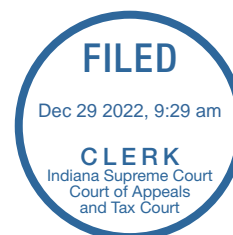


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Rachel M. Rogers
Monroe County Public Defender
Bloomington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of K.C. (Minor Child);

A.I. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 29, 2022

Court of Appeals Case No.
22A-JT-1717

Appeal from the Monroe Circuit
Court

The Honorable Stephen R. Galvin,
Judge

Trial Court Cause No.
53C07-2112-JT-631

Tavitas, Judge.

Case Summary

- [1] A.I. (“Mother”) appeals the termination of her parental rights to Ki.C. (“Child”). Mother argues that the trial court clearly erred in terminating her parental rights. Finding that the trial court did not clearly err, we affirm.

Issue

- [2] Mother raises one issue on appeal, which we restate as whether DCS presented sufficient evidence to support the termination of Mother’s parental rights to Child.

Facts

- [3] Child was born in December 2017 to Mother and Ke.C. (“Father”)¹ (collectively, “Parents”). Child was diagnosed with autism and is “almost non-verbal.” Tr. Vol. II p. 78. Mother’s older child, A.H, was born in July 2014 to Mother and W.H.
- [4] On February 19, 2020, the trial court placed A.H. under guardianship with paternal grandparents due, in part, to Mother’s 1) use of methamphetamine; 2) refusal to submit to drug screens; 3) lack of stable housing; 4) failure to provide appropriate care for A.H; and 5) her relationship with Father, who abused Mother “frequently.” Ex. Vol. I p. 161.

¹ Father does not participate in this appeal.

- [5] Mother and Father ended their relationship around November or December of 2020. At some point thereafter, Mother left Child with Father after a domestic abuse incident while she sought residency in a domestic violence shelter.²
- [6] On February 6, 2021, Father brought Child—who was clothed in only a wet blanket and a diaper—to Monroe County Hospital. Father was delusional and had “fresh track marks on his arms consistent with injecting drugs.” *Id.* at 159. Father tried to abandon Child at the hospital. He subsequently admitted to using methamphetamine.³
- [7] On February 9, 2021, the Department of Child Services (“DCS”) spoke with Mother, who admitted that she abused illegal substances and lacked appropriate housing. *Id.* On February 11, 2021, DCS removed the Child from Parents’ care and filed a petition that alleged Child was a child in need of services (“CHINS”).⁴ The trial court adjudicated Child a CHINS on May 13, 2021, finding:

[Mother] continues to experience the problems that led to the guardianship of [A.H.]. [Mother] continues to use controlled substances. She does not have stable housing. She left [Child] in [Father’s] care for more than a month. Neither parent is participating in services designed to address their substance abuse

² Mother did not end up residing in the shelter.

³ On February 22, 2021, the State charged Father with numerous offenses. On February 24, 2022, Father pleaded guilty to possession of a narcotic drug, and the trial court sentenced Father to 910 days in the Department of Correction, with 748 days suspended to probation.

⁴ Child was subsequently placed with a foster family that now seeks to adopt Child.

and mental health problems. Neither parent is capable of providing [Child] with a safe and stable home.

Id. at 162-63.

[8] On May 13, 2021, the trial court issued its dispositional order, which required, as relevant here, that Mother maintain weekly contact with her family case manager (“FCM”); notify DCS regarding changes in her household composition; attend and complete recommended services, including those to address domestic violence; maintain suitable, safe, and stable housing; secure employment; abstain from using illegal substances; complete a substance abuse assessment and follow all recommendations; and submit to random drug screens.⁵

[9] Mother’s participation in services, however, was inconsistent and incomplete. Mother missed several therapy appointments; was behind on her domestic violence coursework due to “sporadic attendance”; never began substance abuse treatment; and her communication with DCS was “spotty at best.” Tr. Vol. II pp. 53, 115. Father lived with Mother “periodically” after he was released from prison. *Id.* at 36. DCS continued to have concerns regarding domestic violence in the home, Mother’s lack of communication regarding the extent of Father’s occupancy in her home, and Father’s mental state.

