

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

S.P. and L.S.,
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 16, 2022

Court of Appeals Case No.
22A-JT-24

Appeal from the Monroe Circuit
Court

The Honorable Holly M. Harvey,
Judge

Trial Court Cause No.
53C06-2103-JT 175 & 53C06-2103-
JT-176

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellants-Respondents, S.P. (Mother) and L.S. (Father) (collectively, Parents), appeal the trial court's termination of their parental rights to their minor children, De.S. and D.S. (collectively, Children).
- [2] We affirm.

ISSUE

- [3] Parents present this court with one issue, which we restate as: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

FACTS AND PROCEDURAL HISTORY

- [4] Parents are the biological parents to De.S., born on January 14, 2013, and D.S., born on August 8, 2017. On May 30, 2020, Children were removed from Parents on an emergency basis as it was alleged that Parents were engaged in substance abuse and had neglected the educational needs of De.S., who had not attended school in a year. Parents were observed using drugs with Children present, methamphetamine was found at the residence, and Parents refused to take a drug screen at the time of Children's removal. On June 3, 2020, DCS filed its petition alleging Children to be in need of services (CHINS). Due to Parents failing to appear at the subsequent detention and initial hearings, the trial court did not adjudicate Children as CHINS until September 1, 2020. During this hearing, the trial court found that Parents suffered from a substance abuse disorder involving methamphetamine, Suboxone, and THC, which

negatively affected their ability to care for Children safely and appropriately, and that De.S. had not attended school in a year. On September 15, 2020, the trial court entered a dispositional order, requiring Parents to participate in reunification services, including but not limited to, maintain contact with DCS, refrain from using illegal or controlled substances without a prescription, submit to random drug screens, complete a substance abuse evaluation and recommended treatment, complete a parenting assessment, complete a psychological evaluation, attend all scheduled visitation, and maintain suitable and stable housing and income.

[5] Contact between Parents and DCS' family case manager (FCM) was sporadic, in part due to Parents having multiple phone numbers and not responding to calls. Mother acknowledged becoming homeless, anxious, and distrustful of DCS after Children's removal. After an initial drug screen, which was negative for methamphetamine, Mother refused further screening "on principle" as she did not believe she had a substance abuse problem even though she was receiving Suboxone treatment. (Appellants' App. Vol. II, p. 30). By November 2020, Mother was not in compliance with services and had sporadically visited with Children. Father was incarcerated from June 17 until August 20, 2020 and was noncompliant after his release.

[6] By March 10, 2021, Parents were still not compliant with the trial court's dispositional order. Mother had completed only half of the parenting assessment. Although she had indicated that she wanted referrals for the substance abuse assessment and psychological evaluation to be made through

Healthnet, she failed to complete the assessments. She had not made any progress on home-based case management. At the time, she was living with Father at a friend's house in Bedford. Father's situation was similar to Mother's: he refused or missed drug screens and failed to commence services. On March 31, 2021, the trial court changed the permanency plan from reunification to adoption because Parents had failed to fully engage in services. That same day, DCS filed its petition to terminate Parents' parental rights to Children.

[7] At the permanency hearing on June 16, 2021, it was determined that Mother had completed her parenting assessment but had not yet completed her substance abuse assessment or submitted to any drug screens. She continued to refuse drug screens, as she did not think "being a sober caregiver" was an issue for her. (Transcript Vol. I, p. 56). Mother had yet to engage in home-based case management. Father was not in compliance with the trial court's dispositional orders and had yet to complete any services. Although Parents attended scheduled visits with Children, they only attended half of the visits. During one visit, Parents appeared impaired. The visitation supervisor observed that Parents were slurring their speech, engaged in erratic and simultaneous conversation, and their eyes were glazed over. Believing Parents to be under the influence, the visitation supervisor ended the visit.

[8] In July 2021, Mother finally engaged in home-based case management. After a first referral in March 2021 was closed due to Parents' failure to maintain contact, a new referral was opened. Even with this second referral, Mother still

missed almost half of the scheduled appointments. Overall, Father consistently failed to engage in services throughout the entire case. He did not submit to any drug screens, and the only service in which he was engaged was supervised visits. At the time of the proceedings, Father had pending criminal charges of neglect of a dependent, which he had incurred when he was using and delivering methamphetamine while Children were present. Father also had pending charges of criminal confinement with a deadly weapon, domestic battery by means of a deadly weapon, strangulation, and domestic battery. Mother was the alleged victim of these charges, in which it was claimed that Father held a knife to Mother's throat, burned her with a lighter, and strangled her. He has been incarcerated since August 2021.

