine, amphetamine, and fentanyl on several occasions, both before and after the filing of the termination petition does not support the judgment because some of the tests were taken in close temporal proximity and some “drugs are not removed from the human body within hours of ingestion.” (Appellant’s Br. p. 11). Thus, Mother maintains that several of her positive screens could have been the result of a single use of drugs. Mother’s argument does not enjoy support in the record, as she does not cite any evidence that was admitted at the fact-finding hearing and is specific to methamphetamine, amphetamine, and fentanyl. In addition, Mother admitted that she had continued to abuse methamphetamine on a weekly basis during the year and a half preceding the fact-finding hearing. Mother again essentially requests that

we reweigh the evidence on appeal, which is contrary to our standard of review. *In re E.M.*, 4 N.E.3d at 642.

[20] Mother next contends that DCS failed to show any nexus between her drug use and her fitness to parent, arguing that isolated drug use is insufficient to prove that her relationship with Children posed a threat to their well-being. We reiterate that Mother had admittedly continued to abuse methamphetamine on a weekly basis for a year and a half prior to the termination fact-finding hearing, after Children were adjudicated CHINS and after DCS filed its termination petition, so we cannot credit her characterization of her substance abuse as “isolated”. (Appellant’s Br. p. 11). Contrary to Mother’s implications, her parental rights were not terminated solely because of her substance abuse or solely because she ingested marijuana periodically. Rather, the trial court relied on evidence showing that Mother had repeatedly tested positive for methamphetamine, amphetamine, and fentanyl during both the CHINS and termination proceedings, had instability in her income and housing, and had not developed her ability to parent Children. Mother did not address her substance abuse or her other issues through completion of any DCS services. This court has recognized that a parent who is under the influence of illegal drugs while a child is present in the home essentially abandons the child without any responsible supervision. *In re J.L.*, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009), *trans. denied*. We have also held that evidence of continued, regular drug use indicates that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to a child’s well-being. *See In re A.P.*,

981 N.E.2d 75, 81 (Ind. Ct. App. 2012) (finding sufficient evidence to support trial court's 'threat' determination, where Mother missed multiple drug screens and continued to abuse methamphetamine and other drugs and had made no changes in other problematic areas of her life). At the time of the fact-finding hearing, Children were still working on their significant emotional and behavioral issues, and Children's FCM was concerned for their safety if they were to be returned to Mother's care. The trial court could have reasonably concluded from this evidence that Children required an alert, sober caregiver and that Mother's continued substance abuse posed a threat to their well-being.

[21] Mother also offers us an extended argument that the trial court improperly considered her two arrests for possession of paraphernalia as indicating that she would be incarcerated on those charges. However, Mother's argument misses the mark, as the trial court did not enter any findings based on an assumption that Mother would be incarcerated at any point in the future, and we conclude that the trial court's consideration of Mother's two arrests was relevant to her on-going issues with illegal substance abuse. Mother further argues that the trial court should not have terminated her parental rights because she was living with her mother, because she did not complete DCS referred services, or because Children's foster parents were more financially prosperous and could provide a better home for Children. However, we observe that Mother's name was not on the lease of the home she shared with her mother, so she was living there at the mercy of her mother's continued good will, and neither Mother's housing instability nor her failure to complete DCS referred services were the

sole or dispositive factor in the trial court’s determination. In addition, while the trial court entered findings regarding Children’s foster home and the fact that Children were thriving there, there is no indication that it relied on those findings to support its ‘threat’ conclusion, as opposed to its ‘best interests’ conclusion which requires consideration of a wider range of factors.³ See *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022) (observing that the trial court must look at the totality of the evidence to determine if termination is in the best interests of the child), *trans. denied*. Therefore, we find that these arguments are unpersuasive, as they entail impermissible reweighing of the evidence before the trial court. See *In re E.M.*, 4 N.E.3d at 642.

CONCLUSION

[22] Based on the foregoing, we conclude that the trial court’s order terminating Mother’s parental rights was not clearly erroneous.

[23] Affirmed.

[24] Bradford, J. and Weissmann, J. concur

³ Mother does not independently challenge the evidence supporting the trial court’s conclusion that termination was in Children’s best interests.