

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
M.H. and N.H. (Minor
Children);

L.G. (Mother) and A.H.
(Father),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

November 16, 2023

Court of Appeals Case No.
23A-JT-1029

Appeal from the Floyd Circuit
Court

The Honorable Justin B. Brown,
Judge

Trial Court Cause Nos.
22C01-2211-JT-638
22C01-2211-JT-639

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] L.G. (“Mother”) and A.H. (“Father”) appeal the termination of the parent-child relationships with their two children. They specifically contend that there is insufficient evidence to support the terminations. Concluding that there is sufficient evidence to support the terminations, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

[3] Father and Mother (collectively “Parents”) are the parents of son N.H., who was born in May 2013, and son M.H., who was born in September 2017 (collectively, “the children”). In August 2020, DCS received a report that Father was using methamphetamine, Mother had repeatedly left the children in the sole care of Father despite his substance abuse, and then seven-year-old N.H. had not been attending school. Parents and DCS entered into an informal

adjustment, wherein Father agreed to abstain from the use of methamphetamine and Mother agreed to not leave the children alone with Father.

[4] Two months later, in October 2020, Father twice tested positive for methamphetamine, and DCS learned that Mother had continued to leave the children alone with Father. DCS removed the children from Parents' care and placed them with their maternal grandmother ("Maternal Grandmother"). DCS also filed petitions alleging that the children were children in need of services ("CHINS") based on Father's substance abuse and Mother's failure to protect the children and ensure that they had a sober caregiver.

[5] Parents denied the allegations in the CHINS petitions, and the trial court held a CHINS factfinding hearing in January 2021. Following the hearing, the trial court adjudicated the children to be CHINS. The trial court held a CHINS dispositional hearing in February 2021 and issued CHINS dispositional orders in May 2021. These orders required Mother to: (1) complete a psychological evaluation and follow all recommendations that resulted from the evaluation; (2) complete assessments and enroll in programs recommended by the DCS family case manager; (3) maintain suitable, safe, and stable housing; (4) secure and maintain a stable source of income; and (5) attend all scheduled visits with the children. In addition, these orders required Father to: (1) complete a substance abuse assessment and follow all recommendations that resulted from the assessment; (2) submit to random urine drug screens; (3) abstain from the use of illegal drugs; (4) complete a psychological evaluation and follow all

recommendations that resulted from the evaluation; (5) maintain suitable, safe, and stable housing; (6) secure and maintain a stable source of income; and (7) attend all scheduled visits with the children.

[6] Two weeks later, in its order on the first periodic review hearing, the trial court found that Parents had been evicted from an extended stay hotel because they had frequently engaged in verbal and physical altercations on the premises.

Further, Father had continued to test positive for methamphetamine. In addition, Parents had not been consistently visiting the children, who had been placed with a paternal uncle because Maternal Grandmother had no longer been able to care for them.

[7] Six months later, in its November 2021 order on another periodic review hearing, the trial court found that Parents had not participated in any services and had not maintained contact with the DCS family case manager. The children had been placed with a foster family because the paternal uncle had no longer been able to care for them.

[8] In February 2022, a home-based services provider attempted to assist Parents in obtaining vital documents such as birth certificates and social security cards that were necessary to access community resources. However, Parents never scheduled the appointments necessary to obtain the documents. Also, in February 2022, Father continued to test positive for methamphetamine.

[9] At a May 2022 periodic case review hearing, the trial court found that Parents had not consistently participated in services and had not visited the children.

The trial court advised Parents that “they ha[d] come to a critical time in this case in which the case’s age and their lack of progress ma[d]e it more likely that DCS w[ould] ultimately file a Petition to Terminate Parental Rights.” (Ex. Vol. 2 at 19). Parents indicated that they understood what the trial court had told them.

[10] In July 2022, Mother separated from Father and began participating more consistently in services. Specifically, Mother began regularly meeting with the home-based case manager and attending counseling. Also, in July 2022, Father entered a twenty-eight-day inpatient substance abuse treatment program. However, he left the program after three days. Father then returned to the program for ten days before leaving again. In August 2022, DCS filed a motion to suspend Father’s parenting time until Father completed substance abuse treatment. The trial court granted DCS’ motion.

