

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of A.L. (Minor Child);

B.P. (Father) and B.L. (Mother),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

July 17, 2023

Court of Appeals Case No.
22A-JT-2795

Appeal from the Dearborn Circuit
Court

The Honorable James D.
Humphrey, Judge

Trial Court Cause No.
15C01-2205-JT-8

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] In this consolidated appeal, B.L. (“Mother”) and B.P. (“Father”) (collectively, “Parents”)¹ appeal the trial court’s termination of their parental rights to their son, A.P. (“the Child”). Parents argue that the trial court’s termination of their parental rights was clearly erroneous. We disagree and affirm.

Issue

- [2] Parents raise one issue on appeal, which we restate as whether the trial court’s termination of their parental rights was clearly erroneous.

Facts

- [3] The Child was born in June 2019 to Parents. The Child was born premature at thirty-four weeks. He weighed four pounds; had a cleft palate; and was drug-exposed to methamphetamine, amphetamine, and norfentanyl. When the Child was born, Mother tested positive for illegal drugs,² and Father was serving a

¹ Parents are unmarried and do not cohabit.

² DCS presented no evidence that Child’s premature birth and cleft palate were due to Mother’s use of illegal drugs.

home detention sentence for drug-related convictions. Additionally, Parents were “limited on baby supplies” Ex. Vol. I p. 25.

- [4] Based on the circumstances of the Child’s birth, the Department of Child Services (“DCS”) detained the Child on an emergency basis and, on July 2, 2019, filed a petition that alleged the Child was a child in need of services (“CHINS”). The next day, the Child was placed with M.M. (“Foster Mother”), where he remained throughout the proceedings.
- [5] On August 26, 2019, the trial court adjudicated the Child a CHINS. The trial court observed that “Mother has substance abuse issues, which impair[] her ability to care for the child” and that Father was “currently incarcerated . . . and is unable to care for the child.” *Id.* at 40.
- [6] The Child has significant medical needs due to the circumstances of his birth. When the Child was one-and-a-half years old, he saw Sarah Leder, a developmental therapist, because he was behind on his communication skills. The Child also currently sees or has seen specialists in the fields of feeding; gastrointestinal health; occupational therapy; speech therapy; developmental and behavioral pediatrics; ears, nose, and throat; genetics; cranio-facial; ophthalmology; audiology; urology; cardiology; pediatric dentistry; and plastic surgery. Additionally, the Child was on a wait list to see a specialist for sleeping difficulties.
- [7] Foster Mother takes the Child to approximately fourteen medical appointments each month, and the Child attended approximately 500 medical appointments

between his placement with Foster Mother and the termination hearings.

Foster Mother takes the first available appointment to avoid delays in the Child's care.

[8] The dispositional order and parental participation order in the CHINS case required Parents, in part, to obey the law, participate in services, and maintain stable income. Importantly, Parents were also ordered to “use best efforts” to attend the Child's medical appointments. Ex. Vol. I p. 99. Foster Mother initially emailed Parents at the beginning of every month with a schedule of the Child's upcoming appointments. At some point, Foster Mother began emailing Parents each time she scheduled a new appointment. Mother, however, attended “[a]pproximately less than ten” of the Child's medical appointments. Tr. Vol. II p. 72. At one point, Mother requested that Foster Mother no longer attend the Child's occupational therapy appointments so that Mother could spend time with the Child; however, Mother failed to attend many of those appointments. Father, meanwhile, did not attend any of the Child's medical appointments.

[9] Mother also struggled to keep her home in a safe and sanitary condition for the Child; Mother used visitation and casework time to attend to unrelated matters; and Mother relied heavily on caseworkers during visits with the Child. Specifically, the Child had access to cigarette butts, an ashtray, and a “hot candle” in Mother's home, and Mother left the Child “unattended poolside a few times . . . ,” all of which required caseworkers to intervene to protect the Child. *Id.* at 208.

- [10] Additionally, Mother pleaded guilty to several offenses, including possession of methamphetamine in 2019 and 2021. Mother was incarcerated for several periods of time for those offenses, which hindered her ability to participate in services and visit with the Child. After her release, Mother's participation in casework and visitations was inconsistent.
- [11] Father, meanwhile, was incarcerated for most of the Child's life. Father was charged with several new offenses after the CHINS adjudication, including charges for maintaining a common nuisance, a gaming offense, trespass, and battery. Largely due to his incarceration and the Covid-19 pandemic, Father participated in virtual visits with the Child but has had few in-person visits with the Child.
- [12] Father was also required to participate in a Fatherhood Engagement program, in which he participated while incarcerated, but his participation was "very sporadic" during periods when he was released. Tr. Vol. I p. 52. Additionally, at one point during his incarceration, Father was placed in solitary confinement, during which period he was unable to participate in services or visits. Father did not successfully complete the Fatherhood Engagement program.
- [13] On May 27, 2022, DCS filed a petition to terminate Parents' parental rights to the Child. The trial court held hearings on the termination petition in August and September 2022. DCS explained that, although Mother's illegal drug use had been resolved, DCS remained concerned that, despite the orders in the

CHINS case and repeated urging by DCS, Mother failed to attend a majority of the Child's medical appointments and did not demonstrate the ability to properly supervise and care for the Child during visits. DCS was also concerned with Father's pattern of incarceration. Accordingly, DCS caseworkers testified that Parents had not demonstrated the ability to manage the Child's medical needs or properly care for and supervise the Child.

