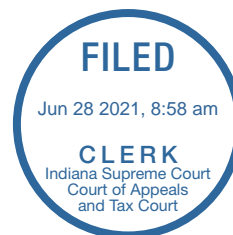


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Jeremy L. Seal
Seymour, Indiana

Jane A. Noblitt
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Robert J. Henke
Deputy Attorneys General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

K. T.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 28, 2021

Court of Appeals Case No.
21A-JT-184

Appeal from the Jennings Circuit
Court

The Honorable Jon W. Webster,
Judge

Trial Court Cause No.
40C01-2005-JT-16

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, K.T. (Mother), appeals the trial court's Order terminating her parental rights to her minor child, J.K. (Child).

[2] We affirm.

ISSUE

[3] Mother presents this court with one issue, which we restate as: Whether the trial court's conclusion that there was a reasonable probability that the conditions resulting in Child's removal would not be remedied was clearly erroneous.

FACTS AND PROCEDURAL HISTORY

[4] Child was born to Mother and F.K. (Father),¹ on October 25, 2018. The Department of Child Services (DCS) became involved before Child left the hospital because it was reported that Child had tested positive for methamphetamine and amphetamine at birth and that there was domestic violence between Mother and Father. These allegations were substantiated when Family Case Manager Emily Ooms (FCM Ooms) learned that Father had pushed Mother from a moving vehicle while she was pregnant with Child, Parents had been arguing loudly in the hospital, and Child's umbilical cord

¹ The trial court also terminated Father's parental rights to Child. Father does not participate in this appeal. Facts pertaining to Father will only be included inasmuch as they are relevant to our analysis of Mother's appellate claims.

blood tested positive for methamphetamine and amphetamine. Prior to Child's removal, Mother acknowledged her history of drug abuse but denied any current use. Child was removed from Parents on October 28, 2018, and was never returned to their care.

[5] On October 30, 2018, DCS filed a petition alleging that Child was a child in need of services (CHINS). On October 31, 2018, Mother admitted that she struggled with substance abuse, Child had tested positive for methamphetamine at birth, and that there were "anger issues" between her and Father. (Transcript p. 22). Based on these admissions, the trial court found that Child was a CHINS. Throughout the month-long assessment period of the case, Mother continued to test positive for methamphetamine. On December 5, 2018, the trial court issued its dispositional orders requiring Mother to submit to a substance abuse assessment and random drug screens, maintain safe and suitable housing, keep all appointments with service providers, and maintain stable employment. Mother was also to have two hours of supervised parenting time with Child once a week.

[6] Mother no-showed or refused to submit to approximately half of her drug screens, and when she did submit to testing, from February of 2019 to November 2, 2020, she tested positive for methamphetamine and amphetamine on sixteen occasions. On multiple occasions, Mother tested positive for methamphetamine during her parenting time with Child, and Mother appeared in court under the influence of methamphetamine. Mother completed a substance abuse assessment in May of 2020 but did not complete any of its

recommendations of outpatient treatment, recovery coaching, life skills training, and individual therapy, resulting in the referrals being closed unsuccessfully. On June 4, 2020, Mother tested positive for methamphetamine at 6523.1 ng/ml, which is considered a lethal level for an average user. In July 2020, Mother entered inpatient treatment for her substance abuse but left before completing treatment, against the advice of those treating her. During the span of the underlying proceedings, Mother gave birth to two additional children, both of whom were removed from her care by DCS due to her drug abuse.

[7] Mother participated in approximately half of her scheduled supervised parenting time sessions with Child. None of Mother's parenting time sessions were cancelled due to the COVID-19 pandemic. Some of Mother's sessions were cut short because of Mother's erratic behavior, such as when she became irate with the parenting time supervisor, yelling and cursing at her. DCS never recommended unsupervised parenting time or a trial home visit with Mother throughout the CHINS case.

[8] In addition, DCS entered referrals for Mother for homebased casework to address parenting issues, employment, and housing. Mother participated in a few homebased sessions at the beginning of the CHINS case but did not participate in any of these services after July 2020, despite the fact that they were scheduled shortly after her parenting time sessions. Mother completed no homebased casework. During the life of the underlying proceedings, Mother did not maintain stable employment and exhibited a pattern of being fired from a job or quitting after only a few weeks or months. Mother did not pay child

support for any of her six minor children, none of whom were in her care. Mother did not maintain a stable address, living in hotel rooms and moving frequently.

[9] On May 5, 2020, DCS filed a petition seeking to terminate Parents' rights to Child. On June 8, 2020, the trial court appointed guardian *ad litem* Jesseka Gibson (GAL Gibson). A fact-finding hearing on DCS's petition was originally scheduled for July of 2020 but was continued at the request of Parents. On November 2, 2020, Mother entered inpatient substance abuse treatment at Fresh Start Recovery Center (Fresh Start). Mother participated in group therapy, individual therapy, and other services to address her substance abuse, life skills, employment, and housing. Mother tested negative for controlled substances on November 13, 2020.

