

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

A.A. and R.B.,  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

May 9, 2022

Court of Appeals Case No.  
21A-JT-2666

Appeal from the Tippecanoe  
Superior Court

The Honorable Faith Graham,  
Judge

Trial Court Cause No.  
79D03-2106-JT-53 & 79D03-2106-  
JT-54

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellants-Respondents, A.A. (Mother) and R.B. (Father) (collectively, Parents), appeal the termination of their parental rights to their minor children A.A. and G.B. (collectively, Children).<sup>1</sup>
- [2] We affirm.

## ISSUE

- [3] Parents present this court with four issues, which we consolidate and restate as: Whether the trial court's order terminating their parental rights to Children is clearly erroneous.

## FACTS AND PROCEDURAL HISTORY

- [4] The trial court's uncontroverted findings supporting its determination are as follows. Mother gave birth to A.A. on October 11, 2015, and to G.B. on April 9, 2019. A.A.'s father is deceased. Father is G.B.'s biological father and has acted in a parental role to A.A. The Department of Child Services (DCS) first became involved with this family on April 10, 2019, after Mother tested positive for methamphetamine upon admission to the maternity ward and after G.B. tested positive for methamphetamine at birth. As part of DCS' investigation, A.A. submitted to a hair follicle test which was positive for methamphetamine. Father, who was residing with Mother and Children, denied having knowledge

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<sup>1</sup> On January 19, 2022, by this court's order, Parents' separate appeals were consolidated.

of Mother's substance abuse. Father initially consented to a drug screen but declined to actually undergo the test when it was offered. Children were removed from Parents' care and were placed with Maternal Uncle.

[5] On April 15, 2019, DCS filed a petition alleging that Children were children in need of services (CHINS) based on its allegations that Mother tested positive for methamphetamine upon admission to the hospital to give birth to G.B. and that G.B. tested positive for methamphetamine at birth. On April 16, 2019, Mother, who was on probation for a 2010 methamphetamine possession conviction, was arrested on a probation violation and was remitted to the Department of Correction (DOC). Father did not participate in the CHINS proceedings, failed to maintain contact with DCS, failed to attend scheduled visits with G.B., and did not attend the final CHINS fact-finding hearing. On June 3, 2019, Children were adjudicated CHINS, and on July 2, 2019, the trial court entered its dispositional order. Parents were offered a parenting assessment, a mental health assessment, a substance abuse assessment and treatment, case management, individual therapy, random drug screens, and parenting time. In addition, Mother was offered a domestic violence assessment, and Father was offered a psychological evaluation. The trial court further ordered as part of its disposition that parenting time, which was to be supervised, would be immediately suspended if Parents tested positive for methamphetamine.

[6] Mother was incarcerated from April 16, 2019, to April 23, 2020. During Mother's incarceration, Father completed some of his court-ordered

assessments, participated in case management services, exercised parenting time with G.B., and had negative drug screens when he submitted to testing. In October of 2019, A.A. sustained a traumatic head injury while in Maternal Uncle's care, was airlifted to Riley Children's Hospital, and was hospitalized for several weeks. DCS substantiated physical abuse by Maternal Uncle, and Children were both removed from his care. After her discharge from the hospital, A.A. entered foster care, where she has remained ever since.

- [7] On November 13, 2019, Father began a trial home visit with G.B. When Mother was released from the DOC, she returned to the family home without first obtaining court approval. Mother was subsequently ordered to vacate the family home, and she began receiving services to address her addiction to methamphetamine, including a clinical interview and assessment. By June of 2020, Parents continued to participate in services and had started therapeutically-supervised parenting time with A.A. On July 15, 2020, Father's trial home visit ended when Father and G.B. both tested positive for methamphetamine. Father admitted using methamphetamine with Mother, and Mother tested positive for methamphetamine shortly thereafter. Mother moved in with Father after G.B. was removed from Father's care. G.B. was placed in foster care, where she has remained. Mother was offered in-patient treatment, but she declined in favor of out-patient treatment. Parenting time with Children was suspended, but Parents were permitted virtual parenting time with Children as of August 25, 2020.