[14] Foster Mother testified regarding her efforts to manage the Child's medical needs and Mother's lack of attendance at the Child's medical appointments. Foster Mother further testified that the Child will need specialized medical care for years to come. Foster Mother plans to adopt the Child if Parents' parental rights are terminated.

[15] Ms. Leder, the Child's former speech therapist, testified that the Child was placed with a different family for two days while Foster Mother had surgery and that the Child's communication skills regressed during that time period. Family Case Manager Isabelle Worley testified that the Child's communication skills "at times" regress when he visits with Mother. *Id.* at 137.

[16] Mother testified that she struggles to attend the Child's appointments due to conflicts with her work schedule, lack of transportation, and her own medical needs, which included two high-risk pregnancies. Mother admitted that another one of her children was removed from her care, in part, because Mother "medically neglected" the child. *Id.* at 74. Father testified that he anticipated he would be released from incarceration in January 2023.

[17] On October 28, 2022, the trial court issued findings of fact and conclusions thereon. The trial court found that “Father is currently incarcerated and has been incarcerated through this case” and that Mother “has a history of losing custody of her children and not meeting their medical needs.” Appellant’s App. Vol. II p. 92. The trial court further found that “Mother has failed to ensure that the child’s medical needs would be met if he were placed in her care” and that Parents failed to demonstrate “that they are stable and would be able to provide a safe, stable, and nurturing home environment for [the Child].” *Id.*

[18] The trial court concluded that there was a reasonable probability that the conditions that resulted in the Child’s removal would not be remedied; there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Child; termination was in the best interests of the Child; and DCS had a satisfactory plan for the care and treatment of the Child, namely, adoption. Accordingly, the trial court terminated Parents’ parental rights to the Child. Parents now appeal.

Discussion and Decision³

[19] Parents argue that the trial court’s termination of their parental rights to the Child was clearly erroneous. We disagree.

³ Parents do not challenge the trial court’s findings of fact. Parents, therefore, have waived any challenge to those findings and we accept those findings as true. *In re C.C.*, 170 N.E.3d 669, 675 (citing *In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019)).

[20] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dep't of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental rights are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[21] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.⁴ Here, the

⁴ Indiana Code Section 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

trial court did enter findings of fact and conclusions thereon in granting DCS's petition to terminate Parents' parental rights. We affirm a trial court's termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the trial court's judgment. *Id.*

[22] Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). Here, DCS alleged and the trial court determined that there was a reasonable probability that the conditions that resulted in the Child’s removal would not be remedied; there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Child; termination was in the best interests of the Child; and DCS had a satisfactory plan for the care and treatment of the Child.

I. Remedy of Conditions that Resulted in Removal

[23] Parents challenge the trial court’s conclusion that 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.”⁵

⁵ Parents also argue that there was no reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Child. Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, the DCS was required to demonstrate by clear and convincing evidence of a reasonable probability that *either*: (1) the conditions that resulted in the Child’s removal or the reasons for placement outside the home of the parents will not be remedied, or (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child. *See, e.g., Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 n.5 (Ind. 2005). The trial court here found a reasonable probability that the conditions that resulted in the Child’s removal or reasons for placement outside the home of the Parents will not be remedied, and there is sufficient evidence to support that conclusion. Accordingly, we do not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Child.

I.C. § 31-35-2-4(b)(2). “In determining whether ‘the conditions that resulted in the [Child’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “First, we identify the conditions that led to removal; and second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake Cnty. Off. of Fam. and Child.*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “Requiring 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.” *Id.*

[24] Here, the Child was removed because he was born premature, drug-exposed, and with a cleft palate; Mother was using illegal drugs; Father was incarcerated on drug-related charges; and Parents had limited supplies on hand to care for the Child. In other words, Parents were not equipped to care for the Child.