[10] On December 21, 2020, the trial court convened a fact-finding hearing on DCS's petition. Mother testified that she had been using methamphetamine for eighteen years but that she had been sober for forty-eight days. Mother, who had been diagnosed with bi-polar disease and general anxiety at the age of thirteen, had only recently begun taking medication to address those conditions. Mother had previously been denied medication because of her drug abuse, but she felt that methamphetamine medicated her mental health conditions. Mother had accepted two positions but had not yet started at either new place of employment. Mother hoped to reconcile with her husband (Husband), to whom she had been married when she bore two children with Father.

[11] Family Case Manager Robin Nebbe (FCM Nebbe), who had been with the family since November of 2018, testified that, in addition to outpatient referrals, she had provided Mother with referrals for inpatient substance abuse treatment twice during the CHINS case. Mother's June 4, 2020, drug screen which showed a lethal level of methamphetamine in Mother's system concerned FCM Nebbe because it showed the tolerance Mother had built up to the drug through her long history of abuse. In FCM Nebbe's experience, when Mother was using methamphetamine, her behavior was erratic, and she did not have the focus necessary to perform childcare activities such as feeding, diapering, and supervising Child. FCM Nebbe did not believe that Mother's recent period of sobriety was adequate to ensure that she would remain sober because of the length of her substance abuse history and the fact that she had not yet been released from the controlled environment of her treatment facility. FCM felt that, while Mother's efforts were admirable, Mother was at the very beginning of her sobriety. Mother's relationship with Husband also caused FCM Nebbe concern because Husband is a known drug abuser. FCM Nebbe opined that it was in Child's best interests to have Mother's parental rights terminated and for him to be adopted by his foster parents where he resided with his two younger siblings by Mother.

[12] GAL Gibson also testified that she believed that it was in Child's best interests to terminate Mother's rights because Child needed stability and permanence. Mother's recent efforts at sobriety did not change GAL Gibson's opinion because Mother had a long history of drug abuse, she was not convinced

Mother could maintain her sobriety, and she did not “think that it’s fair to ask [Child] to wait another 6 to 12 months for us to ensure that stability can be provided.” (Tr. p. 115).

[13] On January 26, 2021, the trial court issued its Order terminating Parents’ rights to Child and entered the following relevant findings of fact and conclusions thereon:

There is a reasonable probability that the conditions that resulted in [C]hild’s removal or the reasons for the placement outside the parents’ home will not be remedied, and that continuation of the parent-child relationship poses a threat to the well-being of [Child] in that:

* * * *

95. Parents’ habitual pattern of conduct is abundantly clear in this case. In her report filed with this [c]ourt, GAL Gibson concurs, noting that, despite Mother’s recent positive efforts in sobriety, “history tells us that this positive change will likely not last” and that “historically, she has never demonstrated a significant period of sobriety.” GAL Gibson testified that she is not convinced that the changes very recently made by Mother will last. The parents’ previous history indicates that the issues leading to the current removal are not isolated in nature, but a clearly illustrated pattern of conduct.

96. Child’s case has been open for 785 days as of the day of the [t]ermination hearing. Mother’s testimony is that she has been clean for the past forty-eight (48) days. This means that she has been clean for approximately 6% of the time Child has been removed from her care and was using methamphetamine fairly consistently for the other 94% of the case.

97. Given Mother’s many years of methamphetamine use, a few weeks of sobriety is *not* sufficient to ensure that Mother will continue to be sober. Mother’s overall pattern of conduct indicates severe methamphetamine addiction that she returns to even after brief periods of sobriety.

98. Mother did not make any attempts to get sober in the twenty-six (26) months Child has been removed until [m]onth (twenty-five) 25. Even when she was afforded an additional six months when the [t]ermination fortuitously got continued from its July setting, Mother did not make any attempts to engage in substance abuse treatment until November of 2020.

* * * *

103. Despite Mother’s recent attempts at sobriety in the eleventh hour, Mother’s attempts at improvement are almost certainly temporary when judged against her behavior during the 785 days that her child has been removed.

* * * *

15. Mother’s eighteen (18) years of methamphetamine abuse cannot be solved by forty-eight (48) days of inpatient treatment. Though she appears motivated, she is in highly structured setting and her sobriety has not been tested in the “real world.” Addicts are frequently able to achieve brief periods of sobriety but quickly relapse back into the world of substance abuse.

(Appellant’s App. Vol. II, pp. 9, 16-17, 19). The trial court further found that Mother had been provided services to address her housing, employment, parenting skills, and mental health, had not engaged with services, and had

made little-to-no progress on these issues during the two years of the CHINS proceedings.

[14] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[15] Mother asserts that the trial court's Order terminating her rights to Child was unsupported by the evidence. It is well-settled that when reviewing the evidence supporting the termination of parental rights, we neither reweigh the evidence nor determine the credibility of witnesses. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In addition, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. *Id.* "We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment." *Id.* We must give due regard to the trial court's opportunity to judge the credibility of witnesses firsthand, and we do not set aside the trial court's findings or judgment unless it is clearly erroneous. *Id.*

II. *Termination of Mother's Rights*

[16] "[O]ne of the most valued relationships in our culture" is that between a parent and his or her child. *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). Indeed, "[a] parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Accordingly, the Fourteenth Amendment to

the United States Constitution safeguards “the traditional right of parents to establish a home and raise their children.” *Id.* Nevertheless, parental interests are not absolute; rather, termination of parental rights is appropriate when parents are unable or unwilling to meet their parental responsibilities. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008).

