

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
B.P. (Minor Child) and A.C.
(Mother)

A.C. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

March 1, 2023

Court of Appeals Case No.
22A-JT-2275

Appeal from the
Madison Circuit Court

The Honorable
Stephen Koester, Judge

Trial Court Cause No.
48C02-2204-JT-45

Memorandum Decision by Judge Vaidik
Judges Tavitias and Foley concur.

Vaidik, Judge.

Case Summary

- [1] A.C. (“Mother”) appeals the termination of her parental rights to her daughter, B.P. (“Child”). We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of Child, born in 2017. J.P. (“Father”) is Child’s biological father. Father consented to the adoption of Child, and thus he does not participate in this appeal.
- [3] On May 14, 2019, Mother and Father took two-year-old Child to Riley Hospital for Children because she was “lethargic” and “unresponsive.” Tr. p. 38. The Department of Child Services (DCS) received a report regarding Child’s medical condition, and Family Case Manager (FCM) Welsh¹ visited the family to investigate. Mother admitted to FCM Welsh that the home was not safe for Child due to the presence of mold, standing water, large holes in the floor, and animal urine and feces from the family pets. Based on Child’s

¹ FCM Welsh’s first name is not in the record.

unexplained ailment² and the conditions of the home, she was removed and placed in foster care, where she has since remained.

[4] A few days later, DCS filed a petition alleging Child was in need of services (CHINS). In July, Mother admitted Child was a CHINS, and the trial court adjudicated her as such. A dispositional order was issued, providing Mother shall, among other things, participate in individual counseling, visit regularly with Child, participate in DCS-recommended programs, cooperate with home-based services, obtain a legal and regular source of income, and obtain and maintain adequate housing. The order stated that a failure to comply with the order could result in termination of parental rights. The order also directed DCS to “file a report every three (3) months from this date on the progress made in implementing the decree.” Appellant’s App. Vol. II p. 67.

[5] For the next three years, Mother partially complied with the dispositional order. She participated in individual therapy, but the therapist reported her progress was “stagnant” and recommended trauma therapy, which Mother would not participate in. Tr. p. 79. She attended supervised visitation regularly, but visits were often “chaotic,” and she struggled to focus on Child during the visits. *Id.* at 41. Mother never progressed past supervised visitation. She regularly participated in home-based services but failed to apply the skills learned to her

² The record indicates doctors at Riley were unable to determine the cause of Child’s symptoms. She was released from the hospital the following day, and she has not had a similar episode since being removed from Mother and Father’s care.

home life, and her home's condition was "continuously" an issue. *Id.* at 42. During this time, Mother was evicted four times, and each time she moved to a new home it "quickly fell into . . . disrepair and deplorable conditions." Appellant's App. Vol. II p. 9. Mother also had trouble budgeting and paying bills, including rent, despite having a full-time job. DCS offered services to help Mother organize her finances, but Mother refused to submit most of her financial information to DCS in order to participate.

[6] In April 2022, DCS moved to terminate Mother's rights. The termination hearing was held in July. FCM Sara Day testified that DCS offered Mother various services, including home-based case work, parenting education, supervised visitations with child, and individual therapy. FCM Day also held regular team meetings with Mother during the CHINS proceedings and was "very clear" about expectations and goals. Tr. p. 45. FCM Day testified that Mother generally participated in these services but failed to "utiliz[e] what she's supposed to be learning" or "put in the effort to . . . better her parenting." *Id.* at 43. According to FCM Day, maintaining safe housing and stable finances continued to be an issue for Mother, as her home has "animal feces on the floor," and supervised visitation had to be moved to a different location because Mother's home had a "water leak" and "mold." *Id.* at 47, 54. FCM Day recommended termination, believing it to be in Child's best interests as "permanency has just been dragged out" and Mother has failed to "change and . . . improve" in the last three years. *Id.* at 45, 46.

- [7] Becky Gull, Child’s Court Appointed Special Advocate (CASA), also testified termination is in Child’s best interests, noting Mother has not “made the improvement and the progress” necessary to provide Child with a safe and stable home. *Id.* at 57. Specifically, Gull noted that each time Mother moved into a new home, within a few months the conditions became “deplorable” with animal feces sitting on the floor for weeks, unflushed toilets, mice and fleas, spoiled food, and other unsanitary conditions. *Id.*
- [8] Mother testified that she had been living in the same home for a year. She acknowledged that, in addition to her four evictions during the CHINS proceedings, an eviction petition had been filed against her a few months before the termination hearing. However, she noted she was now “current” on the rent and the eviction was dismissed. *Id.* at 88. She also stated her home had “water damage” that would be fixed by the landlord. *Id.* Mother then testified that her boyfriend, who had been serving a prison sentence for burglary throughout the CHINS case, had recently been released and was staying at her home. Mother stated their relationship was previously “toxic” but had improved upon his release, and she wished to incorporate him into visitation with Child but FCM Day would not approve it. *Id.* at 106. Finally, Child’s foster father testified that Child had been living with him and his wife for three years and is “part of [their] family” and that they wish to adopt her. *Id.* at 73.
- [9] After the hearing, the trial court issued an order terminating Mother’s rights.
- [10] Mother now appeals.

