

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of G.H. (Minor
Child) and
C.H. (Mother) and R.S. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

November 18, 2021

Court of Appeals Case No.
21A-JT-841

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2101-JT-9

Crone, Judge.

Case Summary

- [1] C.H. (Mother) and R.S. (Father) (collectively Parents) appeal the involuntary termination of their parental rights to their minor child, G.H. (Child). We affirm.

Facts and Procedural History

- [2] The relevant facts indicate that Mother and Father are parents of an older child, A.S., who was adjudicated a child in need of services (CHINS) and removed from their home in 2012 due to domestic violence that resulted in Mother's hospitalization and Father's incarceration. After failed attempts at services, Father's parental rights to A.S. were involuntarily terminated and Mother signed her consent for A.S.'s adoption.
- [3] Child was subsequently born to Parents on November 12, 2015. The Indiana Department of Child Services (DCS) again became involved with the family due to Mother's "marijuana use and instability in general." Tr. Vol. 2 at 7. Of specific concern was Mother's homelessness. Mother participated in a program of informal adjustment that was mainly focused on her mental health and securing stable housing; however, that program was eventually discharged as unsuccessful. DCS filed a CHINS petition on May 4, 2017, and Child was removed from the home and placed in foster care due to Mother's substance abuse, continued homelessness, and mental health issues. Mother admitted that Child was a CHINS and that "she could benefit from mental health services." Ex. Vol. 1 at 63. Father was incarcerated on multiple criminal

charges (armed robbery, strangulation, burglary with resisting arrest, and domestic violence) throughout the informal adjustment and at the time of Child's removal, so he was unavailable to aid with the care and treatment of Child. On June 13, 2017, the trial court found the allegations of the CHINS petition true and entered a dispositional order requiring both Parents to participate in multiple services to address their parenting deficiencies. Among other things, Parents were ordered to maintain suitable, safe, and stable housing, secure and maintain a legal and stable source of income, meet with medical/psychiatric personnel and take all prescribed medications, and successfully complete parenting classes.

[4] Over the next three-plus years, Parents participated to varying degrees in some ordered services but failed to make meaningful progress toward reunification with Child. Significantly, regarding the original reasons for Child's removal from the home, Parents wholly failed to address mental health issues or to secure long-term housing or income sufficient to provide Child with safety and stability. Moreover, new concerns arose regarding Child's well-being after allegations of domestic violence between Parents surfaced and service providers observed extreme volatility in Parents' relationship, which ultimately required Parents to visit separately with Child. Father was discharged unsuccessfully from at least one ordered service due to his hostile and violent behavior, which put the provider in fear for her physical safety. Providers also observed that Child suffered from extreme and destructive behavioral issues following visits with Mother and/or Father. Often after visits with either Parent, Child would

harm herself and attack and harm others. During the pendency of the CHINS proceeding, Parents had another child who was also removed from their care based upon many of the same concerns.

- [5] DCS filed its petition to terminate both Mother's and Father's parental rights to Child on January 21, 2021. A factfinding hearing was held on April 20, 2021. On May 3, 2021, the trial court entered its findings of fact and concluded that: (1) there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside the home will not be remedied by Mother or Father; (2) there is a reasonable probability that continuation of the parent-child relationship between both Parents and Child poses a threat to Child's well-being; (3) termination of the parent-child relationship between both Parents and Child is in Child's best interests; and (4) DCS has a satisfactory plan for Child's care and treatment, which is adoption. Accordingly, the trial court determined that DCS had proven the allegations of the petition to terminate by clear and convincing evidence and therefore terminated both Mother's and Father's parental rights. Parents now jointly appeal.

Discussion and Decision

- [6] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all

other reasonable efforts have failed.” *Id.* A petition for the involuntary termination of parental rights must allege in pertinent 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.

Ind. Code § 31-35-2-4(b)(2). DCS must prove that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[7] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to

the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. 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. at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

Clear and convincing evidence supports the trial court’s conclusion that there is a reasonable probability of unchanged conditions.

