

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: The
Termination of The Parent-Child
Relationship of C.M.I., (Minor
Child)

C.I. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

December 13, 2023

Court of Appeals Case No.
23A-JT-1719

Appeal from the Wabash Circuit
Court

The Honorable Robert R.
McCallen, III, Judge

Trial Court Cause No.
85C01-2304-JT-10

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] C.I. (“Mother”) appeals the Wabash Circuit Court’s termination of her parental rights over her minor child C.M.I. (“Child”). Mother presents the following issues for our review:

1. Whether the trial court clearly erred when it concluded that the conditions that resulted in the removal of Child from Mother’s care are not likely to be remedied.

2. Whether the trial court clearly erred when it concluded that termination of Mother’s parental rights is in Child’s best interests.

3. Whether the trial court clearly erred when it concluded that the Indiana Department of Child Services (“DCS”) has a satisfactory plan for the care and treatment of Child.

[2] We affirm.

Facts and Procedural History

[3] Child was born March 3, 2011. Child’s father is unknown. In January 2012, DCS investigated a report that Mother had hit Child in a Walmart bathroom. Mother reported that she was upset because Child had ruined new clothing she had purchased to have photos taken of Child. Mother denied hitting Child, but she admitted that she was “hostile towards” law enforcement and medical personnel who subsequently examined Child. Ex. Vol. 1, p. 142. Mother entered into an informal adjustment with DCS, which included parenting and

psychological assessments. Due to Mother's compliance with the informal adjustment, she was discharged in July.

[4] On December 6, 2013, DCS filed a petition alleging that Child was a Child in Need of Services ("CHINS") when law enforcement officers discovered a methamphetamine lab inside Mother's home. Mother admitted the allegations in the petition, and the trial court adjudicated Child to be a CHINS. Mother engaged in services, and the court dismissed the CHINS proceeding in January 2015.

[5] In May 2020, Mother and Child were living with Mother's boyfriend, but he broke up with Mother and told them to leave the house. Mother subsequently entered her ex-boyfriend's home without his permission, and he called the police. The State charged Mother with Level 6 felony residential entry and Class A misdemeanor trespass. Mother was arrested and incarcerated, and DCS filed a CHINS petition alleging that Child was a CHINS due to not having anywhere to live. DCS later dismissed that petition when Mother was released from jail and able to care for Child.

[6] On March 17, 2022, DCS received a report that Child was the victim of neglect. A family case manager ("FCM") located Mother at a motel, where she and Child were then living. Mother told the FCM that she had to leave her prior residence because she could not afford the utilities. Mother explained that a charity was paying for her to stay at the motel for two weeks only. The FCM offered Mother services and community resources, but Mother refused help

because, she alleged that “all you want to do is take my kid.” Ex. Vol. 1, p. 16. During a subsequent conversation regarding services DCS could provide to Mother, Mother became “argumentative” with the FCM. *Id.* And Mother stated that she had recently violated her probation and would probably be incarcerated again soon. The FCM suspected that Mother was using drugs, but Mother refused to take a drug screen.

[7] On March 29, the probation department informed the FCM that Mother had, indeed, been incarcerated. When the FCM asked Mother where Child was, Mother stated that she was staying with a friend. When the FCM followed up with that friend, she stated that she had not discussed with Mother that she would, indeed, take care of Child while Mother was in jail. Accordingly, the FCM placed Child in foster care and filed a petition alleging that Child was a CHINS.

[8] At a factfinding hearing on May 4, Mother admitted to the allegations in the CHINS petition, namely, that Mother was unable to provide stable housing for Child and had not arranged for care during her incarceration. The trial court adjudicated Child to be a CHINS. On June 7, the court issued a dispositional decree ordering Mother to, among other things: maintain visitations with Child; complete substance abuse and psychological assessments and follow recommendations; submit to random drug screens; and complete a Family Recovery Court evaluation and, if appropriate, participate and complete that program.

[9] Mother got out of jail in May, and she tested positive for methamphetamine and marijuana on June 13. Mother participated in visits with Child, and in October she completed an assessment for family recovery court. The results of that assessment were that she was eligible for the program if she first entered a twenty-eight day detox program or a sober living home. Mother declined to do either of those things, stating that she wanted to leave Wabash County because of the bad influences there. In October, DCS moved to suspend Mother's visits with Child due to Mother's verbal aggression towards staff during supervised visits and Mother's inability to provide for Child's "mental well-being during visits." Ex. Vol. 1, p. 33. The trial court granted that motion. Mother's communication with the FCM from November until Spring of 2023 was "sporadic." Tr. p. 20.

