

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

L.F. (Minor Child)

and

S.F. (Mother)

Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 30, 2022

Court of Appeals Case No.
21A-JT-2581

Appeal from the Tippecanoe
Superior Court

The Honorable Nancy Gettinger,
Senior Judge

Trial Court Cause No.
79D03-2108-JT-63

Bailey, Judge.

Case Summary

- [1] S.F. (“Mother”) appeals the trial court judgment terminating her parental rights to her child, L.F. (“Child”).¹ She raises three issues on appeal which we consolidate and restate as the following dispositive issue: Whether the termination of parental rights (“TPR”) order was clearly erroneous.
- [2] We affirm.

Facts and Procedural History

- [3] On August 20, 2020, Mother gave birth to Child six weeks prematurely. At the time of her birth, Child’s umbilical cord tested positive for methamphetamine and amphetamine. Child was placed in the Newborn Intensive Care Unit (“NICU”) and remained hospitalized until August 28, 2020. Prior to Child’s discharge from the hospital, Mother was arrested when drug paraphernalia and illegal substances were found in her home while she was on house arrest for earlier criminal charges. Father was also incarcerated at the time of Child’s discharge. Because there was no parent available to care for Child upon her discharge from the hospital, the Indiana Department of Child Services (“DCS”)

¹ The parental rights of Child’s father, S.N.F. (“Father”), were also terminated but Father does not participate in this appeal.

removed her “from the care of her parents” and filed a petition alleging Child was a Child in Need of Services (“CHINS”). Appealed Order at 2. DCS also alleged in its August 31, 2020, CHINS petition that, among other things, Child was born testing positive for methamphetamine and amphetamine. Child was placed with Mother’s brother and sister-in-law, where Child remained throughout the CHINS and TPR proceedings.

[4] On January 19, 2021, the trial court adjudicated Child to be a CHINS based, in part, on its findings that Child had tested positive for illegal substances at her birth; Mother was arrested for various drug-related crimes on August 27, 2020; and Child had to be placed with relatives upon her release from the hospital because both her parents were incarcerated. In its January 27 dispositional order, the court ordered Mother to participate in reunification services, including participation in and completion of substance abuse evaluation and treatment, and drug screening. On July 26, 2021, the trial court changed the permanency plan to termination of parental rights and adoption because Mother had not complied with the order to engage in reunification services.

[5] On August 2, 2021, DCS filed its petition to terminate parental rights, and the court conducted a factfinding hearing on the TPR petition on September 22, 2021. On October 5, 2021, the trial court entered an order terminating Mother’s parental rights. The court entered findings which stated in relevant part, in addition to the above, that:

6.(b)(ii) There is a reasonable probability that th[e] conditions that caused Child’s removed will not be remedied in that[:]

1. Mother has [been] offered services not only by the DCS but also through Court Services as well.[] Mother was ordered to complete certain substance abuse evaluations and treatment services through the criminal court. She has not been compliant with the referrals through Court Services under two criminal charges.

2. Mother was originally referred for an evaluation and directed to participate in no fewer than 45 meetings in a 12-step program.

3. When she was arrested again in a new case, Mother was ordered again to be evaluated, however, she was discharged from Valley Oaks for non-compliance with the referral.

4. Another referral was made for further evaluation and services at Turning Point Counseling Services, however, Mother failed to appear for a status appointment with Court Services or to maintain contact with Court Services with regards to that service. Mother has not participated in ANY services referred by Court Services.

5. Mother has also been provided services from the Department of Child Services as a result of the underlying CHINS.

6. PAKT, a Community Behavior Health agency in Lafayette[,] was to provide case management services and to provide visitation supervision.

7. Initially, visits went well. Mother was fully engaged, and the visitation supervisor had no concerns other than to offer parent education.

8. At some point, visits became virtual due to concerns with regards to COVID[-]19.

9. Thereafter, because Mother had a good relationship with the relatives with whom Child is placed, visits could take place without a service provider. Relatives were able to monitor whether Mother was under the influence or otherwise presented safety concerns for visits.

10. Goals for case management included 1) assisting Mother with employment; 2) establishing a home that is suitable for an infant; 3) learning to manage a schedule to avoid missing appointments; 4) assistance with transportation; and 5) initially, during the time PAKT was supervising visits, providing parenting education.