[9] Mother eventually submitted to a drug screen on August 18, 2021, two months before the scheduled termination hearing, and tested positive for methamphetamine. Prior to the termination hearing, Mother moved into a new apartment and secured employment as a home health aide.

[10] On October 22, 2021, the trial court conducted a factfinding hearing on DCS' petition to terminate Parents' parental rights. During the hearing, evidence was presented that between August 2020 and August 2021, seventy-one appointments for supervised visits with Children were scheduled, twenty of which Parents cancelled. At the onset of the proceedings, De.S. had not attended school in a year. He was timid and shy, and did not engage with the foster family when he was placed in their home in December 2020. After being evaluated in March 2021, De.S. was diagnosed with an adjustment disorder.

He began acting out when visits were cancelled by exhibiting self-injurious behavior, smearing feces, lighting fires, and destroying property. When he was referred for therapy and life skills services, De.S. became more relaxed and comfortable with the foster placement and established a connection with his foster sister. His behavior at home improved and he progressed academically. At the time of the hearing, De.S.'s grades were good, and he loved football. He has learned coping skills through therapy, and after the supervised visits were suspended, he was no longer acting out. At the time of the removal, D.S. was three years old and non-verbal. He was evaluated and diagnosed with developmental delays and speech impairment. D.S. exhibited negative behaviors after supervised visits and was very aggressive with violent tantrums. By the time of the termination hearing, D.S. had made progress: he talked all the time, opened up to new people, attended a developmental preschool, and received speech therapy. Children's Court-Appointed Special Advocate (CASA) and DCS' FCM both testified that termination was in Children's best interests as Parents had not established their sobriety and could not demonstrate that they were able to meet Children's needs.

[11] On December 7, 2021, the trial court entered its Order, terminating Parents' parental rights to Children. Referencing the same evidence in support, the trial court concluded that "[t]here is a reasonable probability that the conditions which resulted in the removal of [C]hildren, or the reasons for placement outside the home of [P]arents, will not be remedied, and /or, the continuation of the parent-child relationship poses a threat to the well-being of [C]hildren."

(Appellants' App. Vol. II, p. 35). The trial court found termination to be "in the best interest of the [C]hildren" and determined that "a satisfactory plan for the care and treatment of the [C]hildren" existed. (Appellants' App. Vol. II, p. 37).

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

DISCUSSION AND DECISION

I. *Standard of Review*

[13] Parents challenge the trial court's termination of their parental rights to their Children. 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. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). "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)). However, parental rights "are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Id.* If "parents are unable or unwilling to meet their parental responsibilities," termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is "an 'extreme measure' and should only be utilized as a 'last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.'" *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett*

v. Vanderburgh Cnty. Office of Family & Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[14] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment, and we accord deference to the trial court’s “opportunity to judge the credibility of the witnesses firsthand.” *Id.*

II. *Termination of Parental Rights*

[15] In order to terminate a parent’s rights to his or her child, DCS must prove:

(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 and has been under the supervision of a local office . . . for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a [CHINS] . . . ;

(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 [CHINS];

(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). DCS must prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[16] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of

future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

A. *Conditions for Removal and/or Threat to Well-Being*

[17] Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and “the trial court need only find one of the two elements by clear and convincing evidence”¹—either that (1) there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home of the Parents will not be remedied or (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Children. *K.E.*, 39 N.E.3d 646 n.4. Here, the trial court concluded that DCS presented sufficient evidence under both prongs. However, Parents only challenge the trial court’s legal conclusion that there was a reasonable probability that the conditions

¹ The third prong of I.C. § 31-35-2-4(b)(2)(B)—“[t]he child has, on two (2) separate occasions, been adjudicated a [CHINS]”—is not applicable to the facts of this case.

prompting removal and continued placement outside of the home would not be remedied. Accordingly, as they do not challenge the second statutory prong, we must conclude on appeal that DCS established, by clear and convincing evidence, that the continuation of the parent-child relationship poses a threat to Children's well-being and we must affirm the trial court. *See In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (when a parent "does not specifically challenge the trial court's findings or conclusions," the parent waives argument "by failing to make a cogent argument"), *trans. denied*.

[18] Notwithstanding Parents' concession that DCS satisfied its burden by failing to challenge both of the trial court's disjunctive legal conclusions, we address Parents' claim and find that the evidence establishes that there is a reasonable probability that Parents will not remedy the conditions that resulted in Children's removal and continued placement outside their care.

[19] The trial court adjudicated Children to be CHINS due to Parents suffering from a substance abuse disorder which negatively affected their ability to care for Children safely and appropriately and their neglect of De.S.'s educational needs. To support reunification efforts, the trial court required Parents to engage in services, including, among others, to maintain contact with DCS, to submit to drug screening, to participate in substance abuse assessment and treatment, to participate in parenting assessments, and to participate in supervised visitation.

