

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of X.D. (Minor Child);

N.D. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 31, 2023

Court of Appeals Case No.
22A-JT-3093

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

The Honorable Brittney A.
Newland, Magistrate

Trial Court Cause No.
03C01-2203-JT-1145

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] N.D. (“Mother”) appeals the trial court’s order terminating her parental rights to X.D. (“Child”). Mother argues that the trial court clearly erred by: (1) relying on exhibits submitted by the Department of Child Services (“DCS”); (2) determining that the conditions that resulted in Child’s removal were unlikely to be remedied; and (3) determining that the termination of Mother’s parental rights was in Child’s best interests. We find Mother’s arguments without merit and, accordingly, affirm.

Issues

- [2] Mother raises three issues on appeal, which we restate as:
- I. Whether the trial court abused its discretion by relying upon exhibits submitted by DCS.
 - II. Whether the trial court clearly erred by determining that the conditions that resulted in Child’s removal were unlikely to be remedied.
 - III. Whether the trial court clearly erred by determining that termination of Mother’s parental rights was in Child’s best interests.

Facts

- [3] The Child was born in August 2018 to Mother and C.D. (“Father”). The Child was removed from Parents on February 18, 2021, due to deplorable conditions

in Parents' home, Mother's methamphetamine use, and domestic violence between Parents. The Child was placed in relative care. On February 22, 2021, DCS filed a petition alleging that the Child was a child in need of services ("CHINS"). Parents admitted that they struggled with substance abuse, and the trial court found the Child to be a CHINS.

[4] The trial court entered a dispositional order and ordered Mother, in part, to maintain weekly contact with the family case manager, participate in home-based case work, complete a substance abuse evaluation and follow all treatment recommendations, submit to random drug screens, attend supervised visitations with the Child, and participate in family therapy. Mother was later ordered to complete batterer's intervention services.

[5] Mother's participation in services, however, was "sporadic." Tr. Vol. II p. 37. Mother had periods of inconsistency in her supervised visitations with the Child and never progressed to unsupervised parenting time. Her participation in home-based case management, individual and family therapy, and batterer's intervention was also inconsistent. In July 2021, DCS filed a petition for rule to show cause against Mother. After a hearing, the trial court found that Mother failed to attend appointments with her home-based case manager, failed to attend an intensive outpatient program ("IOP"), and failed to comply with the dispositional decree. The trial court found Mother in contempt of court.

[6] At the beginning of the CHINS proceedings, Mother participated in Family Recovery Court, which required Mother to participate in substance abuse

treatment, random drug screens, and weekly court meetings. Mother became “less engaged” over time though. *Id.* Mother eventually stopped attending the weekly court meetings and engaging in services. Mother was discharged from the Family Recovery Court in December 2021.

[7] Mother has had “short periods of sobriety with relapses.” *Id.* at 42. Mother completed an in-patient thirty-day treatment at Wooded Glen in the Spring of 2021. Mother also started an IOP in April 2021. She needed to attend thirty appointments to complete the program. Out of fifty-one appointments, Mother attended twenty-six, missed twenty-five, and was ultimately discharged for failure to complete services. After her release from the in-patient treatment program, Mother relapsed in July 2021 and began testing positive for methamphetamine again.

[8] After a short period of sobriety in August 2021, Mother stopped participating in drug screening and other services in September 2021. Although Mother was referred for random drug screens, which required Mother to call daily on Monday through Friday and complete a drug screen if directed to do so, Mother failed to call 213 times, missed ninety-two tests, and participated in testing approximately ten times with five positive test results for methamphetamine/amphetamine. Mother’s last test under the random drug screening program was in September 2021.

[9] Family Case Manager (“FCM”) Brittany Turner collected a drug screen from Mother at a permanency hearing on January 4, and Mother tested positive for

methamphetamine. Mother started substance abuse treatment through another treatment center in January 2022, but she was discharged for lack of participation. Mother admitted that she relapsed in May 2022 and August 2022, and was arrested in July 2022 for unlawful possession of a syringe, a Level 6 felony.

[10] In March 2022, DCS filed a petition to terminate Parents' parental rights. On October 17, 2022, the trial court held a hearing regarding the termination of Mother's parental rights. At the start of the hearing, the following discussion occurred regarding DCS's exhibits:

[DCS's Counsel]: And then your Honor, I know that we had a conversation off record, I just wanted to put it on record that the Department does have physical exhibits that we provided to Mother's counsel, however we do have Father's portion of this trial, not set until November 18th, and his counsel would have to have time to object to them, so we will be entering them at that time. And I believe that Mother's counsel is not objecting to any of them.

[Mother's counsel]: Correct your Honor.

Tr. Vol. II p. 8.

[11] At the end of DCS's case-in-chief, DCS's counsel stated: "Your honor, I forgot to put on the record that the stipulated Exhibits is [sic] 1 through 15. And then I will just enter them in individually at the next hearing." *Id.* at 60-61. Mother made no objection to this procedure. At the end of the hearing, the trial court

took the matter under advisement until “Father’s hearing in November.” *Id.* at 96.