11. Mother verbalized that she wanted to be organized but did not follow through even though she was given a daily list of things she needed to do, a paper planner, and text messages as reminders. She continued to miss appointments.

12. PAKT notified Mother that her failure to make all of her appointments could result in her discharge from services.

13. Mother did get a job[] but did not establish independent, appropriate[,] and safe housing for herself and Child.

14. Mother did not utilize the transportation services that were offered.

15. In March 2021, Mother admitted to using drugs, although she had not been screened since January 2021.

16. At two Child and Family Team Meetings held in March 2021, Mother expressed her desire to go into an in-patient program, but only if she could not be successful through Community Corrections. She was going to be on house arrest on an electronic ankle bracelet.

17. Mother appeared to be motivated about getting clean and staying sober.

18. However, when PAKT had no contact with Mother for seven (7) weeks and eventually learned that she had cut off her ankle bracelet and left the state, PAKT closed its case.

19. PAKT closed its case at the end of May 2021.

20. In the meantime, Mother was picked up in Montana, and returned to Tippecanoe County Jail. She has pled guilty to failure to return to lawful detention and will execute a sentence of two years in the Indiana Department of Correction. (IDOC).

21. In December 2020, DCS referred Mother to Families United for individual therapy.

22. [Mother] failed to make contact with Families United until early January 2021.

23. Mother initially had voiced an interest in working on her sobriety as well as meeting the requirements and

conditions that needed to be addressed with regard to reunification.

24. However, Mother did not follow through with Families United and was discharged from Families United in February 2021.

25. Mother claims to be currently drug free and sober at this time. However, as she is incarcerated, it is likely that she has limited, if any, opportunity, to abuse illegal substances. In any event Mother has had no drug screens since she has been in jail and therefore, DCS has not been able to verify her sobriety.

26. Having never fully participated in or completed an Intensive Outpatient Program (IOP) or an inpatient treatment program, Mother will likely relapse another time.

27. The Court concludes that because Mother has not followed through with or taken advantage of the services ordered and provided, the conditions that led to the removal of Child will not be remedied.

28. The facts in the case at bar are similar to those in *In Re B.H.*, 44 N.B.3d 745 (Ind. Ct. App. 2015), *trans. denied*. In that case, the Court of Appeals affirmed the juvenile court's finding that there was a reasonable probability that the conditions leading to the children's initial and continued removal from Mother would not be remedied. [The court noted] that although the mother of the children admitted to drug use, she had repeatedly failed to take substance abuse intake assessment, failed to complete the recommended IOP[,] and either failed to appear for random drug screens o[r] tested positive.

* * *

[6.(b)](iii) The DCS also demonstrated by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the well-being of the child in that:

1. In this case, Mother's substance abuse, a condition that has not been remedied, caused Child to be born prematurely and to spend several days in NICU.
2. The likelihood [that] Mother has continued untreated substance [abuse problems] and [engages in] illegal conduct affects her ability to maintain employment, to provide safe and stable home[,] and to meet the needs of a young child.

[6.(b)](iv) Termination is in the best interests of the child in that:

1. The CASA volunteer in this case believes it is in the best interest of the child for parental rights to be terminated based on the child's need for care and attention by safe and sober parents.
2. Child is placed in a relative home where she thrives, is loved[] and well cared for, and all her needs are met.
3. Child is in relative care and will have the ability to maintain contact with members of her biological family.

[6.(b)](v) DCS has a satisfactory plan for the care and treatment of the child, which is:

1. Adoption by her current relative caregivers.

Appealed Order at 2-6 (emphasis in original).

- [6] The trial court held that Mother's parental rights as to Child were terminated because there is a reasonable probability that the conditions which resulted in Child's removal will not be remedied, continuation of the parent-child relationship poses a threat to the well-being of Child, and termination of parental rights is in Child's best interests. This appeal ensued.