[11] In September 2022, Mother attended a psychological evaluation and was diagnosed with borderline intellectual functioning, which impacts her critical thinking and decision-making processes. Also, in September 2022, Parents reconciled, and Father returned to the inpatient substance abuse treatment program. Father remained in the program for twenty days, when he was discharged for medical reasons. Father never returned to the program and did not successfully complete it. After the Parents reconciled, they stopped participating in services.

[12] DCS filed a petition to terminate Parents' parental relationships with the children in November 2022. One week later, Father contacted DCS family case manager Spencer Day ("FCM Day") and told him that Parents were moving to Michigan that day. FCM Day told Father that it was not a good idea for Parents to move to Michigan because it would be difficult for DCS to refer Parents to services in Michigan. Father assured FCM Day that within one month of moving, Parents would access community resources, Father would attend a substance abuse treatment program, and Parents would find individual therapists.

[13] After settling in Michigan, Father told FCM Day that Parents were living in a two-bedroom apartment, Parents had jobs, Father's brother was providing Parents with transportation, and Father had registered to attend an intensive outpatient substance abuse treatment program. When FCM Day asked Parents for written verification of their housing and employment, Parents sent FCM Day a copy of their lease, which included a family member's name. However, Parents did not send FCM Day written verification of their employment. When FCM Day asked Father "how bills were being paid up there," Father told FCM Day that he had "no right to ask." (Tr. Vol. 2 at 143).

[14] FCM Day contacted Child Protective Services in Michigan and asked if a case worker would do a home check at Parents' apartment. However, a Michigan case worker told FCM Day that a home check would not be possible because there were no children in Parents' home. FCM Day and CASA Paul LaBelle ("CASA LaBelle") discussed driving to Michigan to do a home check at the

apartment. However, after FCM Day learned that Father had been unsuccessfully discharged from the outpatient substance abuse program because he had failed to attend any sessions, FCM Day and CASA LaBelle decided not to visit Michigan.

[15] The trial court heard the facts as set forth above at the March 2023 termination hearing. In addition, FCM Day testified that although Parents appeared to believe that “the move to Michigan ha[d] taken care of all their issues,” Parents had made no progress in addressing the reasons for the children’s removal. (Tr. Vol. 2 at 143). FCM Day specifically explained that Father had not completed substance abuse treatment, Mother had continued to focus on Father’s needs rather than the children’s needs, and Parents had not participated in services or complied with the CHINS dispositional order. FCM Day also testified that termination was in the children’s best interests and that the plan for the children was foster parent adoption. CASA LaBelle also testified that termination was in the children’s best interests because they deserved permanency. The children’s therapist further testified that the children were “thriving” in foster care. (Tr. Vol. 2 at 104).

[16] On the other hand, Mother testified that she believed that DCS had “been overreacting” since the beginning of the case and that she had never believed that leaving the children with Father was “much of a concern.” (Tr. Vol. 2 at 27, 207). She also testified that she had never needed to improve her parenting skills. When asked what she would be willing to do if the children were returned to her, Mother responded that she would do anything “but not too

many classes.” (Tr. Vol. 2 at 211). Mother also testified that although she had left Father in July 2022, she had no intention of leaving Father again.

[17] Father testified that he had not used methamphetamine since September 2022, he had paid for drug screens in Michigan, those drug screens were negative for methamphetamine, and he had sent the results of those drug screens to FCM Day. Father acknowledged that the Michigan drug screens had been positive for alcohol and THC. The drug screen results were not admitted into evidence at the hearing. Father further testified that he was a server at Denny’s in Michigan and that the intensive outpatient drug treatment program would be too much for him to do with his job. Although Father was unwilling to participate in an intensive substance abuse treatment program, Father testified that he was “otherwise willing to do whatever [he] need[ed] to do to address stability in [his] recovery.” (Tr. Vol. 2 at 227).

