

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 A.D., Mother, N.D., Sr.,
Father, and L.D. and P.D.,
Minor Children,

A.D. and N.D., Sr,
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

August 14, 2023

Court of Appeals Case No.
23A-JT-253

Appeal from the
Randolph Circuit Court

The Honorable
Jay L. Toney, Judge

Trial Court Cause Nos.
68C01-2205-JT-74
68C01-2205-JT-75

Memorandum Decision by Judge Foley

Chief Judge Altice and Judge May concur.

Foley, Judge.

- [1] A.D. (“Mother”) and N.D., Sr. (“Father”) are the parents (together, “Parents”) of L.D. and P.D. (“the Children”), and their parental rights were terminated by the juvenile court. Parents appeal the juvenile court’s judgment and argue that the juvenile court erred because its conclusion that there was a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home would not be remedied was not supported by clear and convincing evidence. Finding no error, we affirm.

Facts and Procedural History

- [2] Mother and Father are the parents of L.D., born February 7, 2019, and P.D., born January 26, 2020. In December of 2019, the Indiana Department of Child Services (“DCS”) received a report alleging Parents were neglecting L.D. and his older half-siblings, who are not a part of this appeal, due to home conditions and the failure to provide them necessary medical care. Family Case Manager Natalie Crist (“FCM Crist”) made several visits to the family home in Lynn, Indiana, while completing the 2019 assessment. When visiting the home, she observed trash throughout the home, animal feces smeared into the carpet, feces covering the toilet, and gallon containers of murky water in the home because the home had no running water. The area where L.D. slept was filled with items such as blankets and pillows, which created a concern that the Parents were not using safe sleep practices for L.D.

[3] Parents used kerosene to heat the home, but there were times where they could not afford the kerosene causing concerns that the home was not properly heated. The bedrooms in the home contained no furniture other than bare mattresses. Parents told DCS that they were working on cleaning up the home to make it suitable for L.D. and his half-siblings, and on some visits, there would be improvements, but on subsequent visits, the conditions would again deteriorate. L.D., who was over ten months when the assessment began, had missed his six-month and his nine-month well-check appointments. His pediatrician had referred L.D. to be evaluated by First Steps¹ because he had developmental delays, but Parents had failed to follow through with that referral. While FCM Crist was in the process of completing her assessment, P.D. was born in late January 2020.

[4] On February 10, 2020, DCS filed its petition alleging L.D. to be a Child in Need of Services (“CHINS”). DCS did not initially request removal of L.D. when they filed the petition. Instead, DCS contracted with an intensive in-home service provider to assist the family with bringing the home conditions up to DCS’s minimum standards for the health and safety of the Children and to try to prevent the removal of the Children. However, the program was unsuccessful, and the home conditions did not improve. The Children were therefore removed from Parents’ care on February 28, 2020, based on the

¹ First Steps is a program that provides therapy for Children from birth to their third birthday who have developmental delays or disabilities. See <https://www.in.gov/fssa/firststeps/> (last viewed July 7, 2023).

continued home conditions that endangered the health and welfare of the Children and the concern that Parents were not following through on the medical needs of the Children. When they were removed from Parents' care, the Children were placed with their paternal aunt and uncle. On March 2, 2020, DCS filed a petition alleging that P.D. was a CHINS.

[5] On June 23, 2020, Parents admitted the Children were CHINS, and the juvenile court adjudicated them to be CHINS. The Children remained placed with paternal aunt and uncle and were not returned to the care of either Parent throughout the duration of the case. After the dispositional hearing, the juvenile court issued its participation order and dispositional order, in which Parents were ordered to, among other things, “[m]aintain suitable, safe, and stable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities” and to “[k]eep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter, and safe for the [Children].” Ex Vol. 4 pp. 34, 36, 95, 97. Parents were also ordered to complete a parenting assessment and successfully complete all recommendations, which may include parenting classes, home-based counseling, and other counseling services. They were also ordered to attend all scheduled visitations and to comply with the visitation rules and procedures and to participate in case management services.