Discussion and Decision

Standard of Review

- [7] Mother maintains that the trial court's order terminating her parental rights was clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution. *See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination matter. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.
- [8] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(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;

* * *

(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) [and] that termination is in the best interests of the child

Ind. Code § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *In re G. Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[10] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

Section (b)(2)(B) Requirements

[11] Mother asserts that the trial court erred in basing its termination decision on evidence of her incarceration and potential for drug abuse relapse. As the State points out, Mother does not specify which if any subsections of Indiana Code

Section 31-35-2-4(b)(2) she challenges; therefore, she has arguably therefore waived any such challenges. Ind. Appellate Rule 46(A)(8)(a). However, even if we read Mother’s challenges regarding her incarceration and potential for drug abuse relapse as challenges to subsection (b)(2)(B)(i)—i.e., the finding that there is a reasonable probability that the conditions that resulted in Child’s removal or continued placement outside Mother’s home will not be remedied—she still has not challenged the trial court’s finding that continuation of her relationship with Child poses a threat to Child’s well-being. “Because subsection (b)(2)(B) is written in the disjunctive ... the trial court need only find one of the ... elements by clear and convincing evidence.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 n.4 (Ind. 2015) (quotations and citations omitted). As the unchallenged ultimate finding that Mother’s continued relationship with Child poses a threat to Child’s well-being is, alone, sufficient to meet the requirements of Indiana Code Section 31-35-2-4(b)(2)(B), we need not address Mother’s possible claim regarding the remedying of conditions.² The trial court did not clearly err in concluding that the requirements of Indiana Code Section 31-35-2-4(b)(2)(B) are met in this case.

² Nevertheless, we note that the trial court’s ultimate finding that there was a reasonable probability that the conditions that resulted in Child’s removal would not be remedied by Mother was supported by ample evidence of Mother’s historic and continued inability to follow the law, refrain from drug use, obtain and complete drug abuse treatment, and remain free from incarceration/obtain and maintain appropriate housing for Child.

Child's Best Interests

[12] Mother also asserts that the trial court erred in concluding that termination of her parental rights is in Child's best interests. In making such a determination, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006). "Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child's best interests." *In re A.K.*, 924 N.E.2d at 224. Such evidence, "in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests." *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[13] Here, the evidence established that Mother has a historic inability to remain drug-free, to obtain and complete drug treatment, to obtain and keep adequate housing, to refrain from violating the law, and to remain free from incarceration. In addition, at the time of the termination hearing, Mother was incarcerated on drug charges—and therefore, unable to provide adequate housing for Child—and had not completed any of the multiple drug treatment programs offered to her. *See Castro*, 842 N.E.2d at 374 (noting that a parent

who had been incarcerated for most of his child's life had a "historic inability to provide housing, stability and supervision" for the child and that continued incarceration at the time of the TPR hearing was strong evidence of a current inability to provide the same). Furthermore, although Mother maintains she was drug free at the time of the TPR hearing, the evidence supports the trial court's inference that, if Mother was drug free, it was likely because she did not have access to drugs in prison. Moreover, the court was entitled to weigh Mother's historic pattern of drug abuse more heavily than her recent alleged cessation of drug use while incarcerated. *See Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted) (noting the court must "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child"). Mother's contentions to the contrary are requests that we reweigh evidence and judge witness credibility, which we may not do. *See In re D.D.*, 804 N.E.2d at 265.

[14] In addition, the Court Appointed Special Advocate ("CASA") and the DCS Family Case Manager ("FCM") testified that Child needs permanency and is doing well in her pre-adoptive relative placement, through which Child will be able to maintain contact with her biological family. The CASA and FCM also testified that they believe termination of Mother's parental rights is in Child's best interests. Given that testimony and the evidence of Mother's historic and continued violations of law, incarcerations, failures to obtain and complete drug treatment, and failures to obtain and maintain adequate housing, we cannot say

the trial court clearly erred in finding that termination was in Child's best interests. *See In re S.P.H.*, 806 N.E.2d 874, 883 (Ind. Ct. App. 2004) (holding that the needs of the children were too substantial to force them to wait while determining if their incarcerated father would be able to be a parent for them).

Conclusion

[15] The unchallenged ultimate finding that Mother's continued relationship with Child poses a threat to Child's well-being, together with the other statutory findings, supports the trial court's termination order. And the trial court did not clearly err when it determined that termination is in Child's best interest.

[16] Affirmed.

Mathias, J., and Altice, J., concur.