⁵ The trial court issued a similar order regarding Father.

- [10] On December 16, 2021, DCS filed a petition for involuntary termination of Parents' parental rights to Child. The trial court held a hearing on May 16, 2022. During the hearing, Mother admitted that she used marijuana "weekly" and methamphetamine "a few times." Tr. Vol. II pp. 7-8. Mother testified that she used methamphetamine "a couple of weeks" before the hearing and again "probably about the same" amount of time before that. *Id.* at 8.
- [11] Mother also admitted that she had "not drug screened throughout th[e] entire case," despite weekly requests by DCS. *Id.* at 10. Mother further admitted to lying to DCS about her efforts to enroll in inpatient methamphetamine treatment. FCM David Lindsey testified that Mother appeared to be "impaired" during several of his interactions with her. *Id.* at 112.
- [12] Court Appointed Special Advocate ("CASA") Kaisa Goodman and FCM Lindsey testified that the reasons Child was removed from Mother have not been remedied due to Mother's refusal to submit to drug screens and failure to complete services and DCS's concerns regarding Father living with Mother. Child has special needs, made developmental progress in her placement, and is bonded with her foster family. CASA Goodman and FCM Lindsey testified that placement with Child's foster family was in Child's best interests.
- [13] On June 21, 2022, the trial court issued its written findings of fact and conclusions thereon. The trial court found that DCS met the statutory requirements and, accordingly, terminated Parents' parental rights to Child. Mother now appeals.

Discussion and Decision

- [14] 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. Ind. Dep't of Child Servs., Dearborn Cnty. Off.*, 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 interests 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*, 140 S. Ct. 2835 (2020), *reh’g 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.
- [15] 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.⁶

⁶ Indiana Code Sections 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.

[16] 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.*

[17] 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, 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.

(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

- (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. Reasonable Probability that the Conditions that Resulted in Removal Will Not be Remedied

[18] Mother challenges the trial court’s conclusion that “[t]here is a reasonable probability that the conditions which resulted in the removal of the child, or the reasons for placement outside the home of the parents, will not be remedied . . .

.”^{7, 8} Appellant’s App. Vol. II p. 24; *see* 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 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.*

⁷ 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 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 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 Child.

⁸ Mother also challenges factual findings 12, 16, 20, 27, 37, 42, and 48. Mother, however, fails to support her argument with cogent reasoning and citations to the record or authorities. Accordingly, we find Mother waived this challenge. *See A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013) (citing Ind. App. R. 46(A)(8)(a)), *trans. denied*.

[19] Child was initially removed from the home because Mother left her with Father, who, in a delirious state, tried to abandon Child at the hospital; Mother abused illegal drugs; and DCS had concerns regarding domestic violence between Parents. Mother argues that the trial court erred in finding that she failed to comply with the trial court’s dispositional order. In her brief, however, Mother admits the truth of this finding. *See* Appellant’s Br. p. 15 (“Mother had complied with the dispositional decree to a commendable extent”); *id.* at 16 n.6 (“Mother has not been fully compliant with the screening and substance [ab]use parts of this case”). Indeed, Mother refused to submit to drug screens “throughout th[e] entire case”; admitted to using marijuana “weekly” and methamphetamine “a few times”—including a “couple of weeks” before the hearing; never followed through on substance abuse treatment; was dishonest with DCS regarding her pursuit of substance abuse treatment and the extent of Father’s occupancy in her home; and did not consistently attend all required services or communicate with DCS. Tr. Vol. II pp. 7-8, 10; *see In re S.S. v. Ind. Dep’t of Child Servs.*, 120 N.E.3d 605, 611 (Ind. Ct. App. 2019) (parent’s substance abuse, refusal to submit to drug screens, and failure to seek treatment supported termination order).