[12] A hearing regarding the termination of Father’s parental rights was scheduled for November 18, 2022; Father, however, consented to Child’s adoption, and the hearing was cancelled. The trial court’s clerk then sent the parties an email directing DCS to file the exhibits with the trial court. On November 22, 2022, DCS filed a notice with the trial court, which included the DCS exhibits. Mother did not object. The trial court issued findings of fact and conclusions thereon on November 29, 2022, granting DCS’s petition to terminate Mother’s parental rights to the Child. Mother now appeals.

Discussion and Decision

[13] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental rights are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*. “When parents

are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[14] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.¹ Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[15] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true,

¹ Indiana Code Section 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

I. DCS Exhibits

[16] On appeal, Mother argues the trial court’s findings of fact are clearly erroneous because the findings rely upon DCS’s exhibits, which were “never formally

admitted into evidence.” Appellant’s Br. p. 11. Mother, however, never objected to this procedure and, in fact, specifically agreed to it. “‘An appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous.’” *Hostetler v. State*, 184 N.E.3d 1240, 1247 (Ind. Ct. App. 2022) (quoting *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013)) (internal quotations omitted), *trans. denied*; *see also* Ind. Evid. R. 103(a) (requiring a timely objection to claim an error in the admission of evidence). Mother has waived appellate review of this claim of error.

II. Reasonable probability of remedying conditions

[17] Mother challenges the trial court’s conclusion that 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.”² I.C. § 31-35-2-4(b)(2). “In determining whether ‘the conditions that resulted in the [Child’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at

² Mother also argues that there was no reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Child. Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence of a reasonable probability that **either**: (1) the conditions that resulted in the Child’s removal or the reasons for placement outside the home of the parents will not be remedied, or (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child. *See, e.g., Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005). The trial court here found a reasonable probability that the conditions that resulted in the Child’s removal or reasons for placement outside the home of the parents will not be remedied, and there is sufficient evidence to support that conclusion. Accordingly, we do not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Child.

1231). “First, we identify the conditions that led to removal; and second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester*, 839 N.E.2d at 152). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “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.” *Id.*

[18] The Child was removed from Mother’s care due to deplorable conditions in Parents’ home, Mother’s methamphetamine use, and domestic violence between Parents. Mother argues that she made progress in remedying the conditions that caused the Child’s removal. Mother points out that, at the time of the termination of parental rights hearing, she had started a job at Bob Evans; she had housing because she was living with her manager; she started substance abuse treatment through Groups three weeks before the hearing; and she was no longer in a relationship with Father.

[19] DCS, however, presented evidence that, since February 2021, Mother has repeatedly tested positive for methamphetamine, failed to complete drug treatment, and failed to participate in random drug screening. Although Mother claimed to have been sober for two months at the time of the

termination of parental rights hearing, Mother relapsed several times during the CHINS proceedings and the termination of parental rights proceedings.

Moreover, the Groups program is not approved by DCS because the drug testing is not adequately supervised. Although Mother's relationship with Father ended, Mother failed to address her domestic violence issues. In fact, Mother did not complete any of the services recommended by DCS except in-patient drug treatment.

[20] FCM Turner testified that DCS "provided both parents with the ability to engage in the necessary services to alleviate the safety concerns as it relates to substance use, instability and unhealthy relationships." Tr. Vol. II p. 50. Mother, however, was "unwilling to engage in those services," and, Mother has "not alleviated any of the concerns" raised in the CHINS petition. *Id.* at 50-51.

[21] The trial court was entitled to weigh Mother's newly claimed progress against her habitual patterns. Mother's argument is merely a request that we reweigh the evidence, which we cannot do. The trial court's conclusion that there is a reasonable probability that the conditions resulting in the Child's removal will not be remedied is not clearly erroneous.

III. Best Interests of the Child

[22] Mother challenges the trial court's finding that termination of her parental rights is in the Child's best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Ma.H.*, 134 N.E.3d at 49. In doing so, the trial court must subordinate the

interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.*

[23] Mother argues that she has a strong bond with the Child and that termination of her parental rights is not in the Child’s best interests. Guardian ad Litem (“GAL”) Emily Yardy, however, testified that Mother’s “negative attitude and resistance to the Court ordered services have been her biggest hindrances in moving forward.” Tr. Vol. II p. 57. According to the GAL, Mother’s situation at the time of the termination of parental rights was “less stable” than Mother’s situation at the time of the Child’s removal. *Id.* at 58. Further, the GAL testified that there is “no proof at all that [Mother] is sober.” *Id.*

[24] Similarly, FCM Turner testified that “Mother has been unable to demonstrate over the duration of the case, that she is able to provide a safe and stable home environment for [Child]. There’s been continuous concerns with unhealthy relationships that could cause continuous trauma [and] the methamphetamine use to our knowledge still exists.” *Id.* at 48. A further delay in permanency for the Child “could negatively impact his well[-]being and secure attachments as well as healthy relationships.” *Id.* at 50.

[25] The trial court concluded that termination of Mother's parental rights is in the Child's best interests. Given Mother's substance abuse issues and instability and the testimony of the GAL and FCM Turner, we cannot say the trial court's conclusion is clearly erroneous.

Conclusion

[26] The trial court did not err by relying upon DCS's exhibits, determining that the conditions that resulted in the Child's removal were unlikely to be remedied, or determining that termination of Mother's parental rights was in the Child's best interests. Accordingly, we affirm.

[27] Affirmed.

Bailey, J., and Kenworthy, J., concur.