

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of J.B.
(Minor Child),

and

R.B. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



April 16, 2024

Court of Appeals Case No.
23A-JT-2614

Appeal from the Perry Circuit Court

The Honorable Lucy Goffinet, Judge

Trial Court Cause No.
62C01-2304-JT-78

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] R.B. (“Mother”) is the biological mother of J.B. (“Child”). Five substantiated cases have been filed by the Indiana Department of Child Services (“DCS”) against her. In the case leading to this appeal, DCS became involved with Child in 2020, for concerns of neglect, unsafe home conditions, and violence in the home. After an informal adjustment was deemed unsuccessful, DCS filed a petition alleging that Child was a child in need of services (“CHINS”) on June 16, 2020. After Child was adjudicated to be a CHINS, Mother was ordered to complete certain services. While Mother was initially compliant with the ordered services, over time, her compliance levels decreased. On April 6, 2023, DCS petitioned to terminate Mother’s parental rights to Child, arguing that Mother had failed to remedy the conditions that had led to Child’s removal from her care and, given Child’s need for stability, termination of Mother’s parental rights was in Child’s best interests. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Mother contends that DCS failed to present sufficient evidence to support the termination of her parental rights. We affirm.

Facts and Procedural History

- [2] Child was born to Mother on December 23, 2015.¹ Including Child, Mother has a total of four children but, as of the time of the evidentiary hearing in the instant proceedings, did not have custody of any of them. Mother has a significant history with DCS including five substantiated cases, one of which was a prior informal adjustment (“IA”) involving Child.
- [3] DCS again became involved with Mother and Child in April of 2020, after receiving reports of neglect, domestic abuse, and poor home conditions. Mother and her then-boyfriend initially agreed to an IA for Child and Child’s sibling, who had been born on December 23, 2019. The IA ended unsuccessfully “due to non-compliance” and neglect. Tr. Vol. II p. 152. On June 11, 2020, DCS received a report that Sibling had suffered “a subdural hematoma and skull fracture,” allegedly a result of neglect and lack of supervision. A few days later, DCS received another report that Mother had been arrested for the domestic battery of her then-boyfriend, which had allegedly been committed in Child’s presence. DCS also received reports that Mother had been intoxicated at the time she had committed the alleged domestic battery.
- [4] On June 16, 2020, DCS filed a petition alleging that Child was a CHINS due to neglect, unsafe home conditions, and domestic abuse. The juvenile court

¹ Child’s biological father is deceased.

adjudicated Child to be a CHINS on August 31, 2020. Following a dispositional hearing, the juvenile court ordered Mother to, *inter alia*, (1) contact the DCS family case manager (“FCM”) each week; (2) notify the FCM of any changes in address, home composition, employment, or arrest or criminal charges; (3) allow the FCM and service providers to make unannounced visits to her home; (4) enroll in all services recommended by the FCM or other service providers; (5) keep all appointments with the FCM and service providers; (6) maintain suitable, safe, and stable housing; (7) secure and maintain a legal and stable source of income; (8) refrain from using illegal drugs and alcohol and from engaging in domestic violence; (9) obey the law; (10) participate in home-based counseling; (11) complete parenting, substance-abuse, and domestic-violence assessments and complete all recommended services; (12) submit to random drug screens; (13) take all prescribed medications as directed; (14) meet all of Child’s medical and mental-health needs; (15) attend all scheduled visitation with Child; and (16) provide Child with a safe and nurturing environment that is free from abuse and neglect.

[5] Mother was initially compliant with the dispositional order and made progress with the case plan. Based on Mother’s compliance and progress, in December of 2021, Child was placed with Mother for a trial home visit. At the review hearing held the following month, the juvenile court found that Mother had complied with the case plan, cooperated with DCS, and enhanced her parental abilities. On March 16, 2022, the trial home visit was extended.

