MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of Ke.T. and Ki.T. (Minor Children)

and

L.T. (Mother) and M.T. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

March 30, 2023

Court of Appeals Case No. 22A-JT-2311

Appeal from the Wabash Circuit Court

The Honorable Chad E. Kukelhan, Special Judge

Trial Court Cause Nos. 85C01-2108-JT-18, -19

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] L.T. (Mother) and M.T. (Father) (collectively the Parents) appeal the trial court's order involuntarily terminating their parent-child relationship with Ke.T., born in 2015, and Ki.T., born in 2016 (collectively the Children). We affirm.

Facts and Procedural History

[2] In 2020, the Parents, the Children, and the maternal grandparents lived in one home. On May 1, the Indiana Department of Child Services (DCS) received a report alleging that the Children were victims of neglect. That day, Mother had left the Children unattended as the maternal grandparents slept. The grandparents had earlier declined to watch the Children. Upon waking, the grandparents discovered that the Children were in the home, but Mother was gone. Mother returned, a verbal argument began, and Mother used a box cutter to cut her wrists while the Children were present. Law enforcement was called, and Mother was transported to a hospital.

[3] The following day, a DCS family case manager (FCM) initiated an investigation, spoke with the responding sheriff's deputy, and visited the home. With matted hair and a soiled diaper, three-year-old Ki.T. answered the door. Ten minutes later, Ki.T. found and woke her grandmother. Ten more minutes

elapsed before barefoot, five-year-old Ke.T. was located outside in the yard. Ke.T. stated that she had not had breakfast or lunch that day. The grandmother informed the FCM that Mother had harmed herself previously, that the Parents stayed in their room all day and did not provide care for the Children, and that she was unsure when the Children last bathed. Both Parents were on home detention for possession of methamphetamine.[1] The Children were removed and placed with relatives.

[4] DCS filed petitions alleging that Ke.T. and Ki.T. were children in need of services (CHINS). The court held initial and detention hearings, found the detention necessary, and noted the emergency nature of the circumstances. At a status hearing, the Parents admitted that the Children were in need of services. By the end of May, the relatives with whom the Children were placed requested removal, and the Children were moved to foster care. In June 2020, the court held a dispositional hearing and issued an order directing the Parents to participate in various reunification services. These included maintaining safe and stable housing and employment, not consuming alcohol or illegal substances, completing assessments and recommendations, submitting drug screens, meeting with all providers, visiting with the Children, and providing them with a safe, secure, nurturing environment free from abuse and neglect.

[1] Mother had two felony convictions for possession of methamphetamine and one misdemeanor conviction for criminal conversion. Her most recent conviction was in September 2020 for possession of methamphetamine. Father's criminal history includes convictions for possession of methamphetamine, possession of syringe, criminal confinement, and "strangulation" of Mother. Tr. Vol. 2 at 49-50.

[5] By August 2020, the Children had resided in more than one foster home, and the Parents were sober, engaging in services, and voicing their readiness to have the Children return. Accordingly, DCS requested and was granted permission for the Children to participate in trial home visits with the Parents. In January 2021, DCS requested termination of the trial visits, alleging that the Parents had relapsed into drug use and had asked for removal of the Children. The court ordered the Children returned to foster care.

[6] In February 2021, Mother underwent a substance use assessment, was diagnosed with major depressive disorder and stimulant use disorder, and admitted suicidal ideations and a family history of suicide. She received recommendations for individual therapy, group therapy, domestic violence therapy, and medication management with the goals of decreasing depression and maintaining sobriety. She attended few therapy sessions or meetings, was noncompliant with drug screens, tested positive for methamphetamine on three occasions, and did not take prescribed medication. Due to attendance issues, services ceased in June 2021.

[7] Meanwhile, Father completed a substance use assessment, admitted methamphetamine use and suicidal ideation, and received recommendations for various therapy sessions. He attended very few sessions, failed to comply with drug screens, and tested positive for methamphetamine on multiple occasions. Further, Father failed to attend required drug education classes, which led to revocation of probation for his methamphetamine conviction and jail time from April through August of 2021.

[8] On August 30, 2021, DCS filed a termination of parental rights (TPR) petition. At a September initial hearing, counsel was appointed for the Parents. In December, without notifying DCS because he thought it was "none of [their] business," Father took a bus to Idaho, where he remained for a few months. Tr. Vol. 2 at 62. Counsel withdrew so separate counsel could be appointed for each parent. Factfinding in the TPR was initiated in February 2022. Father did not appear, and the remainder of evidence was scheduled for a later date.

