

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

H.S. (Minor Child),

And

L.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

And

February 16, 2024

Court of Appeals Case No.
23A-JT-1883

Appeal from the Marion Superior
Court

The Honorable Geoffrey Gaither,
Judge

The Honorable Scott Stowers,
Magistrate

Trial Court Cause No.
49D09-2209-JT-7298

Kids' Voice of Indiana,
Appellee-Guardian Ad Litem.

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, L.S. (Mother), appeals the trial court's termination of her parental rights to her minor child, H.S. (Child).
- [2] We affirm.

ISSUE

- [3] Mother presents this court with one issue on appeal, which we restate as:
Whether the trial court's termination of Mother's parental rights to Child was clearly erroneous.

FACTS AND PROCEDURAL HISTORY

- [4] Mother is the biological parent of Child, born on September 16, 2021, and of prior-born siblings, O.W., born on May, 29, 2019, and K.S., born on May 13,

2020 (collectively, Siblings). In the winter of 2020, prior to Child's birth, Mother reached out to her brother (Maternal Uncle), requesting him to take Siblings while she got her furnace fixed. Mother left Siblings with Maternal Uncle for weeks and did not respond when he notified her that he and his family were taking a family trip to Texas. Maternal Uncle took Siblings on the family trip, and when they were on the way back to Indiana, Mother reported Maternal Uncle to law enforcement for having kidnapped Siblings. Maternal Uncle returned Siblings to Mother after she passed a drug screen, but about five days later, on December 19, 2020, the Department of Child Services (DCS) filed a Verified Petition alleging that Siblings were Children in Need of Services (CHINS) because Mother used illegal substances and acted erratically. DCS removed Siblings from Mother's care and placed them in relative care with Maternal Uncle. At the time of placement with Maternal Uncle, neither of the Siblings had updated immunizations.

[5] Siblings were adjudicated as CHINS and on January 13, 2021, the trial court issued a dispositional decree ordering Mother to participate in reunification services, which included keeping in touch with DCS on a weekly basis, completing a substance abuse assessment and submitting to random drug screens, maintaining suitable housing and employment, participating in individual counseling, and attending supervised visitation.

[6] By August 18, 2021, Mother had completed the substance abuse assessment; however, by September 2021, she had only completed five drug screens, with three of those testing positive for methamphetamine. Mother was difficult to

reach, and DCS's Family Case Manager (FCM) could only get in contact with Mother when she was incarcerated. Mother was inconsistent with therapy and made no progress. She was also inconsistent with visitation and appeared to be under the influence of illegal substances during some visits. Mother's last visit with Siblings was in November 2021. On December 15, 2021, the trial court approved a concurrent plan of adoption for Siblings.¹

[7] On September 16, 2021, Child was born and twelve days later, on September 28, 2021, DCS filed a petition alleging that Child was a CHINS because Mother was neglectful, she had a signification history of substance abuse, testing positive for methamphetamine during her pregnancy with Child, and she had not completed the court-mandated services in Siblings' Cause. DCS removed Child from Mother's care and placed him in relative care with Maternal Uncle.

[8] On March 3, 2022, the trial court adjudicated Child as a CHINS as to Mother, following a factfinding hearing that Mother did not attend. During the dispositional hearing, the trial court did not order services, finding that DCS had already made reasonable efforts in Siblings' case. "DCS was ordered to meet with [M]other to determine whether modification of disposition is necessary should [Mother] contact DCS." (Appellant's App. Vol. II, p. 22). Mother did not attempt to contact DCS during Child's CHINS proceedings.

¹ At the time of Child's termination hearing, Siblings' permanency plan was still adoption. Siblings' Cause progressed more slowly than Child's case due to an unknown father in Siblings' Cause which DCS had to serve by publication.

FCM was able to track Mother down and contact her on a single occasion. Mother sporadically visited with Child. When she did attend visitation, she arrived late and was hostile. Mother last visited Child in November 2021, when he was two months old, after which she was unsuccessfully discharged.

[9] Mother has a criminal history. She was charged with two Counts of theft on April 3, 2019, but she failed to appear until May 15, 2023, and was ultimately convicted of Level 6 felony theft. While this case was pending, on February 26, 2021, Mother pled guilty to Level 6 felony identity deception. She was sentenced to 365 days of incarceration, with 319 days suspended to probation. She violated her probation, was reincarcerated in December 2022, and was released in May 2023.

[10] On September 15, 2022, DCS recommended to change Child’s permanency plan from reunification to termination and adoption because Child “had been in his current placement for a year at that time, [Mother’s] whereabouts were unknown throughout the majority of the case, she had not actively engaged in services even after [FCM] spoke to her once and attempted to engage her in services as well as put in service referrals in place, she still did not engage[.]” (Transcript p. 26). On September 26, 2022, DCS filed its petition to terminate Mother’s parental rights to Child.

