MEMORANDUM DECISION

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IN THE

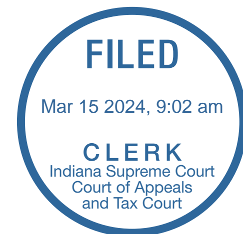
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of M.M. (Minor Child)

and

S.W. (Mother),

Appellant-Respondent



v.

Indiana Department of Child Services,

Appellee-Petitioner

March 15, 2024

Court of Appeals Case No.
23A-JT-2157

Appeal from the Morgan Circuit Court

The Honorable Matthew G. Hanson, Judge

Trial Court Cause No.
55C01-2301-JT-23

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

[1] S.W. ("Mother") appeals the involuntary termination of her parental rights to her daughter, M.M. Mother raises one issue for our review, which we restate as: was the trial court's termination of Mother's parental rights to M.M. clearly erroneous? Concluding it was not, we affirm.

Facts and Procedural History

[2] Mother and S.M. ("Father")[1] are the biological parents of M.M., born on October 11, 2012. During a traffic stop on July 20, 2021, Mother threw a sock containing pills and a glass pipe out of her car window. Police also discovered a bag containing methamphetamine in a cupholder located between Mother and then-eight-year-old M.M., who was sitting in the front passenger seat. Mother was arrested and charged with Level 6 felony possession of methamphetamine and misdemeanor possession of paraphernalia. Mother was on probation when she was arrested. M.M. was removed from Mother's care and placed with her maternal aunt and uncle. While Mother was in jail, she

[1] Father's parental rights to M.M. were also terminated. He does not participate in this appeal.

spoke with an Indiana Department of Child Services ("DCS") Family Case Manager ("FCM") and admitted she had relapsed on methamphetamine.

[3] The next day, DCS filed a petition alleging M.M. was a child in need of services ("CHINS") due to the events leading to Mother's most recent arrest and her relapse. In August 2021, Mother admitted M.M. was a CHINS, in part because of Mother's substance abuse and incarceration. A few weeks later, the trial court entered a dispositional decree ordering Mother to, among other things: contact DCS weekly; permit DCS to make visits and enter her home to ensure the safety of M.M.; participate in recommended programs and services; keep all appointments with DCS and other service providers; sign releases necessary for DCS to monitor compliance with the terms of the trial court's dispositional order; maintain safe and suitable housing; secure and maintain a legal and stable source of income; not consume any illegal controlled substances or alcohol; attend scheduled visitation with M.M.; and submit to random drug screens. The decree also informed Mother that failure to comply with the conditions of the decree could lead to the termination of her parental rights.

[4] Mother pleaded guilty to possession of methamphetamine and to violating her probation. The trial court sentenced Mother to a period of incarceration. While she was incarcerated, Mother completed a counseling program and sought other available help. In January 2022, Mother was released from jail. Mother maintained contact with FCM Sean Ratliff, although her communication with him was "a little bit shaky at times." *Tr. Vol. 2* at 37.

[5] By the end of February 2022, Mother underwent an intake assessment at Centerstone, which recommended Mother complete an intensive outpatient program ("IOP"), individual and group therapy, addiction counseling, and life skills training. DCS also referred Mother to Cordant to undergo drug screens. Around this time, Mother submitted a negative drug screen.

[6] In spring 2022, Mother worked primarily with two Centerstone employees: Sawyer Tull, an individual therapist; and Jared Hunt, a recovery coach and life skills instructor. Mother told Tull she was participating in substance abuse treatment outside of Centerstone. Besides providing the name of the outside provider, Mother would not give Tull her treatment records or complete a release of information. Mother met with Hunt four times. During these meetings, Mother "minimized" her need for services. *Id.* at 144. Believing her outside services were sufficient, Mother refused to participate in services offered by Centerstone and was considered "overall noncompliant." *Id.* at 194.

