

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

C.J., N.P. (Minor Children)

and

K.P. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

August 6, 2021

Court of Appeals Case No.
21A-JT-348

Appeal from the Delaware Circuit
Court

The Honorable Kimberly Dowling,
Judge

The Honorable Amanda Yonally,
Magistrate

Trial Court Cause Nos.
18C02-2005-JT-42, 18C02-2005-
JT-43

Appellee-Petitioner.

Altice, Judge.

Case Summary

- [1] K.P. (Mother) appeals from the involuntary termination of her parental rights to two of her children, C.C. and N.P. (the Children). She challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

Facts & Procedural History

- [3] In late January 2019, Mother had custody of the Children and had just given birth to E.P. (Sibling), who had been exposed to, among other things, methamphetamine, cocaine, and fentanyl during the pregnancy and was born drug positive. C.C. was ten years old at the time, and his father was incarcerated in Michigan for sexual misconduct committed against C.C., with an earliest possible release date in 2052. N.P., who had a different father, was almost eight years old. N.P.'s father's whereabouts were unknown.

[4] While Mother and Sibling were still in the hospital, the Indiana Department of Child Services (DCS) received a report alleging abuse or neglect. An investigation led to DCS removing the Children and Sibling from Mother's care on February 1, 2019, and filing CHINS petitions on February 4, 2019. The petitions were based on the following material facts, which we summarize as related to Mother, the Children's primary caregiver: 1) Mother informed medical staff and DCS that she had been held against her will and forced to prostitute herself in exchange for drugs during her pregnancy; 2) Mother pursued limited prenatal care while pregnant with Sibling and tested positive for amphetamine, methamphetamine, cocaine, suboxone, THC, and fentanyl during the pregnancy; 3) Sibling's cord blood tested positive for amphetamine, methamphetamine, and cocaine; and 4) Mother had two prior CHINS causes.

[5] At the initial hearing on February 5, 2019, Mother admitted that the Children (as well as Sibling) were CHINS as alleged in the petitions, and they were so adjudicated. The trial court entered a provisional order regarding Mother's communication with DCS and ordered that the Children and Sibling remain in the home of their maternal grandmother. The court permitted Mother to reside in the same home on the following conditions: "Mother is not to be left alone with any of her children at any time; Mother is to submit to random and scheduled drug screens and placement must supervise all interactions between mother and child." *Exhibit Index Vol. 1* at 24.

[6] Dispositional orders were entered on or about April 29, 2019. Mother was ordered to, among other things, stay in weekly contact with DCS, keep

appointments with service providers, maintain suitable housing and stable income, not consume illegal substances, submit to random drug screens, obey the law, complete a substance abuse assessment and follow all recommended treatment, and participate in individual counseling.

- [7] Prior to adjudication and disposition, DCS Family Case Manager (FCM) Courtney Hazelwood offered a substance abuse assessment and counseling, but Mother declined these services. While Mother acknowledged that she “needed to get clean,” she told FCM Hazelwood that she “needed to just go to church, and that would help her with her sobriety.” *Transcript* at 65.
- [8] By the beginning of March 2019 and continuing after the dispositional order, Mother began refusing to submit to drug screens. She also refused to participate in other services. As a result, on May 10, 2019, DCS filed a motion to compel Mother to submit to at least two drug screens per week and to otherwise cooperate with DCS. The motion alleged that Mother had tested positive for cocaine and other substances four times in February and once in early April and that she had failed to submit to screens approximately sixteen times since March 13. The court granted the motion to compel and scheduled a hearing for May 30, 2019, at which the court prohibited Mother from living at the Children’s current placement due to her noncompliance with services and drug screens. The court ordered Mother to participate in supervised visitation.
- [9] Thereafter, Mother was homeless for much of the case and refused to notify FCM Hazelwood of where or with whom she was living. DCS experienced

difficulty communicating with Mother for months at a time, as she frequently changed phone numbers and did not maintain consistent contact with FCM Hazelwood. Further, Mother never provided any proof of employment, despite requests from FCM Hazelwood. And Mother was arrested for theft and other offenses multiple times during the underlying proceedings.