- [8] Between July 15, 2020, and the end of October 2020, Mother tested positive for methamphetamine on six occasions and for buprenorphine once, despite engaging in some services. During the same period, Father tested positive for methamphetamine on four occasions, buprenorphine once, and for alcohol on three occasions. Parents failed to remain in contact with DCS. On October 14, 2020, DCS filed its first petitions seeking to terminate Parents' rights to Children, and the permanency plan for Children was changed to adoption. Mother tested positive for methamphetamine five times in November of 2020, and Father tested positive four times that month. On January 2, 2021, Mother gave birth to Ga.B., her second child with Father. Ga.B. tested positive for methamphetamine at birth. Ga.B. was removed from Parents' care and was subsequently also adjudicated to be a CHINS in a separate proceeding. After Ga.B.'s birth, both Mother and Father expressed a desire to get sober.
- [9] On March 12, 2021, the trial court dismissed DCS' first set of termination petitions, and although Children's permanency plan reverted to reunification, Parents failed to participate in services, attending only one out of four substance abuse treatment sessions. From February 3, 2021, to April 23, 2021, Mother tested positive for alcohol on fourteen occasions and tested positive for methamphetamine on April 16 and April 19, 2021, all while receiving services. During the same time period, Father tested positive for alcohol on thirteen occasions and for methamphetamine on April 16 and April 23, 2021, also while receiving services. Parenting time with Children was again suspended, and Parents have had no parenting time with Children since April 23, 2021. Parents

did not submit to regular drug screens after April 2021. Mother completed thirty days of in-patient substance abuse treatment at Volunteers of America in May of 2021.

[10] On June 7, 2021, DCS filed its second set of petitions to terminate Parents' rights to Children. Father's last DCS drug screen on June 21, 2021, was positive for methamphetamine. Mother left her in-patient treatment early on June 25, 2021. DCS discontinued substance abuse services for Mother and Father in July 2021 due to lack of participation. On August 5, 2021, the date set for the fact-finding hearing, Mother was undergoing in-patient treatment and was unable to attend in person. Based on Mother's representation that she had a projected release date of August 23, 2021, the trial court continued the hearing but ordered Father and Mother to appear in person on August 24, 2021. Mother subsequently completed a twenty-three-day in-patient program in August 2021.

[11] On August 24, 2021, the trial court convened the fact-finding hearing. By that time Mother had an active warrant out for her arrest for probation violations in her 2010 methamphetamine possession case. Mother's attorney represented to the trial court that Mother would turn herself in after the hearing and did not anticipate being able to post bond. Cat Sorenson (Sorenson), a therapist who provided substance abuse counseling to Parents beginning in September 2020, testified that she had discussed with Parents the transferability of methamphetamine and how their methamphetamine use could endanger Children. Parents had not had parenting time with Children for four months.

DCS' Family Case Manager (FCM) testified that DCS' only concern with Parents was their substance abuse and how it affected Children. Children had been together with the same foster family since May of 2021. FCM found Children's pre-adoptive foster home to be appropriate and that Children were bonded to their foster parents and to their three-year-old foster sibling. A.A. was in therapy to address nightmares. G.B. had completed her services. Children's foster family facilitated visits between Children and Ga.B. without DCS' participation. FCM recommended termination of Parents' rights to Children and adoption by Children's foster family due to Parents' inability to remain sober and how that inability negatively impacted Children. FCM testified that "[t]hese children deserve permanency. Twenty-eight months in, and the parents are still, [] relapsing and, [] visits are still being stopped. These children are negatively affected by that." (Transcript p. 113). FCM felt that it would be very hard on Children if the case were continued for another two years. Children's CASA (CASA), who had been with the family since March of 2020, also recommended termination of parental rights and adoption by Children's foster family due to Parents' pattern of engaging in services, relapsing, losing contact with DCS, and then starting the process all over again. CASA expressed her opinion that Children "need more stability than what they're getting through their parents." (Tr. p. 124).

[12] On November 2, 2021, the trial court entered its detailed findings consistent with the aforementioned facts. The trial court ordered that Mother's parental

rights to Children and Father's parental rights to G.B. be terminated, concluding in relevant part that

1. There is a reasonable probability the conditions that resulted in the removal of [Children] from the care of the parents or the reasons for continued placement outside the home will not be remedied. Neither parent has demonstrated the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that either parent will maintain stability to care and provide adequately for [Children].

2. Continuation of the parent-child relationships poses a threat to the well-being of [Children] who need stability in life with parents who can provide for their emotional, psychological, and physical well-being.

