

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Matter of the Termination of the Parent-Child
Relationship of M.S., Mother, and K.S., Child,

M.S.,

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



February 23, 2024

Court of Appeals Case No.

23A-JT-1991

Appeal from the Knox Superior Court

The Honorable Gara U. Lee, Judge

Trial Court Cause No.

42D01-2301-JT-2

Memorandum Decision by Judge Foley
Judges Riley and Brown concur.

Foley, Judge.

- [1] M.S. (“Mother”) is the mother of K.S. (“Child”), and her parental rights were terminated by a judgment issued by the trial court. Mother appeals, claiming the trial court erred because the following conclusions were not supported by clear and convincing evidence: (1) that there was a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside the home would not be remedied; (2) that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of Child; and (3) that termination of parental rights was in the best interests of Child. Finding no error, we affirm.

Facts and Procedural History

- [2] Mother and G.B.¹ (“Father”) are the biological parents of K.S., who was born on March 30, 2021. Mother had sole legal and physical custody of Child as no paternity was ever legally established for Father. Child has “significant medical issues” including distal 18q deletion and Pitt Hopkins syndrome. Appellant’s App. Vol. II p. 55. These conditions can cause Child to have a compromised immune system, heart defects, hearing loss, and vision impairment. As a result

¹ Father’s parental rights were also terminated in the proceedings, but he does not participate in this appeal.

of the diagnoses, Child has feeding difficulties that cause him to aspirate his food into his lungs, so he requires a feeding tube. Child may never walk independently or communicate through speech, although he did “jabber” at the time of the evidentiary hearing. Tr. Vol. 2 p. 27. Child requires therapy to learn how to walk and be able to maintain this skill, and without daily attention, Child would regress from the progress he gains from therapy.

[3] The Indiana Department of Child Services (“DCS”) first became involved with Child on November 15, 2021, when DCS received a report that Child and another sibling² were being neglected or abused. The report contained allegations that Mother was leaving Child and sibling unsupervised in the apartment and that there were firearms accessible. After DCS made several unannounced visits to Mother’s home, on December 17, 2021, Mother brought Child into the DCS office and requested to speak with a DCS supervisor about DCS’s concerns about Child’s health. At this meeting, the supervisor and a family case manager observed that Child was coughing, wheezing, and struggling to breathe. At that point, due to concerns for Child’s health, DCS made the decision to remove Child from Mother’s care and seek medical care for him. When asked about Child’s condition, Mother responded, “[n]obody told me to take him to the hospital.” *Id.* at 90. Mother called her husband’s

² At the time that DCS became involved, Mother had another child who was older than Child, and Mother subsequently gave birth to a child while this case was pending. However, neither of those two children are subject to these proceedings.

aunt (“Aunt”) to come take placement of Child at that time. Child has been in Aunt’s care since that date.

[4] When Aunt came to take placement of Child from Mother at the DCS office, she was “shocked” at Child’s condition and how it had deteriorated since the last time she had seen him. *Id.* at 25. She noticed that Child was having trouble breathing, and she immediately took him to the emergency room. At the hospital, the doctors prescribed albuterol and nebulizer treatments. Child remained on some preventative medicine to avoid future breathing issues. Aunt learned that Child had a weakened immune system, which could cause a simple cold to turn into pneumonia and require hospitalization.

[5] On December 20, 2021, DCS filed a petition alleging that Child was a child in need of services (“CHINS”) because Mother failed to provide Child with a safe and stable home environment, stored guns in her apartment within reach of a Child’s older sibling, failed to properly supervise Child, and failed to provide Child with essential medical care. A detention hearing was held on the same date, and the trial court determined that removal of Child was authorized, and that Child should remain out of Mother’s care and in placement with Aunt. On April 1, 2022, Mother admitted that Child was a CHINS because she “need[ed] parenting assistance” and because Child needed “care, treatment or rehabilitation that [Child was] not receiving and [was] unlikely to be provided or accepted without the coercive intervention of the court.” Ex. Vol. 4 p. 38. On April 29, 2022, the trial court entered a dispositional order for Mother to participate in services. The court found Child needed: “a safe, secure, and

nurturing environment that is free from abuse and neglect with an effective caregiver who possesses the necessary skills, knowledge[,] and abilities to provide [Child] with this type of environment on a long-term basis.” *Id.* at 67.

In relevant part, the court ordered Mother to: participate in home-based counseling program and demonstrate positive changes in the family’s life as a result; complete a parenting assessment and all recommendations; meet all of her personal mental health needs; and meet all of Child’s medical and mental health needs including, but not limited to, following all instructions of the nurses and doctors, attending all appointments, and giving all medications in the prescribed manner.

