

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

H.K. (Minor Child),

and

H.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

July 23, 2021

Court of Appeals Case No.
21A-JT-319

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2008-JT-114

Weissmann, Judge.

[1] Having already lost her parental rights as to two older children, H.F. (Mother) overdosed on heroin and nearly died about a month after the birth of a third child, H.K. The Indiana Department of Child Services (DCS) removed the infant and ultimately sought termination of Mother's parental rights. Because Mother continued to use drugs and failed to complete treatment and other services required to reunite with H.K., the trial court terminated her parental rights. We reject Mother's contention that the evidence does not support the termination and, therefore, affirm the trial court's judgment.

Facts

[2] Fourteen years ago, Mother relinquished her first child with a family that ultimately adopted the child. Mother then lost her parental rights as to a second child in 2018 due to Mother's drug use and unstable housing. Mother gave birth to H.K. in January 2019. H.K.'s father has never been identified or involved with H.K. When DCS investigated a report that Mother was smoking crack cocaine shortly after H.K.'s birth, DCS and Mother agreed to an informal adjustment with the goal of keeping H.K. with Mother. In February 2019, Mother overdosed on heroin and had to be revived with Narcan. DCS could not locate H.K. until mid-April but immediately removed her from Mother's home and petitioned for a finding that H.K. was a child in need of services.

[3] During the next three months, Mother attended only 18 of 30 scheduled visitations with H.K. Mother appeared under the influence of drugs and nearly dropped the child during one visit. The trial court halted Mother's visits with

H.K. in July 2019, conditioning reinstatement on her compliance with the case plan for 30 days. Mother never achieved that compliance and, therefore, never saw H.K. again.

- [4] The trial court found H.K. to be a child in need of services in August 2019 at a hearing at which Mother failed to appear. The court ordered Mother to undergo inpatient drug treatment followed by an intensive outpatient program. Once Mother had been sober for 30 days, she was to complete a parenting assessment and clinical assessment, follow all resulting recommendations, and submit to random urine screens.
- [5] Mother failed to remain sober. Although Mother often did not submit to drug screens as required, she routinely tested positive when she did. DCS ultimately filed a petition to terminate her parental rights, which the trial court granted after hearing.

Discussion and Decision

- [6] Mother claims the evidence is insufficient to support the judgment terminating her parental rights. Termination is proper only when DCS alleges and proves by clear and convincing evidence:

(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.

(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); *see also* Ind. Code § 31-37-14-2.

- [7] 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). Applying a two-tiered standard of review, we determine whether the evidence supports the findings before deciding whether the findings support the judgment. *Id.* We set aside the judgment only if it is clearly erroneous. *Id.*
- [8] Mother does not challenge the trial court's findings. Instead, she contends clear and convincing evidence does not support three of the trial court's conclusions: 1) a reasonable probability that the conditions that resulted in H.K.'s removal or reasons for the placement outside Mother's home will not be remedied; 2) continuation of the parent-child relationship poses a threat to H.K.'s well-being; and 3) termination of Mother's parental rights is in H.K.'s best interests. In a single argument addressing all three challenged conclusions, Mother argues that the trial court reached those erroneous conclusions only by failing to consider how her life had changed since H.K.'s removal. Mother claims she could care for H.K. appropriately by the time of the termination hearing because she had resolved her patterns of unemployment, substance abuse, and unstable housing.
- [9] To determine whether conditions justifying a child's placement outside the parent's home likely will not be remedied, the trial court must judge a parent's

fitness to care for her child at the time of the termination hearing and take into consideration evidence of changed conditions. *In re D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. However, the trial court also must evaluate the parent's habitual patterns of conduct to ascertain the probability that the child will suffer future neglect or deprivations. *Id.*

[10] Habitual patterns of conduct and changed conditions also are important in determining whether continuation of the parent-child relationship poses a threat to the child. *See, e.g., In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). The juvenile court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Termination is proper when the evidence shows the child's emotional and physical development is threatened. *Id.*

[11] Evidence of habitual patterns and current conditions is relevant to the question of whether termination of parental rights is in the child's best interests, as the court is required to look at the totality of the evidence in making that determination. *See Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans denied*. This evaluation requires subordination of the parent's interests to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

- [12] The record is clear that Mother did little to change the circumstances that prompted both H.K.'s initial and continued removal. Mother does not dispute that she continued to use drugs until at least November 2020. She claims she then had an epiphany which ended her craving for drugs. Yet, she readily admitted she continued to smoke marijuana until a week before the termination hearing. Tr. Vol. II, p. 61. Her drug test results also show she tested positive for cocaine and methadone in December 2020 and January 2021.
- [13] Mother has not had steady employment at any time since H.K.'s removal. Mother is enrolled in a massage school and has earned a small amount of money through occasional lawn work and massages. The record does not reveal any existing source of income sufficient to meet H.K.'s needs.
- [14] Finally, Mother continues to lack stable housing. She argues on appeal that she has lived in the same home since the CHINS petition was filed—that is, the home of a male friend where Mother suffered her near-fatal overdose in February 2019. Tr. Vol. II, p. 28. However, Mother testified at the termination hearing that she was not staying at that home anymore. Tr. Vol. II, p. 53. DCS presented evidence of Mother's reports during the last two years of living in a number of different places, including jail, Chicago, and Lake County. Tr. Vol. II, p. 24.
- [15] Although Mother professes to have changed, her actions do not support her words. Mother has abused drugs since she was a teenager and nearly died after a heroin overdose shortly after H.K.'s birth. When Mother was willing to

submit to court-ordered drug screens, she tested positive for drugs such as heroin, cocaine, methadone, and THC. She appeared under the influence of drugs when she visited with H.K. early in the CHINS proceedings, leading to suspension of her visits. And she was still using drugs just days before the termination hearing 1½ years later.

[16] Despite knowing that she was risking the loss of a third child to the State, Mother declined numerous opportunities for substance abuse treatment. She refused to comply with other parts of the trial court's orders, as well as services aimed at reunification. She has been arrested and jailed multiple times on drug-related charges during the last three years. Those who "pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State OFC*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*.

[17] Due to Mother's ongoing drug abuse and concerns over H.K.'s safety in Mother's presence, Mother has not even seen two-year-old H.K. for 1½ years. The evidence need not rule out all possibilities of change by the parent; instead, it need only establish a reasonable probability that the parent's behavior will not change. *In re B.J.*, 879 N.E.2d 7, 18-19 (Ind. Ct. App. 2008), *trans. denied*. DCS met that burden in this case.

[18] Clear and convincing evidence supports the trial court's finding that Mother is an addict in denial who is both a threat to H.K.'s safety and unlikely to remedy the conditions that prompted H.K.'s removal and continuing placement in

foster care. App. Vol. II, pp. 51-52. Clear and convincing evidence also supports the trial court's conclusion that termination of Mother's parental rights is in H.K.'s best interests. *Id.* at 52.

[19] The judgment of the trial court is affirmed.

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