

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.S.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

March 18, 2022

Court of Appeals Case No.
21A-JT-2196

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

Trial Court Cause Nos.
79D03-2012-JT-101, 79D03-2012-
JT-102, 79D03-2012-JT-103,
79D03-2012-JT-104

Altice, Judge.

Case Summary

- [1] D.S. (Mother) appeals the involuntary termination of her parental rights to her four minor children, Jo.H.,¹ C.H.,² Ja.H.,³ and J.R.⁴ (collectively, the Children).⁵ She challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

Facts & Procedural History

- [3] On February 26, 2019, Laura Somerville, with the Tippecanoe County Department of Child Services (DCS), met with Mother, who had an open assessment with DCS, to discuss alternative living arrangements for the family, as the individual with whom they had been staying no longer wanted them in the home. Somerville and Mother developed a safety plan in which Mother and the Children would take a bus to the YWCA shelter for an intake assessment. Mother did not follow the plan.

¹ Born August 8, 2006.

² Born June 16, 2009.

³ Born January 12, 2011.

⁴ Born May 3, 2014.

⁵ Jo.H., C.H., and Ja.H.'s father, E.H., is incarcerated in Illinois with an expected release date in 2034 and consented to the termination of his parental rights. J.R.'s alleged father, B.R., did not appear in the underlying proceedings.

- [4] That afternoon, Mother reported that twelve-year-old Jo.H. had been a runaway for two days. Later in the day, Jo.H. was located by police and transported to juvenile intake. Jo.H. informed the juvenile probation officer that he ran away because Mother was drinking and had slapped him. He also indicated that Mother drank alcohol and used marijuana daily, which Mother later confirmed.
- [5] In the meantime, Mother was arrested for public intoxication at a local gas station with her three youngest children in her immediate care. Somerville went to the jail to speak with Mother and found her to be “extremely intoxicated” and unable to coherently discuss Jo.H.’s situation. *Transcript* at 125. Additionally, Mother did not have alternative living arrangements for the Children. The Children were, therefore, immediately detained, and DCS filed CHINS petitions. The Children have not returned to Mother’s care since their removal in February 2019.
- [6] Following a factfinding hearing in April and August 2019, the Children were adjudicated CHINS, as Mother continued to struggle with substance abuse and homelessness despite services being offered for several months. Pursuant to the dispositional order issued in October 2019, Mother was required to, among other things, refrain from the use of alcohol and illegal drugs, obtain and maintain suitable housing and stable income, participate in homebased case management and recommended therapy, complete a substance use assessment and follow all recommendations, submit to random drug screens, and participate in parenting time.

[7] The initial plan for the family was reunification, but the trial court changed the plan to adoption at a permanency hearing on December 10, 2020. Thereafter, on December 30, 2020, DCS filed petitions to involuntarily terminate Mother's parental rights with respect to each of the Children. The termination factfinding hearing was held on March 10 and June 7, 2021, after which the trial court granted the termination petitions on September 6, 2021.

[8] The trial court entered extensive findings of fact in its termination orders, none of which are challenged by Mother on appeal. In summary, the findings provide that Mother inconsistently participated in homebased services and then completely stopped in November 2020, resulting in her unsuccessful discharge from these services and little to no progress being made toward her goals. Mother had only brief periods of employment throughout the case and had remained unemployed since August 2020, when she quit her part-time job at a laundromat. Additionally, Mother failed to demonstrate an ability to provide stable housing for the Children, experiencing periods of homelessness and, after obtaining a suitable apartment with the help of DCS, an eviction in January 2021. Mother's parenting time with the Children never progressed past semi-supervised visits and eventually switched back to fully supervised due to her continued substance use and inconsistent attendance. After her third stay in residential treatment in November 2020, Mother failed to attend any parenting time in December 2020 and only participated in a few visits until her eventual discharge from parenting time in March 2021. Parenting time resumed with three visits just before the end of the termination hearing. Though Mother was

loving and appropriate during visits, her inconsistent attendance, missing approximately thirty-five visits, was difficult on the Children.

