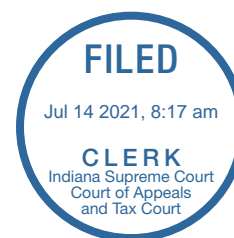


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

C.L. and M.L. (Minor Children),

and

C.L. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

July 14, 2021

Court of Appeals Case No.
21A-JT-191

Appeal from the Washington
Circuit Court

The Honorable Larry W. Medlock,
Judge

Trial Court Cause Nos.
88C01-2002-JT-14, 88C01-2002-
JT-15

Appellee-Petitioner.

Altice, Judge.

Case Summary

[1] C.L. (Mother) appeals the trial court's order terminating her parental rights as to her minor children M.L. and C.L. (collectively, Children).¹ Mother contends that the evidence was insufficient to support the termination order. Specifically, Mother claims that the Indiana Department of Child Services (DCS) failed to establish that the conditions resulting in Children's removal from her care would not be remedied, or that DCS had a permanency plan for Children. Mother also contends that DCS failed to offer adequate services in assisting with parent/child reunification.

[2] We affirm.

¹ Although Father's parental rights were also terminated, he is not a party to this appeal. Thus, we focus primarily on the facts and evidence as they relate to Mother.

Facts and Procedural History

- [3] Mother and T.L. (Father) (collectively, Parents) resided together in Washington County with Children. DCS became involved with the family in the spring of 2017 after receiving reports of Parents' drug use and episodes of domestic violence.
- [4] DCS filed a petition on May 2, 2017, alleging that Children were in Need of Services (CHINS) because Mother was using methamphetamine, had stabbed Father, and made homicidal statements to Father. Mother stabbed Father after he had thrown a chair at her and punched her in the nose. DCS further alleged that Father was using cocaine and methamphetamine and that there were ongoing domestic violence issues that Children had witnessed. Parents admitted the CHINS allegations at the initial hearing that was conducted on May 23, 2017.
- [5] Following a dispositional hearing on June 13, 2017, Parents were ordered, among other things, to stop using and possessing drugs, to ensure proper care and living conditions for Children, and to participate in various parenting programs and counseling services. Thereafter, on June 16, 2017, DCS removed Children from Parents' care on an emergency basis because Parents tested positive for methamphetamine. At the time, Father had moved from the residence and Mother was Children's sole caregiver. Following Children's removal, Parents began to participate in the services set forth in the

dispositional order. At DCS's recommendation, the CHINS case was closed on January 30, 2018, and Children were returned to Parents' care.

- [6] Children were removed a second time, however, on June 20, 2018, because Mother had thrown various objects at Children and Father. That same day, DCS filed another CHINS petition. At the initial hearing, the juvenile court found that Children were not in need of further detention, and Parents were ordered to comply with various provisional directives. Children were released to Father's care, and the juvenile court determined that Parents were to abide by the terms of a no contact order and Mother was not to have unsupervised visitation with Children until further order. Two months later, Children were again removed from Parents' care and placed in foster care because Parents had violated the provisional order and had resumed living together with Children.
- [7] On September 11, 2018, Father admitted to the CHINS allegations in the second petition. Thus, the juvenile court ordered Father to undergo further counseling and participate in various DCS services. Mother also admitted to the CHINS allegations and was ordered to continue to participate in DCS services and counseling.
- [8] Parents made minimal progress during the CHINS proceedings. Although Mother participated in some home-based casework, she was unemployed and failed drug screens. On March 6, 2019, Mother took Oxycodone that was not prescribed to her and then was unable to remain sober for several months.

- [9] Parents engaged in another act of domestic violence in June 2019. From June 2019 through October 2019, Mother did not participate in substance abuse meetings and continued to test positive for various illegal drugs. Father also used methamphetamine and other illegal drugs on a regular basis. Several visits with Children had to be canceled because of Parents' continued episodes of domestic violence. As a result, the trial court ultimately changed the plan from reunification to adoption.
- [10] On January 9, 2020, Mother was charged with Criminal Recklessness with a deadly weapon, for attempting to strike Father's then-girlfriend with her vehicle. Thereafter, on February 3, 2020, DCS filed a petition to terminate Parents' parental rights. Mother subsequently pleaded guilty to criminal recklessness on June 11, 2020 and was sentenced to four months of incarceration. Father continued to use illegal substances and consistently missed therapy sessions.
- [11] Termination hearings were conducted over several days, beginning July 16, 2020. On the first day of testimony, Father admitted that he could not stop using illegal drugs and claimed that DCS services were not helping him. Several DCS caseworkers and managers testified that termination of parental rights and adoption were in Children's best interests. The case managers opined that keeping Children with Parents would place Children in danger because of Parents' three-year history of domestic violence and illegal drug use.

