MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

M.N. and J.D. (Minor Children)

And

A.N. (Mother) and J.N. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

August 19, 2022

Court of Appeals Case No. 22A-JT-556

Appeal from the Benton Circuit Court

The Honorable John Wright, Judge

Trial Court Cause No. 04C01-2103-JT-14 & 04C01-2103-JT-15

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellants-Respondents, A.N. (Mother) and J.N. (Father) (collectively, Parents), jointly appeal the trial court's termination of their parental rights to the minor children, M.N. and J.D. (collectively, Children).

[2] We affirm.

ISSUE

[3] Parents present this court with two issues on appeal, which we consolidate and restate as: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

FACTS AND PROCEDURAL HISTORY

[4] Mother is the biological mother to J.D., born on April 2, 2020, and M.N., born on November 9, 2015. J.D.'s biological father is W.D., who voluntarily relinquished his parental rights and M.N.'s biological father is Father. DCS first became involved with the family in 2016 due to allegations that Father had physically abused his minor child, I.N.[1], and that Parents left Children home alone without supervision. DCS initiated a Child in Need of Services (CHINS)

[1] I.N. is not part of these proceedings.

petition and the State filed criminal charges against Father for battery on a child and neglect of a dependent for which he was sentenced to five years incarceration, with a portion served on community corrections. Although Children remained in Mother's care, DCS removed them on July 6, 2016, when Mother was found passed out in a vehicle after operating a motor vehicle while intoxicated with Children inside. When Father arrived at the hospital to pick up Children, he was also found to be intoxicated. On October 16, 2016, the trial court adjudicated Children to be CHINS and, pursuant to a dispositional order, Parents were ordered to complete parenting education, individual outpatient drug treatment, character restoration, relapse prevention, random drug screening, and supervised visitation. Mother continued to test positive for illegal substances and, on October 22, 2018, she pled guilty to possession of a narcotic drug as a felony. DCS closed the CHINS case when Father's brother (Uncle) was appointed as Children's guardian.

[5] On December 23, 2019, DCS became involved with the family again when Uncle was arrested for, and subsequently charged with, possession of methamphetamine and other illegal substances. DCS removed Children and, on December 26, 2019, filed two separate CHINS petitions, alleging that Children were CHINS due to Uncle's arrest and due to Parents' instability and history of drug abuse. The trial court dissolved the guardianship because of the drug charges against Uncle and dismissed him from the CHINS proceedings. On May 6, 2020, the trial court adjudicated Children to be CHINS because of Parents' history of substance abuse and on June 3, 2020, the trial court issued

its dispositional order in which it required Parents to participate in random drug screening, outpatient drug treatment, and supervised visitation.

[6] From March 2020 to April 2021, Parents submitted to random drug screens. Mother tested positive for methamphetamine and amphetamine in twenty-two of the twenty-seven drug screens, and Father tested positive for methamphetamine and amphetamine in twenty-five of the thirty-two drug screens. Father also tested positive for THC in eleven of the twenty-five positive drug screens. Father admitted to being "addicted to not being sober," and to using illegal substances to deal with past traumas. (Transcript Vol. II, p. 38).

[7] In February 2020, Parents started to participate in drug treatment with Christine Pirlot (Pirlot), a therapist with Family Focus. The therapy included individual therapy, focusing on drug abuse, and couples therapy, focusing on trust issues. Parents also participated in the Matrix Program, which consisted of thirty-two chapters, with one chapter covered each week. Although Parents participated in the program and completed it, Pirlot opined that Parents were unable to successfully apply what they had learned.

[8] Pirlot and DCS' family case manager (FCM) recommended inpatient drug treatment for Parents. While FCM provided contact information for the program and offered assistance in enrolling in inpatient treatment, Mother advised that she did not want to seek inpatient treatment but "wanted to do it on her own." (Tr. Vol. II, p. 28). Pirlot and FCM also discussed and

recommended outpatient treatment to Mother. On October 30, 2020, the State filed a petition to revoke Mother's probation stemming from her October 2018 possession charge. Mother turned herself in on the warrant so that she would be incarcerated and, therefore, unable to access drugs. Mother considered it to be a form of inpatient treatment. During her incarceration, which lasted from October 2020 through March 15, 2021, Mother continued to work with Pirlot. Mother made progress and felt ready to achieve sobriety upon her release. Pirlot and Mother discussed different ways Mother could maintain sobriety after being released from incarceration and Pirlot and FCM again recommended inpatient treatment for Mother.

