

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of Y.L.Y. and T.Y.
(Minor Children), and S.Y.
(Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Plaintiff

July 29, 2021

Court of Appeals Case No.
20A-JT-2345

Appeal from the St. Joseph Probate
Court

The Honorable Jason Cichowicz,
Judge

Trial Court Cause Nos.
71J01-1909-JT-131
71J01-1909-JT-132

May, Judge.

- [1] S.Y. (“Mother”) appeals the involuntary termination of her parental rights to Y.L.Y. and T.Y. (collectively, “Children”). She argues the trial court’s findings do not support its conclusions that the conditions under which Children were removed from Mother’s care would not be remedied and that continuation of the Mother-Children relationship would pose a threat to Children’s well-being. We affirm.

Facts and Procedural History

- [2] Mother¹ is the biological mother of Y.L.Y. and T.Y., born May 24, 2016, and September 21, 2017, respectively. On October 10, 2016, the Department of Child Services (“DCS”) received a call that Mother, then age sixteen,² ran away from her grandmother’s home and left Y.L.Y. with a relative. On the same day, DCS filed a petition alleging Y.L.Y. was a Child in Need of Services (“CHINS”). DCS placed Y.L.Y. in kinship placement.
- [3] On October 27, 2016, DCS filed an amended petition requesting a change in Y.L.Y.’s placement because Mother had stabbed the relative with whom Y.L.Y. was placed and attempted to kidnap Y.L.Y. Mother was subsequently detained at the Juvenile Justice Center.³ Y.L.Y. was placed in foster care,

¹ Children’s father is T.W. (“Father”); his parental rights were also terminated as part of these proceedings, but he does not participate in this appeal.

² Mother had been adjudicated a Child in Need of Services (“CHINS”) as part of a different proceeding.

³ The trial court’s findings indicate Mother was adjudicated based on this incident, but the result of the adjudication is unclear.

where she remained through the pendency of these proceedings. Mother admitted Y.L.Y. was a CHINS on November 23, 2016. On January 9, 2017, after T.W. (“Father”)⁴ did not attend his initial hearing as scheduled, the trial court entered its order adjudicating Y.L.Y. a CHINS.

[4] On February 6, 2017, the trial court held a dispositional hearing and entered its dispositional order as to Y.L.Y. The order required Mother to, among other things, engage in individual therapy, submit to random drug screens, follow all probation requirements,⁵ establish paternity of Y.L.Y., attend school on a daily basis, and participate in supervised visits with Y.L.Y. Mother did not initially engage in services and was a runaway for a significant portion of the first months of the CHINS case, however, by August 28, 2017, Mother had restarted supervised visits with Y.L.Y. On September 21, 2017, Mother gave birth to T.Y., who was born with six fingers on one hand.

[5] On September 26, 2017, DCS filed a petition alleging T.Y. was a CHINS based on Mother’s comments regarding T.Y.’s polydactyly, including that she did not “like to look at weird people” (Tr. Vol. II at 131); Mother’s lack of maturity and stability; Mother’s failure to make a care plan for T.Y. following release from the hospital; and Mother’s inability to bond with T.Y. DCS placed T.Y. with

⁴ Father’s paternity was not yet established legally, but both Mother and Father acknowledged Father’s paternity of Y.L.Y. and T.Y.

⁵ It is not clear from the record what these rules of probation were or for what adjudication they were imposed.

the same foster home as Y.L.Y., where he has remained throughout these proceedings. On April 2, 2018, after Mother and Father were found in default, the trial court adjudicated T.Y. a CHINS.

[6] On April 16, 2018, the trial court held its disposition hearing and entered its dispositional order as to T.Y. The order required Mother to obtain and maintain suitable housing and employment; participate in individual therapy and follow all recommendations; submit to random drug screens; participate in parenting classes and follow all recommendations; participate in case management services; sign all releases and keep all appointments; and participate in supervised visitation with T.Y. Mother was intermittently compliant with services, having periods of compliance followed by months of noncompliance. Mother similarly had sporadic periods of sobriety and periods of time when she tested positive for marijuana and alcohol or failed to submit to drugs screens.

[7] After a domestic violence incident between Mother and Mother's boyfriend in May 2019, the juvenile court in charge of Mother's criminal matters⁶ ordered Mother to participate in moral reconnection therapy ("MRT")⁷ and complete a substance abuse assessment and follow all recommendations. In September

⁶ It is unclear from the record if Mother was charged with a crime as part of this incident or, if she was, how that charge was resolved.