(Mother's App., Vol. II, p. 24). The trial court also found that it was in Children's best interests that Parents' rights be terminated.

[13] Parents now appeal. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

### *I. Standard of Review*

[14] Parents challenge the evidence supporting the trial court's termination of their parental rights. It is well-settled that when reviewing the evidence supporting the termination of parental rights, we neither reweigh the evidence nor determine the credibility of witnesses. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In addition, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. *Id.* "We confine



our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment.” *Id.* We must give due regard to the trial court’s opportunity to judge the credibility of witnesses firsthand, and we do not set aside the trial court’s findings or judgment unless it is clearly erroneous. *Id.*

## II. *Termination of Parents’ Rights*

[15] “[O]ne of the most valued relationships in our culture” is that between a parent and his or her child. *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). Indeed, “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Accordingly, the Fourteenth Amendment to the United States Constitution safeguards “the traditional right of parents to establish a home and raise their children.” *Id.* Nevertheless, parental interests are not absolute; rather, termination of parental rights is appropriate when parents are unable or unwilling to meet their parental responsibilities. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008).

[16] Termination of parental rights is an extreme sanction that is intended as a “last resort” and is available only when all other reasonable efforts have failed. *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 91 (Ind. Ct. App. 2014). As such, before a termination of parental rights is merited, the State is required to prove a number of facts by clear and convincing evidence, including that there is a reasonable probability that the conditions which resulted in a child’s removal and continued placement outside the home will not be remedied or that there is

a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. Ind. Code §§ 31-35-2-4(b)(2)(B)(i-ii). The State must also show that it is in a child's best interests that a parent's rights be terminated. I.C. § 31-35-2-4(c). Before addressing Parents' specific claims, we note that they do not challenge the evidence supporting any of the trial court's factual findings. Therefore, we must accept the trial court's findings as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

### III. *Reasonable Probability Conditions Will Not Be Remedied*

[17] Parents both claim that the evidence did not support the trial court's determination that there was a reasonable probability that the conditions that merited Children's removal and continued placement outside their home will not be remedied. When reviewing a trial court's determination on this factor, we engage in a two-step analysis. *E.M.*, 4 N.E.3d at 642-43. First, we must identify the conditions that led to removal; second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. When engaging in the second step of this analysis, a trial court must judge a parent's fitness as of the time of the termination hearings, taking into account 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.* This delicate balance is entrusted to the trial court, and a trial court acts within its discretion when it weighs a parent's prior history more heavily than efforts made only shortly before termination. *Id.* "Requiring trial courts to give due regard to changed

conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

[18] The reason for Children's removal from Parents was Parents' methamphetamine abuse. Parents have long-term issues with substance abuse that predate this case. After Children's removal and despite being offered a plethora of services in which Parents engaged at times, Parents continued to test positive for methamphetamine throughout the CHINS and termination proceedings. Parents knew how their drug abuse could impact Children and knew that their parenting time would be discontinued, but they could not stop using methamphetamine. Indeed, the full extent of Parents' drug use during the proceedings is not knowable, as they did not submit to all drug screens when they were offered. During these proceedings, Mother gave birth to another child who tested positive for methamphetamine at birth. Parents tested positive for methamphetamine after the second set of termination petitions were filed, and Father last tested positive within two months of the August 24, 2021, final fact-finding hearing, even after Parents had been granted additional time to achieve and maintain sobriety when the first set of termination petitions were dismissed in March of 2021. Given this evidence, it was within the trial court's discretion to conclude that there is a reasonable probability that the conditions that merited Children's removal and continued placement outside the home will not be remedied. *See In re B.H.*, 44 N.E.3d 745, 750 (Ind. Ct. App. 2015) (upholding the trial court's 'conditions' determination where the child was removed due to testing positive for methamphetamine and Mother admitted

use, Mother failed to complete services, Mother repeatedly produced positive drug screens and failed to take screens, and during the proceedings Mother gave birth to another child who tested positive for methamphetamine at birth), *trans. denied.*

