

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of A.R. (Minor
Child)

and

A.M. (Mother) and J.R.
(Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

April 13, 2021

Court of Appeals Case No.
20A-JT-1769

Appeal from the Daviess Circuit
Court

The Honorable Gregory A. Smith,
Judge

Trial Court Cause No.
14C01-2002-JT-22

Crone, Judge.

Case Summary

- [1] A.M. (Mother) and J.R. (Father) (collectively Parents) appeal the involuntary termination of their parental rights to their minor child, A.R. (Child). We affirm.

Facts and Procedural History

- [2] Child was born prematurely at thirty-two weeks' gestation on February 24, 2019. Mother and Father were not married when Child was born but were in a long-term relationship. The day after Child's birth, the Daviess County office of the Indiana Department of Child Services (DCS) received a report that Child tested positive for tramadol, oxycodone, and cannabinoids, and that Mother had tested positive for methamphetamine, marijuana, and opiates during her pregnancy. Child spent fifty-two days in the hospital's neonatal intensive care unit (NICU) following his birth. During that time, DCS conducted an assessment of the family, but Parents were only mildly cooperative.¹ DCS became especially concerned that Mother and Father were not regularly visiting

¹ Mother has two older children that are in the custody of their respective fathers. The record indicates that Mother "had a past substantiated DCS case" regarding her oldest child. Tr. Vol. 2 at 23.

Child in the NICU and had cancelled all meetings with DCS to address Child's safety plan upon release from the hospital. Further, DCS was unable to view Parents' home because it was allegedly undergoing renovations and lacked any floors or walls. Additionally, during the assessment period, Mother tested positive for controlled substances on five occasions, and, on March 27, 2019, Mother suffered a drug overdose and was hospitalized.

[3] At a DCS family meeting on April 8, 2019, while Child was still in the NICU, Mother admitted that she had a history of substance dependency and mental instability. However, Mother refused all services offered. Father admitted that he had a history of methamphetamine use but believed he was just a recreational user and could stop at any time. Thereafter, DCS filed a petition alleging that Child was a child in need of services (CHINS). The petition alleged, among other things, concerns about both Parents' substance abuse history, Child's medical fragility, and Parents' inability to provide appropriate care and treatment for Child. Following a detention hearing on April 9, 2019, the trial court ordered Child removed from Parents' care. Upon Child's release from the hospital, he was placed in foster care.

[4] In May 2019, Parents got into a physical fight that required law enforcement to be called to the home. Both Parents sustained physical injuries as a result of the altercation. Also in May, Child was taken to a local hospital while suffering from a serious respiratory infection that turned out to be respiratory syncytial virus (RSV). When Mother arrived at the hospital to see Child, she was clearly under the influence of drugs.

- [5] On June 27, 2019, the trial court entered its order adjudicating Child a CHINS. The trial court determined that Child could be returned to the home upon successful completion of requisite background checks and the approval of an appropriate caregiver to act as a sober caregiver for Child while in Mother's care. Because Parents failed to ever locate or identify an appropriate sober caregiver, Child was never returned to the home.
- [6] On August 5, 2019, the trial court entered a combined dispositional and parental participation order in which Parents were ordered to: contact DCS every week; notify DCS of any changes in household composition, employment, address, and phone number; notify DCS of any new criminal charges; allow DCS and service providers to make announced and unannounced visits; enroll in recommended programs; keep all appointments with service providers; sign any releases necessary for monitoring compliance with the trial court's order; maintain suitable and stable housing; secure and maintain a stable source of income; not use or consume illegal substances; obey the law; submit to random drug screens; complete a parenting assessment; and attend scheduled visitation with Child.
- [7] Due to Parents' lack of participation and/or failure to progress in services, especially their failure to address the drug use in the home, DCS filed its petition to terminate both Mother's and Father's parental rights on February 7, 2020. A factfinding hearing was held on April 30, May 7, and May 15, 2020. On August 27, 2020, the trial court entered 165 detailed findings of fact and thereafter concluded that: (1) there is a reasonable probability that the

conditions that resulted in Child's removal and continued placement outside the home will not be remedied by Mother or Father; (2) there is a reasonable probability that continuation of the parent-child relationship between both Parents and Child poses a threat to Child's well-being; (3) termination of the parent-child relationship between both Parents and Child is in Child's best interests; and (4) DCS has a satisfactory plan for Child's care and treatment, which is adoption. Accordingly, the trial court determined that DCS had proven the allegations of the petition to terminate by clear and convincing evidence and therefore terminated both Mother's and Father's parental rights. Each parent now separately appeals.

Discussion and Decision

[8] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed." *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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). DCS must prove that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. 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. at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

Section 1 – The trial court did not clearly err in concluding that there is a reasonable probability of unchanged conditions.

