

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
M.L. and A.L. (Minor Children)
and J.L. (Mother)

J.L. Mother,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

August 2, 2022

Court of Appeals Case No.
22A-JT-312

Appeal from the
Hamilton Circuit Court

The Honorable
Todd Ruetz, Magistrate

Trial Court Cause Nos.
29C01-2009-JT-1400
29C01-2009-JT-1401

Vaidik, Judge.

Case Summary

- [1] J.L. (“Mother”) appeals the termination of her parental rights to her daughters. We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of M.L., born in July 2007, and A.L., born in July 2011. In September 2015, DCS filed petitions alleging the children were children in need of services (CHINS) because of Mother’s heroin use. The trial court found the children to be CHINS. Mother’s mother was appointed guardian of the children, and the CHINS case was closed in June 2017.
- [3] Mother continued to use drugs while her mother cared for the children. In January 2018, Mother pled guilty to Level 6 felony unlawful possession of a syringe and was sentenced to probation. In December, the State alleged Mother violated her probation for testing positive for methamphetamine. That same month, Mother’s mother returned the children to her because she couldn’t care for them financially. Mother wasn’t ready for the children to be returned to her because she “was still on drugs.” Tr. p. 40. In March 2019, Mother and her then-boyfriend fought in front of the children, and one of the children called 911. Mother admitted she had recently used methamphetamine. In April, DCS filed petitions alleging the children were CHINS based on Mother’s substance abuse and domestic violence in the children’s presence as well as Mother

having untreated mental-health issues. The children were removed from Mother.

- [4] Later in April, Mother was found to have violated her probation in the syringe case and was sentenced to community corrections (home detention). About a month later (while the CHINS case was pending), Mother violated community corrections for testing positive for morphine. Mother's community-corrections placement was revoked, and she was sentenced to jail.
- [5] A factfinding hearing in the CHINS case was held in July. Mother was in jail at the time. The trial court found the children to be CHINS and ordered Mother to, among other things, not use drugs, submit to drug screens, visit the children, and complete various services.
- [6] Conner McCarty was Mother's first Family Case Manager (FCM). While Mother was in jail, she participated in some services and spoke to the children on the phone. *See, e.g.*, Ex. p. 41 (providing Mother "was inconsistent with services while incarcerated"). Upon her release from jail in early October, Mother missed a child and family team meeting on October 10. As a result, FCM McCarty didn't know where Mother was and couldn't put in referrals for her to begin services until later that month. Mother started supervised visits with the children in November. Mother didn't comply for very long, missing visits on November 23 and 30 and failing two drug screens. In mid-December, DCS moved to suspend Mother's visits because of the missed visits and failed drug screens. *See id.* 44. One of the children's therapists recommended that

Mother's visits be suspended because she had noticed a decline in the child since the supervised visits had started. The trial court suspended Mother's visits pending a hearing in February 2020. *Id.* at 101. By early January, "most of [Mother's] services were unsuccessfully discharged." Tr. p. 24.

[7] Mother didn't appear at the February hearing to address the suspension of her visits (her attorney was there). DCS recommended continued suspension of Mother's visits because of "noncompliance from [her] within all of her services as well as continued positive drug screens and multiple attempts of trying to contact [her] to address safety concerns." *Id.* at 26. The trial court continued the suspension of Mother's visits until further order of the court.

[8] A permanency hearing was held in May. The trial court found that although Mother had been ordered to complete a substance-abuse assessment in July 2019, she didn't complete it until January 2020. Moreover, the assessment recommended family therapy, individual therapy, a medication evaluation, and outpatient substance-abuse treatment, but Mother didn't complete any of them. Mother was also unsuccessfully discharged from domestic-violence services, home-based therapy, and home-based case services. The court suspended Mother's services, ordered her to obtain her own services, and changed the permanency plan to adoption.

[9] In the spring and fall of 2020, Mother "went to Aspire to receive substance use treatment." *Id.* FCM McCarty received referrals each time for DCS to cover Mother's services, but he denied them because "at that point Mother's services

were ordered to cease.” *Id.* FCM McCarty said he never asked for Mother’s services to be reinstated because he “only got the two requests of [Mother] going and scheduling an intake” and “never saw documentation of [her] actually completing anything or making progress on her services.” *Id.* at 28.

