

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:

R.H. (Minor Child)
and

M.H. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 28, 2022

Court of Appeals Case No.
21A-JT-2070

Appeal from the Grant Superior
Court

The Honorable Dana J.
Kenworthy, Judge

Trial Court Cause No.
27D02-2012-JT-115

Tavitas, Judge.

Case Summary

- [1] M.H. (“Mother”) appeals the termination of her parental rights to her child R.H. (“Son”). Mother challenges the sufficiency of the evidence to support the termination of her parental rights. Because we conclude that the Grant County Department of Child Services (“DCS”) presented sufficient evidence to support the termination of Mother’s parental rights, we affirm.

Issues

- [2] Mother raises two issues, which we restate as:
- I. Whether the trial court clearly erred in finding that there was a reasonable probability that the conditions that resulted in Son’s removal from Mother’s home, or his continued placement outside Mother’s home, would not be remedied.
 - II. Whether the trial court clearly erred in finding that termination of Mother’s parental rights was in Son’s best interest.

Facts¹

- [3] Mother gave birth to Son in September 2009.² Son was eventually diagnosed with autism spectrum disorder and post-traumatic stress disorder. Son has extensive medical, behavioral, and emotional issues. Due to Son's special needs, he will likely need special care for the remainder of his life. On October 8, 2017, DCS received a report that the conditions of Mother's home were deplorable and that Mother was not properly supervising Son. Mother was also struggling with mental health issues. She had recently attempted suicide while Son was in her care and was being detained pending her enrollment in inpatient mental health treatment.
- [4] DCS personnel, including family case manager Ashley Evans ("FCM Evans"), investigated and confirmed the report of the conditions of the house, which included: (1) insect infestation, including cockroaches; (2) numerous items piled throughout the home; (3) the strong odor and presence of animal feces and rotten foods; (4) the kitchen ceiling was falling in; and (5) the presence of unsafe electrical wiring. FCM Evans also found Son sleeping on a futon in the dining room. Son's leg was in a cast, and he moved by scooting along the floor amongst the cockroaches.

¹ Mother makes no challenge to the trial court's findings of fact. We therefore accept the trial court's findings as true. See *In re Br.B.*, 139 N.E.3d 1066, 1073 (Ind. Ct. App. 2019) ("Parents do not challenge any of the [trial court's] findings, and thus they stand as proven.") (citing *Coles v. McDaniel*, 117 N.E.3d 573, 576 (Ind. Ct. App. 2018)), *trans. denied*.

² Son's alleged father is D.S. DCS served D.S. via publication, but D.S. never responded. Thus, D.S. is not an active party to this appeal.

[5] On October 11, 2017, DCS filed a petition that alleged that Son was a child in need of services (“CHINS”). Mother admitted that Son was a CHINS at the fact-finding hearing held on November 9, 2017. Specifically, Mother admitted that: (1) she was then in jail due to pending criminal charges and could therefore not provide for Son’s care and supervision; (2) the conditions of her home were unsanitary and unsafe for Son; and (3) there was then a no-contact order in place that prohibited contact with her Son. The trial court ordered Son to remain in foster care and entered a parental participation order for Mother.

[6] On December 9, 2017, the trial court entered its CHINS dispositional order, which required Mother *inter alia* to: (1) maintain contact with the FCM, notify the FCM of any arrest or criminal charges, and allow the FCM or other service providers to make announced and unannounced visits to Mother’s home; (2) maintain suitable, safe, and stable housing; (3) secure and maintain a legal and stable source of income; (4) complete a parenting assessment and substance-abuse assessment and follow all recommendations; (5) complete a psychological evaluation and follow all recommendations; (6) meet with medical and psychiatric personnel as directed and take all prescribed medicines as directed; (7) attend all scheduled visitations with Son and comply with the visitation rules and procedures set by DCS or the service provider; and (8) engage in home-based services.

[7] At first, Mother was relatively compliant with the services provided to her. She completed a family functioning assessment in January 2018 and completed a clinical interview and assessment in February 2018. Also in February 2018,

Mother completed an attachment and bonding assessment, which determined that Son had an insecure attachment to Mother—a situation that typically occurs when a parent is unavailable to or rejects a child. During this assessment, Mother showed difficulty focusing on Son and attempted to have the attention of the clinician focus on Mother.