[11] On June 1 and 13, 2023, the trial court conducted a termination factfinding hearing on DCS’s petition. By the time of the hearing, Child had been in relative placement for a year and a half, which was “pretty much his entire

life.” (Tr. p. 26). The home was appropriate, and Child referred to Maternal Uncle and his wife as “mommy and daddy.” (Tr. p. 27). Maternal Uncle and his wife were willing to adopt Child and Siblings. FCM testified that Mother would not remedy the conditions that led to Child’s removal because she was not engaged in services and her whereabouts were unknown during the majority of the CHINS proceedings. FCM opined that adoption by the relative placement would be in Child’s best interests. Child’s Guardian Ad Litem (GAL) advised the trial court that Child was thriving in his placement. Like FCM, GAL also advocated that termination and adoption were in Child’s best interests because he was bonded to his Maternal Uncle and wife. Mother appeared for the second day of trial. During her testimony, she claimed to have completed a drug rehabilitation program at Valle Vista two weeks after O.W. and K.S. were adjudicated CHINS, as well as a second program at Just Believe in Florida in March 2022. Mother acknowledged that she did not provide documentation about these programs to DCS although, later during her testimony, she asserted to have sent the documentation to the FCM in Siblings’ Cause about one hour prior to her testimony in Child’s Cause.

[12] On July 14, 2023, the trial court entered its Order, terminating Mother’s parental rights to Child. The court concluded that there was a reasonable probability that Mother would not remedy the conditions that resulted in Child’s removal and retention in relative placement, that the continuation of the parent-child relationship would be a threat to Child’s wellbeing, that

termination was in Child’s best interests, and that adoption was a satisfactory plan for Child’s permanency.

[13] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[14] Mother challenges the trial court’s termination of her parental rights to her Child. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If “parents are unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[15] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment, and we accord deference to the trial court’s “opportunity to judge the credibility of the witnesses firsthand.” *Id.*

II. Termination

[16] In order to terminate a parent’s rights to his or her child, DCS must prove:

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

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * * *

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . 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 [CHINS] . . . ;

(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 [CHINS];

(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). DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[17] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired

before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

A. *Sufficiency of Findings*

[18] Mother specifically challenges the evidence supporting eight findings. In particular, she contests the evidence underlying findings 10, 11, 12, 14, 19, 21, 29, and 30. In Finding 10, the trial court noted that Mother “has had no voluntary participation in any services[,]” while Finding 11 states that Mother “claims to have completed substance abuse treatment. However, she has not submitted any verification to DCS or the [c]ourt[.]” (Appellant’s App. II, p. 22). Mother now points to her testimony at the factfinding hearing that she completed drug rehabilitation programs through Valle Vista and through Just Believe in Florida. However, Mother did not provide the court with any documentation of participation in and completion of these programs, although she claimed to have provided the documentation on June 13, 2023, the second day of testimony in the termination factfinding hearing, about one hour prior to her testimony in Child’s Cause. As the trial court was not required to credit Mother’s testimony, we cannot say that the findings are erroneous. *See Tharp v. State*, 942 N.E.2d 814, 816 (Ind. 2011) (The factfinder is best positioned to

judge the credibility of witnesses, is free to credit or discredit testimony, and weigh conflicting evidence).

[19] Mother next disputes Finding 12, which states that Mother “was released from incarceration on or about May 25, 2023. She made no attempt to notify the FCM upon her release.” (Appellant’s App. Vol. II, p. 22). FCM testified that she was able to track Mother down and contact her on a single occasion during the CHINS proceedings. There is no evidence in the record that Mother ever initiated contact with DCS during Child’s CHINS proceedings. Accordingly, the finding is not clearly erroneous.

[20] Finding 14 determines that Mother “has not submitted any drug screens to DCS for the duration of the CHINS case.” (Appellant’s App. Vol. II, p. 22). While Mother does not argue that the finding is erroneous, she maintains that she was incarcerated during part of the proceedings and that she was not required to submit drug screens in Child’s Cause. Although Mother is correct that she was not mandated to submit to drug testing in Child’s case, it cannot be ignored that Child’s CHINS proceeding was initiated because Mother tested positive for methamphetamine during her pregnancy with Child, and she had not completed the court-mandated services, which included participation in drug screens, in Siblings’ Cause. In Siblings’ case, she only completed five drug screens, all before DCS initiated Child’s case. Therefore, we find the evidence supports the finding.

[21] In Finding 19, the trial court found that “[o]ther than completing the substance abuse evaluation, [Mother] has had no engagement in services in [Siblings’] cases.” (Appellant’s App. Vol. II, p. 22). The record supports that although Mother completed a substance abuse assessment, her participation in other services was questionable. Of the mere five drug screens she participated in, three tested positive for methamphetamine. While Mother did participate in some supervised visitation, she arrived late and appeared to be under the influence of illegal substances. Even though there is some evidence that Mother minimally participated in some services, she was not engaged to the point that she attempted to improve herself. Therefore, we cannot say that the finding is clearly erroneous.

[22] Mother also disputes Finding 21, which states that Mother “has had no contact with FCM [in the Siblings’ Cause], other then [sic] when she was incarcerated.” (Appellant’s App. Vol. II, p. 22). Contrary to Mother’s disputation, the finding is supported by FCM’s testimony who informed the court that “the only time that [he has] been able to maintain any form of communication with [Mother] is while she’s been incarcerated.” (Tr. p. 20).

