

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of:

Au.D. and J.D., Jr. (Minor
Children)

and

J.D. (Father) and A.D. (Mother),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 18, 2023

Court of Appeals Case No.
22A-JT-2894

Appeal from the Marion Superior
Court

The Honorable Alicia A. Gooden,
Judge

The Honorable Jennifer J. Hubart,
Magistrate

Trial Court Cause No.
49D14-2108-JT-6820
49D14-2108-JT-6822

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] J.D. (“Father”) and A.D. (“Mother”) (collectively, “Parents”) appeal the Marion Superior Court’s termination of their parental rights over their two minor children, Au.D and J.D., Jr. (“the Children”). Parents raise five issues for our review, which we consolidate and restate as the following dispositive issues:

1. Whether the trial court’s findings regarding Father’s failed drug screens are supported by the evidence.
2. Whether the trial court clearly erred when it concluded that the conditions that resulted in the removal of the Children from Parents’ care are not likely to be remedied.
3. Whether termination of the Parents’ parental rights is in the Children’s best interests.

[2] We affirm.

Facts and Procedural History

- [3] Parents are married and have a long history of substance abuse. In 2014, Mother gave birth to J.D., Jr. In 2016, she gave birth to Au.D. In 2017, Mother was convicted of possession of a controlled substance, and, the following year, Father began using methamphetamine.
- [4] In January 2020, the Indiana Department of Child Services (“DCS”) alleged the Children to be Children in Need of Services (“CHINS”).¹ At the time of the initial CHINS hearing, Father was incarcerated, and Mother was living in a motel. The trial court ordered the Children to be removed from Parents’ care.
- [5] At the CHINS fact-finding hearing in May, Parents admitted the Children were CHINS based on Parents’ substance abuse. The court adjudicated the Children to be CHINS, ordered their continued placement outside of Parents’ care, and ordered Parents to participate in numerous services, including substance abuse assessments, random drug screens, and home-based case management. The court informed Parents that “a missed drug screen would be considered a positive drug screen.” Father’s App. Vol. 2, p. 52; *see also* Ex. Vol. 1, p. 61.
- [6] At a permanency hearing in February 2021 and another permanency hearing in July 2021, the court found that neither Parent had made meaningful or

¹ The parties have not included the CHINS petitions in the appendices submitted on appeal, yet they did include a number of irrelevant motions and orders. We remind counsel that [Indiana Appellate Rule 50\(A\)](#) states that “[t]he purpose of an Appendix in civil appeals . . . is to present the Court with copies of only those parts of the Record on Appeal that are necessary for the Court to decide the issues presented.”

sustainable progress toward reunification with the Children. The court further found that Parents' substance abuse and lack of stable housing continued to be barriers to reunification. Based on the Children thriving in their placement, at the July hearing the court ordered their permanency plan to be changed to adoption.

[7] In December, Mother gave birth to a third child, C.D. Shortly thereafter, DCS filed a petition alleging C.D. to also be a CHINS. In February 2022, Parents admitted that C.D. was a CHINS based on their continued substance abuse.

[8] Between June 2021 and June 2022, Father failed to call in for required random drug screens 231 times. He missed fifty-five drug screens. He complied with sixty-eight drug screens, but thirteen of those produced “[a]bnormal” results. Ex. Vol. 1, p. 124. At least three of those abnormal results were drug screens where Father had tested positive for methamphetamine and marijuana. *See id.* at 90, 94, 98, 129-30. The last drug screen to which he submitted was on June 3, 2022, which also produced an “[a]bnormal” result. *Id.* at 129.

[9] Over that same time, Mother failed to call in for random drug screens 229 times. She missed fifty-five drug screens. She complied with sixty-seven drug screens, twelve of which produced abnormal results. At least some of those abnormal results were because she had tested positive for methamphetamine. Mother ceased participating in drug screens after her June 2, 2022, test, which was also abnormal.