[12] The juvenile court terminated Parents' parental rights on January 5, 2021, and entered a twenty-three-page order that provided in part as follows:

37. Mother was able to maintain sobriety between the Dispositional Hearing in November 2018 through May 2019, when she admitted to the use of a non-prescription Hydrocodone.

38. In June 2019, Mother and Father engaged in another act of domestic violence.

39. Between June and October of 2019, Mother failed to participate in several different services. Specifically, Mother failed to attend a recommended weekly substance abuse group, failed to make progress in therapy, and tested positive for Amphetamine, Methamphetamine, and Hydrocodone.

40. During the Review Hearing on September 10, 2019, the Court found that some visits with [Children] needed to be cancelled due to Mother and Father fighting.

41. Mother and Father continued to have multiple ongoing instances of domestic violence throughout the life of this case, up until Mother's incarceration in February 2020.

42. Mother and Father have both admitted there was domestic violence in the home. . . .

. . .

49. Over the three (3) years that DCS has been involved with this family, and over multiple cases, Mother and Father have consistently been engaged in repeated incidences of domestic violence.

50. On January 22, 2020, the Court changed the Permanency Plan from Reunification to Reunification with a Concurrent Plan of Adoption.

51. In February 2020, Mother was arrested for an incident of attempted violence.

52. Mother was specifically arrested for attempting to strike Father's then-girlfriend with Mother's car, and Mother later admitted guilt in that incident.

53. Mother admitted that the incident occurred in significant part because the victim was Father's girlfriend.

54. Mother was incarcerated between February 2020 and June 2020 as a direct result of this incident.

55. During her testimony, Mother admitted that had her [Children] been in her care during this incident, . . . that . . . [Children] would have been in danger. The Court agrees with Mother and adopts that portion of her testimony into its findings.

56. Evidence shows that Mother and Father, in spite of having a relationship that regularly includes cycles of physical violence even in front of the children, have continued to communicate throughout the CHINS case.

. . .

59. Since her release from incarceration, Mother has participated in offered services and has maintained sobriety.

60. Mother was not released from incarceration until after the Termination Petition was filed and was released only one month prior to the start of the Termination Hearing.

61. Father has continued to struggle with substance abuse and has made little if any progress in solving these issues.

62. Father admitted on the first day of testimony that he could not stop using illegal substances, and that services won't help. The Court, considering the results of the drug screens that Father has submitted to and the testimony offered finds no reason to contradict Father.

63. Mother's current progress is to be commended, as she has remained sober since January. However, Mother has made efforts in the past to remain sober and stable, and on multiple occasions relapsed with incidences of drug use and domestic violence.

64. Mother has historically maintained sobriety for a couple of months at a time, but has on multiple occasions returned to the use of illegal substances.

65. During the majority of Mother's current sobriety she was also incarcerated.

66. The Court finds that this is a pattern of behavior for Mother — that Mother engages in services, seems to make progress, and then backslides.

67. Mother appeared to make sufficient progress during CHINS matter that the Court saw fit to return her [Children] to her care.

68. Not six (6) months after, the family was again in Court due to incidents of domestic violence and substance abuse.

69. [Children have] been removed from [their] parents three (3) times, and [have] been adjudicated to be [CHINS] twice.

70. [Children] . . . need permanency through Adoption and Termination of Parental Rights.

71. Based on Mother's consistent pattern of behavior, inability to maintain progress, and continued acts of domestic violence, termination of Mother's parental rights as to [Children] is in [Children's] best interests.

72. Based on Father's consistent use of illegal substances which have impaired his ability to care for his children, and his own admission that continued services are unlikely to ever help him overcome his addiction, termination of Father's parental rights as to [Children] is in [Children's] best interests.

73. FCM Jessica Lewis testified that she believes that termination of parental rights and adoption is in [Children's] best interests. FCM Lewis testified that it is not in the best interest of the children to be reunited with their parents, yet testified that the minor child, [C.L.] has tried to choke himself while in placement. She agreed that the children love their parents dearly, and their parents love them.

. . .