[6] At some point after the dispositional order was issued, Parents moved from Lynn, Indiana to a trailer park in Ohio where they first lived in a trailer on Lot 8 and, around March 2022, moved to Lot 29 in the same trailer park. FCM

Stephanie Leffel (“FCM Leffel”), worked with Parents for several months after they moved to Ohio, referred them to participate in homemaker services (case management), a parenting assessment, individual therapy, and couples’ therapy. While she worked with Parents, they were living in the trailer on Lot 8 in Ohio. The overall condition of the home remained poor throughout the time that FCM Leffel worked with Parents and deteriorated over time, despite brief periods of improvement. FCM Leffel found it difficult to even walk through the front yard to get to the home, and a ramp that led into the home was unstable and unsafe. Father repaired the ramp, but the front porch and yard remained covered with open trash bags, debris, and clutter. The smell of rotten food was strong even outside the home. The home also smelled of dog odor and feces, and there was feces on the floor, as well as a black sticky substance FCM Leffel could not identify in the bedroom. On at least one visit, she saw mice running back and forth on the kitchen cabinets.

- [7] FCM Leffel arrived on one occasion for a potential supervised visitation at the home. The home again smelled strongly of feces and urine, and there was debris and trash on the floor. FCM Leffel asked to see Parents’ bedroom to ensure safety for the visit because there was only a cloth covering on the door, which made the room accessible to Children. Father would not allow FCM Leffel to look into the bedroom and became very angry when she insisted that she needed to do so for safety reasons. Father then violently punched the refrigerator while FCM Leffel was standing nearby. FCM Leffel left immediately for safety reasons, and visitations remained out of the home for the

rest of the case due to this incident and the deteriorating conditions in the home. During FCM Leffel's involvement in the case, Parents did not improve home conditions sufficient for Children to be safe even though they participated in some services. During team meetings, Parents told FCM Leffel they were tired of dealing with DCS.

[8] From June to September 2021, FCM Susan Brabaw ("FCM Brabaw") worked with Parents to try to rectify the unsafe and unsanitary condition of the home. During her time with Parents, FCM Brabaw also did not observe any improvement to the home's conditions and did not consider the home to be suitable and safe for the Children, who were both mobile and able to climb and grab items. The outdoor area was never safe for Children because of safety hazards consisting of broken items and other debris throughout. When she made announced visits, the house would look as if Parents attempted to clean up, but FCM Brabaw observed cockroaches in the home and broken cabinet doors that caused her concern for child safety. Parents had a wood-burning stove for heat but there was no guard around the stove to protect the Children. The inside of the home remained dirty and cluttered. The entrance ramp to the home was too dangerous to use, was likely rotting, and had a hole in it.

[9] Parents told FCM Brabaw that they had elected to obtain some services on their own in Ohio but never provided any confirmation of these services. Mother was not engaged in services other than being present for case management appointments. Father reported he was participating in services, but never provided confirmation. He also did not maintain stable employment as he

worked at four different jobs in the ninety days FCM Brabaw had the case. Parents denied Mother was pregnant until she gave birth to a younger sibling, W.D. However, once FCM Brabaw confirmed proof of the birth in Ohio, Parents admitted W.D.'s existence but claimed he lived with a family member. While FCM Brabaw was assigned to the case, Parents had supervised visitation with the Children, but due to lack of progress and consistent visitations, they never progressed to unsupervised visits.

[10] From September 2021 through the duration of the case, FCM Rhonda Gard ("FCM Gard") took over the Children's case. FCM Gard found Parents did not maintain any improvements to their home's conditions, and the home remained in such a condition that the Children had access to things that would cause them serious harm if touched or ingested. FCM Gard observed W.D. in the trailer in Ohio even though Parents claimed W.D. lived with other relatives, which was later determined to be untrue. Although the home would appear to have been cleaned up when FCM Gard made announced visits, when she made an unannounced visit to the home, the home had deteriorated to the previous unsafe and unsanitary condition. The temporary improvements in the home conditions were never sufficient for FCM Gard to say the reasons for DCS involvement had been remedied or to allow in-home visits.

[11] By January 2022, the improvements in the trailer home on Lot 8 were enough that DCS was considering moving Children's fully supervised visits to being in the home, and then Parents moved to the second trailer on Lot 29, which was in worse condition than the first trailer. This was confirmed by other home-

based service providers. The unsafe and unsanitary conditions of the home included broken windows in the bedroom, an unsecured crossbow that was accessible to children, and trash in the yard and strewn inside the home. Due to the age of the Children and their mobility, which allowed them access to these unsafe things in the home, FCM Gard never requested that the Children be returned to the home. FCM Gard offered Parents services consistent with the dispositional order, but they failed to maintain weekly contact, to follow-up on recommendations for couples counseling, and to attend all scheduled visitations with the Children, and they were only partially compliant with their case management services.

