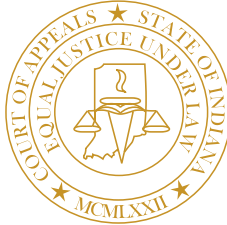


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of:

N.F. (minor child)

and

S.F. (mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



July 26, 2024

Court of Appeals Case No.
24A-JT-355

Appeal from the Clark Circuit Court
The Honorable Vicki L. Carmichael, Judge
The Honorable Joni L. Grayson, Magistrate

Memorandum Decision by Judge Bailey
Chief Judge Altice and Judge Mathias concur.

Bailey, Judge.

Case Summary

- [1] S.F. (“Mother”) appeals¹ the trial court judgment terminating her parental rights to her child, N.F., (“Child”), born October 28, 2019. The sole restated issue is whether the termination of Mother’s parental rights is clearly erroneous. We affirm.

Facts and Procedural History

- [2] On May 15, 2020, the Indiana Department of Child Services (“DCS”) filed a petition alleging Child was a child in need of services (“CHINS”) because of “domestic disturbances” in the home, suspicions that Mother had or would medicate Child with Xanax to get Child to stop crying, Mother’s untreated

¹ The parental rights of P.F., N.F.’s father, (“Father”) were also terminated, but Father does not participate in this appeal.

mental health posing a threat to Child, Mother's "violent and erratic" behavior at the hospital during an examination of Child, and Mother's DCS history regarding her other children. App. v. II at 146. In October 2020, following a fact finding hearing, the trial court adjudicated Child to be a CHINS and ordered Child's continued placement in a relative's care. In support of its CHINS adjudication, the court found, in relevant part: that Mother was not managing her own mental health medication and was running out of it "too quickly;" the death of Mother's own mother (i.e., Child's maternal grandmother) had negatively impacted Mother's ability to care for Child; Mother needed a "full psychological examination to determine a complete diagnosis;" and Mother's "mental condition pose[d] a serious threat to the child's wellbeing." Ex. at 29.

[3] The court subsequently entered a dispositional order in which it ordered Mother, among other things, to: not use illegal controlled substances; obey the law; maintain a suitable and safe home; complete a substance abuse assessment and all recommended treatments; submit to random drug screens; complete a psychological evaluation and complete any recommended treatments; meet with psychiatric personnel and "take all prescribed medications as [sic] in the doses and frequencies specified in the prescriptions[;]" refrain from any acts of domestic violence; and complete domestic violence assessment and recommended programming. *Id.* at 33.

[4] During her initial supervised visits with Child, Mother exhibited erratic behavior, including talking to people who were not there and attempting to

leave with Child under the mistaken belief that the trial court had ordered it. Visitation was then changed to virtual supervised visits. While the CHINS case was pending, Mother was incarcerated multiple times on multiple new criminal charges, including felony theft, domestic violence, disorderly conduct, domestic battery, and criminal trespass. It took Mother over one year to complete a psychological assessment due to her multiple incarcerations, homelessness, and failure to keep appointments. Mother frequently failed to submit to drug screens when requested, and she tested positive for methamphetamine on three drug screens she did take.

- [5] In May 2021, the trial court held a permanency hearing at which it found that Mother had enrolled in some services and scheduled some assessments but had not completed them. In addition, the court found that Mother was “non-compliant” with avoiding drug use, obeying the law, attending to her mental health needs, and avoiding domestic violence. *Id.* at 37. In May 2022, the court found that Mother had not complied with Child’s case plan, was “not effectively meeting her own mental and medical needs,” and was “not participating meaningfully” in visits or services. *Id.* at 40. The court found that Mother was still non-compliant with avoiding drug use, obeying the law, attending to her mental health needs, and avoiding domestic violence. A report filed on June 7, 2022, by the Court Appointed Special Advocate (“CASA”) reported that Mother had been in jail beginning June 1, 2021, had recently been released from jail and was homeless, had been diagnosed with bipolar disorder and schizophrenia, and was not taking her medication as prescribed.

- [6] On September 1, 2023, DCS filed a petition to terminate Mother’s and Father’s parental rights to Child. In December 2023, the trial court conducted a termination hearing at which Mother and Father failed to appear, but the CASA and DCS employees appeared and testified. At the time of the termination hearing, the CHINS case had been pending for forty-three months. During all that time Child had been placed in the care of a relative who wished to adopt Child, and Child was bonded to her placement family and doing well with them. Both the Family Case Manager (“FCM”) and CASA opined that it was in Child’s best interest that parental rights be terminated.
- [7] In an order dated January 18, 2024, the trial court issued findings of fact—which included the above stated facts—and conclusions thereon and terminated Mother’s parental rights to Child. This appeal ensued.

Discussion and Decision

Standard of Review

- [8] Mother maintains that the trial court’s order terminating her parental rights is clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution. *See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one’s own child

should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[9] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

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

* * *

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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) [and] that termination is in the best interests of the child

I.C. § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[10] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[11] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98,

102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

Conditions that Resulted in Removal/Continued Placement

[12] Mother does not challenge the sufficiency of the evidence to support the findings of fact; therefore, we must accept those findings as correct. *See, e.g., Matter of To.R.*, 177 N.E.3d 478, 485 (Ind. Ct. App. 2021) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)), *trans. denied*. Rather, Mother alleges that the findings of fact do not support the trial court's ultimate determination that there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside the home likely will not be remedied. When addressing that issue, we must determine whether the evidence most favorable to the judgment supports the trial court's determination. *Id.*; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). "First, we identify the conditions that led to removal; and second, we determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quotations and citations omitted).