[9] The trial court's findings reveal the primary cause of Mother's inability to care for the Children – her continued struggle with sobriety. We set out those specific findings:

14. Mother was referred for a substance use evaluation with Valley Oaks, which was completed on March 25, 2019.... Mother indicated she was using every other day and she was binge drinking. She would drink ½ pint of vodka and 2-3 beers. Mother also reported using 1-2 blunts of marijuana daily Mother met criteria for Alcohol Use Disorder Moderate, Cannabis Use Disorder Mild, and Adjustment Disorder. It was recommended that she participate in individual therapy to address substance use and depression. Mother did not attend therapy until July of 2019 and she attended only one (1) session in July and one (1) session in August. In August of 2019, Mother relapsed and expressed suicidal ideations. She did not return to therapy in September of 2019.

15. In December of 2019, it was recommended that Mother participate in Intensive Outpatient Therapy (IOT) During December of 2019, Mother only attended three (3) out of the nine (9) sessions. Mother reported that she was still drinking large quantities of alcohol frequently. Mother reported ten (10) months of sobriety from marijuana and other substances, but this was not supported by drug screens she had taken during that time period. Mother failed to attend any sessions in January or February of 2020 and she was discharged from IOT.

16. In March of 2020, Mother went to residential substance abuse treatment. She was there fourteen (14) days before the program released all participants due to Covid-19. Mother returned to

residential treatment in May of 2020 and completed the program. Mother relapsed the same day she was released from the program. Mother was referred to IOT but did not attend. Mother was also provided prescriptions for depression, anxiety, and night terrors but she chose not to take them.

17. Mother was referred for another substance use evaluation as she continued to test positive for alcohol and marijuana. Mother completed the evaluation in September of 2020 with Regional Health Systems. During the second assessment, Mother disclosed she first used alcohol at age 16 and her heaviest use was a fifth of vodka daily. At the time of the assessment, Mother reported drinking half a pint and a “cooler” when she felt overwhelmed. She indicated her last use was three days before the assessment. Mother reported using marijuana first at the age of 14 and her heaviest use was three (3) to four (4) blunts. Mother indicated her last use was four (4) days before the assessment. Mother denied use of cocaine, but this conflicted with the prior positive drug screens for cocaine. Mother was diagnosed with Alcohol Use Disorder Moderate, Cannabis Use Disorder Moderate, and Tobacco Use Disorder Moderate. It was recommended that Mother complete residential treatment, then IOT with individual substance abuse therapy. It was further recommended that Mother participate in community recovery support groups, recovery peer coach services, and case management.

18. Since there was a waiting list for residential and IOT, Mother started individual substance abuse therapy. Mother reported to the therapist that she would drink mixed drinks all day every day until she passed out and used marijuana three (3) to six (6) times per week. Mother also reported domestic violence in her relationship with Father, including Father beating her with an umbrella and stabbing her repeatedly with the tip that had been broken.

19. Mother was able to start IOT in September of 2020. Mother missed three (3) or four (4) sessions of IOT and attended total of five (5) sessions. The therapist reported Mother was not happy to be in the program, but participated as required. On October 13, 2020, Mother tested positive for alcohol at an IOT session and she was referred to residential treatment. Mother started residential treatment on October 22, 2020. Mother was very resistant to treatment for the first two and half (2 ½) weeks and there were many days that Mother refused to participate in therapy or groups. The therapist also expressed concern about Mother's behavior negatively impacting other residents. Mother successfully completed the program, however, and she was released on November 12, 2020. It was recommended that Mother return to IOT and she attended the first session on November 17, 2020. When Mother arrived at the session, she tested positive for alcohol after only five (5) days since her release from inpatient treatment. Mother only attended one (1) other session of IOT and she was unsuccessfully discharged for lack of engagement. Mother testified she has been sober for one (1) month but has not submitted to any drug screens and is not participating in any substance abuse services or community support groups.