[18] In April 2023, the trial court issued nearly identical detailed twenty-nine-page orders terminating Parents’ parental relationships with the children. N.H.’s termination order provides, in relevant part, as follows:

75. However, the Court finds that the testimony of Mother and Father regarding their compliance . . . with the Dispositional Order to lack credibility. That is based in part on the following:

- a. Both the Informal Adjustment and the CHINS case were opened in November of 2020, approximately two years and four months before the hearing on the involuntary termination of parental rights. This provided Mother and Father with ample time and resources to comply with the Dispositional Order

and address the issues that gave rise to DCS's involvement.

* * * * *

- c. Father claims that he has given himself the tools needed to be successful, and that he does not need intensive outpatient treatment. Those statements fly in the face of both Father's non-compliance throughout the case and the seriousness that is a methamphetamine addiction. Father never successfully completed treatment, and left ALL treatment programs prior to completion. A short series of drug screens, none of which were produced to this Court, reportedly devoid of the presence of methamphetamine does not evidence that his addiction has been successfully treated. If anything, it appears that Father has supplemented THC and Alcohol in an attempt to self-treat his addiction. This is neither a tenable nor safe solution.
- d. Furthermore, Father indicated that his employment as a server was prohibitive to his ability to complete Intensive Outpatient Therapy. Father's failure to prioritize his substance abuse treatment and to even search for or consider alternative employment that would provide him with a better opportunity to treat his addiction is suggestive of how unimportant addressing the concerns which gave rise to the case are to Father.
- e. Both Mother and Father have an indisputable history of non-compliance with services and the Dispositional Order. Throughout the CHINS case, nearly all service providers terminated services with Father and Mother due to missed appointments and failure to comply. Statements by both Mother and Father that DCS is overreacting and/or did not do

what they are supposed to do belies the fact that both Mother and Father consistently failed to follow through with the services necessary to achieve reunification.

- f. Perhaps most troubling to the Court is the fact that Mother and Father spontaneously relocated from New Albany, Indiana to Kalamazoo, Michigan in November of 2022 and provided DCS approximately twenty-four hours' notice of their move. Neither DCS, nor this Court, sanctioned a move to another state over five (5) hours away. Furthermore, as Mother and Father have been non-compliant with the Dispositional Order, relocating in the manner that they did demonstrates a continued disregard of what was needed to safely achieve reunification.
- g. Relocating to Michigan has unilaterally created numerous barriers on DCS's ability to provide services. As DCS is an agency for the state of Indiana, it stands to reason that it cannot be expected (absent an agreement by DCS or possibly an Order of the Court, assuming such an Order is enforceable) to provide services in another jurisdiction. To state it plainly, it is disingenuous of Mother and Father to create a difficult situation by relocating to another state, and then attempt to attribute blame to DCS and other parties/service providers for not providing services and/or viewing the home environment in Michigan. Their argument would still be without merit, albeit . . . less so, if Mother and Father had been compliant with services here. They, however, were not.

* * * * *

j. Additionally, Mother and Father claim to have stable housing, employment, and transportation. While no lease or paystubs were presented to the Court, it appears from the testimony that Father's Grandmother assisted Mother and Father by co-signing a lease for an apartment, and Father's Brother (who previously had placement of Child before being removed) is providing all transportation as needed for Mother and Father. The Court was unable to verify this beyond the testimony of Mother and Father. Members of Father's family were present in Court, but did not testify.

* * * * *

76. As such, the reasons for the Child's removal from Father have never been and are unlikely to be remedied, despite Father being given every resource and opportunity to do so. Father has failed to show that he has addressed his substance abuse issues, and he had not taken responsibility for his actions during the case. In fact, rather than address the issues as he was required pursuant to the Dispositional Order, Father relocated over five (5) hours away to another State, thereby demonstrating a lack of intention and commitment to accomplishing what was necessary to keep Child safe in his care and achieve reunification. Father's habitual pattern of conduct creates a substantial probability of future neglect.

* * * * *

78. While Mother has, in very limited circumstances, shown a willingness to engage in the plethora of services offered by DCS and Ordered by this Court, her failure to do so in any significant way, in conjunction with her reduced intellectual capacity (which inhibits her understanding of Child's supervision and safety needs, especially as it pertains to Father) evidences a failure to remedy the reasons for removal. Furthermore, Mother relocated

over five (5) hours away to another State, thereby demonstrating a lack of intention and commitment to accomplishing what was necessary to keep Child safe in her care and achieve reunification. Mother's habitual pattern of conduct creates a substantial probability of future neglect.