[19] Father argues that prior to his home visit he engaged in services and that, during the visit, he provided for G.B.'s needs, kept her safe, and maintained his sobriety for approximately nine months. Because of these circumstances, he maintains that "the trial court undervalued the evidence pertaining to the trial home visit" and that "this home visit period should be more than a footnote." (Father's Br. p. 13). While acknowledging our standard of review, Father asserts that his argument on this point is not an invitation to reweigh the evidence because the facts concerning the trial home visit were not in controversy. However, the home visit did not occur in a vacuum, and the trial court was tasked with balancing Father's home visit with his multiple relapses and continued methamphetamine use. Father presents us with no cases wherein this court held that a trial court abused its discretion in entering a finding on this factor where a parent, even one who had a relatively lengthy trial home visit, tested positive for methamphetamine throughout more than two years of proceedings and tested positive shortly before the termination fact-finding hearing. Therefore, Father has failed to persuade us that the trial court's findings and conclusions on this factor were clearly erroneous.

[20] Mother's argument on this point is two-fold: (1) she contends that her incarceration was an insufficient basis for terminating her rights, and (2) she

draws our attention to the fact that she had completed inpatient treatment by the time of the termination fact-finding hearing. However, although the trial court entered findings regarding the fact that Mother had been incarcerated and was about to turn herself in after the termination hearing, the primary basis for the trial court's determination was Mother's inability to maintain her sobriety. Therefore, contrary to Mother's implication, her incarceration was not the only basis for the termination of her parental rights. In addition, although Mother's completion of two rounds of in-patient treatment just prior to the fact-finding hearing is to be applauded, Mother continued to use methamphetamine and alcohol throughout the proceedings, and the trial court weighed that conduct more heavily than her recent stints at sobriety. As noted above, a trial court acts within its considerable discretion when it weighs recent improvements against habitual patterns of conduct. *See E.M.*, 4 N.E.3d at 642-43. Therefore, we must reject Mother's request that we reweigh the evidence. *Id.* at 642. Accordingly, we find no clear error on the part of the trial court.<sup>2</sup>

#### IV. *Children's Best Interests*

[21] Mother also challenges the trial court's determination that it was in Children's best interests that her parental rights be terminated. Our supreme court has

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<sup>2</sup> Parents also challenge the trial court's determination that their continued relationship with Children poses a threat to Children's well-being. Because section 31-35-2-4(b)(2)(B) is written in the disjunctive and we have concluded that the trial court's determination regarding the 'conditions' factor was not clearly erroneous, we need not and do not address Parents' argument pertaining to section 31-35-2-4(b)(2)(B)(ii). *In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008) (declining to address the merits of Parents' 'threat' argument), *trans. denied*.

recognized that one of the most difficult aspects of a termination of parental rights determination is the issue of whether the termination is in the child's best interest. *E.M.*, 4 N.E.3d at 647 (noting that the question "necessarily places the children's interest in preserving the family into conflict with their need for permanency"). The trial court's determination that termination was in a child's best interests requires it to look at the totality of the evidence of a particular case. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. "In doing so, the trial court must subordinate the interests of the parents to those of the children involved." *Id.*

[22] Here, the trial court found that there was a reasonable likelihood that the conditions meriting Children's removal from Mother's care would not be remedied; FCM recommended termination of Mother's rights and adoption by Children's foster family; and CASA had concluded that termination was in Children's best interests. These findings alone supported the trial court's determination that termination of Mother's parental rights was in Children's best interests. *See A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013) (finding the evidence supported the trial court's 'best interests' determination where the family case manager and CASA supported termination and the conditions resulting in removal would not be remedied), *trans. denied*.

[23] In addition, by the time of the termination fact-finding hearing, Children were well-bonded with their pre-adoptive foster family, including their young foster sibling. A.A. was engaging in services to address her nightmares, and G.B. had

completed needed services. Children's foster family arranged for Children to spend time with Ga.B., something they did without prompting or the involvement of DCS. Mother contends the mutual love between her and Children, her exercise of parenting time, and the fact that there were no other concerns with her parenting apart from her drug use all undercut the trial court's determination that termination was in Children's best interests. However, given the totality of the circumstances before us and our standard of review which precludes us from reweighing the evidence and considering evidence that does not support the trial court's determination, we cannot credit Mother's argument. *See In re E.M.*, 4 N.E.3d at 642.

## CONCLUSION

[24] Based on the foregoing, we conclude that the trial court's order terminating Parents' rights to Children was supported by the evidence and was, therefore, not clearly erroneous.

[25] Affirmed.

[26] May, J. and Tavitas, J. concur