

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:

H.R. (Minor Child)

And

B.R. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 16, 2022

Court of Appeals Case No.
21A-JT-2768

Appeal from the Daviess Circuit
Court

The Honorable Gregory A. Smith,
Judge

Trial Court Cause No.
14C01-2103-JT-41

Mathias, Judge.

[1] B.R. appeals the Daviess Circuit Court's order terminating her parental rights to her child, H.R. Mother raises two issues: 1) whether DCS proved by clear and convincing evidence that the reasons for H.R.'s removal and continued placement outside Mother's care will not be remedied; and, 2) whether DCS provided reasonable services to Mother for the purpose of reunifying her with H.R.

[2] We affirm.

Facts and Procedural History

[3] H.R. was born on June 4, 2018.¹ In February 2020, twenty-month-old H.R. was removed from Mother's care after law enforcement officers received a report that Mother and H.R. were outside for over twenty minutes in subfreezing temperatures at approximately 12:45 a.m. Mother was only wearing her underwear and child was only wearing a diaper. The responding police officer smelled alcohol on Mother's breath and noted that she was slurring her words. Mother was hostile toward the officers and pushed an officer. Mother was arrested and H.R. was transported to a hospital where he was treated for hypothermia.

[4] Mother was charged with neglect of a dependent, battery on a public safety officer, and battery. Mother was incarcerated on those charges until March 31.

¹ H.R.'s father voluntarily relinquished his parental rights.

The charges were still pending when the fact-finding hearings were held in this case.

[5] The Department of Child Services (“DCS”) filed a petition alleging that H.R. was a Child In Need of Services on February 18. DCS alleged that Mother had untreated mental health issues and H.R. suffered from abuse and neglect. The petition also noted Mother’s prior history with DCS.² The trial court adjudicated H.R. a CHINS on June 30 due to Mother’s ongoing mental health issues and her inability to recognize the risk her mental health posed to H.R. In its July 14 dispositional order, the court ordered Mother to participate in numerous services including a parenting assessment, substance abuse assessment, a psychological evaluation, and visitation with H.R. The court ordered Mother to follow the recommendations from the assessments. H.R. was placed in foster care.

[6] In June 2020, just before H.R. was adjudicated a CHINS, Mother was found wandering back and forth across a highway. She smelled like alcohol, focused on matters unrelated to the officer’s inquiries, and spoke to people who were not present. Mother also stomped on the officer’s foot multiple times, struck his arm, and threatened him. Mother was arrested. Mother was charged with

² Mother has prior DCS involvement due to her mental health issues and substance abuse. Mother has two children older than H.R. and does not have custody of either child. In 2010, maternal grandmother obtained permanent guardianship over C.W., Mother’s oldest child. Maternal grandmother also obtained a protective order against Mother in September 2020 because Mother was harassing maternal grandmother and C.W. Mother’s second child was removed when the child was born in December 2014 due to concerns over mother’s mental health and her benzodiazepine use. That child is in her father’s care.

battery, resisting law enforcement, and public intoxication. Those charges were still pending on the date of the fact-finding hearings in this case.

- [7] Throughout the CHINS and termination proceedings, Mother's communication with DCS was sporadic and her whereabouts were often unknown. Mother lacked a stable home and income. Mother consistently refused to participate in DCS provided services such as home-based casework and parent aide services. Mother admitted to periods of homelessness.
- [8] Mother did not consistently visit with H.R. While Mother had positive interactions with H.R. during the visitations she attended, she also engaged in inappropriate conversation in front of H.R. The visit supervisor tried to redirect Mother toward appropriate interaction during visits but was not always successful. During one visit, Mother responded to the supervisor's efforts by lunging at her. The visit supervisor was concerned for her and H.R.'s safety and called 911 for assistance to end the visit. During another visitation, Mother hit her head on playground equipment, became upset, and swore at and physically threatened the visit supervisor.
- [9] Mother refused to participate in therapy until the therapy sessions were scheduled to coincide with Mother's visits with H.R. Mother was guarded with her therapist and would not disclose requested information.
- [10] Due to Mother's volatile behavior and lack of cooperation, DCS service providers were no longer willing to work with Mother. Mother's family case manager struggled to find new providers to supervise visitation and assist

Mother with services. As a result of Mother's behavior, visitation was suspended in September 2020 after the trial court found that DCS was unable to ensure the safety of H.R., service providers, and DCS employees during visits. Mother has not seen H.R. since August 25, 2020.

[11] Mother also failed to complete a psychological evaluation in a timely manner. In November 2020, Mother was held in contempt of Court for failing to participate in court-ordered services, including the psychological evaluation. Thereafter, Mother completed the evaluation through Samaritan Center but failed to follow through with the recommended treatment plan. Samaritan Center closed Mother's chart due to non-compliance.

[12] On March 1, 2021, DCS filed a petition to terminate Mother's parental rights to H.R. That same month, law enforcement received a report that Mother was making suicidal statements. After locating Mother at a church, officers transported her to LaSalle Behavioral Health, where she was involuntarily committed, Mother was combative and argumentative. She had to be restrained during transport to the facility. Mother was contained to a security room for the first few days of her commitment because she threatened staff and was not cooperative at intake. She also tested positive for methamphetamine, amphetamine and cannabinoids when she was admitted to LaSalle.