[10] In September, DCS petitioned to terminate Mother’s parental rights to the children. A new FCM, Michelle Harrison, took over in January 2021. A review hearing was held the next month. Mother reported she was working thirty-four hours a week, doing individual therapy, and working with a sobriety coach, but the trial court found she hadn’t provided “any supporting documentation.” Ex. p. 55. The court continued the suspension of Mother’s visits “until” DCS received her psychological evaluation. *Id.* at 56.

[11] Meanwhile, Mother contacted FCM Harrison about once a month. Mother said she was doing services on her own, but she never provided any proof to FCM Harrison despite her requests. In September 2021, FCM Harrison visited Mother’s home, where she lived with her new boyfriend, and “did not have any concerns with” it. Tr. p. 34. She drug-screened Mother at that visit, and it was negative. *Id.* at 35.

[12] After several continuances by Mother, the termination hearing was held in December 2021. M.L. was fourteen years old and had been living with the same foster family since June 2021, and they wanted to adopt her. A.L. was ten years old and had been living with her paternal uncle and aunt since April 2019, and

they wanted to adopt her. The two families knew each other and wanted to preserve the “sister bond” between the children. *Id.* at 63.

[13] Mother testified she was doing therapy weekly at Meridian and Associates, but she didn’t know how long she had been doing it and didn’t have any documentation to support it. Mother acknowledged DCS had been asking her for documents “for quite a while.” *Id.* at 42. She claimed she had given the documents to her attorney, but no documents were admitted into evidence at the hearing. Mother also said she had been doing drug screens through her primary-care physician for the past three weeks. Mother claimed she had given the drug screens to her attorney the day before, but again they weren’t admitted into evidence at the hearing. *Id.* Finally, Mother said she didn’t have a job but was “looking.” *Id.*

[14] Mother presented the testimony of a Fishers Police Department Officer. According to the officer, Mother had been a confidential informant for the drug task force since 2020, when she was involved in a meth-related incident and became an informant to work off charges. The officer hadn’t noticed any signs of drug use by Mother (he didn’t administer any tests), but he acknowledged being a confidential informant was “risky.” *Id.* at 18.

[15] FCM McCarty testified Mother hadn’t enhanced her parenting ability during his time on the case. FCM Harrison likewise testified Mother hadn’t enhanced her parenting ability because she presented no “evidence that she has completed any services or that she is clean at this time.” *Id.* at 35. FCM Harrison

acknowledged Mother had one clean drug screen from July but said one wasn't enough. She said DCS needed more negative screens plus evidence that Mother had completed substance-abuse treatment.

[16] The children's therapists also testified. According to M.L.'s therapist, M.L. was not interested in seeing Mother because of everything that had happened.

A.L.'s therapist testified A.L. didn't "want anything to do with" Mother and that she didn't think it would be "safe" or "appropriate" to introduce Mother back into her life. *Id.* at 55.

[17] Finally, the children's guardian ad litem (GAL), Thomas Roberts, testified. He had been their GAL for the entire case. GAL Roberts said he had asked Mother for proof that she had been doing services, but he never received any. GAL Roberts observed progress in the children since they had been removed from Mother and said they "would be very afraid to go back with" Mother now. *Id.* at 59. GAL Roberts highlighted that Mother had "ample" opportunity to engage in services and make progress toward reunification, but he simply hadn't received "any confirmation" from her. *Id.* at 60. He believed it was in the children's best interests for Mother's parental rights to be terminated.

[18] Following the hearing, the trial court entered an order terminating Mother's parental rights to the children.

[19] Mother now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[20] When reviewing the termination of parental rights, we don't 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).

[21] 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).