[20] Although the trial court's dispositional order was entered on September 15, 2020, with the termination hearing being on October 22, 2021, neither parent engaged in services which could have negated the presumption that drug use still existed. Father never submitted to drug screens and Mother submitted a positive drug screen on August 18, 2021. She self-reported opiate dependency and companion use of methamphetamine as late as July 2021. Parents failed to maintain contact with FCM and there was no opportunity for DCS to develop services for Parents due to their lack of engagement until termination of parental rights proceedings had been initiated. After DCS filed its petition for termination of parental rights on March 31, 2021, Mother completed her parenting assessment, commenced home-based case management services, and obtained suitable housing and stable income, yet she refused all drug screens.

[21] Both Children had educational and developmental needs that were identified at the time of removal from Parents. Although Parents were offered services which would have educated them on the means to support Children's educational, emotional, and developmental needs, neither Parent participated in these services in a manner that could have improved their parenting skills by the time of the factfinding hearing. At the same time, Parents' participation in supervised visitation was sporadic and had detrimental effects on Children. After visits, Children would act out, with De.S. engaging in destructive behavior and D.S. being aggressive with violent tantrums.

[22] "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.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Furthermore, “[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.” *Lang*, 861 N.E.2d at 372. Mindful of these guidelines, we note that the evidence presented shows clearly and convincingly that a reasonable probability exists that the conditions that led to Children’s removal from Parents’ care will not be remedied. At no point during the proceedings did Parents exhibit a turnaround in their behavior; rather, Parents’ disengagement from the case, failure to contact service providers and remain in contact with DCS, and failure to engage in services left the court with no measure to determine Parents’ progress, their sobriety, or Children’s safety in their care during the proceedings of the case. While we applaud Mother for now making a commitment to maintain employment and stable housing, in the totality of the evidence, this effort is too little and comes too late—and is not supported by any evidence of negative drug screens. “[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the petition for termination.” *K.T.K.*, 989 N.E.2d at 1230. To that end, the trial court is within its discretion to “disregard the efforts” Mother made—as Father did not make any—“only shortly before termination and to weigh more heavily Mother’s history of conduct.” *Id.* at 1234. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d at 648. Accordingly, the trial court was entitled to weigh the evidence as it found appropriate in the context of this case, and we affirm the trial court’s disjunctive

conclusion that a reasonable probability exists that the conditions that resulted in Children’s removal will not be remedied despite the minor improvement Mother has shown after DCS filed its termination petition. *See K.T.K.*, 989 N.E.2d at 1234.

B. *Best Interests of Children*

[23] Parents also challenge the trial court’s conclusion that termination is in Children’s best interests. Parents claim that “[t]he extreme measure of termination of parental-rights is not in the [C]hildren’s best interest; continuing a relationship with their [P]arents is in their best interest.” (Appellants’ Br. p. 15). To determine whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* In this regard, “recommendations by both the case manager and the child advocate to terminate parental rights, 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.” *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[24] CASA opined that termination was in Children’s best interests and focused on the lack of documented improvement in Parents’ substance abuse issues through the life of the case. “Central to CASA’s opinion was [] [P]arents’

substance use, and lack of consistency and ability to provide a safe and supporting home.” (Appellants’ App. Vol. II, p. 35). CASA expressed concern about the effects of cancelled visits, which CASA characterized as “a pattern through the case,” on Children’s behavior and emotional health. (Appellants’ App. Vol. II, p. 35). Similarly, FCM recommended the termination of the parent-child relationship as Parents “have not proven their sobriety, as well as not having the parenting education that they need and were recommended for.” (Tr. Vol. I, p. 200). The evidence indicates that Children have flourished in the care of foster parents. Children’s emotional and developmental needs have improved with regular and consistent therapeutic and educational support. De.S., who once was reserved, quiet, and suspicious, is now open, at ease, and excelling at school, while D.G., who was nonverbal when in his Parents’ care, is now talking and communicating at his appropriate age level.

[25] Parents failed to avail themselves of the opportunities and services offered by DCS to reunite with Children and made no progress nor commitment during the proceedings of the case. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d at 648. Even though “the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child’s interest to maintain this relationship.” *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Parents’ failure to maintain contact with DCS, together with their lack of participation in services requested by DCS to address these issues and their complete disregard to establish their sobriety from methamphetamine or other

illegal substances, supports the trial court's conclusion that termination of their parental rights is in the best interests of Children. Accordingly, we affirm the trial court's decision.

CONCLUSION

[26] Based on the foregoing, we hold that DCS presented sufficient evidence to support the termination of Parents' parental rights to Children.

[27] Affirmed.

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