- [8] In May 2018, Mother underwent psychological testing. This testing revealed that Mother was severely anxious and depressed and had significant issues with paranoia; she was preoccupied with thoughts and delusions of others plotting against her and attempting to harm her. Mother was also diagnosed with major depressive disorder, post-traumatic stress disorder, histrionic personality disorder, and paranoid personality disorder. Mother had highly impulsive behaviors, and she displayed psychotic features, low self-esteem and low empathy, and self-defeating patterns of behavior. Mother, however, failed to address her mental health issues, which in turn made it difficult for her to maintain positive relationships or effectively communicate. Mother avoided personal responsibility and considered herself a victim. Even though she had twice attempted suicide, Mother denied ever having been suicidal. Mother tended to focus not on her own mental health issues but on her claims of being abused and mistreated by others, including her parents, her sister, her ex-husband, her ex-husband's new girlfriend, her handyman, her neighbors, her service providers, and even DCS staff.

- [9] Mother also had numerous health problems, including morbid obesity, osteoarthritis, chondromalacia,³ degenerative joint disease, degenerative disk disease, spinal issues, diabetes, anemia, asthma, acute hypoxic respiratory failure, and chronic kidney disease. These physical ailments also negatively affected Mother’s ability to care for Son because she could not be physically active for more than a few minutes at a time. Mother completed a medical evaluation, but she failed to follow the recommendations made by the evaluator. In April 2019, Mother suffered a stroke and began to receive Social Security Disability benefits.
- [10] Mother told FCM Evans that she was participating in individual therapy through the Veterans Administration (“VA”). Mother, however, stopped attending her therapy sessions in May 2019. Evans then made another referral for Mother, which Mother did not act on.
- [11] Mother got a job through vocational rehabilitation services, but she was terminated from her employment due to inappropriate behaviors such as talking loudly, laughing at inappropriate times, taking excessive breaks, and claiming that several different women were her husband’s ex-girlfriend. Mother denied these behaviors and claimed that the person who reported her behaviors was lying.

³ “Chondromalacia is an affliction of the hyaline cartilage coating of the articular surfaces of the bone. It results in the softening and then subsequent tearing, fissuring, and erosion of hyaline cartilage.” Steven F. Habusta, et al., *Chondromalacia Patella*. <https://www.ncbi.nlm.nih.gov/books/NBK459195/>.

[12] Mother showed a lack of competency in the very areas where Son needed the most help. Mother repeatedly demonstrated that she was unable or unwilling to communicate properly with service providers. Mother never fully accepted the seriousness of her physiological and psychological problems. Despite the evidence to the contrary, Mother insisted at the termination hearing that her mental health issues were under control and that “people [were] out to ruin [her] life.” Tr. Vol. II p. 68. Mother’s psychological problems made it difficult for her to meet Son’s special needs.

[13] Mother participated in mental health and social work services starting in October 2017 but stopped participating in August 2020. During her appointments, Mother fixated on perceived wrongs inflicted on her by others. Mother’s counselors worked with her to develop coping skills, regulate her emotions, avoid a victim mindset, and educate her on the consequences of her anger. Mother, however, was resistant to this treatment and was unable to maintain progress in these areas. For example, during an individual counseling session in January 2020, Mother claimed that her recent arrest for invasion of privacy was due to the machinations of her ex-husband. In August 2020, Mother reported to her counselor that her ex-husband had “ambushed” her with false criminal charges and that her stress was due to her “abuser” and the DCS case manager. DCS Ex. 70 pp. 30, 41. Beginning in the fall of 2019, Mother’s participation in services began to decline, and by March 2020, Mother had stopped participating in the services she was receiving through the Veterans Administration.

- [14] Mother participated in home-based case management, but she failed to follow the instructions or make significant progress. Mother failed to demonstrate that she learned any skills from the home-based case-management services.
- [15] Mother did consistently attend scheduled visitations with Son, but she often displayed inappropriate behavior. During visits, she once brought undercooked chicken for Son to eat, and on another occasion, she brought spoiled milk. FCM Evans also observed Son touching Mother's breasts. When confronted about this, Mother claimed that it was not an issue because Son is her child and "he started it first." Tr. Vol. II p. 27. FCM Evans also observed Mother and Son tongue kissing. Due to Mother's inability to make her home safe, the visitations remained supervised.
- [16] Throughout the course of the CHINS and termination proceedings, Mother demonstrated a lack of financial soundness. She received income from both the VA and disability benefits. Yet she claimed that she was unable to fix the numerous issues with her house due to lack of funds. Mother made cosmetic repairs to her home instead of fixing the underlying issues. Thus, even in February 2021, Mother's home was still unclean and had unsafe wiring and plumbing issues. During a DCS inspection of Mother's home in that month, the case manager took photos depicting the back door had been nailed shut, thereby creating a hazard in case of fire. Multiple windows were broken in the home. The issues with Mother's house included an uninhabitable third bedroom next to the kitchen, which contained exposed electrical wiring, exposed wall studs, and a hole in the wooden floor. When asked how she

could keep Son from entering this dangerous room given her physical disabilities, Mother testified she had “trust and faith” in Son to do what he was told and accordingly would not enter the dangerous areas of her house. Tr. Vol. II p. 189.