[7] By November 2022, Mother felt "discouraged, "overwhelmed," and had "completely checked out." *Id.* at 165. Mother did not contact DCS or any of her recommended service providers for several months. During this gap in contact, DCS petitioned to terminate Mother's parental rights to M.M.[2]

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[2] This was the second termination petition filed by DCS. About a month prior, DCS petitioned to terminate Mother's parental rights. That petition, however, was dismissed because DCS failed to satisfy certain timeframes.

[8] In March 2023, Mother started to reengage with some of her recommended services. Specifically, Mother began to meet consistently with Tull. According to Tull, Mother made "substantial progress" regarding her mental health, but still would not submit any drug screens. *Id.* at 136. FCM Daniel Barrer—who had replaced FCM Ratliff on M.M.'s case—relayed Mother's refusal to submit drug screens and described Mother's overall cooperation with the services recommended by Centerstone as "minimal." *Id.* at 212. Even though he acknowledged Mother's progress with Tull, FCM Barrer emphasized Mother refused to provide drug screens or attend "any of the group sessions that were recommended to her." *Id.* at 219. Thus, in FCM Barrer's opinion, Mother had not remedied the conditions that led to M.M.'s removal or placement outside of Mother's home.

[9] Following a fact-finding hearing, the trial court terminated Mother's parental rights to M.M. By then, Mother had missed about fifty drug screens and over 200 related calls.

Standard of Review

[10] In a proceeding to terminate parental rights, the trial court must enter findings of fact that support its conclusions. Ind. Code § 31-35-2-8(c). "We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly support the judgment." *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016) (quoting *In re E.M.*, 4 N.E.3d 636, 642

(Ind. 2014)). Trial court findings not challenged on appeal must be accepted as true. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[11] Out of deference to the trial court's unique position to assess the evidence, we will affirm the termination of parental rights unless the trial court's judgment is clearly erroneous. *In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019), *cert. denied*. A termination decision is clearly erroneous "when the court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision." *Id.* We neither reweigh evidence nor judge witness credibility. *Id.* And we consider only the evidence and reasonable inferences that support the trial court's judgment. *Id.*

Clear and Convincing Evidence Supports the Trial Court's Conclusion That There Is a Reasonable Probability the Conditions Resulting in M.M.'s Removal or Placement Outside the Home Will Not Be Remedied

[12] Parents have a fundamental right to raise their children. *Id*. This right, however, is not absolute and may be terminated when parents are unwilling to meet their parental responsibilities. *Id.* at 45–46. "The purpose of terminating parental rights is not to punish parents, but to protect the children." *In re I.B.*, 933 N.E.2d 1264, 1270 (Ind. 2010) (quoting *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)).

[13] But because parental rights are "an important interest warranting deference and protection, and a termination of that interest is a 'unique kind of deprivation,'" Indiana law sets a high bar to sever the parent-child relationship. *In re C.G.*, 954

N.E.2d 910, 916–17 (Ind. 2011) (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981)). To do so, DCS must prove four elements by clear and convincing evidence. *See* I.C. § 31-35-2-4(b)(2) (2019); I.C. § 31-37-14-2 (1997). Under the second element, DCS is required to prove one 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[.]

I.C. § 31-35-2-4(b)(2)(B).[3] Here, the trial court determined DCS met its burden on this element.[4] Mother contends otherwise.

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[3] Mother concedes M.M. had been removed from the home for at least six months under a dispositional decree and there is a satisfactory plan for the care and treatment of M.M. *See Appellant's Br.* at 13; I.C. § 31-35-2-4(b)(2)(A), (D). Mother also concedes "in the event that DCS met its burden in demonstrating that (a) there is a reasonable probability that the conditions that led to the removal will not be remedied or (b) there is a reasonable probability that the continuation of the parent-child relationship between [Mother] and M.M. poses a threat to the child's well-being, it is necessarily in the best interests of child for the relationship to be terminated." *Appellant's Br.* at 13; *see* I.C. § 31-35-2-4(b)(2)(C). Thus, Mother challenges only whether DCS carried its burden under Indiana Code Section 31-35-2-4(b)(2)(B).

