

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
R.M., A.R., and C.R. (Minor
Children) and Ad.R. (Mother)
Ad.R. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

March 24, 2022
Court of Appeals Case No.
21A-JT-1947
Appeal from the
Madison Circuit Court
The Honorable
Stephen Koester, Judge
Trial Court Cause Nos.
48C02-2103-JT-38
48C02-2103-JT-39
48C02-2102-JT-29

Vaidik, Judge.

Case Summary

- [1] Ad.R. (“Mother”) appeals the termination of her parental rights to her three children. We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of C.R., born in February 2014, R.M., born in July 2016, and A.R., born in October 2018. Ri.M., who is C.R.’s biological father, voluntarily relinquished his parental rights and doesn’t participate on appeal. Ro.M. is the biological father of R.M. and A.R. The trial court terminated Ro.M.’s parental rights, and he doesn’t participate on appeal either. As a result, we focus on the facts relevant to Mother.
- [3] In January 2019, Mother was involved with the Department of Child Services (DCS) through a “Program of Informal Adjustment” because she had drug problems and was neglecting her children. Appellant’s App. Vol. II p. 44; Tr. Vol. II pp. 34-35, 117; Ex. p. 55. On March 6, while still on the informal adjustment, Mother was charged with Level 4 felony burglary and Class A misdemeanor theft.¹ See Ex. p. 57. The next day, DCS filed petitions alleging the children were in need of services (CHINS) because “Mother had a drug abuse issue and was arrested by law enforcement [for] burglary and theft.”

¹ The informal adjustment was later discharged as “unsuccessful.” See Ex. p. 54.

Appellant's App. Vol. II p. 35. Because Mother was in jail, the children were placed in relative care (and have never been returned to Mother's care since).

[4] At the March initial hearing on the CHINS petition, Mother admitted she couldn't care for the children because of her incarceration, and the trial court found them to be CHINS. Following the April dispositional hearing, the court ordered Mother to, among other things, participate in individual counseling and a drug/alcohol assessment and follow all recommendations, regularly visit the children, submit to random drug screens and not use illegal drugs, successfully complete parenting classes, and cooperate with home-based services.

[5] Meanwhile, in the criminal case, Mother pled guilty to Level 4 felony burglary and Class A misdemeanor theft in May 2019. In July, she was sentenced to six years, with three years on the Continuum of Sanctions program with an initial placement on work release and three years suspended to probation.

[6] At first, Mother did well. At the August 2019 review hearing in the CHINS case, Mother was complying with services and regularly visiting the children. In late September, Mother was moved from work release to home detention in the criminal case.

[7] But at the February 2020 permanency hearing in the CHINS case, things had changed. Mother missed several individual-counseling appointments in December 2019. She also tested positive for methamphetamine on November 13, December 9, December 11, December 20, December 23, December 31,

January 7, January 10, and January 14. In the criminal case, Mother was sent back to work release due to her positive drug screens.

[8] At the August 2020 review hearing, Mother was again complying with services and regularly visiting the children. In the criminal case, Mother was placed back on home detention.

[9] But at the February 2021 permanency hearing, things had changed once again. Mother no-showed for three drug screens (November 3, November 20, and December 4) and tested positive for methamphetamine on September 7, September 23, October 8, November 9, and December 10. In the criminal case, Mother was sent back to work release in December due to her positive drug screens. In late February, Mother completed the Continuum of Sanctions portion of her sentence and started probation.

[10] In March 2021, DCS filed petitions to terminate Mother's parental rights to the children. The next month, the State filed a notice of probation violation in the criminal case alleging Mother tested positive for methamphetamine on April 6.²

[11] A factfinding hearing in the termination case was held on May 25 and June 10. C.R. was seven years old, R.M. was four, and A.R. was two. R.M. and A.R.

² On June 25—about two weeks after the termination hearing—the State filed a second notice of probation violation alleging Mother admitted using methamphetamine on or around June 10. On August 11—a couple days after Mother's parental rights were terminated—the trial court found she violated the conditions of her probation and ordered her to serve eighteen months on the Continuum of Sanctions program and eighteen months on probation.

were placed with a relative, who wanted to adopt them. C.R. was in foster care, but DCS was looking for a pre-adoptive home for her.

