MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

M.D., C.M.D., C.C.D. (Minor Children),

and

Z.D. (Father) and

J.D. (Mother)

Appellant-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

September 7, 2022

Court of Appeals Case No. 22A-JT-614

Appeal from the Scott Superior Court

The Honorable Marsha O. Howser, Judge

Trial Court Cause No.
72D01-2101-JT-1
72D01-2101-JT-2
72D01-2101-JT-3

Mathias, Judge.

[1] Z.D. ("Father") and J.D. ("Mother") (collectively, "Parents") appeal the trial court's order terminating their parental rights over their minor children, M.D., C.M.D., and C.C.D. (the "Children"). Parents raise a single issue for our review, which we restate as whether the trial court's judgment that the conditions that resulted in the Children's removal from Parents' care are not likely to be remedied is clearly erroneous. We affirm.

Facts and Procedural History

[2] In June 2016, Alex Peacock, a caseworker with the Indiana Department of Child Services ("DCS") in Scott County, received a report of two toddlers "walking down highway 31 in Austin . . . only in diapers." Tr. Vol. 2, p. 32. The children, C.M.D. and C.C.D., were three-years old and two-years old, respectively, and both were nonverbal. DCS placed the children in foster care. Six or seven hours after DCS had located the two children, Parents called 9-1-1 and reported the children as missing.

[3] Peacock went to Parents' home and completed a home visit. At Parents' home, she located a third child, M.D., who was around nine months old. Peacock observed that Parents' home was "dirty," with "trash" and "moldy food lying around." *Id.* at 34. There was no safe food to eat in the home. *Id.* There was no formula for M.D.

[4] Peacock further observed that Father "appeared to be under the influence," as he was "stumbling" around, "his pupils were dilated," and he was "slurring"

his speech. *Id.* Father refused to submit to a drug screen. Mother reported that "she was suffering from post-partum depression" and that "she had been at a friend's home" because she "needed a break" and "was unable to care for the [C]hildren . . . ." *Id.* Parents also informed Peacock that this was not the first time C.M.D. and C.C.D. "had been out," and on another occasion those two children "were found by a pond." *Id.* at 35.

[5] DCS filed petitions alleging the Children to be Children in Need of Services ("CHINS") due to Parents' neglect and failure to properly supervise the Children. Parents admitted the Children were CHINS, and the trial court ordered Parents to participate in numerous services. In relevant part, the court ordered Parents to "maintain suitable, safe[,] and stable housing with adequate bedding, functional utilities, adequate supplies of food[,] and food preparation facilities"; "keep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter[,] and safe" for the Children; maintain stable and adequate income; refrain from using illicit substances; complete a substance abuse assessment and submit to random drug screens; and "meet all . . . mental health needs in a timely and complete manner." Appellant's App. Vol. 2, pp. 182-83.

[6] From September 2016 to early 2018, Parents were inconsistent with participating in services. According to Family Case Manager Brandice Sutton, Parents "were pretty good starting out' with services, but "it was hit or miss." Tr. Vol. 2, p. 41. However, in early 2017, Mother moved into her boyfriend's home three hours away from the Children, and Father lived an hour away from

the Children. This resulted in a "lack of consistency" with Parents' visitations. *Id.* at 43.

[7] In early 2018, Father began to participate in services, and DCS started a home trial visit with Father and the Children in June. However, "[w]ithin days, Father stated that he was not ready to care" for the Children, and the trial home visit failed. Appellant's App. Vol. 2, p. 184; *see* Tr. Vol. 2, p. 45. Meanwhile, in early 2018, Mother also "stopped being consistent with her providers." Tr. Vol. 2, p. 44. Parents informed DCS that they wished for the Children to be adopted by their maternal grandmother and they both signed consents for that adoption. DCS supported the adoption based on Parents' "lack of progress" in the two and one-half years of the case. *Id.* at 47.

