

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: T.N. and L.N. (Minor
Children), and S.N. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Plaintiff.

May 31, 2023

Court of Appeals Case No.
22A-JT-2591

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Sherry A. Hartzler,
Magistrate

Trial Court Cause Nos.
02D08-2112-JT-340
02D08-2112-JT-341

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] S.N. (“Mother”) appeals the involuntary termination of her parental rights with respect to her children, T.N. and L.N. (the “Children”). We affirm.

Facts and Procedural History

- [2] Mother is the mother of T.N., who was born in March 2012, and L.N., who was born in November 2014. In 2015, there was an allegation that the Children were children in need of services (“CHINS”). In August 2017, the case ended with reunification of the Children with Mother.
- [3] In November 2019, the Indiana Department of Child Services (“DCS”) filed a Verified Petition Alleging Children to be CHINS. DCS asserted that A.A. was the alleged father of T.N., and E.F., III, was the alleged father of L.N. It alleged the Children had been removed from the parent, guardian, or custodian with the assistance of law enforcement. In December 2019, DCS filed an Amended Verified Petition Alleging Children to be CHINS asserting that, in or about November 2019, the family was homeless and T.N. had missed fifteen days of school, T.N. stated that several men came to the home with guns and threatened Mother and her significant other over money, Mother was unemployed and lacked independent, safe, and stable housing, she was diagnosed with “mental health issues (bi-polar)” and was prescribed medication which she did not take regularly, and she had a prior DCS history. Appellant’s Appendix Volume II at 31.

- [4] On December 9, 2019, the court entered an Order on Dispositional Hearing finding the Children had been adjudicated CHINS and ordering Mother to: refrain from all criminal activity; maintain clean, safe, and appropriate housing; notify DCS within forty-eight hours of all changes in household composition, housing, and employment; cooperate with all caseworkers and the guardian ad litem or court appointed special advocate; submit to a diagnostic assessment and follow all recommendations; and enroll in Lifeline home-based services program and successfully complete the program.
- [5] On May 28, 2020, the court entered an Order on Review Hearing which found Mother had enrolled in and was participating in services but had not yet completed those services, she was pregnant and had some medical issues, and she had secured housing.
- [6] On August 21, 2020, Mother gave birth to M.W., who died on October 1, 2020.¹ On October 27, 2020, the court entered a Permanency Plan Order which found that Mother had not yet completed her diagnostic evaluation and had struggled to maintain stable housing, and she was in therapy for her loss. The

¹ When asked if she knew the reason M.W. died, Family Case Manager Kristen Bortner answered: “[S]afe sleep.” Transcript Volume I at 147. She also testified: “[Mother] was having some depression and some post-partum that she didn’t want to ask me for help for so she reached out to a family friend, left the baby with her and . . . the baby was I believe rolled over on and . . . passed away.” *Id.* at 147-148. On cross-examination, she clarified that M.W. was not in Mother’s care when she died and had nothing to do with the death “other than choosing an inappropriate caregiver.” *Id.* at 183.

court continued the placement of the Children in foster care. In July 2021, Mother gave birth to M.J.W.

[7] On February 18, 2022, DCS filed verified petitions for the termination of Mather's parental rights to the Children. In April 2022, M.J.W. was removed from Mother's care. On June 27 and July 11 and 12, 2022, the court held a hearing. DCS presented the testimony of multiple witnesses including Dr. David Neubauer Lombard, a clinical psychologist, Pauline Workman, a therapist at Park Center, Salisha Keller, Mother's therapist since January 2022, April Smith, a home-based supervisor, Deborah Yoder, a case manager, Destiny Howard, a case manager, Olivia Schuchardt, an employee of Whittington Homes and Services who supervised visitations, Ozie Taulbee, L.N.'s foster parent, Family Case Manager Kristen Bortner ("FCM Bortner"), Court Appointed Special Advocate Aaron Reidenbach ("CASA Reidenbach"), and Mother. DCS also presented evidence that Mother tested positive for benzoylecgonine, cocaine, and THC on March 28, 2022, benzoylecgonine and cocaine on April 19, 2022, and cocaine on June 9, 2022.