[12] Family Case Manager (FCM) Marlana Bertram testified she managed the case from August 2019 to May 2020. FCM Bertram acknowledged Mother complied with “many” of the trial court’s orders, except for not using illegal drugs. Tr. p. 63. But as FCM Bertram pointed out, Mother’s compliance revolved around her work-release program. FCM Bertram explained that Mother did “very well while she was in the structure of a work release program,” but when she was released to home detention, she would relapse on drugs and miss appointments. *Id.* at 61. This became a cycle for Mother.

[13] FCM Shawn Middlesworth started managing the case in October 2020. She testified Mother’s compliance with services had been “[o]ff and on.” *Id.* at 38. Mother participated in individual counseling, but she did not “follow[] all the recommendations.” *Id.* Mother’s visits with the children were also “off and on.” *Id.* FCM Middlesworth testified that when Mother completed the Continuum of Sanctions portion of her sentence in February 2021, “she refused to screen,” and her participation in services and visits with the children decreased. *Id.* at 39, 45. FCM Middlesworth believed Mother had not remedied the reason for the children’s removal because she still used drugs and that Mother’s “continued drug use” posed a danger to the children. *Id.* at 44. FCM Middlesworth testified termination of Mother’s parental rights is in the children’s best interests. *Id.* at 45.

[14] Jordan Dager from Lifeline Youth and Family Services provided Mother with home-based services from July 2019 to April 2021. The service was closed out unsuccessfully in April 2021 due to “no shows.” *Id.* at 29. Although Dager helped Mother find housing, Mother was never able to find stable employment. Dager knew of at least five jobs that Mother had but couldn’t keep. Mother also didn’t complete a parenting class called “One Two Three Magic.” *Id.* at 28. Dager testified Mother couldn’t maintain sobriety, which was a barrier to achieving her goals. Dager noted Mother showed up to several sessions under the influence.

[15] Amy Surface from Seeds of Life supervised Mother’s visits with the children from July 2019 to December 2020. According to Surface, Mother’s visits were inconsistent. The visits were supposed to occur weekly over that eighteen-month period, but Mother attended only about thirty. Two or three times, Surface drove the children to Mother’s house for a scheduled visit, but Mother didn’t answer her phone, so Surface had to take the children back. During “some of the visits,” Mother was “under the influence” and fell asleep. *Id.* at 20-21. The children were “present” during these times. *Id.* at 21. Surface recalled one time when she picked up Mother for a visit. About a mile down the road, Surface could tell Mother was “clearly” under the influence of drugs, so she turned around and took Mother back home. *Id.* at 20. The oldest child, C.R., was “devastated” when visits had to be canceled. *Id.*

[16] Morgan Hart provided therapeutic visits between Mother and two of the children, A.R. and C.R., starting in March 2021 (the same month the

termination petition was filed). Mother missed two of the four visits with C.R. A visit with C.R. was scheduled the day before the May 25 factfinding hearing, but Mother asked Hart to take her back home because she was “very tired” and “not sure she could stay awake” during the visit. *Id.* at 14. Hart observed that Mother appeared to be under the influence because her eyes were “very glossy,” she was “having trouble following [their] conversation clearly,” and she was “very animated” at first but then her “energy level very quickly dropped off.” *Id.* at 15. Mother didn’t have any in-person visits with A.R. but had three virtual visits.

[17] The children’s Court Appointed Special Advocate (CASA), Stephanie Hamilton, testified she didn’t think Mother was “able and willing” to remedy the reasons the children were removed from her because, “as has been testified to multiple times today, [Mother’s] sobriety seems to really affect her ability to participate in the case and in her children’s lives.” *Id.* at 77. CASA Hamilton was particularly worried about Mother’s “ability long term to take care of three children if everybody removes themselves from her life.” *Id.* CASA Hamilton believed termination of Mother’s parental rights is in the children’s best interests. *Id.* at 79.

[18] Mother testified on the last day of the hearing, June 10. She said she last used drugs a “couple of weeks ago” (on May 24, when she had to cancel her visit with C.R.) and that if she took a drug screen that day it would be positive. *Id.* at 110, 117-18. Mother admitted she hadn’t done the things she needed to do to get her children back but asked the trial court for one more “chance.” *Id.* at 111.

Mother believed she could finally overcome her drug addiction because she had started a new therapy called “EMDR.” *Id.* at 105.³

[19] In August 2021, the trial court issued orders terminating Mother’s parental rights to the children.

