

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: D.B. (Minor Child)

B.B. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner

February 2, 2024

Court of Appeals Case No.
23A-JT-1784

Appeal from the Vigo Circuit
Court

The Honorable Daniel W. Kelly,
Magistrate

Trial Court Cause No.
84C01-2203-JT-259

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

- [1] B.B. (Mother) appeals the termination of her parental rights over D.B. (Child).¹ The Indiana Department of Child Services (DCS) petitioned to terminate Mother’s parental rights after she failed for years to substantially complete required reunification services and also repeatedly tested positive for illegal drugs. Rejecting Mother’s claim that insufficient evidence supports the termination of her parental rights, we affirm.

Facts

- [2] Child tested positive for THC exposure at his birth in late 2016. DCS, which was already involved in a children in need of services (CHINS) proceeding with Mother’s two older children, entered into an informal adjustment with Mother to protect Child.² Although the informal adjustment ended in early 2017, DCS petitioned later that year to adjudicate Child a CHINS. DCS’s concerns arose over allegations of drug use and domestic violence. But this first petition was dismissed after six months when Mother demonstrated she had remedied the underlying problems.
- [3] Soon after that dismissal, DCS received a new report alleging Child was neglected and that Mother was impaired and facing eviction. When a DCS case

¹ Child’s biological father has consented to Child’s adoption and does not participate in this appeal.

² Informal adjustments are an agreement between DCS and a family in which the family voluntarily agrees to participate in services to avoid a formal CHINS petition. *See generally K.B. v. Ind. Dep’t. of Child Servs.*, 24 N.E.3d 997, 1005 (Ind. Ct. App. 2015).

manager investigated the report, Mother appeared to be impaired, and her home contained drug paraphernalia within Child's reach. A drug test Mother took at the scene came back invalid. The case manager also observed that Child had a large "head to toe" rash and had "large scabbing and open sores around his knees, feet, and ankles." Exhs. Vol. IV, p. 60. Mother explained Child's condition as eczema and that she was not applying his prescription ointment because it did not work. Mother also admitted she would be evicted at the end of the month.

[4] DCS removed Child and took him to the hospital for treatment. DCS quickly petitioned the trial court to declare Child a CHINS. At the emergency detention hearing, the trial court authorized Child's continued removal and ordered Mother to submit to random drug screens. After a later factfinding hearing, the trial court adjudicated Child a CHINS "[d]ue to the gross medical neglect of the Child" and the apparent "lack of stable housing, lack of stable employment" and an "unwillingness" by Mother to fix these problems. *Id.* at 83-84.

[5] The trial court ordered Mother to maintain stable housing, refrain from drugs and alcohol, and complete a substance use assessment. Mother also needed to participate in all recommended treatment, complete random drug screens, participate in supervised visitations, and engage in individual therapy. Around this time, Mother tested positive for amphetamine and methamphetamine. Mother also completed a substance abuse assessment that found her unsuitable for treatment.

- [6] Mother's initial engagement with services was not promising. Her therapy provider canceled Mother's sessions over her refusal to engage and participate. Mother also "rarely participated in random drug screens" and did not consistently attend supervised visits with Child. Tr. Vol. II, pp. 63-64. Child became upset and "distraught" when Mother did not visit. *Id.* at 65.
- [7] Although Mother experienced multiple periods of substantial compliance, they did not last. Eventually, DCS moved to hold Mother in contempt for her refusal to engage in reunification services. The trial court did so, but Mother still only sporadically completed the required services, and ultimately, she fell out of compliance. Mother also continued testing positive for drugs or alcohol. Mother tested positive five times for methamphetamine and three times for cocaine. Mother went from living with Father to a new boyfriend who was arrested on drug charges while living with Mother. Mother's attendance at supervised visits fared no better, with Mother often canceling or failing to appear.
- [8] In April 2022, Mother moved into her current residence, which she shares with Child's maternal grandmother and which DCS found appropriate. By the time of the termination hearing in March and April 2023, Mother had not submitted a random drug screen for several months. The service providers unanimously agreed that Mother continued to exhibit problematic behavior and that termination of Mother's parental rights was in Child's best interests. For more than two years, Child had been placed with foster parents who wished to adopt

him. The court ultimately terminated Mother's parental rights. Mother appeals that judgment.

Discussion and Decision

[9] Mother generally challenges the termination of her parental rights by alleging DCS did not adequately prove its case. To terminate parental rights, the State must prove that the parent is unable or unwilling to meet her parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). DCS must prove these requirements:

(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.

Ind. Code § 31-35-2-4(b)(2). If the trial court finds these allegations are true by clear and convincing evidence, it must terminate the parent-child relationship.