[13] Mother experienced delusions and paranoia during her involuntary commitment. Mother initially refused to take medication. Due to concerns of her ongoing psychosis and refusal to take medication, Mother's treatment team

determined that a 90-day involuntary commitment was necessary. Mother was prescribed a long-acting injectable medication, and her symptoms did improve, but her progress was unusually slow. Mother continued to have psychotic symptoms until the last few days of her commitment. Mother was diagnosed with Bipolar Disorder with Psychotic Features and Substance Abuse Disorder. Mother refuses to accept her diagnoses.

[14] After a month of treatment at LaSalle, Mother was transferred to a group home while still under the involuntary commitment. She continued to receive mental health treatment and medication. She tested positive for THC while she was residing in the group home. She also refused to speak with her therapist about her mental health and stated that it was not important. Tr. Vol. 2, p. 86. Mother continued to deny that she has a substance abuse issue. *Id.* After Mother was released from the group home, her commitment was extended due to concerns that Mother would not take medications or attend appointments. She continues to see a psychiatrist on a monthly basis and he administers her monthly injection of Invega. Mother also has a prescription for Lithium but her psychiatrist is unable to monitor Mother's Lithium levels because she refuses to have her blood drawn. Mother has stated that she does not need medication and is only taking medication because she is under a commitment.

[15] The trial court held fact-finding hearings on June 21 and July 20. Mother refused to provide her address to DCS prior to the hearing. During her direct examination, Mother disclosed her current address where she lives with a

roommate. She also stated that her roommate's children have been removed from her roommate's care and her roommate has open DCS involvement.

[16] Mother testified that she does not have Bipolar Disorder. Tr. Vol. 3 p. 4. But she admitted that she is using the diagnosis to attempt to qualify for disability income. *Id.* Mother also refused to answer questions about whether she will continue to take medication, but eventually, Mother testified that she would. *Id.* at 6-7. The trial court did not credit that testimony. Appellant's App. p. 23. Despite admitting to substance abuse beginning when she was a teenager, Mother would not acknowledge that she has a substance abuse problem. She also refused to submit to random drug screens throughout these proceedings. Mother did not recognize her need to continue with mental health treatment.

[17] H.R.'s Court Appointed Special Advocate and family case manager testified that termination of Mother's parental rights is in H.R.'s best interests. Tr. Vol. 3 pp. 28, 57. DCS's plan for H.R. is adoption by his foster parents, with whom he has been placed for approximately seventeen months. H.R. is thriving in that placement.

[18] On September 19, 2021, the trial court issued its order terminating Mother's parental rights to H.R. The trial court found that Mother had not remedied the reasons for H.R.'s initial removal or continued removal "as evidenced by her recent use of illegal substances, her continued denial of having a mental illness, her lack of housing and employment stability, and her unwillingness to participate in services recommended to facilitate reunification." Appellant's

App. p. 25. In addition, the court concluded that her “unremedied use of illegal substances and inability to care for any of her children due to substance abuse, lack of stability, and mental health concerns is indicative of an ongoing inability to care for” H.R. *Id.* The court also determined that DCS proved that the ongoing parent-child relationship poses a threat to H.R.’s well-being. Finally, the court found that termination of Mother’s parental rights was in H.R.’s best interests.

[19] Mother now appeals.

Standard of Review

[20] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* 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. *Id.*

[21] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *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.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, in her Appellant’s Brief, Mother does not challenge the trial court’s findings of fact as clearly erroneous; therefore, we will accept the unchallenged findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[22] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2021). Only one of those elements is at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home will not be remedied.³ *I.C. § 31-35-2-4(b)(2)(B)(i)*.

³ Mother does not challenge the trial court’s finding that continuation of the parent-child relationship poses a threat to H.R.’s well-being. Because DCS must only prove one of the elements listed in *Indiana Code subsection 31-35-2-4(b)(2)(B)*, Mother has waived her claim that DCS failed to present clear and convincing evidence to prove each element required under that statute. We elect to address Mother’s argument challenging the trial court’s findings and conclusions concerning *subsection 31-35-2-4(b)(2)(B)(i)* because of the fundamental interest at stake in this case.

Mother also waived her claim that termination of her parental rights was not in H.R.’s best interests. Because Mother failed to argue that issue in her brief, we will not address the issue in this appeal. However, we note

[23] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

I. Clear and convincing evidence supports the trial court's finding that the conditions that resulted in H.R.'s removal or reasons for placement outside Mother's home will not be remedied.