[12] On May 19, 2022, DCS filed petitions to terminate Parents' parental rights to the Children based on non-compliance with services and failure to improve the conditions resulting in removal from their care. The termination evidentiary hearing was held on August 11, and September 15, 2022. At the termination hearing, Mother testified she believed the home in Lynn and the trailer on Lot 29 in Ohio, where they were living at the time, were "dirty" and not safe for the Children; she also testified that the trailer they lived in on Lot 8 was clean at times but also dirty for several of the months they lived in it. Mother also testified it was in the Children's best interests to remain in their current placement. On the first day of the termination hearing, Mother denied being pregnant with her fifth child although it turned out that she was pregnant with a due date of October 1, 2022. Father testified to what he thought a clean home

should look like and agreed that photographs taken by FCM Gard of the trailer home on Lot 29 did not meet these expectations.

[13] In addition to the issues with the home conditions, service providers testified that Parents told them that they did not need help from the service providers. Neither Mother nor Father participated in psychological treatment to address the underlying cause of their unstable housing and income. Father refused to sign release of information forms so FCM Gard could verify whether he was participating in individual counseling and the topics being addressed. Through a DCS referral, service providers worked with Parents to develop parenting skills, and Parents progressed somewhat with the curriculum. However, they canceled several appointments for case management services and the referral was closed out as unsuccessful because Parents did not follow through with the services and did not improve their home conditions.

[14] Parents often missed supervised visits and had only attended around one-third of the offered visits with Children. The visits occurred in the community and not at Parents' home because of the unsafe and unsanitary condition of the home. Initially, the visits were to be twice a week, but due to Parents' inconsistency in keeping the appointments, the visits were reduced to once a week. The visitation remained supervised because the Children did not show attachment to Parents. During the visits, Parents failed to maintain interaction with Children and seemed to be more bonded with L.D. than P.D., which caused P.D. to become uninterested in interacting with Parents. Parents never provided Children with gifts on birthdays or Christmas and did not attempt to

contact the Children except for visitations. Parents also did not attend Children's medical appointments although they were made aware of the appointments.

[15] At the time of the termination hearing, the Children had been removed from Parents' care for over two years and had remained in the same placement the entire time, which was their paternal aunt and uncle. When the Children were placed with paternal aunt and uncle, they noticed that L.D. had some physical limitations. The aunt took L.D. to his assessment with First Steps, and L.D. qualified for services for speech and improvement of fine motor skills. At the time of the hearing, L.D. still required assistance with his speech, but was attending school and progressing well. When P.D. came to paternal aunt and uncle, he had thrush and a yeast infection that covered his neck, armpits, and private area, which was quickly treated, and he recovered. He had not shown any signs of having any physical or speech delays but was evaluated to ensure his development was on track. The Children were doing well in their placement but had been diagnosed as failure to thrive, and paternal aunt and uncle were responding to the diagnosis appropriately. Paternal aunt and uncle were willing to adopt the Children.

[16] FCM Gard and the Children's court appointed special advocate ("CASA") each testified that they believed that termination of the parental rights of Parents was in the Children's best interests because Parents had not shown consistent progress or the ability to maintain any improvements in their home's conditions, which was the reason for the Children's removal in early 2020.

FCM Gard and the CASA also believed termination of the parental rights to be in the Children's best interests because Parents failed to visit the Children consistently and failed to demonstrate any benefit from the services offered to them by DCS, including case management and parenting training.

- [17] At the conclusion of the termination hearing, the juvenile court took the matter under advisement. On January 10, 2023, the juvenile court issued its order terminating Parents' parental rights to the Children. Parents now appeal.

Discussion and Decision

- [18] 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 the 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 for 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 juvenile 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.*

- [19] 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). Where, as here, the juvenile court enters specific 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 B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn from it that support it. *Id.* We do not reweigh the evidence or determine the credibility of witnesses and consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *E.M.*, 4 N.E.3d at 642. If the evidence and inferences support the juvenile 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*.
- [20] Before an involuntary termination of parental rights may occur, the State must allege and prove, among other things:

(B) that one (1) of the following is true:

² Parents do not challenge any of the trial court’s findings of fact, so they have 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).