[10] Mother began supervised visits with the Children in June 2019, but the services were closed out in July due to her noncompliance. Mother's frequent no-shows, cancellations, and late arrivals negatively affected the Children and caused them to withdraw from her. After a new referral for visits that summer, Mother failed to show up for any of the visits, despite confirming about eight visits. She would either cancel at the last minute or say that she was on her way and then not show. Visits resumed several months later with a new referral in February 2020 but were closed after a month, again because of Mother's inconsistency. With a fourth referral, Mother exercised supervised visits with the Children virtually and then in person from about April to October 2020. During one of these visits, Mother was visibly under the influence, appearing hazy and acting erratic. Although Mother was generally loving during the visits, she acted like more of a friend than a parent to the Children and was often distracted on her phone. Additionally, during this time, Mother missed visits while she was incarcerated and never seemed interested in visiting with the Children for more than an hour at a time. "Whenever that one hour mark hit, she was ready to go um- and end the visit." *Transcript* at 55.

- [11] On March 2, 2020, about a year after being referred by DCS, Mother completed a substance abuse assessment with therapist Hannah Small. Mother disclosed an extensive substance abuse history, as well as recent use of cocaine and marijuana. Small recommended that Mother participate in an eight-week intensive outpatient program and weekly individual therapy. Mother did not follow through with the recommended treatment.
- [12] In the underlying CHINS proceedings, Mother did appear for the first review hearing held on October 7, 2019, and the court found that she had failed to participate in court ordered reunification services. Additionally, the court found that Mother “abuses illicit substances and has taken no meaningful steps to remedy the condition.” *Exhibit Index Vol. I* at 46.
- [13] Thereafter, following a permanency hearing in February 2020, the trial court issued an order on March 20, 2020, changing the permanency plan from reunification to adoption, as Mother had not complied with services or visitation and had not submitted to a drug screen since August 2019, when she tested positive for cocaine. Mother had also not been in contact with FCM Hazelwood for several months.

[14] On May 7, 2020, DCS initiated the instant termination proceedings relating to the Children.¹ C.C.'s father signed a voluntary adoption consent in July 2020, and N.P.'s father's parental rights were terminated by default in August 2020.

[15] On November 24, 2020, the trial court held a factfinding hearing regarding the termination of Mother's parental rights. Mother did not appear in person at the hearing because, according to Mother, Thanksgiving was too close and she had already arranged to go out of town for the holiday when she received notice of the hearing date. The trial court granted Mother's request, made on the day of the hearing, to participate by telephone. The court, however, expressly indicated that it "did not give credence to Mother's explanation why she was not in person at the hearing." *Appendix Vol. 2* at 163. Further, Mother later disconnected the phone call mid-hearing, called back after missing the testimony of several witnesses, and then disconnected again before the end of the hearing. She did not testify or offer any evidence.

[16] DCS presented several witnesses in support of the termination petitions. In summary, the witnesses detailed Mother's history of drug addiction, her virtually complete lack of participation in services, her inconsistent visits and the resulting negative effects on the Children, her lack of contact with DCS and service providers, and her unwillingness to submit to drug screens (screening only 19 times during the life of the case – with 10 positive tests – and failing to

¹ Sibling's CHINS case remained pending at the time.

screen as requested 121 times). Moreover, evidence was presented that Mother had 4 pending criminal matters, she had been arrested and charged as recently as August 2020, and her most recent drug screen in October 2020 was positive for methamphetamine and cocaine. Additionally, during the case, Mother never established a safe and stable residence where she could raise the children, and there is no evidence that she maintained stable employment or income.