[6] Shortly afterward, Mother’s compliance with services declined. Mother’s drug screens showed high levels of her prescribed Adderall, with levels that were “over the cut off limits on [DCS’s] drug screens.” Tr. Vol. II p. 182. In addition, during the trial home visit, Child had “struggled academically, ha[d] been falling asleep during classes, and ha[d] not been getting to school on time.” Ex. Vol. I p. 187. Child had also displayed behavioral issues at school, including physical and verbal aggression towards staff and students, threats of violence towards himself and others, and a refusal to follow directions.

[7] In April of 2022, DCS received two reports about the family, including that Mother had been injured during an episode of domestic violence with her then-boyfriend and a warrant had been issued for her arrest on domestic battery charges stemming from the episode. The home visit ended and Child was again removed from Mother’s care after DCS had learned of the episode of domestic violence involving Mother and her then-boyfriend.² Mother was given the opportunity to resume services and visitation shortly thereafter. By late-August of 2022, Mother was only partially compliant with the dispositional order. On September 12, 2022, the juvenile court approved a concurrent permanency plan that included adoption.

² Following termination of the trial home visit, Child continued to exhibit behavioral issues and was eventually admitted to residential treatment for six days after engaging in self-harm, harming others, and making suicidal threats. When Child’s behavioral issues continued after his in-patient treatment, he was placed in an acute in-patient facility for another twenty-eight days, after which he was returned to foster care and, while receiving medication-management and mentor services, was said to be doing “much better.” Ex. Vol. I p. 238.

[8] On April 6, 2023, DCS filed a petition seeking to terminate Mother’s parental rights to Child. The juvenile court held the evidentiary hearing on July 27, September 11, and October 4, 2023. During the hearing, the juvenile court heard evidence indicating that although Mother had initially been compliant with the dispositional order, her level of compliance had decreased and Mother had been unable to remedy the conditions that had led to Child’s removal from her care or achieve the necessary level of stability.

[9] DCS also submitted evidence establishing that the termination of Mother’s parental rights was in Child’s best interests. Specifically, the juvenile court heard evidence that Child continued to exhibit behavioral issues and required a sense of permanency and stability. In addition, the evidence established that FCM Kelly Fields and service providers had generally observed that there was a correlation between Child’s negative behaviors and visits with Mother. For instance, Child’s school psychologist Benjamin Vonderschmitt wrote in a letter that was admitted into evidence that

Over the last year and a half in which he has been in our school, [Child’s] behavior has been a moving target ranging from a perfectly stable student with next to no difference observed between him and his peers to aggressive behaviors which required hospitalization. Some of our most successful times with [Child] have been when contact with his mother has been at a minimum.... Yet like a clock work machine, the easiest predictor of a behavioral outburst has also been visits and communications with his mother and when they resumed his behaviors returned.

At the end of last school year, [Child] was well regulated for

most days of the week. Several times his aggressive and negative behaviors were observed following a visit with [his] biological mother. What first started out as an amusing insight during a meeting, soon became a predictable and reliable way to understand [Child's] behavior. [Child's] behavior could easily be considered a product of [Child's] emotional turmoil surrounding and following his contact with mom.

Ex. Vol. IV p. 15. There had also been an episode at school during which Child had allegedly attempted to take the school resource officer's gun and had threatened to harm both himself and others. DCS reported that Mother had believed that the incident "was exaggerated/not that serious" and had claimed that Child's school was "out to get her and blew that incident out of proportion." Tr. Vol. II p. 116. Mother had also claimed that Child's poor behavior was "DCS's fault for failing him and [claimed] that she ha[d] always been right." Tr. Vol. II p. 116. The incident involving the gun had occurred a few days after a visit with Mother.

[10] Mother testified during the evidentiary hearing, presenting a much different picture of all that had transpired than the other witnesses. At the conclusion of the hearing, the juvenile court stated that

[t]he thing that bothers me the most about this hearing was Mother's testimony. Her testimony was contradictory to every single person who testified in this matter. This Court is used to occasional contradictions. But to literally everyone who testified, it was mind boggling. Not once did Mom own her part or take responsibility for the removal of [Child], other than to say she has bad choices in men.