[9] On March 3, 2021, the trial court, through a dispositional order in the CHINS proceeding, required Mother to participate in inpatient treatment, and Father was ordered to participate in intensive outpatient treatment. FCM offered Mother assistance in enrolling in inpatient treatment, transportation to the treatment center, and a visit with Children prior to entering inpatient treatment. The day after her release from incarceration, Mother contacted Pirlot and informed her that she was moving in with a friend. Four days after her release, Mother tested positive for methamphetamine. Mother tested positive again on April 1 and 13, 2021. She never enrolled in inpatient treatment.

[10] FCM and Pirlot recommended Father to enroll in outpatient treatment because he was employed and the sole source of income for the family. However, due to his continued substance abuse, inpatient treatment was also recommended for Father. Father participated in drug treatment until March 2021. After

Mother's release from incarceration, Father informed Pirlot that he had "reached closure" with Mother and would no longer need treatment. (Tr. Vol. II, p. 75). Father ceased all contact with Pirlot, did not participate in the intensive outpatient treatment ordered by the trial court, and he never successfully completed drug treatment. According to Father, "90 percent of the country gets high" and he failed to understand why his parental rights would be terminated "just because he gets high." (Appellant's App. Vol. II, p. 38).

[11] Following Mother's release from incarceration, Parents separated, and, by the time of the termination hearing, Mother was living with her boyfriend, who was serving a home detention sentence for possession of methamphetamine. Mother is employed, performing manual labor, and earning approximately $16.50 per hour. Father is self-employed, performing construction work and making hand-crafted signs. Father was previously employed by Rowe Truck Equipment, but he had been unable to work due to complications from a COVID-19 infection.

[12] During the CHINS proceedings, Parents were given supervised visits with Children and they participated consistently. DCS instituted a "progressive visitation plan," which would reward four consecutive negative drug screens with increased visitation. (Tr. Vol. II, p. 33). Neither parent ever had four consecutive negative drug screens.

[13] At the outset of the CHINS proceeding, DCS had placed Children with M.N.'s paternal grandparents, but the grandparents made it clear "that they were not a

permanency plan." (Tr. Vol. II, p. 39). At the time of the termination hearing, Children had been in their current foster placement for approximately eight months, starting in January 2021. Children are bonded with their foster parents and are thriving in their care. Foster parents are willing to adopt Children.

[14] On March 29, 2021, DCS filed the petitions to terminate Parents' rights to Children. On February 9, 2022, after a hearing, the trial court entered its decree, terminating Parents' parental rights The trial court concluded that there was a reasonable probability that the conditions which resulted in Children's removal and continued placement outside the home will not be remedied, there was a reasonable probability that the continuation of the parent-child relationship will pose a threat to Children's well-being, termination of parental rights was in Children's best interests, and there was a satisfactory plan for the care and treatment of Children, that being adoption.

[15] Parents now appeal. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[16] Parents jointly challenge the trial court's termination of their parental rights to Children; Mother contests the termination of her parental rights to J.D. and M.N., while Father contests the termination of his parental rights to M.N. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). "A

parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights "are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Id.* If "parents are unable or unwilling to meet their parental responsibilities," termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is "an 'extreme measure' and should only be utilized as a 'last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.'" *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[17] Indiana courts rely on a "deferential standard of review in cases concerning the termination of parental rights" due to the trial court's "unique position to assess the evidence." *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court's judgment, and we accord deference to the trial court's "opportunity to judge the credibility of the witnesses firsthand." *Id.*

II. *Termination of Parental Rights*

[18] To terminate a parent's rights to his or her child, DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
* * * *
(iii) The child has been removed from the parent and has been under the supervision of a local office . . . for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a [CHINS] . . . ;

(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 [CHINS];

(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). DCS must establish each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). "[C]lear and convincing evidence requires the existence of a fact to be highly probable." *Id.*

[19] It is well-established that "[a] trial court must judge a parent's fitness as of the time of the termination hearing and take into consideration evidence of changed conditions." *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent's substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent's failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. "[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation." *Stone*, 656 N.E.2d at 828. A trial court "need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship." *Id*. Furthermore, "[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." *K.T.K.*, 989 N.E.2d at 1230.

