

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of: K.R.J., T.R.J.,
N.J., and A.R.J. (Minor
Children)

N.J. (Father) and K.R. (Mother),
Appellants-Respondents,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

February 24, 2021

Court of Appeals Case No.
20A-JT-1559

Appeal from the Montgomery
Superior Court

The Honorable Heather L. Barajas,
Judge

Trial Court Cause Nos.
54D01-1908-JT-222
54D01-1908-JT-223
54D01-1908-JT-224
54D01-1908-JT-225

Weissmann, Judge.

- [1] Domestic violence and drug use by K.R. (Mother) and N.J. (Father) prompted the State to take custody of their four children. Although the domestic violence subsided, Mother and Father continued to use methamphetamine, lacked stable housing, and did not complete the services required to reunite with their children. Finding clear and convincing evidence supports the trial court's decision to terminate Mother's and Father's parental rights, we affirm that judgment.

Facts

- [2] In April 2018, the Indiana Department of Child Services (DCS) received a report that Mother had thrown a small clothes hamper at Father during an argument and accidentally hit one of their four children. The children are T.R.J., K.R.J., N.J., and A.R.J. (Children), who are 3, 11, 12, and 13, respectively. Mother and Father (collectively, Parents) agreed to work with DCS informally to avoid DCS's removal of the children from Parents' home. Parents also agreed to implement a safety plan to avoid further domestic violence.
- [3] Within two weeks, Parents tested positive for methamphetamine and engaged in another altercation. That prompted DCS to remove Children from Parents' home and seek a court finding that they were children in need of services (CHINS). During the CHINS proceedings, Father admitted to regularly smoking marijuana outside the presence of the children. Tr. Vol. IV p. 11.

Mother admitted she was on parole for dealing in methamphetamine. She also admitted to smoking methamphetamine on April 14, 2018, shortly before caring for Children. Tr. Vol. IV p. 10. Parents admitted:

- Children have witnessed domestic violence and arguments between Parents, including another incident in which Mother stated she wanted to stab Father in the leg.
- Children told a family case manager (FCM) that they were scared and sad and were worried about Parents hurting each other.
- Parents tested positive for methamphetamine multiple times from April 11, 2018 to May 11, 2018.
- Children were in need of services.

Tr. Vol. IV, pp. 10-12.

[4] Finding Children to be CHINS, the trial court entered a dispositional order requiring Parents, among other things, to refrain from the use of drugs and alcohol, complete a substance abuse assessment and follow all resulting treatment recommendations, submit to random drug screens, and attend all visits with Children. Tr. Vol. IV, pp. 28-32. The trial court ordered Mother to undergo a psychological evaluation and follow all resulting recommendations. Tr. Vol. IV p. 29. DCS later referred Father to a psychological evaluation as well. Tr. Vol. II, pp. 93-94, 210-211.

[5] Neither Father nor Mother complied with the dispositional order. Each continued to use drugs, generally lacked stable housing, and did not complete

services. Their actions ultimately prompted DCS to petition for termination of Parents' parental rights as to all four children. After a hearing, the trial court entered findings of fact and conclusions of law terminating the parental rights of Mother and Father.

Discussion and Decision

- [6] Mother and Father appeal separately but raise the same issue: whether the evidence was sufficient to support the trial court's judgment. Finding clear and convincing evidence supports the judgment, we affirm.

I. Standard of Review

- [7] 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.

[8] Ind. Code § 31-35-2-4(b)(2).¹

[9] A trial court must terminate the parent-child relationship where it finds DCS has proven these allegations by clear and convincing evidence. Ind. Code §§ 31-35-2-8, 31-37-14-2. When reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We will set aside the judgment only if it is clearly erroneous. *Id.* We apply a two-tiered standard of review: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.* Parents do not challenge any of the trial court's findings, so we accept those findings as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

II. Evidence is Sufficient

Mother and Father both challenge the trial court's conclusion that the conditions leading to removal of Children and their continued placement outside Parents' homes are not likely to be remedied. Father also challenges the trial court's conclusions that continuation of his relationship to Children posed

¹ I.C. § 31-35-2-4(b)(2)(B)(iii) is irrelevant because DCS did not attempt to prove that prong and the trial court entered no findings or conclusions relating to it.

a threat to their well-being and that termination of his parental rights was in Children's best interests.²

A. Remedying of Conditions and Threat to Children

[10] When reviewing a trial court's "remedying of conditions" and "threat to child" conclusions, we consider its assessment of the parent's fitness at the time of the termination proceeding. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014); *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). That assessment requires consideration of evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether a substantial probability of future neglect or deprivation exists. *E.M.*, 4 N.E.3d at 643; *A.P.*, 981 N.E.2d at 81. It is a delicate balancing entrusted to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *E.M.*, 4 N.E.3d at 643.

[11] Parents admitted that domestic violence and drug use prompted the initial removal of Children. Tr. Vol. II p. 36. The trial court's findings show Children remained in foster care due to Parents' continued drug use, failure to comply with required services, and lack of stable housing.

² The statement of issues in Mother's amended brief suggests Mother challenges the trial court's conclusion that termination of her parental rights was in Children's best interest. However, Mother's brief otherwise is silent on that claim. To the extent Mother intended to raise the claim, she has waived it by failing to provide cogent argument supported by appropriate citations to the record and authority. See Ind. Appellate Rule 46(A)(8)(a).

i. Mother's Argument

[12] Mother does not appear to dispute that the evidence of her drug use and unstable housing justified the trial court's conclusion under Indiana Code § 31-35-2-4(B)(2)(B)(i) that Mother was not likely to remedy the conditions leading to removal of Children and their continued placement outside her home. Instead, Mother claims only that she *would have* been successful in proving the conditions were likely to be remedied if DCS had provided her greater assistance.