Tr. Vol. II pp. 238–39. The juvenile court continued, stating

[b]ad choices in men that has led to five substantiated DCS cases against her. As of today's date, she has shown lack of compliance, continued issues with domestic violence. Her home is still not ready for the child. She's been arrested multiple times. Sporadic employment, not employed as we speak, has not been able to demonstrate financial stability, does not have adequate transportation to [sic] the child, doesn't have understanding of the child's issues.

After this case has been open since April of 2020, she is still on therapeutic visits. This child has been a ward of the State multiple times in his short life. He is struggling mentally with the chaos of all of the DCS involvement. There has not been significant progress to justify not granting this termination petition.

The State has a satisfactory plan of adoption. The issues that resulted from the child removal before are still the same issues that we're discussing today, after five substantiated cases.

Tr. Vol. II p. 239. The juvenile court then orally granted DCS's termination petition and, on October 23, 2023, entered a written order terminating Mother's parental rights to Child.

Discussion and Decision

[11] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the

termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[12] In reviewing termination proceedings on appeal, we will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Term. of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[13] In deference to the juvenile court’s unique position to assess the evidence, we set aside the juvenile court’s findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* “A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it.” *Id.* A judgment is clearly erroneous only if the legal conclusions made by the

juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[14] Mother contends that the evidence is insufficient to support the termination of her parental rights to Child. DCS was required to prove the following:

- (A) that one (1) of the following is true:
 - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree....
 - (iii) The child has been removed from the parent ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services...
- (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). Mother argues that the evidence is insufficient to prove subsections (B) and (C).

I. The Evidence is Sufficient to Prove Subsection (B)

[15] It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court's determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-35-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

[16] When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In so doing, the trial court may consider the parent's response to the services offered through [DCS]. 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. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability that the parent's behavior will not change.

In re B.J., 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008) (internal citations and quotations omitted), *trans. denied*.

[17] Child was initially removed from Mother's care due to concerns of neglect, poor home conditions, and reports of violence in the home. In concluding that the conditions resulting in Child's removal from Mother's home were not likely to be remedied, the juvenile court found as follows:

1. Mother's testimony has been contradictory to all other witnesses.
2. Mother has never accepted responsibility for her part in removal other than to say she has bad choices in men.
3. Mother has had five substantiated DCS cases against her.
4. Mother has not been compliant with services offered by DCS.
5. Mother has not been compliant with the dispositional order.
6. Mother has had ongoing issues with domestic violence in the home.
7. Mother's housing situation has been unstable throughout the life of the case.
8. Mother has frequently been homeless during the life of the case.
9. Mother's home is still not ready for the Child to come home.
10. Mother has been arrested multiple times during the life of the case.
11. Mother has only had sporadic employment throughout the life of the case.
12. Mother is not currently employed.
13. Mother has not demonstrated financial stability.
14. Mother is not able to provide transportation for the child.
15. Mother does not understand the Child's issues or behaviors and is not able to adequately parent or supervise the child.
16. The CHINS case has been open since April 2020, but Mother is currently at a therapeutic visitation level.
17. The child has been negatively impacted mentally due to

the ongoing involvement with DCS and lack of permanency.

18. There is not significant progress in the case to justify moving forward with Mother.

19. Mother is still dealing with the same issues that le[d] to the initial removal.

Appellant's App. Vol. II p. 100. In arguing that the evidence is insufficient to prove that the conditions that led to Child's removal from Mother's care would not be remedied, Mother challenges the juvenile court's findings regarding her noncompliance with the dispositional order and her on-going issues with domestic violence.