[20] We observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and "the trial court need only find one of the two elements by clear

and convincing evidence"[2]—either that (1) there is a reasonable probability that the conditions that resulted in Children's removal or the reasons for placement outside the home of Parents will not be remedied or (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Children. *K.E.,* 39 N.E.3d at 646 n.4. Here, the trial court concluded that DCS presented sufficient evidence under both prongs and Parents challenge the trial court's conclusion under both prongs.

Conditions for Removal

[21] The trial court adjudicated Children to be CHINS due to Parents' instability and history of drug abuse. To support reunification efforts, the trial court required Parents to participate in random drug screening, outpatient drug treatment, and supervised visitation.

[22] Although the trial court's dispositional order was entered on June 3, 2020, with the termination decree issued on February 9, 2022, neither Parent exhibited any conduct which could have negated the presumption that drug use still existed. From March 2020 to April 2021, Parents submitted to random drug screens. Mother tested positive for methamphetamine and amphetamine in twenty-two of the twenty-seven drug screens, and Father tested positive for the same illegal substances in twenty-five of the thirty-two drug screens. The positive screens

[2] The third prong of I.C. § 31-35-2-4(b)(2)(B)—"[t]he child has, on two (2) separate occasions, been adjudicated a [CHINS]"—is not applicable to the facts of this case.

reflect that, not only did Parents fail to achieve sobriety, they failed to make meaningful progress. Mother's longest period of negative drug tests was approximately six weeks from early March to late April 2020. Father's longest period of sobriety was approximately one month from September to October 2020. Although Parents participated and successfully completed the Matrix Program, they were unable to implement the techniques they learned and it is clear that drug abuse continues to be an habitual pattern for both Parents. Receiving services alone is not sufficient evidence to show that conditions have been remedied if the services do not result in the needed change, and if the parent does not acknowledge a need for change. *See In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570-71 (Ind. Ct. App. 2005).

[23] DCS offered every service available to Parents to help them achieve and maintain sobriety. Pirlot offered counseling services, with FCM offering help with enrollment in inpatient and outpatient treatment and transportation. Yet, Parents were unwilling to take advantage of these services. Mother preferred "to do it on her own," to the point where she chose incarceration as a form of inpatient treatment. (Tr. Vol. II, p. 28). Even though Mother maintained sobriety during her period of incarceration, Mother relapsed four days after being released. Father stopped treatment when he and Mother broke up because he was convinced that after "reaching closure" with Mother, he no longer needed treatment. (Tr. Vol. II, p. 75). Parents' argument that they were still "working the services" at the time the permanency plan changed is

unpersuasive since Parents consistently tested positive for illegal substances during the duration of the CHINS case, with Mother testing positive even after DCS filed its petition to terminate. (Appellants' Br. p. 12).

[24] "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." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Furthermore, "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang*, 861 N.E.2d at 372. Mindful of these guidelines, we note that the evidence presented shows clearly and convincingly that a reasonable probability exists that the conditions that led to Children's removal from Parents' care will not be remedied. At no point during the proceedings did Parents exhibit a turnaround in their behavior; rather, Parents' failure to engage in inpatient or outpatient treatment and continued substance abuse left the court with no measure to determine Parents' progress, their sobriety, or Children's safety in their care during the proceedings of the case. "[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification." *In re E.M.*, 4 N.E.3d at 648. Accordingly, the trial court was entitled to weigh the evidence as it found appropriate in the context of this case, and we affirm the trial court's disjunctive conclusion that a reasonable probability exists that the

conditions that resulted in Children's removal will not be remedied.[3] *See K.T.K.*, 989 N.E.2d at 1234.

CONCLUSION

[25] Based on the foregoing, we hold that the trial court did not erroneously terminate Parents' parental rights to Children.

[26] Affirmed.

[27] May, J. and Tavitas, J. concur

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[3] Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, and we affirmed the trial court's Order based on the fact that there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside the home of Parents will not be remedied, we will not address whether there was a reasonable probability that continuation of Parents' relationship with Children threatened Children's wellbeing.

Also, neither parent challenges on appeal the trial court's conclusion that termination of the parental rights are in Children's best interests and therefore, the argument is waived for our review. *See In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to make a cogent argument waives issue from appellate consideration), *trans. denied*.