

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Christopher R. Berdahl
Berdahl Law P.C.
Plymouth, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Frances Barrow
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

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

R.M. (*Minor Child*),
and

L.H. (*Mother*),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 8, 2022

Court of Appeals Case No.
22A-JT-1104

Appeal from the Kosciusko
Superior Court

The Honorable Karin A. McGrath,
Judge

Trial Court Cause No.
43D01-2108-JT-276

Robb, Judge.

Case Summary and Issue

[1] L.H. (“Mother”) is the biological mother of R.M. (“Child”), born in April 2019.¹ Child was removed from Mother’s care in February 2020 and adjudicated a child in need of services (“CHINS”) in April. In August 2021, the Indiana Department of Child Services (“DCS”) filed a petition to terminate Mother’s parental rights to Child. Following a factfinding hearing, the juvenile court issued an order finding DCS had proved by clear and convincing evidence that Mother’s parental rights should be terminated. Mother now appeals, raising several issues for our review that we consolidate and restate as one: whether the juvenile court’s termination decision is supported by clear and convincing evidence. Concluding that it is, we affirm.

Facts and Procedural History

[2] On February 26, 2020, Mother was arrested on drug-related charges.² Child was in her custody at the time and DCS responded to a law enforcement report of neglect. At the home, the DCS assessment worker observed drugs, scales, baggies, and syringes, some in places that Child could have accessed. Mother

¹ Child’s biological father, S.M., signed a consent to R.M.’s adoption and is not part of this appeal. The facts will be limited to those pertinent to Mother.

² The charges were eventually dismissed.

told DCS she and Child were just visiting the home and denied that any of the drugs or paraphernalia were hers. Mother appeared to be under the influence of some substance, and police officers had observed track marks on her arm when they arrested her. She admitted to DCS that she had used methamphetamine and marijuana that day and would fail a drug screen. Determining there was no suitable sober caregiver available, DCS took Child into custody.

[3] Child was initially placed in foster care until a relative placement was found. In April 2020, Child was diagnosed with Hirschsprung’s disease, “a disease of the colon where the distal end of the colon can’t perform its peristalsis so baby can’t have bowel movement[s].” Transcript of Evidence, Volume 2 at 77. Because he was undiagnosed and untreated for so long,³ Child had to have two surgeries in spring 2020.⁴ But surgery is “not an end to [the] [d]isease.” *Id.* “[K]ids with Hirschsprung’s just struggle with constipation and they will have problems with potty training because of all the painful bowel movements.” *Id.* at 77-78. The severity of symptoms are dependent on diet, and people with the disease must be on a strict “very high fiber diet[.]” *Id.* at 77. Child also has intermittent asthma for which he does daily nebulizer treatments. Child’s medical needs

³ Children are born with Hirschsprung’s and signs and symptoms usually appear shortly after birth. Mayo Clinic, Hirschsprung’s disease, Symptoms & Causes, <https://www.mayoclinic.org/diseases-conditions/hirschsprungs-disease/symptoms-causes/syc-20351556> (last visited Nov. 2, 2022) [<https://perma.cc/N985-D2QD>].

⁴ “For most people, Hirschsprung’s disease is treated with surgery to bypass or remove the [diseased] part of the colon[.]” Mayo Clinic, Hirschsprung’s disease, Diagnosis & treatment, <https://www.mayoclinic.org/diseases-conditions/hirschsprungs-disease/diagnosis-treatment/drc-20351561> (last visited Nov. 2, 2022) [<https://perma.cc/L548-F8ZX>]. This is usually done in a single laparoscopic surgery, but in children who are very ill, the surgery might be done in two steps. *Id.*

ultimately made the original relative placement untenable, and Child was moved to a different foster family. Finally, in April 2021, Child was placed with his paternal aunt and her husband where he has remained.⁵

[4] Child was adjudicated a CHINS in April 2020 and a dispositional order was entered in May requiring Mother to comply with certain rules (such as maintain weekly contact with DCS and notify the Family Case Manager (“FCM”) of any arrest or criminal charges), immediately enroll in and regularly participate in recommended services, attend all scheduled visits with Child, and submit to random drug screens, among other things. With the exception of sporadic supervised visitation, Mother failed to comply with nearly all terms of the dispositional order over the next fifteen months. In review orders issued in August 2020, February 2021, and August 2021, the juvenile court found that Mother had not complied with Child’s case plan, had not maintained sobriety, and had not enhanced her ability to fulfill her parental obligations.