[18] Mother argues that “[p]erfect compliance with services is not required when the record shows a consistent and good faith effort by the parent to engage in services and address the reasons for removal.”³ Appellant's Br. pp. 26–27. She asserts that throughout the pendency of the case, she has been largely compliant with the case plan. The juvenile court, however, found that while Mother had initially been largely compliant, her level of compliance had deteriorated over time. The record demonstrates that Mother had initially made progress to the point of Child being placed with her for a trial home visit in December of 2021. The trial home visit, however, was terminated and Child was again removed from Mother's care in April of 2022, after Mother was arrested for domestic violence. Since that time, Mother has only partially complied with the

³ Mother cites to two cases in support of this argument but neither specifically stands for the proposition she argues.

dispositional order and, by April of 2023, Mother was not in compliance with the dispositional order. At that time, the juvenile court found that Mother had failed to attend therapy sessions for a two-month period, had canceled seven visitation sessions and had frequently been late to or not prepared for others, and had lacked stable housing. The evidence before the juvenile court supports its determination that while Mother had, at times, been compliant with the dispositional order, her level of compliance had deteriorated over time, she had not shown significant progress in the case, and the lack of permanency had negatively impacted Child. Mother's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[19] With regard to the pattern of domestic violence, Mother acknowledged that there had been domestic violence "between herself and L.S." but argues that because she and L.S. have broken up, the concerns about domestic violence in Mother's home have been eliminated. While a juvenile court should judge a parent's fitness at the time of the termination hearing, the juvenile court "must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Bester*, 839 N.E.2d at 152. The record demonstrates that the juvenile court considered Mother's pattern of conduct regarding domestic violence in finding that there were ongoing issues with domestic violence in the home. In addition, the record does not demonstrate, and Mother points to no evidence to suggest, that she has successfully engaged in, much less completed, services aimed at eliminating

the risk of domestic violence. Mother merely argues that because she has broken up with her ex-boyfriend, the issue has been resolved. While that may be true as far as Mother and L.S. are concerned, nothing in the record even suggests that Mother has addressed the root cause of her tendency to engage in a pattern of conduct that has led her to engage in domestic violence.⁴ The record supports the juvenile court's finding regarding Mother's ongoing issues with domestic abuse. Again, Mother's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[20] Furthermore, while Mother does not challenge the juvenile court's findings regarding her lack of stable, suitable housing and her lack of reliable transportation in arguing that the evidence is insufficient to support the juvenile court's conclusion that the conditions leading to Child's removal from her care are not likely to be remedied, she does challenge the juvenile court's findings in these regards in arguing that the evidence is insufficient to prove that continuation of the parent-child relationship poses a threat to Child.⁵ Since these findings are relevant to both inquiries, we will discuss them as they relate

⁴ Mother also claims that the record does not support the determination that she suffers from current substance-abuse issues and that sibling's fractured skull was anything other than an accident. While concerns about substance abuse and sibling's injury were included in the discussion of the reasons for Child's removal from Mother's care, the juvenile court did not appear to rely on either of these factors in concluding that the overall conditions that led to Child's removal from Mother's home, *i.e.*, neglect, unsafe housing, and violence in the home, were not likely to be remedied.

⁵ Mother also points to the juvenile court's finding that she was unemployed and lacked financial stability. She acknowledges, however, that the juvenile court's finding in this regard is supported by the evidence.

to the question of whether the evidence supports the juvenile court's conclusion regarding the question of whether the conditions leading to removal are likely to be remedied.

[21] Mother argues that the juvenile court's finding that her "home is still not ready for the Child to come home" is not supported by the evidence. Appellant's App. Vol. II p. 100. We disagree. Mother moved into a new apartment in June of 2023. The residence was clean and safe one week after Mother had moved in. However, when FCM Fields visited the apartment in July of 2023, the apartment was extremely cluttered, to the point that there "was not a clear pathway for [Child] or any other visitors within the home" and "[i]t was difficult to move in [the] home with all the items that were within the apartment." Tr. Vol. II p. 161. At that time, Mother's apartment "was not considered appropriate" for Child. Tr. Vol. II p. 161. Mother's challenge to this finding again is merely a request to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879. Moreover, Mother does not challenge the juvenile court's finding that her "housing situation has been unstable throughout the life of the case." Appellant's App. Vol. II p. 100. Unchallenged findings must be accepted as true. *See Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*.