[4] Section 31-35-2-4(b)(2)(B) requires DCS to make one of three showings. Here, the trial court found that DCS met its burden on two: (1) a reasonable probability that the reasons for removal or placement outside the home of the parents will not be remedied; and (2) a reasonable probability that the continuation of the parent-child relationship poses a threat to the child's well-being. *See* I.C. § 31-35-2-4(b)(2)(B)(i), (ii); *see also*

[14] In Mother's view, there is insufficient evidence to clearly and convincingly show there is a reasonable probability the conditions leading to M.M.'s removal from and continued placement outside the home will not be remedied. To make this determination, courts engage in a two-step analysis. *E.M.*, 4 N.E.3d at 643. First, trial courts "identify the conditions that led to removal." *Id.* And second, trial courts "determine whether there is a reasonable probability that those conditions will not be remedied." *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). This second step requires the trial court to "judge a parent's fitness 'as of the time of the termination proceeding, taking into consideration evidence of changed conditions[.]'" *Id.* (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 152 (Ind. 2005)). In doing so, the trial court "balanc[es] a parent's recent improvements against 'habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.'" *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). This is a "delicate balance" that we entrust to the trial court—giving it "discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination." *Id.* The evidence presented by DCS need not rule out all possibilities of change; DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *In re C.C.*, 153 N.E.3d 340, 348 (Ind. Ct. App. 2020), *trans. denied*.

Appellant's App. Vol. 2 at 84–85. Because we determine the trial court's findings support its conclusion on the former, we need not address the latter. *See In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013).

[15] Because Mother does not challenge the trial court's findings on appeal, we must accept the following findings as true: Mother has an ongoing struggle with drug use; Mother has consistently avoided drug screening; Mother has avoided contact with service providers for months at a time; and Mother has not provided releases or information about services she was receiving from outside providers. Even so, Mother argues the trial court clearly erred because she "consistently engage[d] with service providers throughout the case" and "did not test positive for drugs on any occasion but simply did not submit to screens[.]" *Appellant's Br.* at 15.

[16] As to Mother's alleged consistent compliance with services, the trial court's findings state otherwise. The trial court found Mother avoided contact with her service providers for months-long periods. To use Mother's own words, she "completely checked out" from November 2022 to March 2023. *Tr. Vol. 2* at 165. Even if we overlooked this four-month noncompliant period, Mother's participation was far from consistent. For example, FCM Ratliff considered Mother "overall noncompliant" due to her failure to attend recommended services and provide drug screens. *Id.* at 194. And FCM Barrer explained Mother's cooperation with Centerstone's services was "minimal" because she did not attend "any of the group sessions that were recommended to her." *Id.* at 212, 219. To the extent Mother requests we reweigh the evidence or judge witness credibility, we must decline. *See Ma.H.*, 134 N.E.3d at 45.

[17] Additionally, we cannot equate Mother's refusal to provide drug screens with DCS failing to show her drug use has continued. Not only did the trial court

specifically find otherwise, but prior panels of this Court have repeatedly rejected "such a circular and cynical argument." *In re A.B.*, 924 N.E.2d 666, 671 (Ind. Ct. App. 2010) ("A parent whose drug use led to a child's removal cannot be permitted to refuse to submit to drug testing, then later claim the DCS has failed to prove that the drug use has continued.").

[18] In sum, the trial court's unchallenged findings support its judgment. The trial court did not clearly err in finding there was a reasonable probability the conditions that resulted in M.M.'s removal or the reasons for her placement outside of Mother's home will not be remedied. *See, e.g., In re J.S.*, 906 N.E.2d 226, 234 (Ind. Ct. App. 2009) ("[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change.") (quotation omitted).

Conclusion

[19] The trial court's determination that there is a reasonable probability that a primary reason for M.M.'s removal or placement outside the parents' home will not be remedied was not clearly erroneous.

[20] Affirmed.

May, J. and Vaidik, J., concur.

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