[10] Meanwhile, Paulette Hartfield of Healthy Family Advocates provided substance abuse assessments and counseling to Parents. Mother completed a substance abuse assessment in September 2021 and recommended Mother complete forty hours of substance abuse treatment, individual counseling, and a behavior assessment. Mother completed about half of those hours, but she never finished them. Similarly, Father “never disclosed . . . use of methamphetamine” to Hartfield. Father’s App. Vol. 2, p. 53. While he still did not complete the services she recommended, she would have recommended an additional twenty hours of substance abuse classes had she known of his methamphetamine use. Father also “never responded” to Hartfield’s attempts to engage him in individual counseling. *Id.*

[11] In August, DCS filed its petitions to terminate Parents’ parental rights over the Children. Over the course of several days of fact-finding hearings, DCS submitted the CHINS records; the records of Parents’ drug screens; Hartfield’s testimony along with evidence submitted by other service providers; the testimony of family case managers; the testimony of the Children’s guardian ad litem; and the testimony of a court-appointed special advocate. Further, between the filing of the termination petitions and the final day of the fact-finding hearing, each Parent missed approximately seventeen additional required drug screens.

[12] Following the fact-finding hearing, the trial court found in relevant part that the conditions that resulted in the Children’s removal from Parents’ care were not likely to be remedied and that termination of Parents’ parental rights was in the

Children's best interests. The court then ordered that Parents' parental rights be terminated, and this appeal ensued.

Standard of Review

- [13] 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.*
- [14] 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; 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*. 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).

- [15] 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). We need only discuss two of those elements in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside of Parents’ home will not be remedied;² and (2) whether termination of Parents’ parental rights was in the Children’s best interests. *I.C. § 31-35-2-4(b)(2)(B)(i), (C)*.
- [16] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child’s very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that a child’s emotional and physical development are put at risk by a parent’s custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. *I.C. § 31-35-2-8(a)*.

² DCS needed to prove only one of the elements listed in *Indiana Code* § 31-35-2-4(b)(2)(B). Thus, given our disposition as to the conditions that resulted in the Children’s removal under subsection (B)(i), we need not address Parents’ additional argument under the “threat” prong of subsection (B)(ii).

1. The trial court's findings regarding Father's failed drug screens is supported by the record.

[17] We first address Father's argument that the trial court's finding number 52 is not supported by the record.³ In that paragraph, the court found as follows:

Since June of 2021, Father has failed to call the random drug screening line as required by Court order 231 times. He has missed 55 random drug screens that were required during that period. He has complied with 68 screens during that period, but of those, at least 13 were abnormal. Father had drug screens which were positive for methamphetamine as well as THC, collected on 9/13/21, 9/22/21, 10/1/21, 10/4/21, 10/13/21, 11/10/21, 11/24/21, 4/21/22, 4/28/22, 5/10/22, 5/20/22. Father has not produced a random drug screen since June 3rd, 2022. His screen on June 3rd, 2022[,] was found to be positive for methamphetamine. Father never again submitted a random drug screen despite the referral being open and screens being available.

Father's App. Vol. 2, p. 55.

[18] Father challenges finding number 52 in two respects. First, he asserts that DCS's evidence demonstrated only three failed drug screens, on April 28, 2022, May 10, 2022, and May 20, 2022. Thus, he continues, the court's finding that he had other failed drug screens is clearly erroneous.

³ Father also challenges the trial court's findings and conclusions pertaining to threats to the Children's well-being. However, given our disposition under the alternative statutory provision regarding the conditions that resulted in the Children's removal, we need not consider those additional challenges.

[19] Father is incorrect. DCS presented a list of Father’s long drug-screen history, which identified only as “[a]bnormal” thirteen tests that he had taken and not passed. *See* Ex. Vol. 1, p. 124. Separately, DCS introduced three of Father’s “[a]bnormal” test results—the April 28, 2022, May 10, 2022, and May 20, 2022, results—and those results more specifically stated that Father had tested positive for methamphetamine and THC on each of those occasions. *See id.* at 90, 94, 100.⁴ The trial court therefore reasonably inferred from the evidence that an “[a]bnormal” test result was the result of a failed drug screen.