[5] The COVID-19 pandemic obviously created some barriers to services in 2020, but neither DCS nor the Bowen Center (which provides and facilitates services for DCS) completely suspended their services, offering virtual and other alternatives instead. Mother also had personal barriers to participating in services including phone and transportation issues, but she did not take advantage of workarounds DCS offered, such as offers of transportation, use of

⁵ This relative placement is out of county, but it was the closest available relative placement.

service providers' phones, and gas cards. She did complete two substance use assessments but did not follow through on the recommendations for treatment and did not submit to requested drug screens. Mother requested individual therapy for anxiety and DCS made the appropriate referrals, but she never attended. She never completed a parenting risk assessment. Visits between Mother and Child generally went well, although Mother initially struggled after Child's diagnosis to bring appropriate snacks despite education about his dietary restrictions and became agitated when reminded. Mother attended visits inconsistently, however, and after she missed three consecutive visits in March 2021, the visits were temporarily suspended.

[6] Natarsha Starkey, the FCM for the duration of this case, identified several specific concerns arising from Mother's lack of engagement. First, Mother's failure or refusal to submit to drug screens as requested was of concern because "if she's not committed to any drug screens I don't have anything to show that she's being clean." Tr., Vol. 2 at 53. Second, with respect to visits, Mother "has not given us reason to have those visits moved from supervised to unsupervised. She has not maintained sobriety when we feel as though [Child] is safe in her care. . . . [A]nd, of course, if she's . . . being inconsistent with those visits then she loses that bond with her son[.]" *Id.* at 47. Third, Mother's failure to maintain regular contact with DCS meant the FCM could not "update her on how her son's doin [sic][,] provide services that she needs in order for her to maintain her sobriety and . . . update her on what is the plan moving forward toward reunification." *Id.* at 34.

- [7] On August 26, 2021, DCS filed a petition for the involuntary termination of Mother’s parental rights.⁶ A factfinding hearing was held on February 1, 2022. DCS presented testimony from the FCM; Bowen Center employees Jessica Mikesell and Heather Groves; Child’s court appointed child advocate (“CASA”) Billie Lavin; and Child’s current foster parents. Mother offered no evidence of her own.
- [8] DCS presented evidence that in October 2021, Mother was arrested for possession of methamphetamine. She did not notify DCS of her arrest, but the FCM learned of it from other sources and visited Mother in jail. Mother was “very hostile[,]” but the FCM explained she was there because she wanted to update Mother on Child’s health and well-being. *Id.* at 37. The FCM emphasized that Mother should contact her when she was released from jail.
- [9] Mother was released on work release on December 27 and called the FCM that same day. Following her release, Mother began to reengage in services. In the month that Mother was on work release before the termination hearing, she submitted to four drug screens. She had virtual visits with Child three times. She began to participate in a substance use education group at the Bowen Center that had been recommended when she completed her first substance use assessment in May 2020. She had attended two sessions of the group that usually requires fourteen to twenty sessions to complete. At this group, Mother

⁶ This petition is not in the record before us. Mother’s appendix contains only the Chronological Case Summary and the Appealed Order.

identified methamphetamine and heroin as her drugs of choice but said she had been sober since October 28, 2021. She was employed as of January 26, 2022.

[10] Acknowledging Mother's recent efforts, the FCM nevertheless testified that termination was in Child's best interest because Mother had not shown in the nearly two years the case had been open that she could be a consistent sober caregiver for Child and so "she's never remedied the reason of involvement[.]" *Id.* at 57. Prior to Mother's arrest in October 2021, she "was not doin [sic] it on her own with her resources." *Id.* at 58. Specifically,

when [Mother] was free and when she was not in work release, . . . she didn't call to drug screen. She didn't go to her services on her own. She did not visit with her son on her own.