[9] Following an early April 2022 permanency hearing, the court issued an order outlining the Parents' compliance and noncompliance and approving adoption as a concurrent permanency plan. By the end of April, DCS filed an emergency motion for temporary suspension of parenting time, alleging Father's use of methamphetamine and failure to complete any substance abuse treatment, Mother's continued use of illegal substances and refusal to "submit to drug screening or participate in any mental health or substance abuse treatment," plus the unanimous opinions of the Children's therapist, DCS, and court appointed special advocate (CASA). Ex. Vol. 2 at 191.

[10] At a July 2022 TPR factfinding hearing, the court learned that Father was unemployed, had not visited the Children since the end of 2021, lived with his mother, paid no rent, did not complete recommended classes, treatments, or services, admitted to using drugs two weeks prior to the hearing, and was "at a point where he did not want to stop or participate in any services." Tr. Vol. 2 at 208. The court also heard that Mother's participation in services was inconsistent due to relapses into drug use. Indeed, a week prior to the hearing,

Mother admitted "using anything and everything" and stated that she did not want to stop, get treatment, or reengage in services "because it would do her no good even though she was given multiple opportunities to reengage." *Id.* at 207-08, 164. Mother was living with her boyfriend, who had neither met nor spent time with the Children.

[11] The CASA testified that it would be in the "best interest for the [Children] to be adopted." *Id.* at 169. She cited the Parents' lack of participation throughout the case despite encouragement to reengage in services and described how well the Children were doing in their placement. The FCM, who managed the case from inception to the termination, also testified regarding adoption as the best plan. She reiterated the Parents' inconsistent or lack of participation in treatments and therapies, outlined the Children's needs for stability, structure, and permanency, and stated that the Children "have their own mental health needs." *Id.* at 203, 206. In addition, the court heard testimony from Mother, Father, Mother's therapist, Father's therapist, Ke.T.'s therapist, Ki.T.'s therapist, two visitation supervisors, a Bowen Center skills coach for Mother, and the Children's foster father. In a September 2022 order, the court terminated the parent-child relationship between the Parents and the Children. This appeal ensued.

Discussion and Decision

[12] The Parents' statement of the issues asks whether there is "clear and convincing evidence to support the termination of parental rights." Appellants' Br. at 4.

[13] We have long applied a highly deferential standard of review in cases involving the termination of parental rights. *In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). We neither reweigh evidence nor assess witness credibility. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence and reasonable inferences favorable to the trial court's judgment. *Id*. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* Unchallenged findings stand as proven. *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*; *In re De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020). 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. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Clear error is that which "leaves us with a definite and firm conviction that a mistake has been made." *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied*. "[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal." *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[14] "Parents have a fundamental right to raise their children–but this right is not absolute." *In re Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). When parents are unable or unwilling to meet their parental

responsibilities, their parental rights may be terminated. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). A petition to terminate a parent-child relationship must allege, among other things:

> (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 child in need of services;
>
> (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) (emphasis added). DCS must prove the elements by "clear and convincing evidence." *In re R.S.*, 56 N.E.3d 625, 629 (Ind. 2016). DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[15] Within their summary of argument, the Parents contend that DCS "failed to prove by clear and convincing evidence that the reasons for removal of [the

Children] would not be remedied, or that the termination of their parental rights was in the [C]hildren's best interests." Appellants' Br. at 13. Yet, in the argument section of their brief, the Parents challenge only the "likelihood that conditions resulting in the [C]hildren's removal will not be remedied," focus solely upon Mother's efforts, and include no discussion whatsoever regarding best interests. *Id*. at 15-16. Toward the end of their brief, the Parents mention, without any discussion or analysis, that the "continuation of the parent-child relationship poses a threat to the [C]hildren's wellbeing was not supported by sufficient evidence." *Id.* at 16.

[16] Appellate Rule 46(A)(8) provides that an "argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and by citation to the authorities, statutes, or record on appeal, and must include the applicable standard of review. "A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record." *Dickes v. Felger*, 981 N.E.2d 559, 562 (Ind. Ct. App. 2012). One mention each of "best interests" and "poses a threat" is not sufficient to constitute cogent argument regarding either requirement. Therefore, the Parents have waived any challenge to the "best interests"[2] and "poses a threat" prongs. Moreover, given that the argument section of the

[2] Even if the Parents had not waived a challenge to the best interests prong, where the testimony of service providers supports a finding that termination is in the Children's best interests, we would not second-guess the court. *See McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Here, the FCM and CASA were unequivocal that termination is in the Children's best interests.