(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.³

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).

[21] Parents contend that the juvenile court's conclusion that there was a reasonable probability that the conditions resulting in the removal of the Children and the reasons for placement outside of the home would not be remedied was not

³ Parents only challenge the juvenile court's conclusion that there was a reasonable probability that the conditions resulting in the removal of the Children and the reasons for placement outside of the home would not be remedied. Parents, therefore, waive any challenge as to the court's other legal conclusions under the statute. See *In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007), *trans. denied*.

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, 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 determine what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[22] In the second step, the juvenile 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, "[juvenile] 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).

[23] 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 [juvenile] 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 for the removal would be remedied, the juvenile court may consider the parent's response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[24] Children's initial removal in February 2020 "was based, at least in part, to the [C]hildren's young ages," Parents' inability to provide for Children's basic needs and failure to take L.D. to his wellness checkups, and because the home's conditions were unsafe and unsanitary and allowed the Children "access to trash and feces throughout the home." Appellant's App. Vol. 2 pp. 59–60. Children remained in relative placement for the duration of the case because Parents failed to ever achieve a safe and hygienic home or to maintain small improvements for any length of time.

[25] During the duration of the case, Parents were never in substantial compliance with the juvenile court's dispositional orders or Children's case plans. The juvenile court concluded that Parents had not improved the deplorable home conditions and failed to participate in supervised visitations with the Children. Mother admitted the home did not meet her own standards for cleanliness, and Father testified he was only partially meeting his personal standard for cleanliness.

[26] Parents only participated in services sporadically. Father said he attended therapy but never signed the releases so that FCM Gard could confirm his participation. Neither parent completed psychological assessments to address the underlying cause of their unstable housing issues. Parents did progress through the parenting curriculum but did not demonstrate any understanding or

consistent use of the skills taught. Over the course of the case and through three different homes, Parents failed to demonstrate the ability to sustain even minor improvements in home conditions. One of their service providers visited their home on September 14, 2022, and found the home to be in the worst condition she had ever seen. Although Parents participated in some services offered by DCS, it is not enough that they merely attended services if they cannot demonstrate the desired change.

[27] Parents did not make visiting the Children a priority. The “failure to exercise the right to visit one’s child demonstrates a ‘lack of commitment to complete the actions necessary to preserve [the] parent-child relationship.’” *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (quoting *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002)), *trans. denied*. Between March 2021 through May 2022, Parents missed at least one-third of their twice weekly visits with the Children. When they did have visitations with the Children, Parents failed to maintain their interaction with the Children. Further, Parents did not make efforts to stay connected to the Children outside of the visitations or to attend any of the Children’s medical appointments. The Children were not bonded to Parents. The evidence supports the reasonable inference that Parents lacked the commitment to take the necessary action to maintain their parent-child relationship with Children.

[28] Parents argue that the juvenile court’s conclusion that there was a reasonable probability that the conditions resulting in removal and continued placement outside the home will not be remedied was not supported by clear and

convincing evidence because the juvenile court failed to take into account testimony by Father that each time the family moved, they were trying to better their living situation and that the court should have considered other testimony that the condition of the trailer had improved since the last provider visit in September 2022. This is merely a request for this court to reweigh the evidence and substitute its judgment in place of the trial court, which we will not do. *E.M.*, 4 N.E.3d at 642. Although Father may have intended to improve the condition of the home, the evidence clearly established that he was unable to do so.

[29] Children “cannot wait indefinitely for their parents to work toward preservation or reunification.” *Id.* at 648. Here, at the time of the termination hearing, the Children had waited for over two years for Parents to obtain and maintain safe and stable housing and to do what was necessary to maintain the parent-child relationship. Parents moved at least three times while this case was pending, and the home they were living in at the time of the termination hearing was not any safer than the home they had when the case began and still posed health and safety hazards for the Children. The juvenile court did not err in its conclusion that the conditions for removal and continued placement outside the home would not be remedied. We, therefore, conclude that the juvenile court’s judgment terminating Parents’ parental rights was supported by clear and convincing evidence.

[30] Affirmed.

Altice, C.J., and May, J., concur.