

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

K.W. (Minor Child),
and

M.W. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 27, 2023

Court of Appeals Case No.
22A-JT-2101

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2205-JT-69

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issue

- [1] M.W. (“Mother”) appeals the juvenile court’s judgment terminating her parental rights to her minor child K.W. (“Child”). Mother raises one issue for our review, which we restate as whether the juvenile court’s judgment terminating Mother’s parental rights was clearly erroneous. Concluding the juvenile court’s judgment was not clearly erroneous, we affirm.

Facts and Procedural History

- [2] Mother is the biological parent of Child, born January 15, 2019.¹ Mother was on probation at the time of Child’s birth. On September 28, 2020, the Indiana Department of Child Services (“DCS”) received a report alleging Child was a victim of neglect due to Mother’s substance abuse. On October 8, 2020, DCS filed a petition alleging Child was a child in need of services (“CHINS”). Mother admitted “to relapsing on several substances[,] to using the substances while being the sole caregiver for [Child, and] to using methamphetamine, marijuana, and Xanax.” Exhibits, Volume 1 at 6. Subsequently, Child was

¹ N.R. is the biological father of Child. His parental rights were also terminated; however, he does not join in this appeal.

adjudicated a CHINS and Mother was ordered into reunification services. *See id.* at 11-12. DCS did not remove Child from Mother's care.

[3] On March 19, 2021, following a domestic violence incident between Mother and her partner, the State charged Mother with domestic battery committed in the presence of a child less than sixteen years old as a Level 6 felony. Child was then removed from the home. The juvenile court determined it was in Child's best interests to be removed because of Mother's "inability, refusal or neglect to provide shelter, care, and/or supervision at the present time[.]" *Id.* at 15. Mother was in jail until she bonded out on April 2. Subsequently, Mother pleaded guilty to and was convicted of domestic battery as a Class A misdemeanor.

[4] On June 17, Mother tested positive for methamphetamine and amphetamine. This was the last drug screen that Mother submitted. That same month, Mother was placed on home detention for violating probation. Subsequently, in November, the juvenile court changed the permanency plan to include adoption due to Mother's lack of participation in services.

[5] On January 27, 2022, Mother participated in a visit with Child. This was their last visit. The following month, Mother was incarcerated after violating her home detention and was charged with escape, a Level 6 felony, and theft, a Class A misdemeanor.² By April, Mother had still not complied with Child's

² Mother's theft charge was for failing to return her ankle monitor.

case plan and her therapy services had been closed due to lack of “participation/progress[.]” *Id.* at 35. Further, Mother’s referrals for substance abuse treatment, home-based casework, and visitation services were all closed due to non-compliance.

- [6] On May 17, 2022, DCS filed a verified petition for involuntary termination of the parent-child relationship. Mother was still incarcerated at the time the termination hearing was held. Following the hearing, the juvenile court entered an order for involuntary termination of parental rights concluding:

There is a reasonable probability that the conditions that resulted in the child’s removal or the continued placement outside the home will not be remedied by the parent or that continuation of the parent-child relationship poses a threat to the well-being of the child; [and t]ermination of . . . parental rights is in the child’s best interest[.]

Appealed Order at 5.³

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

³ Citation to the Appealed Order is based on pdf. pagination.

Discussion and Decision

I. Standard of Review

[8] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). We acknowledge the parent-child relationship is “one of the most valued relationships in our culture[,]” but we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights.” *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). Therefore, the law provides for the termination of parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children, and as such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. The purpose of terminating parental rights is to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[9] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship, including in relevant part:

(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; [and]

(C) that termination is in the best interests of the child[.]

DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2. However, because subsection (b)(2)(B) is written in the disjunctive, DCS need only prove one of those three elements by clear and convincing evidence. *See, e.g., In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009).

[10] If the juvenile court concludes the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a). In doing so, the juvenile court must enter findings supporting its conclusions. Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quoting Ind. Trial Rule 52(A)), *trans. denied*. To determine whether findings or a judgment are clearly erroneous, we consider 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 625, 628 (Ind. 2016).

We do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

II. Findings of Fact

[11] As required by Indiana Code section 31-35-2-8(c), the juvenile court’s judgment contains specific findings of fact and conclusions thereon. Therefore, we must first determine whether the record contains evidence supporting the findings either directly or by inference. *In re A.S.*, 17 N.E.3d 994, 1002 (Ind. Ct. App. 2014), *trans. denied*. Mother challenges Finding 11. We accept the remaining unchallenged findings as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). Finding 11 states:

By early 2022, *some* of Mother’s services were closed by the providers due to her lack of participation and progress.

Appealed Order at 2 (emphasis added).

[12] Mother contends “lack of progress” was not a ground for closing her out of programs and the sole ground was her lack of participation due to her incarceration. Brief of Appellant at 10. However, the juvenile court’s order on periodic case review indicates that Mother’s therapy was “[c]losed due to lack of participation/progress[.]” Ex., Vol. 1 at 35. Therefore, the finding is supported by the evidence.

III. Conclusions of Law

A. Remedy of Conditions Resulting in Removal⁴

[13] To determine whether the conditions resulting in a child’s removal will not be remedied, we conduct a two-step analysis. *E.M.*, 4 N.E.3d at 642-43. First, we identify the conditions that led to removal. *Id.* at 643. Second, we determine whether a reasonable probability exists that those conditions will not be remedied. *Id.* When considering whether there is a reasonable probability the conditions will not be remedied, we evaluate a parent’s fitness as of the time of the termination proceeding while taking into account evidence of changed circumstances. *S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019). However, habitual patterns of conduct and engagement in services offered by DCS may also be considered. *Id.* Ultimately, past patterns may be considered the best predictor of future behavior. *In re E.M.*, 4 N.E.3d at 643.