[25] The Child was subsequently placed with Foster Mother, who takes the Child to approximately fourteen medical appointments every month to attend to the Child’s significant medical needs. Mother has attended approximately less than ten of the Child’s medical appointments despite court orders requiring her best efforts to attend those appointments and DCS’s repeated urging of the

importance of Mother's attendance. *See In re A.S.*, 905 N.E.2d 47, 50 (Ind. Ct. App. 2009) (affirming termination of mother's parental rights based, in part, on mother's "neglect of [her] children's medical needs" by failing to fill prescriptions and not taking the children to medical appointments). Strikingly, Mother failed to attend many of the Child's occupational therapy appointments even after she requested that Foster Mother not attend those appointments so Mother could spend time with the Child. DCS was concerned that the Child's development would regress if Mother failed to take him to his medical appointments, and Mother admitted that another one of her children was removed from her care because Mother was unable to meet that child's medical needs.

[26] Mother argues that the conditions that resulted in the Child's removal were remedied because she was sober by the time the trial court held the termination proceedings.⁶ The Child, however, has significant medical needs, and Mother did not attend the vast majority of the Child's medical appointments, despite court orders requiring her best efforts to attend those appointments. *See In re K.T.*, 137 N.E.3d 317, 327 (Ind. Ct. App. 2019) ("[A] court may consider not only the basis for a child's initial removal from the parent's care, but also any

⁶ Mother also argues that the trial court should have assigned greater weight to the complications presented by Mother's high-risk pregnancies and that the trial court should have discredited Foster Mother's testimony based on Foster Mother's intent to adopt the Child. The trial court, however, was in the best position to weigh the evidence and determine the witnesses' credibility, and we will not second-guess those determinations on appeal.

reasons for a child’s continued placement away from the parent.’” (quoting *In re D.K.*, 968 N.E.2d 792, 798 (Ind. Ct. App. 2012))). Mother’s failure to attend to the Child’s medical needs is especially concerning given the fact that Mother neglected the medical needs of another one of her children, leading to the removal of that child from her care.

[27] Mother further argues that she was “set up to fail” because she had no control over the scheduling of the Child’s medical appointments and because she was unable to take time off of work to attend those appointments. Mother’s Br. p. 17. Mother, however, was given notice often weeks in advance of the Child’s medical appointments.

[28] As for Father, he committed additional offenses after the CHINS adjudication and was largely unable to visit with the Child in person due to his repeated bouts of incarceration. *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022) (“The ‘trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.’” (quoting *K.T.K.*, 989 N.E.2d at 1231)), *trans. denied*. Father remained incarcerated at the time of the termination hearings.

[29] Father argues that he expected to be released in January 2023 and that, “[o]nce his incarceration was resolved, there was no evidence that Father would be unable to provide for the Child in the future.” Father’s Br. p. 16. Father, however, has been incarcerated for most of the Child’s life, and as a result, lost the opportunity to develop a strong bond with the Child in person. *See K.T.K.*,

989 N.E.2d at 1235-36 (“Individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.”). Further, even during periods when he was released from incarceration, Father inconsistently participated in services and did not attend any of the Child’s medical appointments.

[30] Given Parents’ habitual conduct, the trial court did not clearly err by finding that Parents would be unable to meet the Child’s medical needs. Accordingly, the trial court did not clearly err by finding that the conditions that resulted in the Child’s removal or continued placement outside the Parents’ home were unlikely to be remedied.

II. Best Interests

[31] Parents next challenge the trial court’s conclusion that termination of their parental rights was in the Child’s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Ma.H.*, 134 N.E.3d at 49. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.*

[32] Here, the Child has lived all but a few days of his life with Foster Mother, who attends to the Child's significant medical needs. As we have explained, neither Mother nor Father have demonstrated that they would be able to meet the Child's medical needs. Additionally, the Child's development regresses when he is not in Foster Mother's care.

[33] Furthermore, Mother used visitation time to attend to unrelated matters; relied heavily on caseworkers during visits; allowed the Child to access dangerous items in her home, including cigarette butts, an ashtray, and a hot candle; and left the child unattended near a pool. Meanwhile, Father participated in services while incarcerated, but his participation was sporadic during periods when he was released, and he failed to complete the Fatherhood Engagement program.

[34] Parents essentially argue that the Child's interest in permanency does not require the termination of their parental rights. Parents are correct that "a need for permanency, alone, is not a sufficient basis for terminating parental rights." *In re A.S.*, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014), *trans. denied*. Here, however, the Child's need for permanency was not the sole basis for terminating Parents' rights. Rather, over approximately three years, Parents have failed to demonstrate that they would be able to meet the Child's significant medical needs or properly care for and supervise the Child. The trial court's findings of fact support its conclusion that terminating Parents' rights to the Child was in the Child's best interests, and we cannot say that conclusion is clearly erroneous.

Conclusion

[35] The trial court's termination of Parents' parental rights was not clearly erroneous. Accordingly, we affirm.

[36] Affirmed.

Bailey, J., and Kenworthy, J., concur.