⁷ "MRT is a cognitive-behavioral treatment system that leads to enhanced moral reasoning, better decision making, and more appropriate behavior." <https://perma.cc/E7U6-6GX4>

2019, Mother was arrested and charged with Class A misdemeanor resisting law enforcement.⁸ She pled guilty to the charge in July 2020 and was sentenced to time served. Regarding visitation with Children over the pendency of the CHINS case and the eventual petition to terminate her parental rights, Mother has had periods of time during which she did not attend visitation with Children. Some of Mother's supervised visitations went well; however, there were times when Mother spent the entire visitation on her laptop, allowed a friend to feed T.Y. cheese despite his lactose intolerance, or refused to attend visitation or communicate with the visitation supervisor, resulting in Children having to wait in a car for Mother for an hour.

[8] On September 26, 2019, DCS filed a petition to involuntarily terminate Mother's rights to Children⁹ because Mother had been non-compliant with services and had not visited with Children on a regular basis. DCS suspended Mother's visitation with Children in January 2020 due to multiple cancellations, and Mother has not seen Children since that time. The trial court held evidentiary hearings on the petition on July 21 and July 31, 2020. On December 4, 2020, the trial court entered its order terminating Mother's parental rights to Children.

⁸ Ind. Code § 35-44.1-3-1(a) (2019).

⁹ Father was also a party to this petition.

Discussion and Decision

1. Standard of Review

- [9] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).
- [10] "The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.
- [11] To terminate a parent-child relationship, the State must allege and prove:

(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). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[12] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s

decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Mother does not challenge specific findings, and thus they must be accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

2. Reasonable Probability Conditions Would Not Be Remedied

[13] A trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Regarding this issue, the trial court found and concluded:

3. There is a reasonable probability that the conditions that resulted in the removal of [Children] and their continued placement outside the home will not be remedied.

a. FCM [Family Case Manager] Rosas credibly testified that [Y.L.Y.] was removed from Mother’s care after Mother left [Y.L.Y.] with a caregiver who was unable to care for [Y.L.Y.]. Mother’s whereabouts at that time were unknown.

b. FCM Rosas credibly testified that shortly after detention, Mother was involved in a violent argument in which Mother stabbed a family member at the home of the kinship placement of [Y.L.Y.].

c. Mother did not visit with [Y.L.Y.] or participate in services to rebuild her relationship with [Y.L.Y.] until August 2017, ten (10) months after [Y.L.Y.] was removed from Mother's care per the credible testimony of FCM Rosas[.]

d. [T.Y.] was born September 21, 2017 and detained the very next day due to Mother's inability to appropriately bond and care for [T.Y.].

e. Mother was ordered to have no visitation with [T.Y.]. Mother was not authorized to visit with [T.Y.] until June 2018.

f. Mother never successfully completed case management services, MRT [moral reconnection therapy], a substance abuse assessment or therapy per the credible testimony of FCM Rosas. The only service Mother ever successfully completed was parenting classes. Mother has failed to consistently take random drug and alcohol screens, engaged in illegal marijuana use, failed to maintain stable housing, failed to obtain and maintain a stable source of income, and committed an additional criminal act per the credible testimony of FCM Rosas.

* * * * *

i. In May 2019, after Mother was involved in a domestic violence ordeal with her then boyfriend in addition to Mother's then positive drug screens, Mother was ordered to participate in MRT and a substance abuse assessment.

j. Mother never completed MRT or a substance abuse assessment per the credible testimony of FCM Rosas. The

Court finds this especially concerning considering Mother has been involved in at least two (2) serious incidents of violence involving a deadly weapon. FCM Rosas credibly testified that Mother seemed to have a lack of understanding about the severity of the issues.

k. Further, Mother has failed to complete, or even comply, with case management services. Those services are critical for Mother. Mother testified to residing in nine (9) different residences during the duration of the CHINS matter, many of those for only a short duration. Mother testified she had been evicted from one (1) home. In addition, Mother testified that she currently was unemployed and she had quit her previous employment because it “wasn’t working out.” Mother previously, per the credibly [sic] testimony of Ms. Waters, had been receiving Social Security Disability benefits. However, Mother failed to attend an appointment regarding those benefits approximately one (1) year ago, and Mother has yet to have those benefits reinstated per Ms. Waters [sic] credible testimony.

l. Mother’s therapy with Ms. Waters was one of the few services that Mother was moderately compliant with her engagement. Even so, Mother had many lapses in therapy, Ms. Waters credibly testified that she began working with Mother in 2018. In August 2019, Mother ceased working with her individual therapist per the credible testimony of FCM Rosas. Mother restarted therapy in December 2019 and then once again dropped off in February 2020 per the credible testimony of FCM Rosas.