[20] Mother argues that the trial court “failed to note Mother’s vast improvements through compliance in home[-]based case work and through therapy,” and cites *In re G.Y.*, 904 N.E.2d 1257, 1262 (Ind. 2009). Appellant’s Br. p. 17. In *G.Y.*, after caring for the child for the first twenty months of its life, the mother was incarcerated for a crime that she committed before the child was born. 904

N.E.2d at 1258-59. While the mother was incarcerated, the child was adjudicated a CHINS, and later, the mother's parental rights were terminated. *Id.* at 1259. Though the mother had not completed all of the services required by the trial court in the CHINS case, we reversed the trial court's termination of the mother's parental rights. *Id.* at 1262. We observed that:

despite the physical impossibility of completing some of these requirements while incarcerated, the record shows that Mother took positive steps and made a good-faith effort to better herself as a person and as a parent. At the time of the termination hearing, she had completed an eight-week drug rehabilitation program At the time of the termination hearing, she was on the waiting list for phase II of the program Mother also testified at the termination hearing that even though she has a history of drug use, she has not used cocaine since [before the child was born].

Id.

[21] We find *G. Y.* distinguishable. Unlike the mother in *G. Y.*, Mother continued to use illegal substances, including methamphetamine, after Child was born and failed to seek treatment for her substance abuse. Additionally, Mother cannot attribute her failure to comply with required services to incarceration. Accordingly, the trial court did not clearly err in finding that the conditions that resulted in Child's removal are unlikely to be remedied.

II. Best Interests of the Child

[22] Mother next argues that the trial court erred in finding that termination of her parental rights was in 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] Here, the trial court found that termination of Mother’s parental rights was in the best interests of Child based on its findings that “[Parents] are unwilling and unable to provide [Child] with a safe and stable home”; Child was behind on her development until she was placed in foster care; Child’s special needs require “care by a knowledgeable and attentive adult”; and, in her placement, “[Child] received the love, attention, and services she requires” and “is happy and well-adjusted.” Appellant’s App. Vol. II p. 26.

[24] Mother first challenges the trial court’s finding that Mother was unwilling to and unable to provide Child with a safe and stable home. Testimony, however, revealed that, despite the history of domestic abuse between Parents, Father stays with Mother “periodically” and Mother provides for “all of [Father’s] basic needs.” Tr. Vol. II p. 36. Testimony further revealed that Father has not engaged in domestic violence services, that Mother has not been forthright with

DCS regarding the extent of Father's occupancy in her home, and that "domestic violence hasn't been remedied." Tr. Vol. II p. 104.

[25] In addition, Mother admitted to using marijuana and methamphetamine, failed to seek substance abuse treatment, and refused to submit to drug screens "throughout th[e] entire case." *Id.* at 10. FCM Lindsay, moreover, testified that Mother appeared to be "impaired" during several of their interactions. *Id.* at 112. The trial court, accordingly, concluded that "the full nature and extent of [Mother's] substance abuse cannot be determined." Appellant's App. Vol. II p. 25.

[26] Based on the potential for domestic violence in the home and Mother's untreated substance abuse, we cannot say that the trial court's finding that Mother was unwilling and unable to provide the Child with a safe and stable home is erroneous. Mother's citation to other testimony regarding her housing conditions merely asks us to reweigh the evidence, which we cannot do.

[27] Mother next argues that the trial court erred in finding that termination was in Child's best interests because of Child's bond with Mother. Mother further argues that she appropriately cared for Child during visitations. Mother is correct that witnesses testified that she and Child were bonded and that Mother demonstrated appropriate care during supervised visits with Child. Testimony also revealed, however, that Child was bonded with her foster family and that Child's special needs require several weekly therapy sessions and additional care and supervision in the home, all of which the foster family provided.

Testimony further revealed that Child was twenty-months behind in her development until she began therapy after being placed in foster care.

[28] Mother's untreated substance abuse of marijuana and methamphetamine is highly problematic considering Child's special needs, and Mother's refusal to seek treatment and her sporadic participation in services and communication with DCS suggests she would not be able to meet those needs. The trial court, accordingly, did not clearly err in concluding that termination of Mother's parental rights was in Child's best interests.

Conclusion

[29] The trial court did not clearly err in terminating Mother's parental rights. Accordingly, we affirm.

[30] Affirmed.

Brown, J., and Altice, J., concur.