Id. In short, the FCM did not believe a few weeks' engagement was enough time to show "a consistent safe stability" or to believe that the change was due to anything other than Mother being in the "controlled environment" of work release. *Id.* Child's CASA also testified that termination would be in Child's best interest.

[11] On March 2, 2022, the juvenile court issued its order terminating Mother's parental rights to Child. Relevant to this appeal, the juvenile court concluded DCS had proved there is a reasonable probability that the conditions that resulted in Child's removal from Mother's home will not be remedied, that continuation of the parent-child relationship poses a threat to Child's well-being, and that termination is in Child's best interest. In so concluding, the

juvenile court placed “much greater weight on Mother’s lengthy history of failing to comply with DCS recommendations and services when she was not in custody than on her recent improvements now that she is in a heavily controlled environment” at the work release facility. Appealed Order at 8, ¶ 48. “[F]or approximately eighteen months during which Mother was not incarcerated and was free to engage in services, she simply failed to do so in any significant way.” *Id.*, ¶ 49. Mother now appeals.

Discussion and Decision

I. Standard of Review

[12] Although the parent-child relationship is protected by the Fourteenth Amendment to the United States Constitution, *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014), 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).

[13] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must prove by clear and convincing evidence to terminate a parent-child relationship, including:

(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.

Ind. Code § 31-35-2-4(b)(2);⁷ Ind. Code § 31-37-14-2.

[14] 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), and must enter findings supporting its conclusion, 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) (quotation omitted), *trans. denied*. If the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment, the judgment is not clearly erroneous. *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

⁷ There are four elements total. Mother only specifically challenges these two. As Mother did not challenge proof of the remaining two elements (the period of removal from the home/efforts at reunification and the plan for the care and treatment of the child), we consider any argument regarding them waived. *See* Ind. Appellate Rule 46(A)(8)(a).

inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

II. Remedy of Conditions

- [15] Mother challenges the juvenile court's conclusions that there is a reasonable probability the conditions that resulted in Child's removal will not be remedied and that a continuation of the parent-child relationship poses a threat to Child's well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B).
- [16] The juvenile court need not have made both conclusions. This element of the statute is stated in the disjunctive, and therefore, DCS only has to prove there is a reasonable probability that either removal conditions will not be remedied *or* the child's well-being is threatened by continuing the relationship. *In re S.K.*, 124 N.E.3d 1225, 1233 (Ind. Ct. App. 2019), *trans. denied*. Likewise, we need not address both prongs if we find that one was sufficiently proven. *Id.* at 1234. We begin with whether DCS proved there is a reasonable probability that removal conditions will not be remedied.
- [17] There is a two-step analysis for addressing whether the conditions that resulted in a child's removal will not be remedied: first, identifying the conditions that led to removal, and second, determining whether there is a reasonable probability those conditions will be remedied. *See E.M.*, 4 N.E.3d at 642-43. In the second step, the juvenile court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent

improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* at 643. We entrust that “delicate balance” to the juvenile court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *Id.*

[18] Child was removed from Mother’s care because of her use of illegal substances.⁸

For nearly two years – from Child’s removal in February 2020 until January 2022 – Mother did not take a single drug test despite being called in ninety times. As the FCM noted, DCS therefore had no way to verify Mother was drug-free during that time frame. Contrary to showing drug use was no longer an issue, Mother was arrested in October 2021 for drug possession.

[19] We acknowledge, as the FCM and the juvenile court did, that Mother has claimed to be sober since her arrest and after her release from jail to work release, she began a substance use education program and passed several drug screens. But her behavior over a few weeks’ time while in the custody and control of jail or a work release facility is not necessarily indicative of her behavior if on her own. Moreover, these changes have come at the last minute in these proceedings. On September 21, 2021, this case was set for a factfinding

⁸ Mother argues that the reason for removal was her arrest and the fact that the charges were dropped means the conditions leading to removal had been remedied. *See* Appellant’s Brief at 9. Mother’s arrest brought her substance abuse issues to the attention of DCS, but the substance abuse issues as a whole were the reason for Child’s removal.

hearing on January 12, 2022. Knowing the stakes, Mother was nevertheless arrested for possession of methamphetamine in October 2021.