[17] Termination of parental rights is an extreme sanction that is intended as a “last resort” and is available only when all other reasonable efforts have failed. *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 91 (Ind. Ct. App. 2014). As such, before a termination of parental rights is merited, the State is required to prove a host of facts by clear and convincing evidence, including that there is a reasonable probability that the conditions which resulted in Child’s removal and continued placement outside the home will not be remedied by Mother or that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. *See* Ind. Code §§ 31-35-2-4(b)(2)(B)(i-ii). The trial court found that both factors warranted termination, but Mother only challenges one—the trial court’s conclusion regarding the unlikelihood that the conditions resulting in removal would be remedied. The statute is written in the disjunctive. Therefore, the unchallenged trial court findings were sufficient to fulfill the requirements of section 35-2-4(b)(2)(B). Nevertheless, given the importance of the interests at stake, we will address the merits of Mother’s claims.

III. *Reasonable Probability Conditions Will Not Be Remedied*

[18] When reviewing a trial court’s determination that the conditions that resulted in a child’s removal or continued placement outside the home will not be remedied, we engage in a two-step analysis. *E.M.*, 4 N.E.3d at 642-43. First, we must identify the conditions that led to removal; second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. When engaging in the second step of this analysis, a trial court must judge a parent’s fitness as of the time of the termination hearings, taking into account evidence of changed conditions, and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* This delicate balance is entrusted to the trial court, and a trial court acts within its discretion when it weighs a parent’s prior history more heavily than efforts made only shortly before termination. *Id.* “Requiring trial courts to 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.* Before addressing Mother’s specific claims, we note that Mother does not challenge the evidence supporting any of the trial court’s factual findings. Therefore, we must accept the trial court’s findings as true. *S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

[19] Mother’s main argument on appeal is that the trial court did not sufficiently credit her progress after she entered inpatient treatment on November 2, 2020. However, Mother’s pattern of conduct throughout the twenty-six months of the

underlying proceedings supported the trial court's determination that there was a reasonable probability that Mother's drug abuse, the principle reason for Child's removal, would not be remedied. Mother has a strong and durable addiction to methamphetamine that has lasted for eighteen years. The breadth of her addiction was demonstrated by evidence that she was unable to stop using methamphetamine during her last three pregnancies, she survived lethal levels of methamphetamine in June 2020 while she was pregnant but kept on using, and she left treatment in July 2020 after only three weeks. Despite being offered services to address her addiction, Mother's addiction to methamphetamine ruled her life and kept her from exercising parenting time with Child as she could have, addressing her mental health, and making progress in other areas of her life that required attention, such as acquiring and maintaining stable housing and employment. Mother did not address her addiction after the CHINS petition was filed, after the termination petition was filed, or even after the termination fact-finding hearing was continued in July 2020.

[20] A trial court acts within its considerable discretion when it weighs a parent's prior history of conduct more heavily than efforts made shortly before termination. *K.T.K. v. Ind. Dep't of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1234 (Ind. 2013); *see also K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015) ("Changed conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect."). Therefore, although we applaud Mother's efforts at sobriety, we

conclude that the trial court acted within its discretion when it weighed Mother's history of methamphetamine abuse more heavily than her last-minute efforts weeks before the termination hearing.

[21] Neither can we credit Mother's argument that, since Child was thriving in his foster placement, she should have more time to engage in services and demonstrate sobriety. Mother relies on *in re Involuntary Termination of Parent-Child Relationship of R.S.*, 56 N.E.3d 625, 630 (Ind. 2016), wherein our supreme court held that R.S.'s stable placement meant that prolonging adoption was unlikely to have an effect on his need for permanency. However, we find *R.S.* to be distinguishable because the *R.S.* court expressly relied on the fact that R.S. was placed with a relative, not a foster family as in this case. *See id.* Moreover, here, Mother's rights could have been terminated after Child had been removed from her care for fifteen months. *See* I.C. § 31-35-2-4(b)(2)(A)(iii). Mother's rights were not terminated until Child had been out of her care for twenty-six months, almost twice the statutorily-allotted time. As mentioned, part of that extra time accrued while the termination fact-finding was continued from July 2020 to December 2020, providing Mother with a special incentive to address her substance abuse. Mother did not make use of that extra time either.

[22] FCM Nebbe and GAL Gibson both testified that it would not be in Child's best interests that Mother be granted more time to address her addiction before her rights were terminated. This testimony weighs heavily in favor of the trial court's decision. In short, the trial court's determination was supported by the evidence and so was not clearly erroneous. *See in re E.M.*, 4 N.E.3d at 642.

CONCLUSION

- [23] Based on the foregoing, we hold that the trial court's conclusion that there was a reasonable probability that Mother's drug addiction and other issues would not be remedied was not clearly erroneous.
- [24] Affirmed.
- [25] Mathias, J. and Crone, J. concur