[8] Mother testified that she was diagnosed with bipolar disorder when she was nine years old and the last time she took medication to treat it was when she was seventeen years old and pregnant, which was about eight years earlier. She testified that her plan to begin her medication again was to "go through Parkcenter to get my medicine back cause that's where I was going through before." Transcript Volume I at 223. She indicated she had stopped taking the medication because she was pregnant with L.N., she was "getting really sick,"

and her probation officer “asked . . . Parkcenter to take [her] off the medicine.” *Id.* at 223-224. She indicated she became “sick with [her] diabetes” in March, it took her about a week and a half to “get over that illness,” and she suffered a miscarriage in early May. *Id.* at 224. When asked why she did not visit with the Children in June, she answered: “I still like [sic] grieving over my miscarriage so.” *Id.* at 225. She indicated she suffers from depression and uses marijuana “every other day.” *Id.* at 227. She denied using marijuana in the prior few months. When asked to explain the positive screens for cocaine, she answered: “I stopped smoking marijuana due to people . . . telling me that it could been [sic] laced with cocaine.” *Id.* at 228. When asked to explain why the result from June 9, 2022, was positive for only cocaine, she answered that someone told her that her “levels were so high it was gonna [] keep testing positive for . . . cocaine.” *Id.* at 229. When asked if she was still smoking marijuana, she answered affirmatively. She testified it concerned her that she was smoking a drug that may be laced with another drug and her plan was to completely stop. She stated: “I’m using it right now to actually cope with the DCS case.” *Id.* She acknowledged she did not have an appointment scheduled with Park Center. She also indicated she had not been on her medicine for her bipolar disorder since the CHINS case began. When asked what happened with visitation with the Children after M.W. died, she stated that she was grieving and “shut [herself] in a dark room.” Transcript Volume II at 3. After DCS rested, Mother testified regarding her receipt of Social Security payments and food stamps and her difficulties during the pregnancies with M.W. and M.J.W. The court admitted notes or visit summaries from health care

providers indicating that Mother had medical appointments on November 29, 2021, January 31, 2022, March 10, 2022, and June 20, 2022.

[9] On October 10, 2022, the trial court entered an eleven-page order terminating Mother’s parental rights to the Children.² The court found that the reasons that led to the removal of the Children included “untreated mental illness and housing stability.” Appellant’s Appendix Volume II at 92. The court determined that there is a reasonable probability that the reasons that resulted in the Children’s placement outside the home would not be remedied and termination was in their best interest. It also stated that it was “unpersuaded that if the children have some needs and are not in a pre-adoptive home that the plan is not satisfactory,” and “[t]o allow these children to continue to languish without permanency is detrimental to their wellbeing.” *Id.* at 97.

Discussion

[10] Mother argues that she became more consistent with visitation and services toward the end of the case, she had a satisfactory home at the time of the termination hearing, and she had the financial ability to provide for the children. She acknowledges that “DCS does not have to have an adoptive home in place” and asserts that “the statute does require that there be a satisfactory plan in place.” Appellant’s Brief at 17. She argues that “DCS does

² The court also terminated the parent-child relationship between E.F., III, and L.N. and ordered the proceedings with respect to A.A. dismissed without prejudice.

not have a *viable* plan in place particularly for the care of minor child L.N. post-termination, due to the extensive behavioral issues identified during testimony at trial.” *Id.* She challenges whether the plan is viable, satisfactory, and in the best interest of the children.

[11] In order to terminate a parent-child relationship, DCS is required to allege and prove, among other things:

(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) 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[12] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the

evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). 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 give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[13] In determining whether the conditions that resulted in a child’s removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh 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 a parent’s past behavior is the best predictor of future behavior. *Id.* The statute

does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[14] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[15] The court's order states in part:

42. The Court concludes that Mother . . . has . . . failed to remedy the reasons for removal and the continued removal from her home. The Court is sympathetic that Mother suffers from mental illness and has experienced tragedy over the course of the juvenile proceedings. However, there were many services to assist her that she did not avail herself of or benefit from, including visiting with her children on a regular basis.