* * * * *

87. The evidence presented in this case clearly shows that even if given more time, both Mother and Father would not be likely to succeed in achieving the stability, sobriety, skills, and education needed to achieve reunification. Nearly two and a half years have passed since DCS became involved and, rather than meaningfully engage in services, Mother and Father chose to relocate hours away and have unequivocally shown that they are neither planning to return to Indiana where Child is, nor engage in services that would help facilitate reunification.

(App. Vol. 2 at 28-35).

[19] Parents now appeal.

Decision

[20] Parents argue that there is insufficient evidence to support the terminations. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *Id.* at 1188. Termination of the parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own children should not be terminated solely because there is a

better home available for the children, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

[21] Before an involuntary termination of parental rights may occur, DCS is required to allege and prove, among other things:

(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 the alleged circumstances by clear and convincing evidence. *K.T.K. v. Indiana Department of Child Services, Dearborn County Offices*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[22] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Id.* at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we

will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[23] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). "This deference recognizes a trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record." *Id.*

[24] Here, Parents argue that there is insufficient evidence to support the termination of their parental rights. Specifically, they contend that the evidence is insufficient to show that there is a reasonable probability that: (1) the conditions that resulted in the children's removal or the reasons for their placement outside Parents' home will not be remedied; and (2) a continuation of the parent-child relationships poses a threat to the children's well-being.

[25] At the outset, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's

removal or the reasons for their placement outside the home will not be remedied.

[26] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge the parents' fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parents' response to those services as evidence of whether conditions will be remedied. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *E.M.*, 4 N.E.3d at 643.

[27] Here, our review of the evidence reveals that DCS removed the children from Parents in October 2020 because of Father's methamphetamine use and

Mother's failure to protect the children and ensure that they had a sober caregiver. During the two-year pendency of the CHINS proceedings, Parents failed to successfully complete any services. Indeed, during most of the proceedings, Parents refused to participate in any services. One week after DCS filed petitions to terminate Parents' parental relationships with the children, Parents moved to Michigan, five hours away from the children. Although Father had told FCM Day that he would participate in a substance abuse treatment program in Michigan, Father failed to do so. Parents have not participated in any services in Michigan. Further, although Father testified that his drug screens in Michigan had been negative for methamphetamine, Father acknowledged that the drug screens had been positive for alcohol and marijuana. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied.¹

[28] Parents further argue that DCS failed to prove by clear and convincing evidence that termination was in the children's best interests. In determining whether

¹ Parents also argue that "[t]he trial court disregarded all evidence of Parents' current circumstances" in Michigan and "focus[ed] exclusively on the Parents' historical failure[s]." (Parents' Br. 18, 19). We disagree with Parents' characterization of the trial court's order terminating Parents' parental relationships with the children. As set forth above in the trial court's order, the trial court carefully considered Parents' current circumstances. Specifically, the trial court pointed out that Parents had not successfully completed any services in Michigan. Importantly, Father had not completed a substance abuse treatment program. Indeed, Father testified at the hearing that his job as a server at Denny's precluded his participation in a substance abuse treatment program even though Father's participation in such a program was required for him to be able to visit the children. Parents appeared to believe that because they had housing, transportation, and employment in Michigan, they no longer needed to participate in services. They are mistaken. We further note that the only evidence of Parents' transportation and employment was Parents' testimony, which the trial court could choose not to believe.

termination of parental rights is in the children's best interests, the trial court is required to look at the totality of the evidence. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the children involved. *Id.* In addition, a child's need for permanency is a central consideration in determining that child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the children's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[29] Here, our review of the evidence reveals that at the time of the termination hearing, the children had been out of Parents' home for more than two years. In addition, FCM Day testified that termination was in the children's best interests. CASA LaBelle also testified that termination was in the children's best interests because they deserved permanency. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the children's best interests.

[30] Affirmed.

Tavitas, J., and Foley, J., concur.