[10] Following a hearing on March 17, 2023, the trial court found that Mother had been "non-compliant with all of her court ordered and recommended services." Appellant's App. Vol. 2, p. 38. Accordingly, on March 20, the trial court changed the permanency plan from reunification to adoption. And on April 27, DCS filed a petition to terminate Mother's parental rights.

[11] Following a hearing on July 11, the trial court found and concluded in relevant part as follows:

[Mother] was evaluated for Family Recovery Court and was deemed appropriate. However, as a condition of participation therein, she was required to complete a detox program, which she refused to do.

Beyond attending supervised visitations and most hearings, [Mother] did little else. The last time [Mother] saw [Child] was early in November of 2022. [Mother]’s supervised parenting time was thereafter suspended. [Mother] never asked the Court to revisit the suspension of her parenting time even though she was represented by her Attorney.

[Mother] never completed any of the services she was ordered to complete. She has moved on numerous occasions making it difficult to provide her services even if she had been willing to engage in same.

[Mother] admits first using marijuana as a teen and also admitted to some use of methamphetamine. The extent to which she used and/or abused marijuana and/or methamphetamine is unknown. However, the use thereof has caused her numerous problems and has interfered with her ability to parent. The Court believes [Mother] minimizes her use and abuse of methamphetamine.

[Mother] is currently in rehabilitation at the Fort Wayne YWCA. She began this program on or about May 23, 2023 following a 23 day stay in a detox program. The Court commends [Mother] for enrolling in detox and participating in rehabilitation. However, that happened only after the Petition to terminate her parental rights was filed and after numerous years of substance use and/or abuse and years of involvement with the DCS. Unfortunately, her actions are “too little, too late,” for her daughter, who needs and deserves permanency.

[Mother] is currently sober, but she is living in a sober living facility. Her residency at the YMCA is not intended to be permanent. Further, her ability to have [Child] live with her at the YWCA is very limited and not at all certain, even assuming she maintains her sobriety.

The Court is concerned that [Mother] continues to cast blame on others for her problems. The Court is further concerned that [Mother] continues to maintain contact with an individual who she blamed for her prior methamphetamine use.

It is clear, [Mother] loves [Child]. If that were the sole criteria for the Court to consider in this proceeding, there would be no basis to terminate her parental rights. However, and unfortunately for [Mother], it is not.

[Mother] has not engaged in services as ordered. [Mother] has had minimal employment and her living situations are and have been incompatible with raising a child.

She has not remotely done all that she can to meet the clearly established goals of the dispositional order (to-wit: reunification).

[Mother] has no real insight into how her actions have affected [Child], in a very negative way. Because of that, the Court finds that the circumstances that led to [Child]'s removal will never be remedied.

[Child] has suffered trauma. [Mother] has caused that trauma. [Child] is finally in a stable environment in a kinship placement and pre-adoptive home. She is doing well. [Child]'s therapist does not believe reunification with [Mother] is in [Child]'s best interests. The Court agrees.

The evidence is clear and convincing that continuation of the parent-child relationship is not in [Child]'s best interests and that doing so would be detrimental to her physical and mental well-being.

Reunification was the goal and it was pursued, to no avail.

DCS' plan for [Child] is adoption. Adoption is the only chance that she will get to have the permanency she deserves, now.

Even [Mother] admitted the current situation is not fair to [Child]. Despite such admission, she offers no real plan to clean up her act and provide a loving, stable and nurturing home to [Child]. Her prior actions are too much to ignore.

Id. at 23-24. The trial court concluded that “it’s a virtual certainty” that the conditions that resulted in Child’s removal from Mother’s home will not be remedied and that termination of Mother’s parental rights is in Child’s best interests. *Id.* at 24. And the trial court concluded that DCS planned to have Child adopted. This appeal ensued.

Discussion and Decision

Standard of Review

[12] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* 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.*

[13] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147

(Ind. 2005). First, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[14] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code § 31-35-2-4(b)(2) (2023)*. We need only discuss three of those elements raised by Mother in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside of Mother’s home will not be remedied; (2) whether termination of Mother’s parental rights is in Child’s best interests; and (3) whether DCS established a satisfactory plan for the care and treatment of Child. *I.C. § 31-35-2-4(b)(2)(B)(i), (C), & (D)*.