[17] Mother also continued to own and buy pets even though she lacked the funds to properly care for them and could not clean up after them. Accordingly, the house smelled of animal feces and rotten food. Although Mother did eventually address the insect infestation, it took her years to do so. It was unclear whether Mother had repaired the leaking roof, and she blamed DCS for the sagging ceiling in her kitchen by claiming the FCM made her repair the ceiling tiles before she repaired the leaking roof.

[18] Mother refused to find a different home because she claimed that she had an emotional attachment to her house because she had purchased it with the proceeds of her own mother’s life insurance policy. Mother’s financial illiteracy was exemplified by her purchase of a clarinet and a recumbent bicycle with funds from a grant she received to repair her home. Mother complained about not having enough money to heat her home, yet she then bought a guitar and a keyboard.

[19] In addition to her psychological and physiological problems, Mother faced several criminal charges. Shortly before the filing of the CHINS case, the State charged Mother with two counts of invasion of privacy, Class A misdemeanors; the alleged victims were Mother’s ex-husband and his family. Mother

subsequently pleaded guilty to one of these two counts in June 2018, was placed on probation, and was ordered to refrain from contact with her ex-husband and his family. On November 7, 2017, the State charged Mother with neglect of a dependent, a Level 6 felony, and invasion of privacy, a Class A misdemeanor. These charges stemmed from the issues that led to DCS involvement in the present case and from Mother having sent Facebook messages to her ex-husband's girlfriend in violation of a protective order. Mother pleaded guilty to both counts in February 2018 and was placed on probation. On January 13, 2020, Mother was yet again charged with invasion of privacy, a Class A misdemeanor, due to contacting her ex-husband. Mother pleaded guilty in this case in July 2020 and was again placed on probation. Mother was obligated to inform DCS of all criminal charges against her,⁴ but she failed to report any of the criminal charges filed after 2017.

[20] On December 15, 2020, DCS filed a petition to terminate Mother's parental rights, and a termination hearing was held on March 9 and 17, 2021. On August 13, 2021, the trial court entered findings of fact and conclusions thereon terminating Mother's parental rights to Son. Mother now appeals.

Analysis

[21] Mother challenges the sufficiency of the evidence supporting the trial court's decision to terminate her parental rights. The Fourteenth Amendment to the

⁴ Although the charges were later dismissed, the State charged Mother on September 21, 2017, and January 29, 2019, with additional counts of invasion of privacy.

United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interest when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[22] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights. We will affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[23] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

(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.

(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.

To justify a termination of parental rights, DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[24] In the present case, Mother contends that DCS failed to prove by clear and convincing evidence that: (1) there was a reasonable probability that the reasons

for Son's removal would not be remedied;⁵ and (2) termination of her parental rights was in Son's best interest. We address each contention in turn.

I. Conditions that Resulted in Son's Removal from Mother's Home

[25] Mother first claims that the trial court clearly erred in finding that there was a reasonable probability that the conditions that resulted in Son's removal from her home, or the reasons for his continued placement outside of her home, would not be remedied. In determining whether the conditions that resulted in a child's removal will not be remedied, courts engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). Courts must (1) identify the conditions that led to removal, and (2) determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step of this analysis, the trial court must assess a parent's fitness "as of the time of the termination proceeding, taking into consideration evidence of changed conditions." *Id.* (quoting *Bester*, 839 N.E.2d at 152). "Requiring trial courts to

⁵ We have long noted that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999) (citing *In re V.A.*, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994)). DCS is, therefore, required to prove by clear and convincing evidence that there was a reasonable probability exists that *either*: (1) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the child's well-being. *See Ma.H.*, 134 N.E.3d at 46 n.2. Here, the trial court found that DCS had met its burden under both subsections. Mother, however, challenges only the trial court's finding under Subsection 4(b)(2)(B)(i) regarding remedy of the conditions that resulted in Son's removal. Because Mother does not dispute the trial court's finding under Subsection 4(b)(2)(B)(ii) regarding the threat to Son's well-being, it stands unchallenged. Consequently, even if we agreed with Mother that the trial court clearly erred in its finding under Subsection 4(b)(2)(B)(i), we could affirm the trial court's judgment based on its finding under Subsection 4(b)(2)(B)(ii). Mother's argument regarding the sufficiency of the evidence supporting the trial court's finding under Subsection 2(b)(2)(B)(i) is, therefore, of no moment. Nevertheless, we prefer to address arguments on the merits when possible, *In re Eq.W.*, 124 N.E.3d 1201, 1214 (Ind. 2019), and we chose to address Mother's argument on its merits.

give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

[26] Here, the reasons for Son's removal from Mother's home included the condition of Mother's home, her incarceration, and her mental health as demonstrated by her suicide attempt while home with Son. Furthermore, Son continued to be placed outside of Mother's home because she failed to make her house a safe and suitable home for Son, failed to address her mental health issues, and failed to demonstrate that she had the capability to meet Son's special needs.

