

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

D.B. (Minor Child),

and

J.M.M.B (Mother)

and

L.W.B. (Father),

Appellants-Respondents,

v.

December 20, 2022

Court of Appeals Case No.
22A-JT-1091

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory
Coy, Judge

Trial Court Cause No.
78C01-2110-JT-6

Indiana Department of Child
Services,
Appellee-Petitioner.

Mathias, Judge.

[1] J.M.M.B. (“Mother”) and L.W.B. (“Father”) (collectively, “Parents”) appeal the trial court’s termination of their parental rights over their minor child, D.B. (“Child”). Parents raise two issues for our review, which we restate as the following dispositive issues:

1. Whether the trial court’s conclusion that the reasons for Child’s removal from Parents’ care is not likely to be remedied is clearly erroneous.

2. Whether the trial court’s conclusion that the termination of the parent-child relationship is in Child’s best interests is clearly erroneous.

[2] We affirm.

Facts and Procedural History

[3] Mother has had ten children, including Child, and Father is the biological father of nine of those children. All of those children have been removed from

Parents' care. Mother has a Massachusetts sex-offense conviction and an Indiana animal-cruelty conviction. Mother and Father are married and share a home.

- [4] In July 2020, Mother gave birth to Child. Child's meconium tested positive for amphetamine, methamphetamine, an opiate, and THC. The Indiana Department of Child Services ("DCS") petitioned for Child's removal from Parents' care, which petition the trial court granted. In December, the trial court adjudicated Child to be a Child in Need of Services ("CHINS").
- [5] During the ensuing CHINS proceedings, Mother repeatedly tested positive for methamphetamine, amphetamine, and THC. In early 2021, she was offered inpatient substance abuse treatment, but she refused to participate. Father had various health issues and worked a difficult schedule, and he admitted that, because of those concerns, Mother would be Child's primary care giver. He did not believe Mother used illicit substances or had a substance-abuse issue.
- [6] In October 2021, DCS filed a petition for the termination of Parents' parental rights over Child. Thereafter, Mother was incarcerated in Indiana and then in Kentucky for failing to register as a sex offender. Mother is currently on probation.
- [7] Following a fact-finding hearing on DCS's petition, the trial court found that the reasons that resulted in Child's removal from Parents' care were not likely to be remedied. The court also found that termination of Parents' parental

rights over Child was in Child's best interests. The court then terminated Parents' parental rights over Child. This appeal ensued.

Standard of Review

- [8] 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.*
- [9] 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; 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, we will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[10] 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). We need only discuss two of those elements in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside Parents' home will not be remedied, and (2) whether termination of Parents' parental rights was in Child's best interests.¹ *I.C. § 31-35-2-4(b)(2)(B)(i) & (C)*.

[11] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child's very survival. *Bester*, 839 N.E.2d at 148. 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)*.

1. Reasons for Child's Removal

[12] We initially address the Parents' argument that DCS failed to prove that there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside of their home will not be remedied. Consideration

¹ DCS need only prove one of the elements listed in *Indiana Code* subsection 31-35-2-4(b)(2)(B). Thus, given our disposition as to the conditions that resulted in Child's removal, we need not address Parents' additional argument under the "threat" prong enumerated in *subsection 31-35-2-4(b)(2)(B)(ii)*.

of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[13] Here, Child was removed from Parents' care after Child's meconium tested positive for amphetamine, methamphetamine, an opiate, and THC. And neither Mother nor Father has remedied Child's likely exposure to illicit substances. Mother failed multiple drug screens throughout the underlying proceedings, including one just a few days before the fact-finding hearing on DCS's termination petition. She did not participate in inpatient rehabilitation services when they were first offered, instead only participating in treatment after DCS had filed its petition to terminate Parents' parental rights. And Father denies Mother's substance-abuse issues while also admitting that Mother would be Child's primary caregiver in the Parents' home.

[14] Still, Mother asserts on appeal that the trial court's conclusion that the conditions that resulted in Child's removal will not be remedied is clearly

erroneous because she did make some progress with services, because she was not visibly intoxicated during services, and because she testified that the positive drug screens were false positives caused by over-the-counter medicines. Similarly, Father asserts that the trial court's conclusion is clearly erroneous because the conditions within the home had improved such that the home "met the minimum standards for fitness and habitability" and Child's visits had progressed to being in-home visits. Father's Br. at 14. Father also asserts that his ability to parent and relationship with Child had improved.

[15] But Parents' arguments on appeal simply seek to have this Court reweigh the evidence, which we will not do. The trial court's finding that the conditions that resulted in Child's removal will not be remedied are supported by the record. We therefore affirm the trial court's judgment on this issue.

2. Child's Best Interests

[16] Parents also argue on appeal that termination of their parental rights is not in Child's best interests. A court's consideration of whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *E.M.*, 4 N.E.3d at 647. When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009).

Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648.

[17] Testimony from both the case manager and an advocate for the child, combined with evidence that there is a reasonable probability that the reasons for a child’s removal are not likely to be remedied, has regularly been found to be sufficient to support a trial court’s determination that termination is in a child’s best interest. *See A.D.S.*, 987 N.E.2d at 1158-59. Here, both the family case manager and Child’s guardian ad litem testified that termination of Parents’ parental rights was in Child’s best interests. And Parents’ arguments to the contrary on this issue again simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s conclusion that termination of Parents’ parental rights is in Child’s best interests is supported by the record, and we therefore affirm the trial court’s judgment.

Conclusion

[18] For all of the above-stated reasons, we affirm the trial court’s termination of Parents’ parental rights over Child.

[19] Affirmed.

Robb, J., and Foley, J., concur.