m. Unfortunately, this appears to be a pattern of Mother’s. Mother goes through periods of engagement,

followed by periods of disengagement per the credible testimony of FCM Rosas.

n. FCM Rosas credibly testified that she does not believe that the conditions that resulted in the removal of [Children] will be remedied because although the CHINS matter was opened for four (4) years with extensive services provided, Mother had made little progress toward reunification.

o. CASA [Court Appointed Special Advocate] Obando credibly testified that she did not believe that the conditions that led to the removal of [Children] would be remedied because Mother has a consistent pattern of numerous homes, no employment, no social security benefits, and no participation in services other than therapy. CASA Obando testified credibly that Mother is simply not gaining the ability to keep the children safe. This Court agrees.

p. Meanwhile, [Children] remain in the same foster care placement they have been for almost their entire lives.

q. In addition to sporadic attendance in therapy, Mother's progress has been limited. Ms. Waters testified credibly that while Mother can vocalize an understanding of her therapeutic goals, Mother has failed to integrate what she learns into daily life. Ms. Waters further testified that Mother lacks follow through.

r. Further, Mother has failed to even consistently visit with [Children]. After visitation was reinstated with Mother in June 2018, Mother visited with [Children] and demonstrated minimum compliance for a period of time. However, as FCM Rosas credibly testified, when Mother

has any distressing issue in her life, Mother's progress "falls apart" and Mother disengages from both her services and [Children].

s. In May 2019, the Court authorized Mother to participate in intermittently supervised community visits with [Children].

t. By August 2019, Mother was testing positive for marijuana per the credible testimony of FCM Rosas.

u. Unsurprisingly, one (1) month later, Mother's visitation became inconsistent. Mother was distracted by friends and electronics at the visits per the credible testimony of FCM Rosas. By mid-September 2019, Mother was no longer attending visitation with [Children] per the credible testimony of FCM Rosas.

v. When Mother was questioned as to why she stopped visiting with [Children] from September 2019 till [sic] December 2019, Mother testified that she was stressed about the services and "just needed some space."

* * * * *

y. Mother has also continued to engage in criminal activity. When [Y.L.Y.] was removed from her Mother's care, a significant incident occurred at the kinship placements [sic] home where mother stabbed a family member per the credible testimony of FCM Rosas.

z. In September 2019, Mother was arrested for resisting law enforcement. Mother pled guilty to that crime on July 31, 2020.

* * * * *

ac. Mother's failure to comply with MRT, a substance abuse assessment, case management services, and random drug and alcohol screens, coupled with her inconsistent visitation, unstable housing and employment, and lack of follow through, demonstrate by clear and convincing evidence that the conditions that resulted in the removal and continued placement [of Children] outside of Mother's home will not be remedied.

(App. Vol. II at 158-60.)

[14] Mother argues the trial court's findings do not support its conclusion that the conditions under which Children were removed would not be remedied. Mother argues the findings do not recognize the positive steps she has made toward reunification, such as successfully caring for a subsequently-born child, being bonded with Children, and showing "no issues of parenting whatsoever[.]" (Br. of Appellant at 10.) Mother also contends the trial court did not note that she had recently engaged in the process to regain her Social Security benefits, and that the characterization that she missed "many" therapy appointments was incorrect. However, Mother's assertions ignore that the CHINS cases were open for almost the entirety of Children's lives and Mother has failed to make any progress in services except for parenting classes. Further, Mother did not obtain stable housing and/or employment during the pendency of the cases and did not consistently participate in visitation with Children. Mother's arguments are invitations for us to reweigh the evidence, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot

reweigh evidence or judge the credibility of witnesses). Therefore, we hold the trial court's findings support its conclusion that the conditions under which Children were removed from Mother's care would not be remedied.¹⁰ *See In re E.M.*, 4 N.E.3d 636, 644 (Ind. 2014) (findings regarding father's continued non-compliance with services supported trial court's conclusion the conditions under which children were removed from father's care would not be remedied).

Conclusion

[15] The trial court's findings support its conclusion that the conditions under which Children were removed from Mother's care would not be remedied.

Accordingly, we affirm the termination of Mother's parental rights to Children.

[16] Affirmed.

Bailey, J., and Robb, J., concur.

¹⁰ Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need decide only if the evidence and findings support the trial court's conclusion as to one of these two requirements. *See In re L.S.*, 717 N.E.2d at 209 (because statute written in disjunctive, court needs to find only one requirement to terminate parental rights). Because the trial court's findings supported its conclusion that the conditions under which Children were removed from Mother's care would not be remedied, we need not consider Mother's argument regarding whether the continuation of the Mother-Children relationship poses a risk to Children's well-being.