[24] First, we address Mother's argument that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in H.R.'s removal or reasons for placement outside of Mother's home will not be remedied. When we review whether there is a reasonable probability that the conditions that resulted in the child's removal or reasons for placement outside the parent's home will not be remedied, our courts engage in a two-step analysis. See *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention in foster care." *Id.* Second, we "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we "evaluate the parent's habitual patterns of conduct to determine the probability

that the record is replete with evidence that termination of Mother's parental rights was in the child's best interests.

of future neglect or deprivation of the child.” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

- [25] H.R. was removed from Mother due to concerns over her mental health, neglect of H.R., substance abuse, and incarceration. Throughout these proceedings, Mother refused to acknowledge her mental health issues. At the termination hearing, she continued to express her belief that she does not suffer from mental illness.
- [26] During the CHINS proceedings, Mother ignored the trial court’s order to participate in a psychological evaluation. Eventually, DCS filed contempt proceedings against Mother due to her failure to comply. After Mother was found in contempt of court, Mother completed the evaluation through Samaritan Center but failed to follow through with the recommended treatment plan. Samaritan Center closed Mother’s chart due to non-compliance.
- [27] Mother only participated in treatment for her mental illness after she was involuntarily committed in March 2021. On the dates of the fact-finding hearings, Mother was receiving monthly medication by injection, but her psychiatrist was not certain whether she was compliant with her prescribed medication. Mother had just completed her inpatient treatment and residence in a group home. Mother had a place to live, but her roommate was also the subject of an open DCS investigation. Mother lacked stable housing and income throughout this case.

[28] During her involuntary commitment, Mother's treatment providers expressed concern that Mother would not continue to take her prescribed medications and attend appointments. Mother has stated that she does not need medication and is only taking medication because she is under a commitment. During the fact-finding hearings, Mother initially refused to answer questions about whether she will continue to take medication. Eventually, Mother testified that she would. Tr. Vol. 3, pp. 6-7. The trial court did not credit that testimony. Appellant's App. p. 23.

[29] Mother also failed to address her substance abuse issues. Mother admitted substance abuse beginning when she was a teenager but would not admit that she has a substance abuse problem. She also refused to submit to random drug screens throughout these proceedings. Mother tested positive for methamphetamine, amphetamine, and cannabinoids when she was involuntarily committed and admitted to LaSalle Behavioral Health. Mother was also intoxicated when she was arrested and H.R. was removed in February 2020 and when she was arrested in June 2020.

[30] Mother argues that DCS failed to take reasonable efforts to reunify her with H.R. and that she was actively addressing her mental health when her parental rights were terminated. But Mother's non-compliance with services, her refusal to accept her mental health diagnosis, and her refusal to acknowledge her substance abuse issues prevented Mother's reunification with H.R. And Mother only began to participate in mental health treatment after she was involuntarily committed. Given Mother's continued denial of her mental health diagnosis

and substance abuse issues, her refusal to discuss her diagnosis in therapy, and her reluctance to take medication, it is reasonably likely that Mother's mental health and substance abuse issues will not be remedied. See *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (observing that "[r]equiring 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").

- [31] For all of these reasons, we conclude that the trial court's finding that there is a reasonable probability that the conditions that resulted in H.R.'s removal or reasons for placement outside of Mother's home will not be remedied is supported by clear and convincing evidence.

II. DCS's efforts to reunify Mother and H.R. were reasonable.

- [32] Mother argues that DCS's failure to "provide appropriate mental health services to [Mother] while the case was in its infancy is at least a failure to provide 'marginal reunification efforts.'" Appellant's Br. at 24 (quoting *In re E.M.*, 4 N.E.3d at 647). And Mother claims that the services DCS initially offered to Mother "were never appropriate to her condition and were never going to result in compliance or reunification given the great berth by which they missed the mark." *Id.* at 25.
- [33] In *E.M.*, our supreme court reiterated that "[a]ttempting to preserve and reunify families promotes not just parents' fundamental liberty interest in raising their own children, but also the children's best interests. Marginal reunification efforts, then, come at the expense of children and parents alike." *In re E.M.*, 4

N.E.3d at 647. But “reasonable family-preservation efforts are balanced by mandates aimed at accomplishing speedy permanency” for the children. *Id. at 648*.

[34] DCS is required to make reasonable efforts to reunify parents and children during CHINS proceedings, but that requirement “is not a requisite element of our parental rights termination statute, and a failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *A.Z. v. Ind. Dep’t of Child Servs.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). In this case, DCS provided Mother with the opportunity to participate in mental health services.

[35] In her brief, Mother does not acknowledge the evidence establishing that DCS offered Mother therapeutic services, which she refused to participate in until the therapy sessions were scheduled to coincide with Mother’s visits with H.R. Mother was ordered to complete a psychological evaluation during the CHINS proceedings, and she failed to comply with the order until she was held in contempt of court. After she finally participated in the psychological evaluation, she refused to follow the ensuing recommendations and her case file was closed.

[36] For all of these reasons, Mother has not established that DCS failed to offer her reasonable services aimed at reunifying her with H.R. And, in any event, Mother is not entitled to relief on her claim that DCS’s failure to provide

services warrants reversal of the trial court's order terminating her parental rights. *See* [A.Z.](#), 915 N.E.2d at 148 n.3.

Conclusion

[37] Mother has not established reversible error and the trial court's order terminating her parental rights is supported by clear and convincing evidence. We therefore affirm the trial court's order terminating Mother's parental rights to H.R.

[38] Affirmed.

Brown, J., and Molter, J., concur.