[6] Shortly after Child was removed from Mother’s care, doctors implanted a feeding tube to assist in getting Child nutrition because he was unable to eat by mouth because he would aspirate the food into his lungs. Without the feeding tube, caregivers had to be extremely attentive because Child did not react if food went into his lungs and did not cough or gag. Aunt hoped Child could eventually eat without a feeding tube, but there was a strong chance that Child would eat this way for the “long-term.” Tr. Vol. 2 p. 28. Child would often pull the feeding tube out of its placement in his abdomen, and when this happened, Aunt had to take Child to the hospital for the tube to be replaced. If he pulled his feeding tube out and it was not addressed immediately, the hole in Child’s stomach would close over. Because of the feeding tube and Child’s nutritional needs, Child was fed special toddler formula which cost over \$4,000 per month, and there were additional costs for necessary medical supplies, such

as feeding tubes, bags, and connectors for the feeding tube. Aunt required Medicaid benefits to pay for these costs as her husband's insurance would not cover them.

[7] On January 11, 2023, DCS filed its petition to terminate Mother's parent-child relationship with Child. On March 6 and May 9, the court held the evidentiary hearing on DCS's petition. At the time of the evidentiary hearing, Mother remained unable to feed Child through the feeding tube. Although she had been shown the steps by Aunt and service providers, Mother could not remember the steps for using the tube, and Mother indicated that the feeding process scared her. At the time of the hearing, Child needed to eat every four hours while he was awake, which was generally between the hours of 6:00 a.m. and 11:00 p.m. Child was mostly non-verbal and could not tell others his needs and needed to rely on a caregiver's ability to read his body language and expressions. However, Mother did not have the ability to read and understand Child's body language at the time of the hearing. Mother first showed an interest in learning how to feed Child in the month before the evidentiary hearing, but she persisted in wanting to only practice feeding techniques on Child even though it was recommended to learn through practicing with a doll because Child could aspirate if the feeding was done incorrectly.

[8] Child's physical therapist testified that, due to Child's severe developmental delays, at the age of two, Child could not sit very well by himself and was unable to walk. Child could only sit up if someone were close by, and if he fell over, he could not react properly and even a small fall could dislocate his

shoulder. Child saw two physical therapists and an occupational therapist and attended a feeding clinic every week. Child required constant supervision and needed whoever he was placed with to work with Child on therapies so that he could progress in his goals. When the physical therapist observed one of Mother's visits with Child, the physical therapist had to prompt Mother to remove Child from his highchair in order for Mother to work on Child's therapy with him. The physical therapist testified that leaving Child in a highchair or car seat for long periods of time was not appropriate with Child because it would limit his ability to progress in physical goals.

[9] At the time of the hearing, Mother had two other children in addition to Child. Mother had difficulty parenting Child while also caring for her other two children and would often leave one of the other children with their father when she would visit with Child. One of the service providers testified that Mother would regularly leave her youngest child, who was one year old at the time, alone in her room for the day. Mother had trouble scheduling medical appointments for her children and showed confusion in how to rectify situations where the children had different appointments at the same time. Mother was a smoker, and due to Child's health conditions, he could not be around smoke. Mother's service providers attempted to discuss a plan for her to quit smoking, but at the time of the hearing, Mother had failed to quit smoking. She had illogical ideas on how to continue to smoke while caring for the medically compromised Child that included taking him outside so that she could smoke while pushing him in a swing.

[10] Until August 2022, Child's visits with Mother occurred in Aunt's home. Mother did not interact or play with Child during these visits. In August 2022, Mother refused to continue to visit Child in Aunt's home because she thought that Aunt had "said something and [Mother] got upset." *Id.* at 40. Mother refused to go to mediation and said that the relationship between Aunt and herself could not be repaired. Mother then stopped visiting Child for two months because the visits were "taking a big toll on [her] mental health." *Id.* at 121. In October 2022, visits began to be held at a provider location for two hours at a time, between Child's feedings. After these visits, Child showed distress by "smack[ing] himself," hitting Aunt, pulling his own hair, and digging his nails into his own skin. *Id.* at 47. Child continued to show these behaviors and remained clingy for hours after these visits, and it was worse when Mother brought Child's siblings to a visit. Child also began to have night terrors after visits when both siblings were present.

