

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Justin K. Clouser
Deputy Public Defender
Kokomo, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:
S.T. (Minor Child),
T.C. (Mother),
Appellant-Respondent,

v.

Indiana Department of
Child Services,
Appellee-Petitioner

May 8, 2023

Court of Appeals Case No.
22A-JT-2657

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause No.
34C01-2207-JT-254

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] T.C. (Mother) appeals the termination of her parental rights to S.T. (Child). Mother challenges the trial court's conclusions that there is a reasonable probability that the conditions resulting in Child's removal will not be remedied and that the continuation of the parent-child relationship threatens Child's well-being. We affirm.

Facts

- [2] The Indiana Department of Child Services (DCS) first became involved with Child, then three years old, in April 2019 due, in part, to Mother's addiction to illegal substances. DCS removed Child from Mother's care and petitioned to find Child to be a child in need of services (CHINS). Child's father (Father) was incarcerated at the time.¹ The trial court declared Child a CHINS and ordered Mother to participate in reunification services. Although Mother began her efforts at reunification by regularly missing drug screens and generally resisting services to address her addiction issues, she eventually turned things around and was reunited with Child.
- [3] Only eight months later, however, DCS again removed Child from Mother's care after receiving a report that a firearm was discharged in their home. Police arrived and observed that Mother and her boyfriend appeared intoxicated.

¹ The trial court also terminated Father's parental rights to Child in this case, but only Mother has appealed.

Mother eventually admitted that she had smoked marijuana laced with methamphetamines. Child looked noticeably hungry to the responding police officers. Child also informed one officer that she had witnessed physical altercations between Mother and her boyfriend during which they used guns and knives. Child also reported that Mother's boyfriend had attempted suicide by gun in Child's presence. Police arrested Mother on charges related to the incident, and DCS filed a new petition alleging Child was a CHINS. Child was placed in the home of Father's ex-girlfriend, where Child's half-sibling lived.

[4] After an evidentiary hearing, the trial court found Child to be a CHINS. On the condition of testing negative for drugs, Mother was allowed to visit with Child pending a dispositional hearing. But Mother only participated in one such visit due to her failure to provide a clean drug screen. At the dispositional hearing, the trial court ordered Mother to complete various tasks to be reunited with Child, including refraining from alcohol and illicit substances; completing substance abuse, domestic violence, and mental health services; and submitting to random drug tests.

[5] Not even a month after the dispositional hearing, Mother was arrested for possession of methamphetamine. And a few months later, Mother was found to be completely non-compliant with the court-ordered services. Mother had failed to communicate with DCS, did not visit with Child, and became incarcerated after pleading guilty to methamphetamine possession and resisting law enforcement. Around the same time, DCS discovered that Child was suffering physical abuse in her placement. Based on Mother's lack of progress, and the

extensive trauma Child had suffered from both Mother and her placement, DCS added adoption as a concurrent plan for Child.

[6] Six months later, DCS petitioned to terminate Mother's parental rights. At the time of the termination hearing, Mother was incarcerated. But even when not incarcerated, Mother had not participated in any drug screens, had not visited with Child, and failed to participate in services in any significant or meaningful way. Child was still struggling from the instability she endured during the first CHINS case, when seemingly no adult could fulfill her needs for a safe and reliable caregiver. The DCS family case manager (FCM) and court appointed special advocate (CASA) both recommended termination of Mother's parental rights.

[7] Ultimately, the trial court terminated Mother's parental rights after considering Mother's failure to engage in services, demonstrate long-term sobriety, obey the law, engage in healthy relationships, safely parent Child, and safely prioritize Child's needs over her own needs.

Discussion and Decision

[8] When reviewing a termination of parental rights, we apply a two-tiered standard of review. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). First, we determine whether the evidence supports the findings. *Id.* Second, we determine whether the findings support the judgment. *Id.* We do not reweigh evidence or judge witness credibility. *Id.* The judgment will be set aside only if it is clearly erroneous. *Id.*

Termination of Parental Rights

[9] Mother alleges that the trial court's decision revoking her parental rights to Child does not meet the conditions set forth in Indiana Code § 31-35-2-4(b)(2)(B). A petition to terminate parental rights must allege, in relevant 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.

(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). Here, Mother only challenges the trial court's conclusions under subsections (B)(i) and (B)(ii). As the statute requires only "one (1) of the following" conditions to be true, Mother must prove the trial court clearly erred as to both findings. *Id.*

Remedying Conditions

- [10] Mother claims the trial court clearly erred in concluding there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside the home will not be remedied.
- [11] When reviewing a trial court's conclusion that conditions are unlikely to be remedied under Indiana Code § 31-35-2-4(b)(2)(B)(i), we engage in a two-step analysis. *In re K.E.*, 39 N.E.3d 641, 647 (Ind. 2015). We first identify the conditions that led to removal and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step of the analysis requires a determination of the parent's fitness at the time of the termination hearing after consideration of any evidence of changed conditions. *Id.* "Changed conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect." *Id.* Habitual conduct may include history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.*
- [12] Here, the trial court did not err in concluding the conditions that lead to Child's removal were unlikely to be remedied. Mother has struggled with substance addiction in the past and has shown few signs of improvement. Indeed, her addiction issues have led to Child's removal from her care twice now. The most recent removal occurred because Mother was under the influence of at least two illegal drugs when police responded to a report that a firearm was discharged in Child's presence. Afterward, Mother continued to use illegal drugs and was arrested for and convicted of methamphetamine possession before the

termination hearing. Mother contests none of the trial court's factual findings, and we find this evidence supports the termination of Mother's parental rights.

- [13] Turning to the second step, examining Mother's parental fitness at the time of the termination hearing while considering any evidence of changed conditions, we again see no error by the trial court. Mother was incarcerated at the time of the termination hearing and had recently been arrested for and charged with a litany of drug offenses. While Mother shared that she had ended her relationship with her boyfriend, thereby mitigating the potential for future domestic strife, we cannot say this fact alone outweighs Mother's pattern of detrimental, habitual conduct harming Child. We therefore find that the trial court did not clearly err in concluding that the conditions prompting Child's removal or the placement outside Mother's home likely will not be remedied.

Threat to Child

- [14] Mother next claims the trial court clearly erred in concluding a reasonable probability exists that the continuation of the parent-child relationship threatens Child's well-being. We see no error here either.
- [15] In deciding whether a reasonable probability exists that the parent-child relationship threatens the child, "a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that [the Child's] physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002) (citations omitted). But a parent's rights should not be terminated simply

because a better home for the child exists. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

- [16] Child suffered significant trauma during her time with Mother. Due to Mother's actions, Child witnessed domestic violence and drug use and experienced substantial instability in her home life. The trial court determined that termination was in Child's best interests because she would gain "permanency" and a "nurturing environment that is secure and free of abuse and neglect that meets the Child's needs." Appellant's App. Vol. II, p. 43.
- [17] Mother argues that she has had "few chances" to prove her rehabilitation and that her recent sobriety and breakup with her boyfriend remove any future threat to Child. But the trial court rejected these arguments in making its decision. Giving "'due regard' to the trial court's" role as factfinder, we find no error. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014) (quoting *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013)).
- [18] We affirm the trial court's judgment terminating Mother's parental rights.

Bailey, J., and Brown, J., concur.