[22] Mother 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 making this determination, 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 court must judge the parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[23] The children were removed from Mother in April 2019 because of her drug use, domestic violence, and untreated mental-health issues. Upon Mother’s release from jail in October 2019, Mother was referred for services and started supervised visits with the children. Mother missed two visits in November and failed two drug screens. In December, the trial court suspended Mother’s visits

pending a hearing in February 2020. By early January, Mother had been discharged from most services. Mother didn't appear at the February hearing, and the court ordered the suspension of her visits to continue. At a hearing in May, evidence was presented that Mother hadn't completed family therapy, individual therapy, a medication evaluation, and outpatient substance-abuse treatment and that she had been unsuccessfully discharged from domestic-violence services, home-based therapy, and home-based case services. The court suspended Mother's services and ordered her to obtain services on her own.

[24] The record shows Mother hasn't completed any services—either those provided by DCS or on her own. Although Mother testified she had been doing therapy weekly for an unspecified amount of time and drug screens for the past three weeks, she didn't present any proof. This is so even though multiple people, including the FCMs and GAL, had asked for proof and her parental rights were at stake. Mother claimed she had given proof to her attorney, but tellingly nothing was introduced into evidence at the hearing. In addition, at the time of the hearing, Mother's visits with the children had been suspended for two years (and she had the children in her care for only four months since September 2015). Despite many years to improve her parenting ability, Mother never established she could safely parent the children. Although Mother claims the police officer's testimony was evidence that she was no longer using drugs (and thus could safely parent the children), his testimony was not helpful. It showed Mother was (again) exposing herself to drug culture and engaging in risky behavior—behavior the officer said had no business around children. The

evidence is sufficient to support the trial court’s conclusion that Mother’s habitual conduct shows there is a reasonable probability she will not remedy the conditions that resulted in the children’s removal and continued placement outside the home.¹

II. Due Process

[25] Mother next contends her due-process rights “were violated when DCS failed to provide reasonable efforts to reunify the family” by “taking away visits and services very early in the CHINS case.” Appellant’s Br. pp. 13, 14. As DCS points out on appeal, Mother did not make this argument below. Generally, an argument cannot be presented for the first time on appeal. *In re D.H.*, 119 N.E.3d 578, 586 (Ind. Ct. App. 2019), *clarified on reh’g on other grounds, trans. denied*. However, “we have discretion to address [due-process] claims, especially when they involve constitutional rights, the violation of which would be fundamental error,” *id.*, and we exercise that discretion here.

[26] To protect a parent’s due-process rights in a termination case, DCS must make reasonable efforts to preserve or reunify the family during the CHINS case. *In re T.W.*, 135 N.E.3d 607, 613 (Ind. Ct. App. 2019), *trans. denied*; I.C. § 31-34-21-

¹ Mother also challenges the trial court’s conclusion there is a reasonable probability the continuation of the parent-child relationship poses a threat to the children’s well-being. But because we affirm the court’s conclusion there is a reasonable probability Mother will not remedy the conditions that resulted in the children’s removal and continued placement outside the home, we need not address this alternate conclusion. See *In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (noting Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements), *trans. denied*.

5.5. “What constitutes ‘reasonable efforts’ will vary by case,” and “it does not necessarily always mean that services must be provided to the parents.” *T.W.*, 135 N.E.3d at 615.

[27] DCS made reasonable efforts here. The children were found to be CHINS in July 2019. Mother spent the next four months in jail, where she participated in some services. Upon her release from jail in October, DCS made referrals for services. Mother missed two supervised visits with the children in November and failed two drug screens. In December, the trial court suspended Mother’s visits pending a hearing in February 2020. By January, Mother had been unsuccessfully discharged from most services. Mother failed to appear at the February hearing, and the court ordered the suspension of her visits to continue. Three months later, the trial court suspended Mother’s services for non-compliance. Specifically, Mother didn’t complete family therapy, individual therapy, a medication evaluation, and outpatient substance-abuse treatment and was unsuccessfully discharged from domestic-violence services, home-based therapy, and home-based case services. Mother had multiple chances to take advantage of visits and services between July 2019 (when the children were found to be CHINS) and February 2020 (when her visits were suspended) and May 2020 (when her services were suspended). DCS’s efforts were reasonable given these circumstances. Mother’s due-process rights were not violated.

[28] Affirmed.

Crone, J., and Altice, J., concur.