[11] During the hearing, Mother testified that she had longstanding mental health issues and that she had been diagnosed with post-partum depression, bipolar disorder, depression, anxiety, and post-traumatic stress disorder. She previously stopped taking her medications and participating in therapy because she lost her insurance. Mother testified she discontinued her treatment because she was unable to pay what she said was \$1,500 per month for her personal mental health treatment, but believed she could pay the \$4,000 per month expenses for Child's special formula. Until shortly before the termination

hearing, Mother declined DCS's offer to provide her with free mental health services.

[12] Both Child's court appointed special advocate ("the CASA") and family case manager Crystal Mefford ("FCM Mefford") testified that it was in Child's best interest that the parent-child relationship with Mother be terminated. Mother did not consistently participate in home-based services or visits with Child. At the time of the hearing, multiple service providers had attempted to teach Mother how to feed Child through the feeding tube, but she was still unable to do so. Although Mother told FCM Mefford that she attended a feeding therapy session in April 2023, when FCM Mefford tried to verify this, she learned Mother left after only five minutes. FCM Mefford did not believe Mother had a full understanding of Child's medical needs and did not believe that more time would change this. Such understanding was essential to caring for Child because if Child did not continue to work on his physical limitations daily, he would lose the ability to ever walk. Further, feedings were important because Child weighed only thirty pounds at the age of two.

[13] The CASA testified that she would "fear for [Child's] life" if he was placed back in Mother's care due to his medical issues and Mother's inability and unwillingness to recognize and address those issues. *Id.* at 75. The CASA did not believe that affording Mother more time would make a difference because Mother had been afforded the opportunity to learn how to meet Child's basic feeding needs but was still unable to feed Child. The CASA also had concerns because Mother had delayed addressing her mental health issues and not

attended Child's medical appointments or therapy sessions. Further, the CASA still believed the guns in Mother's home remained accessible to Child's older sibling.

[14] On July 27, 2023, the trial court issued written findings of fact and conclusions of law terminating Mother's parental rights with Child. The trial court concluded that DCS had proven the elements of Indiana Code section 31-35-2-4 by a preponderance of the evidence and ordered the parent-child relationship terminated. Mother now appeals.

Discussion and Decision

[15] While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise their children, the law allows for the termination of parental rights based on a parent's inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child's interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose of terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The trial court need not wait until the child is irreversibly harmed such that

their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[16] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). In evaluating the trial court’s findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). First, we must determine whether the evidence supports the findings,³ and second, we determine whether the findings support the judgment. *Id.* “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *Id.* If the evidence and reasonable inferences support the trial court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied.*

[17] Before an involuntary termination of parental rights may occur, the State must allege and prove, among other things:

³ Mother does not challenge the trial court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. See *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

(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 [CHINS];

(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). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, "if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship." I.C. § 31-35-2-8(a) (emphasis added). Further, because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the trial court must only find one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence, we need not address all of the requirements if

we find that one has been proven. *See* I.C. § 31-35-2-4(b)(2)(B); *A.D.S.*, 987 N.E.2d at 1157 n.6.

A. Conditions Not Remedied

[18] Mother first argues that the trial court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of Child and the reasons for placement outside of the home would not be remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home will not be remedied, a court engages in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, the court must determine what conditions led to the child’s placement and retention in foster care, and second, the court must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[19] In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against “‘habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.’” *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, “[trial] courts have properly considered 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.” *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).

[20] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "We entrust th[e] delicate balance to the [trial] court, which has [the] discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *E.M.*, 4 N.E.3d at 643. When determining whether the conditions resulting in removal would be remedied, the trial court may consider the parent's response to the offers of help from DCS or the service providers. *D.B.*, 942 N.E.2d at 873.

[21] Here, Child was removed from Mother's care because Mother had neglected Child's medical needs and DCS had concerns about Child's health. Child has significant medical issues that can cause him to have a compromised immune system, heart defects, hearing loss, and vision impairment. Child has feeding difficulties that cause him to aspirate his food into his lungs, so he requires a feeding tube. Child requires therapy to learn how to walk and be able to maintain this skill, and without daily attention, Child would regress from the progress he gains from therapy.

