

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:

T.H. (Minor Child)

and

R.H. (Father) and

A.W. (Mother),

Appellant-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

August 3, 2022

Court of Appeals Case No.
22A-JT-393

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

Trial Court Cause No.
02D08-2105-JT-134

Mathias, Judge.

[1] Parents A.W. (“Mother”) and R.H. (“Father”) appeal the trial court’s termination of their parental rights over their minor daughter, T.H. (“Child”). Parents raise five combined issues for our review, which we consolidate and restate as the following two dispositive issues:

I. Whether the trial court’s conclusion that the conditions that resulted in the removal of Child from Parents’ care are not likely to be remedied is clearly erroneous.

II. Whether the trial court’s conclusion that the termination of Parents’ parental rights is in Child’s best interests is clearly erroneous.

[2] We affirm.

Facts and Procedural History

[3] On May 11, 2019, Mother gave birth to Child. That same day, Mother tested positive for cocaine. Child’s cord blood also tested positive for cocaine. Father established his paternity by affidavit.

[4] The Indiana Department of Child Services (“DCS”) filed a petition alleging Child to be a Child in Need of Services (“CHINS”) based in part on Child having been born with cocaine in her blood. At an ensuing initial hearing on DCS’s petition, Mother and Father both admitted to recent drug use and a history of domestic violence between them. The court adjudicated Child to be a CHINS, placed Child in foster care, and directed Parents to participate in

various services, including obtaining drug and alcohol assessments, following all recommendations from those assessments, refraining from further use of drugs and alcohol, and submitting to random drug screens.

[5] Over the next two-and-one-half years, Parents continued to use cocaine and marijuana, failed or refused to submit to multiple drug screens, failed to submit to or complete substance-abuse assessments, and failed to participate consistently in therapy. In late 2020, Mother gave birth to another child who was also born exposed to cocaine.

[6] In June 2021, DCS filed its petition to terminate the Parents' parental rights over Child. The court held a fact-finding hearing on DCS's petition in mid-November. Family Case Manager ("FCM") Rachel Amiot testified that Mother last relapsed with controlled substances in late October, just a few weeks before the fact-finding hearing. Mother was pregnant at the time of the fact-finding hearing. FCM Amiot likewise testified to Father's continued drug use and failure to successfully complete substance-abuse related services. FCM Amiot recommended that Parents' parental rights be terminated at least in part based on their substance-abuse issues. Child's guardian ad litem ("GAL"), Michael Harmeyer, also testified that he believed the termination of Parents' parental rights to be in Child's best interests based on their "chronic[,] continuing . . . addiction or use of illegal substances" Tr. Vol. 2, p. 175.

[7] The trial court terminated Parents' parental rights over Child. In its order, the court found extensive facts, which are unchallenged in this appeal. The court

concluded in relevant part that the conditions that resulted in Child’s removal from Parents’ care were not likely to be remedied and that termination of the parental rights was in Child’s best interests. This appeal ensued.

Standard of Review

- [8] 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.*
- [9] 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; and 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*. Finally, 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).

Discussion and Decision

[10] 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). Only two of those elements are at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied, and (2) whether termination of parental rights was in the child's best interests.¹ *I.C. § 31-35-2-4(b)(2)(B)(i), (C)*.

[11] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child's emotional and physical development are put at risk by the 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 DCS must only prove one of the elements listed in *Indiana Code* subsection 31-35-2-4(b)(2)(B); therefore, it is not necessary for our court to consider whether DCS presented clear and convincing evidence that continuation of the parental child relationship poses a threat to the child's well-being. See *I.C. § 31-35-2-4(b)(2)(B)*.

I. Conditions that Resulted in Removal

[12] Parents each argue that the trial court’s conclusion that there is a reasonable probability that the reasons for Child’s removal from their care and/or the reasons for her continued placement outside their homes had not been remedied is not supported by clear and convincing evidence. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside a parent’s home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to [the child’s] placement and retention in foster care.” *Id.* Here, there is no dispute that Mother’s and Father’s substance abuse led to Child’s removal from their home.

[13] Second, “we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In this step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration any 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.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). In addition, a trial court may consider services offered by DCS and the parent’s response to those services as evidence of the likelihood that conditions will be remedied. *A.D.S.*, 987 N.E.2d at 1157. “Where there are only temporary improvements and the pattern of

conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). DCS “is not required to provide evidence ruling out all possibilities of change; rather, it need only establish ‘that there is a reasonable probability that the parent’s behavior will not change.’” *A.D.S.*, 987 N.E.2d at 1157 (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)).

[14] Here, Mother asserts that the trial court’s conclusion that the reasons for Child’s removal from her care are not likely to be remedied is clearly erroneous. Specifically, Mother contends that she “tested negative for drugs and alcohol for over a month early in the case,” that she had been attending substance-abuse classes for “a couple of months” prior to the fact-finding hearing on DCS’s termination petition, and that she was “well on her way to completion” of that program. Mother’s Br. at 14-15, 19. Similarly, while Father acknowledges that he struggled with substance abuse throughout the underlying proceedings, he asserts that he “had more consistent attendance with substance abuse treatment the months immediately prior to” the fact-finding hearing on DCS’s termination petition. Father’s Br. at 14.

[15] The Parents’ respective arguments simply seek to have this Court reweigh the evidence on appeal, which we will not do. The record amply demonstrates that the Parents’ substance-abuse issues underlying Child’s removal from their care were not likely to be remedied. Mother and Father both continued to use illicit substances throughout the underlying proceedings, and they both repeatedly

failed to complete substance-abuse assessments and therapy. They both also repeatedly failed or did not submit to drug screens. Further, Mother also had a second child born exposed to cocaine, and, although she had relapsed in late October 2021, she was again pregnant at the time of the hearing on DCS's termination petition just a few weeks later.

[16] A reasonable fact-finder could readily conclude from the evidence before the trial court that the conditions that resulted in Child's removal from Parents' care were not likely to be remedied by either Mother or Father. Therefore, we cannot say that the trial court's conclusion on this issue is clearly erroneous.

II. Child's Best Interests

[17] Parents also assert that the trial court's conclusion that the termination of their parental rights over Child is in Child's best interests is clearly erroneous. A 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. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). 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. "[W]e have previously held that the recommendation by both the case manager and child advocate to terminate

parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests." *A.D.S., 987 N.E.2d at 1158-59.*

[18] Here, again, the evidence demonstrates that the conditions that resulted in Child's removal from Parents' care will not be remedied. In addition, FCM Amiot and GAL Harmeyer both recommended that Parents' parental rights over Child be terminated. Accordingly, we cannot say that the trial court's conclusion that termination of Parents' parental rights was in Child's best interests is clearly erroneous.

Conclusion

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

[20] Affirmed.

Brown, J., and Molter, J., concur.