Parents' brief contains absolutely no reference to Father or his efforts, we find that any argument that termination of his rights was improper has been waived. Accordingly, we are left with one issue: whether Mother has demonstrated clear error in the court's conclusion regarding the unlikelihood that the conditions resulting in the Children's removal would be remedied.

[17] Within its thirty-seven-page order, the court found that DCS "met its burden of proof by clear and convincing evidence of the [statutorily required] elements, which therefore mandate[d]" the court to terminate parental rights. Appealed Order at 4. Forty unchallenged detailed findings later, the court concluded:

> The above findings are incorporated here. In addition, the above and following findings of fact and the reasonable inferences arising therefrom support the legal conclusion that, it was reasonable and probable that the parents did not and would not remedy the reasons for the children's removal and the children's retention in foster care.

Id. at 18. The court again incorporated its findings and then stated, "the same evidence also supports that there is a reasonable probability that the continuation of the parent-child relationship is a threat to the children's well-being." *Id*. at 33. The court reiterated the incorporation of its findings and then determined that the "totality of the evidence supports that termination of the parent-child relationship is in children's best interest." *Id*.

[18] Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, "the trial court need only find one of the two elements by clear and convincing evidence," either that (1) there is a reasonable probability that the conditions

that resulted in the Children's removal or the reasons for placement outside the home of Mother will not be remedied, or (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Children. *K.E. v. Ind. Dep't of Child Servs.,* 39 N.E.3d 641, 646 n.4 (Ind. 2015). Here, the trial court concluded that DCS presented sufficient evidence under both prongs. Having waived any challenge to the "poses a threat" prong due to failure to present a cogent argument, and properly challenging only the probability of remedying prong, Mother effectively concedes that the trial court properly determined that there is a reasonable probability that continuing the parental relationship poses a threat to the Children's well-being. Thus, we must conclude that DCS established by clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the Children's well-being, and we need not reach the alternate ground concerning the probability of remedying.

[19] Waiver notwithstanding, we briefly examine the issue of probability of remedying conditions. In determining whether the conditions that resulted in the Children's removal will not be remedied, we "engage in a two-step analysis." *K.T.K.*, 989 N.E.2d at 1231. "First, we identify the conditions that led to removal," and second, we decide whether there is a reasonable probability that those conditions will not be remedied. *E.M.*, 4 N.E.3d at 643. In the second step, the 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 versus "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id*. (citations omitted). "We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *Id*. Requiring that trial courts "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*.

[20] The preschool-aged Children were removed from the Parents when, within a short span of time, they were left unsupervised, Mother cut her wrists in front of them, Ki.T. answered the door with matted hair and a soiled diaper, Ke.T. was missing and had not eaten, and both Parents were on home detention for methamphetamine possession. Mother does not dispute the conditions that resulted in the removal of the Children. Rather, she highlights her testimony from the termination hearing during which she stated that she lives in a home that she owns, has been working construction for about a month, and claims to be willing to reengage in services.

[21] Weighed against Mother's testimony was evidence that she has struggled with mental health issues (including suicidal ideation, stimulant use disorder, and major depressive disorder), has felony convictions for methamphetamine possession, did not complete recommended services, and continues to use drugs. Indeed, providers testified that Mother's participation in services was inconsistent due to relapses into drug use and that just one week prior to the

termination hearing, Mother admitted using. About a month before the termination hearing, Mother had expressed that she did not want to stop using the drugs, get treatment, or reengage in services. Moreover, she was still married to Father (despite a prior restraining order) and was currently living with a man who had never met the Children. Mother also stated that she was not ready for a home visit and would need more therapy.

[22] DCS "is not required to provide evidence ruling out all possibilities of change;" rather, it need only establish a reasonable probability that the parent's behavior will not change. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. "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). Given the evidence outlined above and the numerous unchallenged findings, we cannot say that the court clearly erred in finding it was reasonable and probable that Mother did not and would not remedy the reasons for the Children's removal. Because the evidence does not positively require the conclusion contended for by the Parents, we find no basis for reversal of the termination.

[23] Affirmed.

Robb, J., and Kenworthy, J., concur.