[14] In addition to reviewing the initial reasons for removal we must also examine those factors that have led to continued placement outside of the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013), *trans. denied*. The court may consider “evidence of a parent’s prior criminal history, drug and alcohol abuse,

⁴ Mother also contends the juvenile court erred in finding continuation of the parent-child relationship posed a threat to Child’s well-being. However, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires only one element in that subsection be proven to support termination of parental rights. *See In re I.A.*, 903 N.E.2d at 153. Because we conclude the evidence is sufficient to show a reasonable probability the conditions resulting in Child’s removal will not be remedied, we need not also determine whether the juvenile court erred in concluding continuation of the parent-child relationship posed a threat to Child’s well-being.

history of neglect, failure to provide support, and lack of adequate housing and employment.” *A.F. v. Marion Cnty. Off. of Fam. & Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*.

[15] Following a domestic violence incident between Mother and her partner, Child was removed from the home. The juvenile court determined it was in the best interests of Child to be removed because of Mother’s “inability, refusal or neglect to provide shelter, care, and/or supervision at the present time[.]” Ex., Vol. 1 at 15. Mother contends the April 14, 2021, periodic case review indicated that before her March 19, 2021, arrest she had “made great progress[.]” *Id.* at 17.⁵ However, the evidence also shows “she began a spiral downward and was not engaging in services” after her arrest. Transcript of Evidence, Volume I at 30. In June 2021, Mother failed a drug test and subsequently refused to take any more. We have previously stated that “[a] parent who screens positive for illegal substances and is ordered to submit to drug screens, may not refuse to submit to drug screens and expect to maintain his parental rights.” *Matter of C.C.*, 153 N.E.3d 340, 349 (Ind. Ct. App. 2020), *trans. denied*.

[16] Mother also notes the juvenile court initially denied DCS’ request to add adoption as a concurrent plan noting Mother had “partially complied” with the case plan. Ex., Vol. 1 at 28. This may have been the case at that time; however,

⁵ Mother also contends the juvenile court erred in relying on her struggle with substance abuse when terminating her parental rights. However, the juvenile court’s order terminating Mother’s parental rights clearly does not rely solely on Mother’s drug abuse as grounds for termination.

she would later be closed out of services for lack of participation and progress. On January 27, 2022, Mother participated in her last visit with Child because she subsequently “went on the run.” Tr., Vol. I at 44. This was a violation of Mother’s home detention, and she was charged with escape and theft and subsequently incarcerated. Mother would remain incarcerated until her parental rights were terminated.

- [17] In sum, we agree with the juvenile court that DCS established by clear and convincing evidence that there is a reasonable probability the conditions resulting in Child’s removal will not be remedied.

B. Best Interests

- [18] Mother seemingly contends the juvenile court erred by concluding termination of Mother’s parental rights was in Child’s best interests. A determination of the best interests of a child is not based merely on the evidence identified by DCS, but instead is based on the totality of the circumstances. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. In making such a determination, the juvenile court must subordinate the interests of the parent to those of the child. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. And a child has a paramount interest in permanency. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1235 (Ind. 2013). Further, courts “need not wait until the child is irreversibly harmed such that the child’s physical, mental and social development is permanently impaired before terminating the parent-child relationship.” *Id.*

[19] A parent’s right to his or her children may not be terminated solely because a better place to live exists elsewhere. *In re A.B.*, 888 N.E.2d 231, 239 (Ind. Ct. App. 2008), *trans. denied*. Mother relies on *A.B.*, arguing that although Child’s prospective adoptive parents “would no doubt be able to provide more material things for [C]hild than the [M]other[,]” this does not justify the termination of her parental rights. Br. of Appellant at 14. In *A.B.*, we concluded the conditions that led to the removal of the child had been remedied and the juvenile court’s determination that the continuation of the parent-child relationship posed a threat to the child was not supported by clear and convincing evidence. *A.B.*, 888 N.E.2d at 238-39. Therefore, we reversed the termination of parental rights because it was based solely on the recommendation of the guardian ad litem and DCS case worker that it was in the child’s best interests to be adopted by her foster mother. *Id.* at 39. Here, the juvenile court’s decision was not solely based on its determination that adoption was in Child’s best interest. The juvenile court concluded that:

There is a reasonable probability that the conditions that resulted in the child’s removal or the continued placement outside the home will not be remedied by the parent or that continuation of the parent-child relationship poses a threat to the well-being of the child [*and that*] [t]ermination of [Mother’s] parental rights is in the child’s best interest[.]

Appealed Order at 5. Therefore, we differentiate the case at hand from *A.B.*

[20] Further, the record is clear that Mother failed to address her substance abuse, did not complete required services, and was incarcerated multiple times during

the proceedings. Accordingly, we conclude there is clear and convincing evidence that termination of Mother's parental rights is in Child's best interests.

Conclusion

[21] We conclude the juvenile court's order terminating Mother's parental rights is not clearly erroneous. Accordingly, we affirm.

[22] Affirmed.

Crone, J., and Kenworthy, J., concur.