43. Mother was referred to multiple agencies for therapy, homebased services, parenting and visitation. Ultimately, she was discharged from services for failure to attend and participate

despite efforts from providers to accommodate her. Although[] Mother had retained housing by the time of the termination proceeding, her mental illness remained untreated. The Court concludes that Mother[’s] refusal or inability to engage in services related to her mental illness. Further, the court concludes her use of illegal substances as a way to cope does not assist in remedying the reasons why her children have been removed and served as reason for removal of a third child. Further, she failed to complete services related to substance use.

44. Additionally, Mother’s historical pattern of conduct that includes a prior adjudication and services due to instability and mental illness leads this Court to conclude that the reasons for removal and the reasons for the continued placement outside of the care of the children will not be remedied. Concerns were noted with parenting during supervised visitations and providers intervened and attempted to provide parenting classes. However, at the time of the termination proceedings, Mother had not visited in over three months and she never remedied the issues noted in visitations.

Appellant’s Appendix Volume II at 95-96.

[16] The record reveals Dr. Lombard testified that he completed an evaluation of Mother on October 15, 2021. Mother indicated to him that she had never been employed and had been receiving Social Security Disability Income since her youth due to a diagnosis of bipolar disorder and other mental health conditions. He stated Mother reported to him that she had previously been prescribed psychiatric medications and was not taking them. He diagnosed Mother with bipolar disorder, impulse control disorder, recurrent anxiety, panic attacks, anxiety disorder, significant life issues, and dealing with some bereavement issues regarding the death of her daughter. He recommended that Mother

receive a combination of psychiatric medication management and weekly mental health counseling sessions to treat the bipolar disorder symptoms, anxiety, anger issues, and bereavement issues.

[17] Workman, the therapist at Park Center, testified that she was Mother's therapist and the case ended unsuccessfully after Mother had five "no shows in a row." Transcript Volume I at 30. When asked what progress had been made with certain goals, she answered: "There was no progress." *Id.* at 31. She testified Mother failed to attend medication appointments. She also stated that her assessment was that "medications were definitely needed." *Id.* at 33.

[18] Keller, the clinician employed at SCAN and Mother's therapist since January 2022, testified that Mother attended twenty-two of forty scheduled sessions. She stated that "a lot of her absences were due to health conditions . . . and other circumstances." *Id.* at 42. She testified they were working on substance abuse because Mother "had recently had positive screens." *Id.* at 44.

[19] Smith, the home-based supervisor, testified that she first met Mother on December 3, 2021, and worked with her until April 2022, and Mother was unsuccessfully discharged. When asked if Mother had completed her goals by the time she stopped working with her, she answered: "No, only goal she completed was the housing." *Id.* at 61.

[20] Yoder, the case manager, testified that she supervised visits between Mother and the Children for about four or five months. When asked about the frequency of the visits that were to occur in February 2021, she answered that

they had scheduled four visits for that month, three were missed, and the case was placed on hold. On cross-examination, Yoder testified that the three missed visits in February 2021 were “no shows” and she messaged Mother a few times but did not receive a reply. *Id.* at 78. Howard, a case manager, testified that Mother was her client between February 1, 2022, and April 26, 2022, she supervised visits between Mother and the Children, there were two cancellations and two “no shows,” and the last visit she supervised occurred on March 1, 2022. *Id.* at 82. She indicated the referral was discharged on April 26, 2022, and attendance factored into the closure. Schuchardt testified that she supervised visitations between Mother and the Children for about eight months beginning in April 2021. She testified she never recommended community visits “because of the general inconsistencies and concerns that [she] had with . . . an inability to . . . control the [Children] in a community environment” *Id.* at 101. When asked if Mother was able to fully parent the Children by the time she finished working with Mother, she answered in the negative because: “I think it just had a lot to do with the, what I saw during the visits with just inconsistencies [and] all of [L.N.’s] behaviors I don’t think there was an ability to be able to . . . control those or parent them, those behaviors effectively.” *Id.* at 103-104.