[22] With regard to transportation, Mother argues that the record does not support the juvenile court's finding that she "is not able to provide transportation for" Child. Appellant's App. Vol. II p. 100. In support, Mother asserts that while she does not have a valid driver's license, she "has access to Uber, Lyft,

Medicaid cab, and bus services, and she has a friend who can help with transportation.” Appellant’s Br. p. 34. In making this assertion, Mother relies solely on her own testimony, which the juvenile court was under no obligation to believe. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“[I]t was well within [the factfinder’s] prerogative to find [that appellant’s] testimony was self-serving and therefore not believable.”). It is clear from the record that the juvenile court did not credit Mother’s testimony, with the juvenile court stating that while it “is used to occasional contradictions” in witness testimony, it was “mind boggling” that Mother’s testimony “was contradictory to every single person who testified in this matter.” Tr. Vol. II p. 238. Mother’s challenge to this finding amounts to nothing more than a request to reweigh the evidence, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[23] Mother has failed to convince us that any of the challenged findings are not supported by the record. In addition, we accept the unchallenged findings as true. *See Moriarty*, 150 N.E.3d at 626. The findings are sufficient to support the juvenile court’s conclusion that the conditions that led to Child’s removal are unlikely to be remedied.⁶

⁶ Because we have concluded that the evidence is sufficient to support the juvenile court’s determination that the conditions that led to Child’s removal are not likely to be remedied, we need not address Mother’s argument that the evidence is insufficient to prove that a continuation of the parent-child relationship poses a threat to Child’s well-being.

II. The Evidence is Sufficient to Prove Subsection (C)

[24] We are mindful that in considering whether termination of parental rights is in the best interests of the child, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* “A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do the same supports a finding that termination of parental rights is in the best interests of the children.” *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*.

The [juvenile] court need not wait until the [children are] irreversibly harmed such that [their] physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Additionally, [the children’s] need for permanency is an important consideration in determining the best interests of [the children], and the testimony of the service providers may support a finding that termination is in the [children’s] best interests.

In re A.K., 924 N.E.2d 212, 224 (Ind. Ct. App. 2010).

[25] Mother argues that “DCS did not prove that [termination of her parental rights] is in [Child’s] best interests. Appellant’s Br. p. 34. We disagree. FCM Fields testified that termination of Mother’s parental rights was in Child’s best interests. FCM Field’s testimony is likely sufficient on its own to support the

juvenile court's conclusion regarding Child's best interests. *See Lang*, 861 N.E.2d at 374 (providing that the testimony of the case worker, guardian ad litem, or a court-appointed special advocate ("CASA") regarding the children's best interests supports a finding that termination is in the children's best interests). Furthermore, while Child's CASA did not testify during the evidentiary hearing, Child's CASA provided argument to the juvenile court, during which she agreed with FCM Fields that given the facts and circumstances of this case, termination of Mother's parental rights was in Child's best interests.

[26] Other evidence also supports the juvenile court's conclusion that the termination of Mother's parental rights to Child was in Child's best interests. The evidence established that there was a clear correlation between Child's dangerous and worrisome behaviors and contact with Mother. The evidence also established that Mother did not demonstrate the appropriate level of concern in connection to Child's dangerous behaviors, with one example showing that Mother believed an incident with a gun and Child's threats of physical harm to both himself and others was overblown because school officials were out to get her. Child's behavior improved when his contact with Mother was limited and DCS's plan for adoption, with an adoptive family having been identified, would provide Child with much needed stability. The record is more than sufficient to establish that termination of Mother's parental rights is in Child's best interests. Again, Mother's claim to the contrary

amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[27] The judgment of the juvenile court is affirmed.

Altice, C.J., and Felix, J., concur.

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