77. CASA Rosemary Jones testified that she believes termination of parental rights and adoption is in [Children's] best interests, and that she supports DCS's plan of adoption.

78. The Court finds both FCM Jessica Lewis and CASA Rosemary Jones to be reliable and credible and adopts their testimony as a finding of this Court.

79. The permanency plan of adoption is satisfactory for [Children's] care and treatment.

80. While DCS has not yet identified an adoptive home, DCS has indicated that it has a specific plan for [Children] should parental rights be terminated, and that plan is sufficiently detailed as to reassure this Court that [Children] will be adopted.

...

83. Due to Mother's consistent pattern of behavior, inability to maintain progress, and continued acts of domestic violence, and due to Father's consistent use of illegal substances and own admission that services would be unlikely to help, there is a reasonable probability the conditions that resulted in the child's removal will not be remedied.

84. Additionally, the Court finds that continuation of the parent-child relationship . . . would pose a danger to [Children].

85. Mother admitted during the Termination Hearing that if [Children] had been in Mother's care in February 2020, [Children] would have been placed in danger due to Mother's violent actions. Mother also admitted that [Children have], on multiple occasions, been present for acts of domestic violence between Mother and Father.

86. Father is still regularly using illegal substances, and would be unable to provide appropriate care or supervision for [Children] as a result of his use. Additionally, Father has engaged in acts of domestic violence in front of the [Children] in the past, and the Court finds that further acts of domestic violence would be likely.

87. The Court additionally finds that on at least two (2) occasions, [Children have] been adjudicated to be . . . [Children] in Need of Services.

...

CONCLUSIONS OF LAW

The Court concludes that DCS has met its burden of proof, proving its petition to terminate the parental rights of [Parents] by clear and convincing evidence, to wit:

. . .

2. There is a reasonable probability that:
 - a. The conditions which resulted in [Children's] removal and continued placement outside the home will not be remedied by Mother or the Father;
 - b. That continuation of the parent-child relationship poses a threat to [Children's] wellbeing.
3. That [Children have], on two separate occasions, been adjudicated [children] in need of services.
4. Termination of parental rights is in [Children's] best interests. . . .
5. There is a satisfactory plan for the care and treatment of [Children], that being Adoption.

Appellant's Appendix Vol. II at 10-32.

[13] Mother now appeals.

DISCUSSION AND DECISION

I. Standard of Review

[14] We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and

raise their children. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). A parent’s interest in the care, custody, and control of his or her children is “perhaps the oldest of the fundamental liberty interests.” *Id.* However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If parents are “unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an extreme measure and should only be utilized as a last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015).

[15] We rely on a deferential standard of review in cases concerning the termination of parental rights due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. We neither reweigh evidence nor assess the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment. *Id.*

[16] Relevant here is Ind. Code § 31-35-2-4(b)(2)(B), which provides that before terminating a parent’s rights to his or her child, DCS must 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 [CHINS];

(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.

[17] DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

II. Mother's Claims

A. Conditions Not Remedied

[18] Mother contends that there was insufficient evidence to support the juvenile court's determination that there was a reasonable probability that the conditions causing the Children's removal from her care would not be remedied. As a result, Mother argues that the termination order must be set aside.

[19] Notwithstanding Mother's claim, we initially observe that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. That is, DCS must prove there is a reasonable probability that the conditions that resulted in Children's removal

will not be remedied, *or* the continuation of the parent-child relationship poses a threat to Children’s well-being, *or* children have been adjudicated CHINS on two separate occasions. I.C. § 31-35-2-4(b)(2)(B)(i)–(iii). Therefore, the juvenile court need only find that one of the three elements was proven by clear and convincing evidence. *K.E.*, 39 N.E.3d at 646 n.4.

[20] Here, the juvenile court found that DCS proved all three statutory elements set forth in I.C. § 31-35-2-4(b)(2)(B) by clear and convincing evidence. As the evidence showed that Parents engaged in episodes of domestic violence throughout DCS’s three-year involvement with them, and Mother admitted that Children would have been in danger had they been in her care when she tried to strike Father’s girlfriend with her vehicle, we readily agree with the juvenile court’s finding and conclusion that the continuation of the parent-child relationship posed a threat to Children in accordance with I.C. § 31-35-2-4(b)(2)(B)(ii). The record also reflects that Children had been adjudicated CHINS on two occasions, thus satisfying I.C. § 31-35-2-4(b)(2)(B)(iii). Because Mother challenges only one of the elements—that the conditions resulting in removal would not be remedied—she effectively concedes that the termination order is not clearly erroneous and has waived the issue. *See In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (holding that when a parent does not specifically challenge the juvenile court’s findings or conclusions, the parent waives argument by failing to make a cogent argument), *trans. denied*.