[8] Parents challenge the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal from and continued placement outside the home will not be remedied.¹ In determining whether there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to [his] placement and retention in foster care.” *Id.* Second, “we ‘determine whether

¹ Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Accordingly, we address only the evidence pertaining to 4(b)(2)(B)(ii).

there is a reasonable probability that those conditions will not be remedied.”
Id. (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “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 v. Starke Cnty. Off. of Family & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS “need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent’s behavior will not change.” *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[9] Here, Child was initially removed from Mother’s care primarily due to substance abuse, Mother’s inability to provide Child with suitable, safe, and stable housing, and Mother’s admission that she needed mental health services. Due to his incarceration at the time of removal, Father was also unable to provide Child with housing or necessary care. As this case has progressed, Child has continued to be placed outside both Parents’ care due to their longstanding and ongoing inability to maintain suitable housing and income, as

well as their continued failure to successfully address mental health concerns or to change their pattern of domestic violence.

[10] Regarding housing, although Parents had certain brief periods during the CHINS proceedings when they were able to maintain stable housing, they continually had periods of homelessness, followed by brief motel stays, followed by moving from place to place over the last three years. While the evidence indicates that Parents managed to obtain a two-bedroom apartment as of April 5, 2021, a mere two weeks before the termination hearing, the trial court was well within its discretion to give this recent development less evidentiary weight. *See E.M.*, 4 N.E.3d at 643. (in determining whether there is a reasonable probability of unchanged conditions, trial court must balance any recent improvements against parent’s “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.”).

[11] Regarding mental health, Father admits that he has bipolar disorder and Mother admits that she struggles with panic disorder, anxiety, and post-traumatic stress disorder. During the pendency of the CHINS proceeding, both Parents revealed to care providers that they were suffering from paranoid thought patterns. Reports indicate that Father exhibited delusional behavior and Mother was suicidal at times. The record indicates that although Parents did engage in some counseling and therapy services, they failed to fully participate or were unsuccessfully discharged from other mental health referrals and/or services and, as a result, they failed to make any significant progress in

successfully addressing their mental health issues. This pattern of unwillingness to deal with these issues supports a finding that no reasonable probability exists that conditions will change.

[12] One of the most glaring examples of Parents' pattern of unwillingness to deal with parenting problems is their continued cycle of domestic violence. Parents have a history of domestic violence that became a current concern to care providers based upon personal observations of Parents' incredibly volatile interactions with each other and the negative affect those interactions had on Child during and after visits. Parents' aggression toward each other was so intense that they had to visit with Child separately. In the months immediately preceding the termination hearing, police were summoned to domestic violence disputes between Parents at least three times. The trial court specifically found this to be clear and convincing evidence that there was a reasonable probability that one of the reasons for Child's continued placement outside of Parents' care will not be remedied. Appealed Order at 4. It is well established that the trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *K.T.K.*, 989 N.E.2d at 1235.

[13] In short, the evidence presented is sufficient to support the trial court's conclusion that there is a reasonable probability of unchanged conditions. Parents lack the skills needed to provide necessary care for Child, and,

unfortunately, even when they engaged in services aimed at helping them to gain those skills, Parents exhibited little benefit.² Parents' abilities and circumstances remained largely unchanged as of the date of termination, and these habitual patterns justified termination of their parental rights. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (holding parent's historical inability to provide housing, stability, and supervision coupled with current inability to do so supported termination of parental rights), *trans. denied*. Accordingly, the trial court's termination order is affirmed.³

[14] Affirmed.

Bailey, J., and Pyle, J., concur.

² Parents challenge the trial court's statement in finding number 5 that they "failed to participate in or successfully complete court ordered services" and the court's statement in finding number 7 that their "lack of participation and completion of services" demonstrated a lack of interest in Child's life. Appealed Order at 3, 4. Parents claim that these statements are clearly erroneous because they are "contrary" to the findings in several of the CHINS progress reports, which indicated that Parents did participate in and complete many services. Appellants' Br. at 15. However, regardless of Parents' participation in services, the operative question facing the trial court was whether Parents benefited from services and were successful in making significant progress in addressing their parenting deficiencies such that there is a reasonable probability that the conditions that led to Child's removal and continued placement outside their care will change. There is overwhelming evidence that Parents were not successful.

³ Although Parents broadly claim that "DCS failed to establish all four" statutory elements of Indiana Code Section 31-35-2-4(b)(2)(A)-(D), *see* Appellants' Br. at 15, they only present argument regarding subparagraph (B) in their brief and do not specifically challenge the sufficiency of the evidence supporting the trial court's conclusions as to the other three elements. Accordingly, they have waived these issues for our review, and we decline to address them. *See In re A.D.S.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (holding that Mother waived "broad argument" that trial court's conclusion was erroneous because she failed to present "cogent argument"), *trans. denied*.