

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.



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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
E.M. (Minor Child)

and

M.M. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 22, 2022

Court of Appeals Case No.
21A-JT-2759

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2101-JT-4

Mathias, Judge.

[1] M.M. (“Mother”) appeals the Madison Circuit Court’s termination of her parental rights over her minor child, E.M. (“Child”).¹ Mother raises a single issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of her parental rights. We affirm.

Facts and Procedural History

[2] In June 2018, while she was a ward of DCS and residing in foster care, Mother gave birth to Child. One week later, Mother reported to her family case manager that she was unable to care for Child, and she requested that DCS detain Child. Mother then entered the St. Vincent Stress Center as a danger to herself and to others.

[3] DCS took emergency custody of Child at Mother’s request and based on Mother’s “inability, refusal, or neglect . . . to supply the child with necessary food, clothing, shelter, medical care, education[,] or supervision.” Ex. Vol., p. 72-73. DCS then petitioned to have Child determined to be a Child in Need of Services (“CHINS”) due to Mother’s “abuse and/or neglect” of Child. Appellant’s App. Vol. 2, p. 37. Mother admitted the Child was a CHINS “due to [her] mental health issues.” Ex. Vol., p. 56. The trial court adjudicated Child to be a CHINS, ordered DCS to take custody of Child due to Mother’s

¹ The trial court also terminated the parental rights of Child’s father, but he does not participate in this appeal.

“inability, refusal[,] or neglect to provide shelter, care, and/or supervision” necessary for Child, and directed Mother to participate in numerous services, including individual and family counseling and visitation with Child. *Id.* at 58.

[4] During the ensuing CHINS proceedings, Mother did not participate in individual therapy or in family therapy. She did not regularly visit with Child, visiting Child just twice between September 2020 and January 2021. She did not keep all appointments with the court-appointed special advocate and providers; she did not cooperate with home-based care services; she did not complete a substance-abuse assessment; she did not successfully complete parenting classes; she did not successfully complete an anger-management assessment and recommendations; she did not complete a domestic-violence assessment and recommendations; she did not complete her high school or GED diploma requirements; and she did not maintain consistent contact with her family case manager (“FCM”).

[5] DCS petitioned to terminate Mother’s parental rights over Child. At the commencement of the ensuing fact-finding hearing on DCS’s petition, Mother’s counsel informed the court that Mother’s “biggest concern was not necessarily the termination” but rather “on where the child would ultimately be placed.” Tr. Vol. 1, p. 12. Mother did not attend the termination hearing.

[6] FCM Dylan Ridder testified at the hearing that “Mother is currently homeless and has not maintained . . . [a] consistent relationship or contact with [Child].” *Id.* at 36. He further testified that Mother “was not able to provide for food[,]

clothing . . . [or] basic necessities” for Child during visits. *Id.* He added that continuation of the parent-child relationship would be a danger to Child because Mother “has always been unable to provide for his essential needs” and that that inability currently existed as well. *Id.* He also testified that Mother had failed to complete her ordered services, which numerous service providers confirmed. Both FCM Ridder and Child’s court-appointed special advocate agreed that termination of the parent-child relationship was in Child’s best interests.

[7] Following the hearing, the trial court terminated Mother’s parental rights over Child. In doing so, the trial court concluded in relevant part that “[t]here is no reasonable probability that the conditions that resulted in the child’s removal from and the continued placement outside the care and custody of [Mother] will be remedied.” Appellant’s App. Vol. 2, p. 35. This appeal ensued.

Standard of Review

[8] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* 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.*

[9] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, we will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[10] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2021). Only one of those elements are at issue in this case,² namely, whether there is a reasonable probability that the conditions that

² In one sentence in her brief on appeal, Mother states that DCS failed to present clear and convincing evidence of any of the elements required to terminate her parental rights. Appellant’s Br. at 9. But the substance of her argument is focused only on whether the conditions that resulted in Child’s removal would be remedied. *See id.* at 10-12. We limit our review accordingly. *See Ind. Appellate Rule 46(A)(8)(a)*.

resulted in the child's removal or the reasons for placement outside the home will not be remedied. I.C. § 31-35-2-4(b)(2)(B)(i).

[11] When we review whether there is a reasonable probability that the conditions that resulted in a child's removal or reasons for placement outside the parent's home will not be remedied, we engage in a two-step analysis. See *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, "we must ascertain what conditions led to [the child's] placement and retention in foster care." *Id.* Second, we "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. Habitual conduct may include "criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment," but the services offered to the parent and the parent's response to those services can also be evidence demonstrating that conditions will not be remedied. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150 1157 (Ind. Ct. App. 2013) (quoting *A.F. v. Marion Cnty. Off. of Fam. & Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002)), *trans. denied*.

[12] Here, Mother first asserts that the condition that resulted in Child's removal from Mother's care was only her mental-health issues, and that there was no evidence presented at the termination hearing to show that she continued to have any issues with her mental health. But Mother's argument is not well

taken. DCS's emergency filings with the trial court for the immediate custody of Child made clear that Mother was unable, or refused, to provide Child with necessary shelter, care, or supervision. Ex. Vol., p. 58. At the termination hearing, FCM Ridder made clear that the original CHINS adjudication, and Mother's admission that Child was a CHINS due to her mental-health issues, was likewise premised on Mother being "unable and or unwilling to provide for [Child's] basic needs at the time of birth." Tr. Vol. 1, p. 30. Thus, Mother's attempt to disassociate her mental-health issues from her inability or unwillingness to care for Child is unsupported by the record.

[13] Mother next argues that she "was ordered to do 20 things" and that at least some of those services were "not shown to be needed." Appellant's Br. at 10. Be that as it may, Mother does not dispute that the order for her to participate in individual and family therapy and to visit Child was justified, and yet Mother failed to complete those therapies and comply with visitation. As Mother fails to address those relevant services, as well as the evidence of her continued homelessness and inability or unwillingness to provide Child's essential needs, Mother has not met her burden on appeal to show that the trial court's termination of her parental rights over Child is clearly erroneous.³ We therefore affirm the trial court's judgment.

³ Mother also asserts that she "was willing for her child to be adopted but only by a person not named in the record," and, therefore, DCS did not "establish that [her] parental rights should be terminated". Appellant's Br. at 12. Mother's argument is not supported by cogent reasoning, and we therefore do not consider it. [App. R. 46\(A\)\(8\)\(a\)](#).

[14] Affirmed.

Brown, J., and Molter, J., concur.