[22] Child has continued to remain out of Mother's care because, over the duration of the case, Mother failed to demonstrate that she could safely and properly feed Child and take care of Child's significant medical and therapeutic needs and do these things while caring for her other two children. Over the course of the case, Mother failed to consistently participate in home-based services or

visits with Child and did not adequately address her own mental health needs. At the time of the termination hearing, Mother was still unable to feed Child with the feeding tube because the feeding process scared her, and she could not remember all the steps. Child was removed from Mother's care in December 2021, and Mother first showed interest in learning how to feed Child in April 2023, the month before the termination hearing. The CASA did not believe that affording Mother more time would make a difference because Mother had been given numerous opportunities to learn how to meet Child's basic feeding needs but was still unable to feed Child. FCM Mefford did not believe Mother had a full understanding of Child's medical needs and did not believe that more time would change this. Such an understanding was essential to caring for Child because if Child did not continue to work on his physical limitations daily, he would lose the ability to ever walk. Further, feedings and making sure that Child got the correct nutrition were important because Child weighed only thirty pounds at the age of two.

[23] Contrary to Mother's argument, the trial court did not terminate her parental rights because Child had special needs. We do recognize that the extreme vulnerabilities of Child due to Child's special medical needs require a greater competency of care by Mother, but it is Mother's inability or unwillingness to meet the care requirements of Child, and not that fact that Child has special needs, that resulted in the termination of her parental rights. Mother had many opportunities over the duration of this case to engage in services, participate in visitations with Child, and gain an understanding of Child's medical needs and

how to address those needs but failed to comply with all the orders in the CHINS proceedings, failed to consistently visit Child, and failed to improve her ability to safely and permanently parent Child. A child “cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quoting *E.M.*, 4 N.E.3d at 648), *cert. denied*. Mother’s arguments challenging the trial court’s conclusion that the conditions that resulted in Child’s removal and continued placement outside the home will not be remedied are merely requests to reweigh the evidence, which we do not do. *E.M.*, 4 N.E.3d at 642. We, therefore, conclude that the trial court’s conclusion that there was a reasonable probability that the conditions which resulted in Child’s removal and continued placement outside the home would not be remedied was supported by sufficient evidence.

[24] Mother also argues that the trial court’s conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child was not supported by clear and convincing evidence. However, we need not address this argument because of the disjunctive nature of the subsection (b)(2)(B) and because we have concluded that the trial court’s determination that the conditions for Child’s removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence.

B. Termination in Best Interests of Child

[25] Mother also argues that the trial court’s conclusion that termination was in the best interests of Child was not supported by clear and convincing evidence. In

determining what is in the best interests of the child, a trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the trial court must subordinate the interests of a parent to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent's historical inability to provide a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In re A.P.*, 981 N.E.2d at 82. Testimony of the service providers, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[26] Our review of the totality of the evidence leads to the inescapable conclusion that, at the time of the termination hearing, Mother had not appreciatively improved her ability to safely parent Child and enable herself to take care of

Child's specific and significant medical needs to allow him to stay healthy and maintain his therapeutic goals. Mother had sporadic compliance with the trial court's orders but failed to complete her home-based services and did not consistently visit Child. Although Child had been removed from her care for over sixteen months, Mother did not have a real understanding of his medical and therapeutic needs and had not demonstrated that she could take care of Child while also caring for her other two children, who were both under the age of five at the time of the termination hearing. Mother simply had not shown that she could provide Child with a safe, stable, and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Mother would not remedy the reasons for Child's removal from her care. Additionally, both the CASA and FCM Mefford testified that termination was in the best interests of Child because, at the time of the hearing, multiple service providers had attempted to teach Mother how to feed Child through the feeding tube, but she was still unable to do so. Neither the CASA nor FCM Mefford believed that providing Mother more time would make a difference because Mother had been given opportunities to learn the needed skills, but she did not take advantage of such opportunities and still lacked a sufficient understanding of Child's medical needs. The CASA testified that she would "fear for [Child's] life" if he were placed back in Mother's care due to his medical issues and Mother's inability and unwillingness to recognize and address those issues. Tr. Vol. 2 p. 75. Further, the CASA still believed the guns in Mother's home remained accessible to Child's older sibling, which created a safety issue.

[27] Mother argues that she needed more time and training to be able to effectively care for Child’s needs. However, the trial court is to assess a parent’s fitness to care for her children at the time of the termination hearing. *See In re B.D.J.*, 728 N.E.2d 195, 202 n.1 (Ind. Ct. App. 2000). The trial court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Child should not have to wait any longer for Mother to learn how to take care of his needs and to parent him. The trial court’s conclusion that termination of Mother’s parental rights was in Child’s best interests was supported by clear and convincing evidence.

[28] We, therefore, conclude that the trial court did not err in its judgment terminating the parental rights of Mother to Child.

[29] Affirmed.

Riley, J., and Brown, J., concur.

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