[20] Father also asserts that the test results collected on April 28, 2022, May 10, 2022, and May 20, 2022, were unreliable. Specifically, Father notes that it was critical for the test-collectors to inspect the test-taker’s mouth prior to collecting an oral swab, but one of the test-collectors testified that she did not do so, and the other two test-collectors stated that that was their usual practice, but they could not specifically recall doing so here.

[21] However, each of the test results included a “Process Acknowledgment Form” signed by Father contemporaneously with the test. Ex. Vol. 1, pp. 93, 96, 100. In those acknowledgment forms, Father expressly agreed that the collector for each test had “visually inspect[ed his] mouth to ensure it [wa]s empty” prior to collecting the sample. *Id.* Thus, Father’s challenge to the three test results in

⁴ The three specific test results can be correlated to Father’s list of tests using each test’s chain-of-custody identification number.

question goes only to the weight of the evidence, which we will not reconsider. Father's challenges to finding number 52 must fail.

2. The trial court's conclusion that the conditions that resulted in the Children's removal from Parents' care will not be remedied is not clearly erroneous.

[22] Mother and Father each also argue that the trial court erred when it concluded that the conditions that resulted in the removal of the Children from their care will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[23] Parents do not dispute that the Children were removed from their care during the CHINS proceedings after Parents admitted to substance abuse in their home. They also do not dispute that, more than two years after DCS first removed the Children from their care, Mother gave birth to a third child who was also adjudicated to be a CHINS based on Parents' ongoing substance

abuse. Mother does not dispute her extensive and ongoing substance abuse throughout the CHINS and termination proceedings; and, as explained in Issue One, the evidence readily shows that Father likewise continued with his substance abuse throughout the CHINS and termination proceedings.

[24] Mother's argument on this issue is narrow: she asserts that the trial court's conclusion that her substance abuse is unlikely to be remedied is erroneous because she had made *some* progress with treatment and had at least been more willing to work on her substance abuse than Father had been. We recognize that Mother has acknowledged her addiction and has made some, albeit inconsistent, progress on treatment. But she also repeatedly continued to abuse controlled substances throughout the CHINS and termination proceedings; she was unable to complete the offered services; her last failed drug screen occurred during the termination proceeding; and she missed seventeen drug screens during the termination proceeding as well. A trial court is not obliged in a termination proceeding to wait until a child is irreversibly harmed before terminating a parent's rights, and Mother's argument on this issue is ultimately a request for us to simply reweigh the evidence, which we will not do.

[25] As for Father, his argument here is contingent on this Court agreeing with his argument in Issue One. *See* Father's Br. at 27. However, as explained above, we reject his argument in Issue One, and the trial court's finding of Father's ongoing and continued substance abuse throughout the CHINS and termination proceedings is well-supported by the record. Accordingly, Father's argument on this issue fails.

3. Termination of Parents' parental rights is in the Children's best interests.

- [26] Last, Mother and Father each assert that termination of their parental rights is not in the Children's best interests. A trial court's consideration of whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *E.M.*, 4 N.E.3d at 647. When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648.
- [27] Testimony from both the case manager and an advocate for the child, combined with evidence that there is a reasonable probability that the reasons for a child's removal are not likely to be remedied, has regularly been found to be sufficient to support a trial court's determination that termination is in a child's best interests. *See A.D.S.*, 987 N.E.2d at 1158-59. Here, the family case managers, guardian ad litem, and court-appointed special advocate all agreed that termination of Mother's and Father's parental rights was in the Children's best interests. And, as explained above, DCS presented sufficient evidence to show that there is a reasonable probability that the reasons for the Children's removal from the Parents' care are not likely to be remedied. Parents' arguments to the

contrary on this issue again simply seek to have this Court reweigh the evidence, which we will not do. The trial court's judgment on this issue is affirmed.

Conclusion

[28] For all of the above-stated reasons, we affirm the trial court's termination of Mother's and Father's parental rights over the Children.

[29] Affirmed.

Vaidik, J., and Pyle, J., concur.