[27] DCS presented evidence that Mother had made little progress in the services offered to her. Mother refused to participate in counseling through the providers referred by DCS. Although Mother did attend some counseling through the VA, she stopped attending VA counseling in May 2019. Mother was hesitant and inconsistent in releasing her medical records; she did not sign a release for her psychological records until November 2020, years after Son had been removed from her care. Mother made little progress in addressing her mental health and continued to display mental health issues, including paranoid personality disorder. This made it difficult for Mother to work with service providers and others who could help her. For example, Mother refused to seek help from the township trustee because Mother did not trust him. Mother expressed the belief that others were trying to ruin her life. Although Mother denied being suicidal, she twice attempted suicide.

[28] Mother’s criminal behavior continued unabated during the CHINS proceedings, and she was repeatedly charged with, and convicted of, invasion of privacy. Although Mother points to improvements she made in her home, such as apparently taking care of the insect infestation, there was evidence presented that her home remains unsuitable for Son, who has special needs. As set forth in more detail above, the problems with the house included that the back door was nailed shut, several windows were broken, the roof remained unrepaired, and the room off the kitchen remained in an unlivable state, with exposed wiring, no walls, and a broken floor. Instead of adequately taking care of the animals Mother had, she acquired more animals—animals which she was also unable to properly care for. The water heater in Mother’s home often malfunctioned. Although Mother claimed that she had fixed the plumbing, DCS inspections observed standing water in the kitchen sink.

[29] Mother also failed to show any improvement in her parenting skills. Mother’s significant physical and mental health issues hampered her ability to properly supervise her special-needs Son. When asked how she could prevent Son from going into the dangerous areas of her home, Mother stated that she did not need to be able to run after Son because she had “trust and faith” in him to do what he was told. Tr. Vol. II p. 189.

[30] In short, Mother’s pattern of behavior showed little, if any, progress in dealing with the conditions that resulted in Son’s removal, including her mental health, her criminal behavior, and the unsafe conditions of her home. She continually blamed others for her problems and demonstrated that she was unable or

unwilling to take responsibility for her conduct. Accordingly, the trial court did not clearly err in finding that there was a reasonable probability that the conditions that resulted in Son's removal from Mother's home, or the reasons for Son's continued placement outside of Mother's home, would not be remedied.

II. Best Interest of the Child

[31] Mother also claims that the trial court clearly erred in determining that termination of her parental rights was in Son's best interest. In determining what is in the best interest of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004)), *trans. denied*. In making this determination, the trial court must subordinate the interest of the parents to those of the child involved. *Id.*

[32] Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. 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. *Id.* A child's need for permanency is a "central consideration" in determining the best interest of a child. *Id.* "We have previously held that recommendations by the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests."

In re J.S., 133 N.E.3d 707, 716 (Ind. Ct. App. 2019) (citing *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013)); *see also In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (affirming trial court's finding that termination was in child's best interest based on opinion of the CASA, guardian ad litem, and child's psychiatrist).

[33] Here, FCM Evens testified that it was in Son's best interest for Mother's parental rights to be terminated because of Mother's failure to demonstrate that she could maintain a safe home for Son and Mother's failure to adequately address her own mental health issues. Similarly, CASA Stevens testified that she believed that Son would not be safe in Mother's home. This testimony, coupled with the evidence that the conditions that led to Son's removal from Mother's home, are sufficient to support the trial court's conclusion that termination of Mother's parental rights was in Son's best interest. *See J.S.*, 133 N.E.2d at 716; *A.D.S.*, 987 N.E.2d at 1158-59.

[34] We also cannot ignore Son's need for permanency. Son was removed from Mother's care in October 2017. DCS filed its petition to terminate Mother's parental rights in December 2020, over three years later. The termination hearing was held in March 2021, by which time Son had been in foster care for over three years. Still, Mother was unable to take the steps necessary to return Son to her care. While we have no reason to doubt that Mother loves Son, this alone is insufficient for us to overrule the trial court's finding that termination of Mother's parental rights is in Son's best interest.

Conclusion

[35] The trial court did not clearly err in finding that there was a reasonable probability that the conditions that resulted in Son's removal from Mother's home, or the reasons for Son's continued placement outside of Mother's home, would not be remedied. Lastly, the trial court did not clearly err in determining that termination of Mother's parental rights was in Son's best interest. Accordingly, we affirm the judgment of the trial court.

[36] Affirmed.

Bradford, C.J., and Crone, J., concur.