[15] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child’s very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child’s emotional and physical development are put at risk by the parent’s custody. *Id.* If the court finds the

allegations in a petition are true, the court shall terminate the parent-child relationship. [I.C. § 31-35-2-8\(a\)](#).

Issue One: Reasons for Child’s Removal

[16] Mother contends that DCS failed to prove that there is a reasonable probability that the conditions that resulted in Child’s removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. [In re E.M.](#), 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child’s continued placement outside the home. [In re N.Q.](#), 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[17] Here, Child was removed from Mother’s care due to Mother’s inability to maintain stable and suitable housing; her apparent drug abuse (she refused a drug screen); and her failure to provide care for Child during her incarceration. Mother “disputes the trial court’s general findings that she will not change her ways and remedy the conditions that got her in her current situation.” Appellant’s Br. at 15. In support, Mother argues that the evidence “clearly

demonstrates that Mother was addressing the issues that caused Child to be removed from her care, but unfortunately, needed additional time so as to demonstrate lasting and permanent change.” *Id.* at 17. We do not agree.

[18] After Child’s removal from Mother’s care in March 2022, Mother did not complete any of the court-ordered services. And her visits with Child did not go well. On DCS’s motion, Mother’s supervised visits were suspended in November 2022. Mother’s communication with the FCM was sporadic, and she did not request services until April 2023, only after DCS filed its petition to terminate her parental rights. Still, Mother declined services offered by DCS and entered a rehabilitation facility, on her own, in May 2023. Mother was unable to maintain employment or housing. Meanwhile, Child was thriving in her placement.

[19] As the trial court thoughtfully explained, Mother is to be commended for enrolling in the twenty-three-day detox program and seeking residential treatment at the YWCA. But we cannot fault the trial court for considering her recent rehabilitation “too little, too late” for Child. Appellant’s App. Vol. 2, p. 23. Mother’s long history of instability stemming from her drug abuse cannot be ignored.

[20] Mother’s arguments on appeal simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s finding that the conditions that resulted in Child’s removal will not be remedied are supported by the record. We therefore affirm the trial court’s judgment on this issue.

Issue Two: Best Interests

- [21] Mother next contends that DCS failed to prove that termination of her relationship with Child is in Child's best interests. In determining what is in a child's best interests, a court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*
- [22] When making its decision, the court must subordinate the interests of the parents to those of the child. See *Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental rights, coupled with 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. *Id.*
- [23] In her brief on appeal, Mother acknowledges the FCM's testimony that termination of her parental rights is in Child's best interests. But she maintains that the evidence "demonstrated that she had current ability to provide for Child's needs and had made substantial changes to correct the historical record of issues with housing, stability and sobriety." Appellant's Br. at 19.

[24] Once again, Mother asks that we reweigh the evidence. At the time of the factfinding hearing, Child had been removed from Mother's care for sixteen months. Mother's visits had not progressed beyond supervised visits before the court suspended Mother's visits with Child in November 2022. Mother has not visited with Child since that time. The FCM testified that termination of Mother's parental rights is in Child's best interests because, despite "ample opportunity" to engage in services and maintain a stable home for Child, Mother was unable to do so. Tr. p. 70. The FCM also testified that Child "has experienced so much trauma" due to Mother's drug abuse and instability, and Child is "getting the help she needs right now." *Id.* We affirm the trial court's conclusion on this issue.

Issue Three: Satisfactory Plan

[25] Last, we address Mother's argument that DCS failed to show a satisfactory plan for the care and treatment of Child. On this issue, DCS is only required to establish that "there is a satisfactory plan for the care and treatment of the child" in termination proceedings. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009) (citation omitted). And this Court has held that adoption is a "satisfactory plan" for the care and treatment of a child under the termination of parental rights statute. *Id.* (citation omitted). Here, the FCM testified that Child was in a "pre-adoptive home" and that she recommended that the trial court approve the "plan of adoption." Tr. pp. 70-71. To the extent Mother argues that DCS did not present evidence that it planned to have Child adopted, we reject that argument. We affirm the trial court's conclusion that

DCS has shown a satisfactory plan for the care and treatment of Child, namely, adoption.

Conclusion

[26] For all of these reasons, we affirm the trial court's termination of Mother's parental rights.

[27] Affirmed.

Riley, J., and Crone, J., concur.