Ind. Code §§ 31-35-2-8, -37-14-2. When reviewing a trial court's decision to terminate parental rights, we do not reweigh evidence or judge witness

credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). The judgment will be set aside only if clearly erroneous. *Id.*

[10] Mother contends DCS did not present clear and convincing evidence as to the requirements of Indiana Code §§ 31-35-2-4(b)(2)(B)(i), -4(b)(2)(B)(ii), and -4(b)(2)(C). Finding the evidence sufficient, we affirm the trial court’s judgment.

I. A Reasonable Probability Exists that Mother Will Fail to Remedy Conditions that Lead to Child’s Removal³

[11] Our analysis here requires two steps. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we identify the relevant conditions for removal, considering both the initial reasons but also the reasons for continued placement away from Mother. *In re A.I.*, 825 N.E.2d 798, 807 (Ind. Ct. App. 2005). Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *In re E.M.*, 4 N.E.3d at 643. Given its firsthand view as the factfinder, the trial court is entrusted with determining the “delicate balance” of a parent’s fitness at the time of the termination hearing. *Id.*

[12] Child was originally removed from Mother’s care for several reasons. These included: allegations of domestic violence, Mother’s drug use—involving drug paraphernalia within Child’s reach—and Mother’s general inability to be an

³ Although Mother also challenges the trial court’s conclusion that there is a reasonable probability that Children’s well-being will be harmed if Mother’s parental rights continue, we need not address this argument because the termination statute is written in the disjunctive. *In re C.S.*, 190 N.E.3d 434, 438 (Ind. Ct. App. 2022).

effective provider for Child, evidenced by Child's rampant eczema and housing instability.

[13] The record supports the trial court's conclusion that Mother is not likely to remedy these conditions. Mother's drug use continued throughout the proceedings, as her many positive drug screens showed.⁴ Mother's social worker testified that she had a "high probability" of continued substance abuse. Tr. Vol. II, p. 45. Despite this, Mother consistently refused to seek help for her addiction and believed that she did not need any assistance. This led her care providers to conclude that the primary obstacle to reunification was Mother's "lack of insight and how it would affect her ability to parent and keep [Child] safe." *Id.* at 50.

[14] Further, Mother has a substantial history of noncompliance with services over the nearly six years these proceedings have dragged on. Mother should be commended for the recent steps the record shows she has taken to improve her personal life, including obtaining stable housing and employment. Yet the universal opinion of the case workers and medical professionals who worked with Mother was that she is still unready and unfit to care for Child. *In re L.R.*, 79 N.E.3d 985, 992 (Ind. Ct. App. 2017) (finding parent's recent stretch of compliance with services did not outweigh lengthy history of noncompliance).

⁴ Mother quibbles with the results of several of the drug screens, contending they were either "negative" or "inconclusive." Appellant's Br., p. 16. Yet even if these complaints are valid, the record is still replete with many unchallenged, positive drug screens.

Mother failed to embrace her many opportunities for reunification services over the six years of Court supervision.

[15] In sum, Mother does not show that the trial court clearly erred in finding that a reasonable probability exists she will not remedy the conditions that led to Child's removal.

II. Termination is in Children's Best Interests

[16] Whether the termination of parental rights is in Child's best interests is determined by considering the "totality of the evidence." *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. Ct. App. 2019). "In doing so, the trial court must subordinate the interests of the parents to those of the child involved." *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). A child's need for permanency is a "central" consideration. *Matter of Ma.H.*, 134 N.E.3d at 49. Testimony from the involved service providers "may support a finding that termination is in the child's best interests." *In re A.K.*, 924 N.E.2d at 224.

[17] Mother has not proven that she can be an effective, permanent provider to Child. As illustrated above, Mother's record of engagement with reunification services is poor. Although the evidence shows that Mother's visits with Child went well, her record of canceling, or simply not appearing, undercuts the positive weight of the visits. In addition, Mother tested positive for drugs throughout the proceedings and expressed disdain for further participation in reunification services. Child is also thriving in his current foster placement with

relatives who wish to adopt him. And it is the uniform opinion of the service providers that termination is in Child's best interests.

[18] Mother's arguments to the contrary are not persuasive. Mother repeats her claim that she can be an effective caregiver to Child because she is now drug free, has stable employment and housing, and has moved on from her relationship involving domestic violence. But DCS presented substantial evidence to the contrary. The trial court acted within its discretion as factfinder to discount Mother's recent successes in view of her established record of intermittent or noncompliance with reunification services. *See Matter of G.M.*, 71 N.E.3d 898, 906 (Ind. Ct. App. 2017) (“[Parent’s] arguments are invitations for us to reweigh the evidence . . . which we cannot do.”).

[19] For these reasons, Mother has not persuaded us that the trial court clearly erred in terminating her parental rights.

[20] Affirmed.

Mathias, J., and Tavitas, J., concur.