[13] We initially note Mother has waived any error in this conclusion by failing to challenge the trial court's parallel conclusion under Indiana Code § 31-35-2-4(b)(2)(B)(ii) that continuation of the parent-child relationship poses a threat to Children. Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, meaning the trial court is required to find only one of the three prongs in subsection 2(B) as part of its decision to terminate parental rights. *See In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). Therefore, Mother's challenge of the trial court's remedying of conditions conclusion under Indiana Code § 31-35-2-4(b)(2)(B)(i) is fruitless unless paired with an attack on the trial court's conclusion that continuation of the parent-child relationship posed a threat to the children's well-being under Indiana Code § 31-35-2-4(b)(2)(B)(ii). *See In re J.G. and C.G.*, 4 N.E.3d 814, 820 n.2 (Ind. Ct. App. 2014) (finding parent waived claim under I.C. § 31-35-2-4(b)(2)(B) by failing to address it).

- [14] Regardless, we find no error in the trial court's conclusion that the conditions leading to the removal of Children and justifying their continued placement in foster care are unlikely to be remedied. Mother points to short-lived and minor successes in her otherwise dismal record during the CHINS proceedings. For instance, she claims she had appropriate housing and was sober at one point during the CHINS proceedings and that she once sought drug treatment on her own initiative (without success). Mother suggests such efforts demonstrate that she would have been able to demonstrate a change in conditions sufficient to refute the trial court's conclusion if DCS had provided drug treatment to her or provided greater assistance in securing housing.
- [15] DCS provided intensive outpatient treatment to Mother at least four times, and she consistently failed to complete it. Mother does not dispute that her test results showed she relapsed into regular drug use by July 2019. Mother also refused to engage consistently in therapy arranged by DCS, stopping altogether when she was referred to a new therapist in 2019. When DCS found housing for Mother at a halfway house, Mother failed to show.
- [16] Mother had many opportunities to prove she could overcome her substance abuse, housing, and other challenges. Mother, not DCS, is to blame for her failures. The trial court properly concluded Mother is not likely to remedy the conditions which prompted the initial and continued removal of Children from her home.

ii. Father's Argument

[17] Unlike Mother, Father focuses on his alleged successes, rather than DCS's perceived failures, in challenging the trial court's "remedying conditions" conclusion. Father notes the lack of evidence showing any domestic violence incidents after the CHINS fact finding hearing. While conceding he still battles substance abuse, Father notes he completed treatment programs and his positive drug tests have declined. Father views this evidence as establishing that the conditions leading to Children's removal and continued placement outside his home likely will be remedied. Father also relies on this evidence—as well as evidence of his steady employment and good record of visitation—in challenging the trial court's conclusion that continuation of the parent-child relationship posed a threat to each child's well-being.

[18] Father demonstrated some progress but not enough to show he could ably parent Children or remedy the unfortunate conditions that left them in foster care for years. Father's commitment to drug treatment was marginal, given his continuing use of drugs throughout this case. He was discharged from intensive outpatient treatment for missing an appointment to discuss residential treatment options. He also declined DCS's recommendation for long-term treatment. By his own admission, Father tested positive for methamphetamine five times during the final seven and a half months of drug testing. Father's Br., pp. 20-21. Father could not complete a psychological assessment because "his drug use interfered with the testing process." App. Vol. II, p. 51. Father also lacked stable housing prior to the filing of the petition to terminate his parental rights.

[19] Contrary to Father's claim, the evidence and trial court's findings were more than sufficient to support the trial court's "remedying of conditions" and "threat" conclusions. The trial court properly focused on Father's habitual drug abuse, inadequate housing, and overall poor performance in services offered by DCS, all of which supported those conclusions. *See In re R.S.*, 158 N.E.3d 432, 440 (Ind. Ct. App. 2020).

B. Termination is in Best Interests of Children

[20] Father next challenges the propriety of the trial court's conclusion that termination of his parental rights is in Children's best interests. When determining the best interests of a child, the trial court looks at the totality of evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004). Ultimately, the child's interests trump those of the parents. *Id.*

[21] On this issue, Father again suggests he demonstrated significant progress after Children's removal. He also notes that DCS, the Children, and their Court Appointed Special Advocate do not favor separating the four siblings, yet no pre-adoptive home for all four children has been found. Father maintains the only way to guarantee Children stay together is to allow him "to progress to full sobriety so that the children could return to his care." Father's Br. p. 24.

[22] But even Father concedes his "slow progress toward sobriety was unfortunate" and that "the children needed stability . . . and they suffered due to . . . Father's inability to achieve full sobriety." *Id.* at 23. That suffering is well documented in the trial court's unchallenged findings.

[23] The trial court found the oldest child “is sad,” “acts like an adult,” “has self-harm and suicidal ideation,” and fears returning to Parents’ home. App. Vol. II p. 54. Her worries increased after contact with Parents. *Id.* The trial court found the second oldest child has “anxiety,” “struggles with the unknown,” and “needs resolution and permanency.” *Id.* The third child had been “disengaged,” the trial court found, but “has now come out of his shell” in foster care. *Id.*

[24] A trial court need not wait until a child’s physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Termination is appropriate “[w]hen the evidence shows that the emotional and physical development of a [CHINS] is threatened” *Id.* Here, Children cannot wait any longer for Father to correct his substance abuse and become the father they need and deserve. The evidence aptly supports the trial court’s conclusion that termination of Father’s parental rights was in Children’s best interests.

[25] Having found the evidence supports the trial court’s challenged conclusions, we affirm the trial court’s judgment terminating both Parents’ rights to their children.

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