20. Mother struggled with sobriety throughout the case as evidenced by the drug screens results. Mother submitted to approximately twenty-four (24) drug screens in 2019 and 2020 that were positive for alcohol, marijuana, or both. She also tested positive for cocaine on two (2) occasions in 2019. Mother did not submit to all of the requested drug screens during 2019 and 2020 and she admitted that she did not call the drug testing phone number at all during 2021. She was drug tested one (1) time by her DCS case manager in March of 2021 and was positive for marijuana. Mother admitted she continued to drink alcohol after her release from the hospital in April of 2021.

Appellant's Appendix Vol. II at 64-65.

[10] Based on its findings, the trial court ultimately determined that there is a reasonable probability the conditions that resulted in removal of the Children from Mother’s care or the reasons for continued placement outside the home will not be remedied. In this regard, the trial court indicated: “There is no reasonable probability that Mother will be able to maintain stable housing for the children or maintain her sobriety to safely parent the children.” *Id.* at 67. Additionally, the court concluded that continuation of the parent-child relationship poses a threat to the well-being of the Children, that DCS has a satisfactory plan of adoption for the Children following termination of parental rights, and that termination of parental rights is in the best interests of the Children. Mother now appeals. Additional information will be provided below as needed.

Discussion & Decision

[11] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the

findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[12] We recognize that 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 J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[13] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[14] On appeal, Mother challenges only the trial court's conclusions with respect to I.C. § 31-35-2-4(b)(2)(B)(i) and (ii).⁶ Because I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, necessitating satisfaction of only one of the subsections, we will focus our review on the trial court's determination that there is a reasonable probability that the conditions that resulted in the Children's removal and/or continued placement outside Mother's home will not be remedied.

In making such a determination, the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, "but also those bases resulting in the continued placement outside the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to

⁶ The trial court made no determination regarding subsection (iii).

those services.” [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)]. In addition, “[w]here 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).

In re N.Q., 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

- [15] Mother’s argument on appeal is remarkably brief. She does not challenge any of the trial court’s detailed findings. Mother notes simply that she completed inpatient treatment twice, most recently in November 2020, and that her visits with the Children went well, despite her ongoing struggles with sobriety. Based on this, Mother argues that it is not clear that her situation has become hopeless and that there is no reasonable possibility that she will overcome her challenges.
- [16] The trial court recognized that Mother loves the Children and that when she attended parenting time, Mother was loving and appropriate with the Children and prepared for the visits. Unfortunately, love is not enough. Throughout this case, Mother showed that she does not have the ability to stay sober and meet the Children’s needs. The trial court explained:

All imaginable services have been offered and nothing is singularly different in today’s circumstances since the time of removal. Mother failed to demonstrate that she could provide stable housing or basic necessities for the children. Further, Mother failed to demonstrate an ability to remain sober to care for the children despite two (2) years of services and three (3)

stays in residential treatment. Mother failed to sustain even the minimal progress she was able to make.

Appellant's Appendix Vol. II at 67-68.

[17] Mother's own testimony at the termination hearing was telling of her overall lack of progress. She testified that she remained unemployed, had recently moved in with her ex-boyfriend, and had been sober for "like maybe a month" but had not participated in any drug screens during that time and was not in a twelve-step program. *Transcript* at 136. According to Mother, she was currently "just going with the flow." *Id.* at 137. Although she completed residential treatment in November 2020, Mother indicated that she did not complete the subsequent IOT program that was recommended, explaining that she was "overwhelmed." *Id.* at 136. In fact, Mother testified that she "just stopped doing everything" because she was so overwhelmed. *Id.* at 138. Regarding her missed parenting time in late 2020, Mother indicated, "I did go M-I-A to Chicago and just, I just didn't want to be bothered." *Id.* at 139. Finally, with respect to housing, Mother testified, "Once I get employed, I'm gon um, find housing." *Id.* at 142.

[18] The record establishes that the Children had been removed from Mother's care for twenty-eight months at the time of the termination hearing and that Mother had made no sustained progress toward rectifying her issues with substance abuse and related financial/housing instability. The evidence overwhelmingly supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for

placement outside Mother's home will not be remedied. Accordingly, Mother has not established that the trial court erred in terminating her parental rights.

[19] Judgment affirmed.

Bailey, J. and Mathias, J., concur.