[21] FCM Bortner testified she had been Mother’s case manager since December 2019 and the Children had been placed in licensed foster care since she received the case. She testified that Mother last had a job on June 16, 2022, when Mother indicated she was employed at Claire’s. When asked when Mother

notified her that she was no longer working at Claire's, she answered: "Today." *Id.* at 143. She indicated that Mother had not had any other employment during the life of the CHINS case. She indicated that Mother moved into a certain apartment in September 2021, there was a "two and a half (2 ½) month gap" when Mother was not living there because "there was the writ to remove her youngest child," Mother "did not want that to happen," and she "went to stay with her other people so we couldn't find him." *Id.* at 144. She also indicated that, "after [Mother] had left in April," she had not paid the utility bill, the "lights were turned off," and "a family member paid it off for her." *Id.* at 145. She testified the electricity was turned off at a previous apartment in July 2021. When asked at how many addresses Mother had lived during this CHINS case, she answered: "The ones I know of, uh, at least ten (10), to date" with three of those places being her own place. *Id.* at 146. With respect to Mother's ability to maintain safe and appropriate housing, she testified that when Mother had housing it was always appropriate and clean "but there was a lot of time periods where she didn't have housing or was sleeping on people's couches and moving around." *Id.* at 151. She testified that Mother was initially referred for a diagnostic assessment in December 2019 but did not complete it until September 2020. She stated that Park Center made appointments for Mother with respect to medication management for her bipolar diagnosis, Mother did not attend those, and "there's been no medication . . . management done and [Mother] is still seeing her individual counselor currently." *Id.* at 156. She indicated Mother began but never successfully completed a parenting curriculum. She stated that Mother told her

in late spring or early summer 2021 that she used marijuana “whenever she needed it to cope with her mental health.” *Id.* at 164. When she confronted Mother on April 12, 2022, about using illegal drugs and the failed drug screen, Mother stated she did not care about THC, “everybody knows she smokes marijuana,” and “it wasn’t a big deal,” and she denied using cocaine. *Id.*

[22] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the Children’s removal and the reasons for placement outside Mother’s care will not be remedied.

[23] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and 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 children’s best interests. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[24] CASA Reidenbach testified that he believed termination of Mother’s parental rights was in the Children’s best interest. When asked why he made that recommendation, he answered:

Based on several concerns. Due to the significant amount of time the children have been removed from the home, . . . how do I say it? [T]here hasn't been consistent sustained progress with services . . . that have remedied all of the concerns. [W]e have continued to be at supervised visits for [Mother] and the children throughout. Mostly concerned about the level of need, there in [sic] need that each child has and that there hasn't been enough progress with services to help [Mother] address those needs . . . to effectively address those concerns in an ongoing way.

Transcript Volume I at 207. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the Children's best interests is supported by clear and convincing evidence.

[25] To the extent Mother argues that DCS does not have a satisfactory plan for the care and treatment of the Children, we note that adoption is a "satisfactory plan" for the care and treatment of a child under the termination of parental rights statute. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied*.

[26] CASA Reidenbach acknowledged that the Children were not in a pre-adoptive home but that the current placements were willing to remain until such time as a pre-adoptive placement could be located, and he supported the plan of adoption for the Children. FCM Bortner acknowledged that the Children were not in a pre-adoptive home. However, when asked if DCS had a plan for the

care and treatment of the children and if parental rights should be terminated, she answered: “[Y]es. [W]e are seeking adoption for both children. [T]he TPR would allow us to do more thorough searches for an adoptive family outside of the restrictions before the child is TPRed.” Transcript Volume I at 173. On cross-examination by Mother’s counsel, when asked if DCS was looking for the Children to be adopted together in the same home, she answered in the negative because they were physically and sexually aggressive with each other and it was not in their best interest to be in the same home. On cross-examination by counsel for CASA’s counsel, FCM Bortner testified that if termination was granted, DCS would have a broader scope to search and “so many more tools . . . to be able to search outside of the limited scope that we have,” and “[t]hey would be able to . . . meet perspective [sic] families who interviews [sic], we could look outside of the very small area that we’re allowed to do right now while parental rights are intact.” *Id.* at 242-243. She also stated: “So, my hopes are that, and there’s a good chance, that they can find homes once that is available for them.” *Id.* at 243. We conclude that clear and convincing evidence supports the trial court’s determination that adoption is a satisfactory plan for the care and treatment of the Children.

[27] For the foregoing reasons, we affirm the trial court.

[28] Affirmed.

Bailey, J., and Weissmann, J., concur.