[13] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent's fitness to care for his or her children at the time of the termination

hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643. The court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the “trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship”). In evaluating the parent’s habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent’s prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Moore*, 894 N.E.2d at 226.

[14] Here, among the reasons for Child’s removal from Mother’s care was the instability in Mother’s home (i.e., domestic disturbances), and the “serious threat” Mother’s untreated mental health issues posed to Child’s wellbeing. Ex. at 29. During the forty-three months that the CHINS case was pending, Mother did not improve those conditions but continued them. In October 2022, Mother pled guilty to domestic battery and disorderly conduct; yet Mother never completed her domestic violence assessment or participated in any treatment. Moreover, Mother failed to maintain a stable home by becoming homeless and engaging in criminal behavior that led to repeated

incarceration. In addition, Mother consistently failed to take the medications as prescribed for her mental health and obtain and follow through with mental health treatment. For example, it took Mother over one year to obtain a mental health assessment.

[15] By the time of the termination hearing, Mother still had untreated mental health conditions. In addition, she had failed to obtain and complete court-ordered services such as domestic violence assessment and programming, random drug testing, and drug assessment and treatment. Mother had faced new criminal charges, including eight new felony charges, with the most recent charge being filed in September of 2023. Mother had been repeatedly incarcerated and/or homeless. Mother had tested positive for methamphetamine in three random drug screens and had failed to submit to regular random drug screens. While Mother had engaged in some services such as parenting classes, she failed to make meaningful progress in the services and/or complete them.

[16] Thus, the trial court found that Mother had “failed to demonstrate an ability to maintain her own mental health needs, stability, and sobriety.” Appealed Order at 8. The evidence supports that finding, and that finding supports the trial court’s conclusion that Mother is not likely to remedy the reasons for Child’s removal and continued placement outside her home.² *See Lang v. Starke*

² Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we do not address the trial court’s ultimate finding that Mother also posed a threat to Child’s well-being.

Cnty. Off. of Fam. & Child., 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted) (noting evidence of a parent’s pattern of unwillingness or lack of commitment to addressing parenting issues and cooperating with services supports a finding that there exists no reasonable probability that the conditions will change), *trans. denied*.

[17] Mother contends that the trial court terminated her parental rights based solely on her mental disability, which we have long held is not, alone, a proper basis for termination of parental rights. *See, e.g., In re V.A.*, 51 N.E.3d 1140, 1147 (Ind. 2016). However, a parent’s mental illness may be considered as one factor where “‘parents are incapable of or unwilling to fulfill their legal obligations in caring for their children.’” *Z.B. v. Ind. Dept. of Child Serv.*, 108 N.E.3d 895, 902 (Ind. Ct. App. 2018) (quoting *Egley v. Blackford Cty. Dept. of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)), *trans. denied*. As noted above, the trial court’s decision in this case was based on many factors in addition to Mother’s untreated mental health,³ all of which showed that Mother is incapable or unwilling to fulfill her legal obligations to care for Child.

³ Mother asserts—without citation to record evidence or applicable legal authority—that all of Mother’s problems such as drug use, homelessness, and criminal activity were “likely” a result of her mental illness, and that DCS had a legal obligation to “determine whether Mother’s drug use, criminal misconduct, homelessness, and poverty would persist even if her mental illnesses were treated.” Appellant’s Br. at 17. Not only is there no legal authority for that claim, but it also moot, as the evidence clearly establishes that Mother refused to obtain and/or follow through with mental health treatment.

Best Interests of the Child

- [18] In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). “A parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*. “Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child’s best interests.” *In re A.K.*, 924 N.E.2d at 224. Such evidence, “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 A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.
- [19] The evidence most favorable to the judgment shows that, throughout the CHINS and Termination of Parental Rights proceedings, Mother failed to obtain and continue necessary mental health care, engaged in criminal activity—including domestic violence—that led to her repeated incarcerations, failed to obtain a drug assessment and obtain recommended treatment, used illegal drugs, experienced homelessness, experienced mental health issues that led to her visitations being supervised, failed to consistently visit with Child, and failed to obtain and/or make meaningful progress with services offered by

DCS. Child, meanwhile, was bonded and doing well with her relative placement, with whom Child had lived for most of her life and who wished to adopt Child. In addition, the FCM and CASA testified that termination of Mother's parental rights is in Child's best interests. Given that testimony, in addition to evidence that Child needs permanency and stability that Mother cannot provide and that the reasons for Child's removal from Mother will not likely be remedied, we hold that the totality of the evidence supports the trial court's determination that termination is in Child's best interests. *In re A.D.S.*, 987 N.E.2d at 1158-59.

Conclusion

[20] The trial court's uncontested findings of fact support its judgment terminating Mother's parental rights. The trial court did not clearly err.

[21] Affirmed.

Altice, C.J., and Mathias, J., concur.

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