[17] Regarding the Children, DCS presented evidence that they were doing well in their respective placements. In August 2020, C.C. had moved from his maternal grandmother's home to his maternal grandfather's home in Florida. C.C.'s maternal grandfather was willing and able to adopt C.C. upon termination of Mother's parental rights. Although N.P., who remained in the care of his maternal grandmother, was not in a preadoptive home, CASA Vicki Baur and FCM Hazelwood both testified that he is adoptable, which was the plan for N.P. CASA Baur testified that she believed termination of Mother's parental rights was in the Children's best interests. FCM Hazelwood agreed, noting that she did not believe the Children would be safe in Mother's care and that, as of recently, Mother was still using drugs, engaging in illegal activity, and lacked stable housing and income. FCM Hazelwood also expressed concerns regarding Mother being involved in relationships involving domestic violence.

[18] The trial court took the matter under advisement and issued orders on February 2, 2021, terminating the parent-child relationships between Mother and the

Children. Mother now appeals. Additional information will be provided below as needed.

Discussion & Decision

[19] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its 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*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[20] We recognize that the traditional right of parents to “establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In*

re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.*

[21] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[22] On appeal, Mother challenges the trial court’s conclusions with respect to I.C. § 31-35-2-4(b)(2)(B)(i) and (ii)² and the best interests of the Children. We will address each in turn, as needed.

[23] We observe that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive and, thus, requires the trial court to find only one of the three requirements of the subsection by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d at 209. Though the trial court found two of the requirements satisfied in this case, we will focus our review on the trial court’s determination that there is a reasonable probability that the conditions that resulted in the Children’s removal and/or continued placement outside Mother’s home will not be remedied.

In making such a determination, the court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. The statute does not simply focus on the initial basis for a child’s removal for purposes of determining whether a parent’s rights should be terminated, “but also those bases resulting in the continued placement outside the home.” *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court “can reasonably consider the services

² The trial court made no determinations regarding subsection (iii), as that was not one of the bases for termination alleged by DCS in the termination petition.

offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)]. In addition, "[w]here 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).

In re N.Q., 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[24] Mother's argument in this regard is brief. She asserts:

At the time of the fact-finding hearing, there was improvement on behalf of [Mother]. There were no safety issues with respect to her home. [Mother] was participating in visitation. The conditions that resulted in removal of the minor children had been remedied at the time of the fact-finding hearing.

Appellant's Brief at 19. The record before us, however, paints a completely different picture. Specifically, it shows no sustained improvement by Mother since the Children's removal, continued drug use and other criminal involvement, and little to no cooperation with DCS and services providers. Further, at the time of the hearing, Mother had no stable home or income and had not addressed her significant substance abuse issues, despite ample services offered to her of which she failed to take advantage. In sum, the evidence overwhelmingly establishes that the conditions that resulted in the Children's removal and continued placement outside Mother's care are not likely to be remedied. As the trial court aptly found, Mother's failure to engage in services

and her failure to even appear at the factfinding hearing, of which she had sufficient notice, show her unwillingness to meet her parental responsibilities.

[25] Finally, we turn to Mother’s claim that the evidence was insufficient to support the trial court’s determination that termination was in the Children’s best interests. In making this best-interests determination, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013). The court must subordinate the interest of the parent to those of the children and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *McBride*, 798 N.E.2d at 199. Our Supreme Court has explained that “[p]ermanency is a central consideration in determining the best interests of a child.” *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). “Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, 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 J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[26] Regarding this element, Mother baldly asserts that there was no evidence presented that termination of parental rights was in the Children’s best interests. On the contrary, both CASA Baur and FCM Hazelwood testified that termination of parental rights and adoption were in the best interests of the Children. FCM Hazelwood explained that Mother had the potential to be a good parent “if she addressed her issues and was able to work on them” but that

Mother had not done so and, thus, FCM Hazelwood opined that the Children would not be safe in her care at this time. *Transcript* at 83. Similarly, CASA Baur noted the unchanged circumstances due to Mother's lack of inclination to get help and her continued drug use, stints in jail, and inconsistent visits with the Children. Further, the evidence indicated that C.C. was in a preadoptive home and that N.P. was adoptable and a preadoptive home would be sought for him by DCS upon termination. The evidence was sufficient to show by clear and convincing evidence that termination was in the Children's best interests.

[27] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.