[8] However, in late 2019, DCS learned that the Children's maternal grandmother had tested positive for controlled substances and was being evicted from her home. *Id.* at 48. As a result, DCS moved to change the Children's placement from maternal grandmother to foster parents. During this time, Father continued to have issues with "employment" and "transportation," and, while Mother was able to maintain employment, she "worked a lot of hours" and did not "make time to meet with providers" or "complete home-based therapy." *Id.* at 50. Eventually, Parents "did not engage in any services." *Id.* at 89. Mother ceased communicating with the family case managers, and Father failed to communicate consistently. *Id.* at 91-93.

[9] DCS moved to terminate Parents' parental rights over the Children. After a hearing, the trial court found in relevant part that the conditions that resulted in the Children's removal from Parents' care were not likely to be remedied. Accordingly, the trial court terminated Parents' parental rights over the Children, and this appeal ensued.

Standard of Review

[10] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[11] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court's findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and, second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support

the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, we will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[12] It is well-settled that the parent-child relationship is one of society's most cherished relationships. *See, e.g.*, *In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. Ind. Code § 31-35-2-4(b)(2) (2021). Only one of those elements is at issue in this appeal: whether there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside Parents' home will not be remedied.[1] I.C. § 31-35-2-4(b)(2)(B)(i), (C).

[13] Clear and convincing evidence need not establish that the continued custody by the Parents is wholly inadequate for the Children's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the Children's emotional and physical development are put at risk by the Parents' custody. *Id.* If the court

[1] DCS needed to prove only one of the elements listed in Indiana Code subsection 31-35-2-4(b)(2)(B); therefore, it is not necessary for our Court to consider whether DCS presented clear and convincing evidence that the continuation of the parental-child relationship posed a threat to the Children's well-being. *See* I.C. § 31-35-2-4(b)(2)(B).

finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

[14] Parents argue that the trial court's conclusion that there is a reasonable probability that the reasons for the Children's removal from their care and the continued placement outside their home had not been remedied is not supported by clear and convincing evidence. In determining whether there is a reasonable probability that the conditions that led to a child's removal and continued placement outside a parent's home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the Children's] placement and retention in foster care." *Id.* Here, there is no dispute that the Children were removed from Parents' care due to the Parents' neglect and failure to properly supervise the Children.

[15] Second, "we 'determine whether there is a reasonable probability that those conditions will not be remedied.'" *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In this step, the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration any 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." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231).

[16] The trial court may consider services offered by DCS and the parent's response to those services as evidence of the likelihood that conditions will not be remedied. *A.D.S.*, 987 N.E.2d at 1157. "Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). DCS "is not required to provide evidence ruling out all possibilities of change; rather, it need only establish 'that there is a reasonable probability that the parent's behavior will not change.'" *A.D.S.*, 987 N.E.2d at 1157 (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)).

[17] Here, Parents argue that they originally did well in their participation in services; that, even after they signed the adoption consents, they "continued . . . to improve their lives and ability to parent"; and that DCS never "sought to restore" Parents' services after Parents had signed the adoption consents. Appellant's Br. at 16-18. However, Parents' argument is based on a selective reading of the record that is not consistent with our standard of review. The family case managers consistently testified that Parents' participation in services was inconsistent at best. While FCM Sutton testified that Parents' initial participation in services in late 2016 was "pretty good," Tr. Vol. 2, p. 41, their participation in services declined quickly after that. By 2018, Mother was not consistent with services and Father stated he was not ready to care for the Children. DCS sought to have the Children's maternal grandmother adopt them, and Parents consented to that adoption. However, when that adoption

fell through, Parents continued to be inconsistent with remedying the conditions that resulted in the Children's removal from their care before eventually ceasing their engagement in "any services," *id.* at 89, and in communicating with DCS, *id.* at 91-93.

[18] Thus, the record most favorable to the trial court's judgment supports the court's conclusion that the conditions that resulted in the Children's removal from Parents' care were not likely to be remedied. The trial court properly considered the services offered by DCS and Parents' response to those services, and where "the pattern of conduct shows no overall progress, the court might reasonably find that . . . the problematic situation will not improve." *A.H.*, 832 N.E.2d at 570. As the record supports the trial court's findings and its findings support its judgment, we affirm the trial court's order terminating Parents' parental rights over the Children.

[19] Affirmed.

Robb, J., and Brown, J., concur.