[21] Waiver notwithstanding, we will address Mother’s argument. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis process. *K.T.K.*, 989 N.E.2d at 1231. First, we ascertain what conditions led to the child’s placement and retention in foster care, and second, whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[22] In the second step, the juvenile court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *E.M. v. Ind. DCS*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). In judging fitness, the juvenile court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Co. v. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

[23] The juvenile court may also consider a parent’s response to the offers of help, including services offered by DCS and the parent’s response to those services. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change. *Lang v. Starke Co. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007),

trans. denied. In other words, while trial courts must give due regard to changed conditions, they are not precluded from finding that a parent’s past behavior is the best predictor of their future behavior. *In re E.M.*, 4 N.E.3d at 644-45. “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* at 643.

[24] Mother argues that the termination order cannot stand because the evidence at the hearings demonstrated that she “exhibited significant improvements for nearly ten months.” *Appellant’s Brief* at 10. Notwithstanding this contention, the evidence established that while Mother’s goal was to remain sober, she relapsed many times. And although Mother argues that the juvenile court should have afforded more weight to her recent period of sobriety, balancing a parent’s current circumstances and his or her historical patterns of conduct is entrusted to the trial court. *In re E.M.*, 4 N.E.3d at 643.

[25] Here, although the juvenile court considered Mother’s period of sobriety since January 2020, it noted Mother’s frequent and continued backslides to illegal drug use. Indeed, the juvenile court may properly consider a parent’s past behavior to be “the best predictor of . . . future behavior.” *Id.*

[26] In sum, we reject Mother’s contentions that DCS failed to show by clear and convincing evidence that the conditions that resulted in Children’s removal would not be remedied. Mother’s contentions amount to an invitation for us to reweigh the evidence—an invitation we decline.

B. Plan of Adoption

[27] Mother next argues that the termination order cannot stand because there was no permanency plan for Children and no specific adoptive home had been identified. Even though DCS had yet to identify a particular adoptive home for Children, the caseworkers sufficiently and specifically detailed a plan that assured the juvenile court that Children will be adopted. DCS's plan for Children is satisfactory if the plan is to attempt to find suitable parents to adopt the children. *In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014), *trans. denied*. Thus, contrary to Mother's claim, the juvenile court was not required to wait until DCS had identified an adoptive home before terminating Mother's parental rights. We decline to set aside the termination order on this basis.

C. Reunification Efforts

[28] Finally, Mother contends that the termination order cannot stand because the evidence failed to show that DCS made reasonable efforts toward Mother's reunification with Children. Mother claims that DCS had "given up on services to improve [her] parenting." *Appellant's Brief* at 13.

[29] Efforts to reunify parents with their children must be reasonable, but they are not required to be perfect or all inclusive. *In re Termination of S.S.*, 120 N.E.3d 605, 609 (Ind. Ct. App. 2019) (holding that termination of parental rights is appropriate when reasonable efforts at reunification have failed). Moreover, while DCS should make reasonable efforts to preserve and reunify families during *CHINS* proceedings, that requirement is "not a requisite element of [the]

parental rights termination statute.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009); *see also In re J.W., Jr.*, 27 N.E.3d 1185, 1190 (Ind. Ct. App. 2015) (holding that the DCS has no obligation in termination proceedings to plead and prove that services have been offered to the parent to assist in fulfilling parental obligations), *trans. denied*.

[30] Although DCS is not required to prove reunification services while termination proceedings are pending, the record reflects that DCS in fact provided Mother with a multitude of services geared toward reunification throughout that time, including therapy, substance abuse services, and domestic violence assistance. Additionally, Mother’s DCS case manager and a representative from Ireland Home Based Services continued to visit and assist Mother while the termination proceedings were pending.

[31] At one of the termination hearings, DCS caseworker Lewis testified that the domestic violence issues between Parents were “still prevalent.” *Transcript* at 54. Although Lewis believed that additional services would not help Mother with these problems, she never testified—contrary to Mother’s claim—that DCS ever stopped providing services. In short, there is nothing to suggest that DCS failed to provide Mother with reasonable reunification services.

[32] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.