[20] Mother now appeals.

Discussion and Decision

[21] Mother contends DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K. T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

³ At the end of the termination hearing, the trial court, who had looked through the filings in Mother’s pending probation-violation case, noted Mother had tested positive for “fentanyl.” Tr. p. 128. Mother says this was an “error” because the filings do not show she tested positive for fentanyl. Appellant’s Br. p. 12. However, a June 9 filing shows Mother tested positive for fentanyl on May 12. But even assuming the reference to fentanyl in that filing was erroneous, the trial court’s written findings in this case do not mention fentanyl.

[22] A petition to terminate parental rights must allege, among other things:

(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; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

[23] Mother first challenges the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court

engages in a two-step analysis. First, the court must determine what conditions led to the child’s placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[24] The record shows the children were removed from Mother in March 2019 because of her arrest and drug use. At the termination hearing over two years later, Mother was still using drugs and had a pending probation-violation case because of her drug use. Mother acknowledges she has “a problem with methamphetamine.” Appellant’s Br. p. 8. However, she argues “isolated” methamphetamine use, without more, is not enough to terminate parental rights. *Id.* at 13 (citing cases). While a parent’s “isolated” use of methamphetamine may not be enough to terminate parental rights, that is not the case here. Between November 2019 and the termination hearing, Mother tested positive for methamphetamine at least fifteen times and admitted using drugs on May 24, the day of her scheduled visit with C.R. and the day before the May 25 factfinding hearing. She also had several no-shows.

[25] Mother also argues there should be a “nexus” between drug use and parenting ability before parental rights can be terminated. *Id.* (citing cases). But here, such a nexus was established. Several service providers testified Mother appeared to be under the influence of drugs when she was participating in services, including during her visits with the children. Indeed, Mother fell asleep during

some visits (and thus could not parent at all) and had other visits canceled because she couldn't stay awake. CASA Hamilton testified she was worried about Mother's ability to care for the children if there were no service providers present. In addition, several service providers testified that when Mother used methamphetamine, her participation in services and visits with the children decreased.⁴ The evidence supports the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal will not be remedied.

[26] Mother next challenges the trial court's conclusion termination is in the best interests of the children. Deciding whether termination is in the best interests of the children is "[p]erhaps the most difficult determination" the trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children. *Id.* Central among these interests is the children's need for permanency. *Id.* In addition, a recommendation to terminate parental rights by both the case manager and child advocate, together with evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that

⁴ At the end of the termination hearing, the trial court stated Mother had "failed nearly every service that has been offered to her." Tr. p. 127. Mother says the trial court's oral observation was "in error" because the record reflects she completed some services and made some progress. Appellant's Br. p. 11. As the State points out, the trial court's eighteen-page, single-spaced written order includes the services Mother completed and the progress she made.

termination is in the children's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*.

[27] Both FCM Middlesworth and CASA Hamilton testified termination is in the children's best interests because Mother had not remedied her drug problem. Still, Mother argues termination is not in the children's best interests because she just started EMDR therapy, which she had never tried before, and it would not be unreasonable to "delay" the case to see if she "has finally beaten her substance-abuse problem with EMDR." Appellant's Br. p. 16. But Mother had over two years during the CHINS case, and even more time since DCS had been involved with Mother and her drug issues through the informal adjustment, to overcome her drug issues. The trial court was not required to wait any longer. *See Ma.H.*, 134 N.E.3d at 49 ("[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification." (quotation omitted)). The evidence supports the trial court's conclusion termination is in the children's best interests.⁵

[28] Affirmed.

⁵ Mother cites two cases involving incarcerated parents, *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh'g denied*, and *In re J.M.*, 908 N.E.2d 191 (Ind. 2009). Both cases are readily distinguishable. In *G.Y.*, an incarcerated mother committed a crime **before** her child was born, did not commit any additional crimes, and took many steps to improve her life, including completing services while incarcerated in the Department of Correction. Here, in contrast, Mother continued her drug use while she was on home detention and probation and received services from DCS. In *J.M.* the Indiana Supreme Court concluded the trial court's **denial** of the termination petition was not clearly erroneous. *J.M.* turned on the standard of review, which is highly deferential, and is no help to Mother here.

Najam, J., and Weissmann, J., concur.