[10] Both Parents challenge the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal from and continued placement outside the home will not be remedied.² In determining whether there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to [his] placement and retention in foster care.” *Id.* Second, “we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect

² Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Accordingly, we address only subsection 4(b)(2)(B)(ii).

or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “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 v. Starke Cnty. Off. of Family & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS “need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent’s behavior will not change.” *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, Child was initially removed from Parents’ care because he tested positive for a multitude of controlled and illegal substances at birth, and an initial assessment revealed that Parents were unable to provide a sober and safe environment for Child. The evidence is clear that Parents’ inability to provide a sober and safe environment for Child revolved around drug use and abuse in the home, which also contributed to instances of domestic violence between the Parents. As for Mother, the evidence is overwhelming that she has a serious drug addiction. Throughout the pendency of the CHINS and termination proceedings, Mother continually tested positive for various substances including amphetamine, methamphetamine, hydrocodone, tramadol, THC, Xanax, Ativan, and Suboxone. She has admittedly overdosed multiple times, and she has been found incoherent or unresponsive by both Father and caseworkers on many occasions. Although numerous services aimed at helping Mother

overcome her addiction were repeatedly offered, Mother refused to follow through with services. As recently as March 2020, just prior to the first termination factfinding hearing, DCS got Mother accepted into a program at an inpatient substance abuse treatment center. Mother refused to enroll, claiming she was not ready.

[12] Mother's habitual pattern of conduct and unwillingness to deal with parenting problems and to cooperate with those providing social services supports a finding that there is a substantial probability of future neglect or deprivation. The trial court was not required to credit Mother's current claims that she can successfully treat her drug addiction "on [her] own" and is going to "stay clean and try to do better." Tr. Vol. 3 at 23, 26. Clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from and continued placement outside the home will not be remedied by Mother.

[13] As for Father, he argues that the evidence shows that he participated in "many" of the services recommended by DCS, and that his actions over the course of the CHINS and termination proceedings demonstrate "a willingness to change his behavior for the benefit of his son." Father's Br. at 24. While there is evidence that Father did participate in some services, there is ample evidence demonstrating Father's unwillingness to cooperate with those providing social services and a complete refusal to change his negative behavior. As with Mother, Father suffers from an addiction issue that has contributed to instances

of domestic violence in the home. Father admittedly uses methamphetamine intravenously on a regular basis.

[14] Despite at times claiming sobriety to DCS caseworkers, Father continually tested positive for methamphetamine in random drug screens. During the pendency of the CHINS and termination proceedings, Father missed numerous scheduled visits with Child, and he has not visited Child since November 2019. Indeed, between November 2019 and March 2020, DCS lost all contact with Father, and it was not until his March 11, 2020 arrest for possession of methamphetamine that DCS was able to locate him at the Daviess County Security Center where he was incarcerated. At the time of the termination factfinding hearing, Father still had no explanation for his absence or lack of cooperation. In other words, Father's pattern of unwillingness to deal with parenting problems and to cooperate with service providers supports a finding that there is a substantial probability of future neglect or deprivation. The trial court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from and continued placement outside the home will not be remedied by Father is not clearly erroneous.

Section 2 – The trial court did not clearly err in concluding that termination of both Mother's and Father's parental rights is in Child's best interests.

[15] Both Parents also challenge the trial court's conclusion that termination of their parental rights is in Child's best interests. "Permanency is a central consideration in determining the best interests of a child." *In re G. Y.*, 904

N.E.2d 1257, 1265 (Ind. 2009). To determine the best interests of children, the trial court looks to the totality of the evidence and must subordinate the interests of the parents to those of the child. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. The trial court need not wait until a child is irreversibly harmed before terminating parental rights. *McBride v. Monroe Cnty. Off. of Family & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

Recommendations of the family case manager and the court-appointed special advocate (CASA), in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*.

[16] DCS family case manager Jessica Rhoads opined that termination of both Mother's and Father's parental rights is in Child's best interests. Rhoads stated that both Parents had failed to adequately address their substance abuse, mental health, or domestic violence issues. She testified that neither parent had made any progress in services since October 2019, and that "any ongoing parent relationship would pose concerns" because Parents "have not shown that they can maintain their stability as far as substance usage or addressing their mental health, as well as maintaining stable and appropriate housing and some form of income[.]" Tr. Vol. 2 at 179. Rhoads stated that Child is "very bonded" with

his foster parents and that they are able to meet Child's basic and medical needs. *Id.* at 177.³

[17] Similarly, CASA Anne Tillie opined that termination of both Mother's and Father's parental rights was in Child's best interests. Tillie stated that while each parent indicated that he or she was in a better position to care for Child than either had been previously, she was unconvinced that Mother or Father could maintain the ability to provide a safe home for Child. Tillie explained that Mother and Father "keep getting in their own way because the mental health issues and substance abuse continuing – continue being an issue. They go back and forth, and that – that's not stable for [Child]." Tr. Vol. 3 at 74. Tillie testified that Child's foster parents are the only parents Child has ever known, that he is bonded to them, and that he is thriving in that placement.

[18] Based upon the foregoing, and having already concluded that clear and convincing evidence supports the trial court's conclusion that the conditions resulting in Child's removal will not be remedied, we cannot say that the trial court clearly erred in concluding that termination of both Mother's and Father's parental rights is in Child's best interests. We affirm the trial court's termination order with respect to both Parents.

³ Due to his premature birth, Child is at risk for developmental delays. Also, because Child suffered from RSV when he was only two months old, he requires routine care to monitor the lasting effects of the disease. Appealed Order at 14.

[19] Affirmed.

Riley, J., and Mathias, J., concur.