[20] Aside from the drug use that continued throughout this case, Mother was noncompliant with virtually every aspect of Child’s case plan, including being inconsistent with visitation and failing to keep in touch with DCS despite Child’s medical issues. Mother argues DCS “implemented inexplicable restrictions on Mother’s parenting time” by placing Child out of town in his final relative placement. Appellant’s Br. at 9. But that placement was not made until April 2021 – well over a year after the CHINS case began and after Mother had long been inconsistent with visitations closer to her home and her visits had been temporarily suspended because of it. Instead of using every resource DCS offered and taking every opportunity to see Child, Mother would, for instance, take a gas card from DCS to be able to drive to visitation but then cancel the visit. *See Tr.*, Vol. 2 at 48. Mother had restarted virtual visits with Child after her release to work release, but as with her drug use, three consistent visits while in a controlled environment is not necessarily indicative of her future behavior when she is on her own.

[21] We truly hope for Mother’s sake that she is beginning a new, sober phase of her life, but she has only just started on her recovery journey. As Child’s foster father said, “[P]utting a small child in your care when you’re trying to get yourself straight is just a huge thing to put in there too[.]” *Id.* at 91. The juvenile court, with discretion to weigh Mother’s prior history versus her recent short-term improvements, chose to place greater weight on her history as an

indicator of her probable ability to remedy the removal conditions in the future. We entrust those decisions to the juvenile court. *E.M.*, 4 N.E.3d at 643.

[22] The juvenile court did not err in concluding DCS proved by clear and convincing evidence that there is a reasonable probability the conditions that resulted in Child's removal from Mother's care will not be remedied.⁹

III. Best Interests

[23] Mother also challenges the juvenile court's conclusion that termination was in Child's best interests. The determination of a child's best interests should be based on the totality of the evidence. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports concluding that termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002).

[24] Mother in part rests her argument about the best interests conclusion on succeeding in her previous assertion that the conditions resulting in removal had been remedied, an argument that we have already rejected. Mother also argues that Child's best interests "would be served by continuing services and allowing Mother a realistic chance in re-forming her bond with [Child,]"

⁹ As stated above, *supra* ¶ 16, having concluded DCS sufficiently proved the reasons for removal would not likely be remedied, we need not separately address whether DCS also proved continuation of the parent-child relationship threatened Child's well-being.

especially since Child is in relative care. Appellant's Br. at 10. However, "the time for parents to rehabilitate themselves is during the CHINS process, *prior* to the filing of the petition for termination." *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Laws that require reasonable efforts to preserve the family are balanced by mandates aimed at speedy permanency; children cannot wait indefinitely for their parents to work toward reunification. *E.M.*, 4 N.E.3d at 648.

[25] Recommendations of the FCM and CASA, along with evidence that there is a reasonable probability the removal conditions will not be remedied, are also sufficient to show by clear and convincing evidence that termination is in a child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*. Here, the FCM testified that termination of parental rights was in Child's best interest because Mother did not show for the first twenty-three months of this case that she was stable, sober, and would be available to attend to his medical needs despite DCS offering support and services to her. The CASA also stated she believed it was in Child's best interest for parental rights to be terminated and Child to be adopted. Based on this testimony, as well as the totality of the evidence in the record, the juvenile court did not err in concluding DCS proved by clear and convincing evidence that termination of Mother's parental rights is in Child's best interests.

Conclusion

[26] The juvenile court did not err in concluding DCS had sufficiently proven the elements required for termination, and the juvenile court's order terminating Mother's parental rights to Child is therefore affirmed.

[27] Affirmed.

Mathias, J., and Foley, J., concur.