[23] Finding 29 states that Mother “has a lengthy criminal history including convictions for Identity Deception (F6) under Cause Number 55D02-1909-F6-01628 and Theft (F6) under Cause Number 32D05-1906-F6-000593);]” while Finding 30 mentions that Mother “was in and out of incarceration for the duration of the CHINS case. She was released from Hendricks County Jail on or about May 19, 2023. She was not incarcerated at the time of the June 1,

2023 Termination trial date.” (Appellant’s App. Vol. II, p. 23). Even though Mother does not dispute the correctness of these factual findings, she takes issue with the trial court’s characterization of her criminal history as “lengthy” and contends that “there is no likelihood Mother would reoffend and become incarcerated again.” (Appellant’s Br. p. 26). Although two criminal cases might not constitute a lengthy criminal history, here, Mother prolonged her cases by failing to appear in court on numerous occasions in one Cause and by violating her probation in the other Cause. Furthermore, whether there is a likelihood that Mother will reoffend is irrelevant for purposes of deciding whether the evidence supports the findings because the trial court made no finding in this regard. Thus, the finding is supported by the evidence.

B. *Reasonable Probability*

[24] In adjudicating Child as a CHINS, the trial court determined that Child’s removal from Mother’s care was necessary due to Mother’s neglect, her significant history of substance abuse, her positive tests for methamphetamine during her pregnancy with Child, and her failure to complete the court-mandated services in Siblings’ Cause.

[25] Mother did nothing to alleviate any of these conditions before or during the pendency of Child’s CHINS proceedings. Mother first got involved with DCS during Siblings’ CHINS case, in which she completed the court-ordered substance abuse assessment, but in twelve months, only completed five drug screens, and three of those—taken close to Child’s birth—were positive for

methamphetamine. Mother was difficult to reach, was inconsistent with therapy, and made no progress. The trial court was free to discredit Mother's testimony that she had voluntarily completed two different rehabilitation programs and had provided documentation to FCM in Siblings' Cause one hour prior to testifying in Child's factfinding hearing. Mother's argument that she was becoming compliant in Siblings' case and her attempt to tie this to the fact that DCS had not filed a termination petition in Siblings' case is unpersuasive. DCS had not yet filed a termination petition because there was an unknown father in the Siblings' case, whom DCS had to serve by publication.

[26] After Child's birth, the situation did not change and DCS intervened, filing a petition to adjudicate Child as a CHINS. During Child's CHINS proceedings, Mother did not contact DCS to commence services, she did not voluntarily participate in services, and did not submit to drug screens, which she was mandated to in Siblings' case. Mother's failure to engage in services during these proceedings demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). Our supreme court has previously concluded that "parents' past behavior is the best predictor of their future behavior." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Mother's historical and current unwillingness to address her parenting issues and commence services demonstrate the requisite probability that the conditions will not change. *Lang*, 861 N.E.2d at 372. The trial court was entitled to weigh the evidence as it

found appropriate in the context of this case, and we affirm the trial court's conclusion that a reasonable probability exists that the conditions that resulted in Child's removal will not be remedied. *See K.T.K.*, 989 N.E.2d at 1234. As such, we affirm the trial court's decision.²

C. *Best Interests*

[27] Mother also challenges the trial court's conclusion that termination is in Child's best interests. To determine whether termination is in a child's best interests, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* In this regard, "recommendations by both the case manager and the child 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." *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

² Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS needs to prove only one of the disjunctive elements. As we conclude that DCS presented sufficient evidence to establish that a reasonable probability exists that the conditions that resulted in Child's removal will not be remedied, we do not need to address Mother's argument that there is no reasonable probability that the continuation of a parental relationship posed a threat to Child's well-being.

[28] Here, FCM and CASA both supported the termination of Mother's parental rights and adoption. FCM testified that adoption by the relative placement would be in Child's best interests as Mother would not remedy the conditions that lead to Child's removal because she was not engaged in services and her whereabouts were unknown during the majority of the CHINS proceedings. Like FCM, GAL also advocated that termination and adoption were in Child's best interests because he was bonded to his Maternal Uncle and wife and was thriving in his placement. "Termination, allowing for a subsequent adoption, would provide [Children] with the opportunity to be adopted into a safe, stable, consistent, and permanent environment where all their needs will continue to be met, and where they can grow." *In re A.D.S.*, 987 N.E.2d at 1159.

[29] Mother failed to avail herself of the opportunities and services offered by DCS to reunite with Child and made no progress nor commitment during the proceedings of the case. Contrary to Mother's argument, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *In re E.M.*, 4 N.E.3d at 648. Even though "the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's best interest to maintain this relationship." *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Mother's lack of participation to facilitate reunification with Child and her inability to remain in contact with FCM support the trial court's conclusion that termination of Mother's parental rights is in the best interests of Child. Accordingly, we affirm the trial court's decision.

CONCLUSION

[30] Based on the foregoing, we hold that the trial court did not abuse its discretion by terminating Mother's parental rights to Child.

[31] Affirmed.

[32] Brown, J. and Foley, J. concur