Discussion and Decision

I. Due Process

[11] Mother first argues she was denied due process in the CHINS and termination proceedings. Specifically, she alleges DCS failed to make reasonable efforts at reunification and contends she was never provided with a case plan or timely progress reports. Mother concedes she failed to raise these issues in the trial court, so to avoid waiver of her arguments on appeal, she maintains they constitute fundamental error. The fundamental-error doctrine is a narrow exception to the waiver doctrine and applies to an “error that was so egregious and abhorrent to fundamental due process that the trial judge should or should not have acted, irrespective of the parties’ failure to object or otherwise preserve the error for appeal.” *In re G.P.*, 4 N.E.3d 1158, 1167 n.8 (Ind. 2014).

[12] The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* Any procedural irregularities in a CHINS proceeding may be of such significance that they deprive a parent of procedural due process with respect to the termination of his or her parental rights. *In re T.W.*, 135 N.E.3d 607, 613 (Ind. Ct. App. 2019), *trans. denied*.

[13] “Due process requires ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The Indiana Supreme Court has held that “the process due in a termination of parental rights action turns on balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *Id.* (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). Because both a parent’s and the State’s countervailing interests are substantial, when faced with a claim of denial of due process in a termination-of-parental-rights case, we focus on the second factor, the risk of error created by the State’s chosen procedure. *In re C.G.*, 954 N.E.2d at 917-18.

[14] Mother first contends DCS violated due process by failing to make reasonable efforts at reunification, specifically that it “failed to make adjustments in [Mother’s] services” and did not allow her boyfriend to participate in visitation. Appellant’s Br. p. 10. We disagree. As for Mother’s boyfriend, Mother fails to tell us how denying him participation in visits violates her due-process rights. Even if she did, we see no error here. Mother’s boyfriend had been released from prison only a few months before the termination hearing, and his and Mother’s relationship was described by her as toxic. Given that Mother already had trouble focusing on Child during visits, it was reasonable for DCS to limit visitation to only Mother.

[15] As for her own services, it does not appear Mother ever requested a change in services. “A parent may not sit idly by for such an extended period without asserting a need and desire for services and then successfully argue that she was denied services to assist her with her parenting.” *Jackson v. Madison Cnty. Dep’t of Fam. & Child.*, 690 N.E.2d 792, 793 (Ind. Ct. App. 1998), *trans. denied*. Furthermore, “it has been established that DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship.” *In re T.W.*, 135 N.E.3d at 612. Nonetheless, the record reveals DCS provided ample services to Mother, including home-based services, therapy, and supervised visitation. We cannot say DCS erred in its offering of services to Mother, let alone committed fundamental error.

[16] Mother also contends that her due-process rights were violated because DCS “failed to create or submit a case plan ever.” Appellant’s Br. p. 11. Indiana Code chapter 31-34-15 governs case plans in CHINS proceedings. Section 31-34-15-1 provides that such plans are “required for each child in need of services,” while Section 31-34-15-2 states that DCS “after negotiating with the child’s parent . . . shall complete” a case plan within sixty days of a child’s first placement or the date of a dispositional decree, whichever comes first. Finally, Section 31-34-15-3 states that a copy of the completed plan “shall be sent” to the child’s parent within ten days after it is completed.

[17] Mother now contends she never participated in the creation of a case plan or received a copy as required by statute. However, due to her failure to object to this alleged deficiency throughout the three-year CHINS proceedings, we

cannot verify her claim. No case plan is provided in the record, but it's unclear if that is because none exists, especially since the record is also devoid of any mention of a missing or incomplete case plan. *See In re T.F.*, 743 N.E.2d 766, 771 (Ind. Ct. App. 2001) (noting the difficulties in analyzing a claim about a deficient case plan where “the record does not contain a case plan, thus the record does not reflect whether a case plan was ever prepared or whether the [parents] were ever provided with a copy of a case plan”). As the State points out, the trial court references a case plan in its periodic-review orders, suggesting one did exist and Mother was at the very least aware of it. *See* Appellant’s App. Vol. II p. 43 (trial court’s October 2021 periodic-review order noting “DCS has complied with the child’s case plan” and Mother “has partially complied with the child’s case plan”).

[18] Even if DCS failed to properly create a case plan or provide one to Mother, this does not necessarily violate due process. The “two important purposes of a case plan are to notify parents of conduct that could lead to the termination of parental rights and to inform parents of the steps they need to take in order to facilitate reunification with the child.” *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006), *trans. denied*. And there is plenty of indication in the record that Mother had this information. The dispositional order clearly states what is expected of Mother and that failure to comply could result in termination of the parent-child relationship. And FCM Day testified that there were regular team meetings in which DCS communicated with Mother as to what she needed to do to accomplish reunification and the current

permanency goals. Given that Mother had this notice and information, we conclude the risk of error in failing to create or provide her with a copy of the case plan is low. *See In re T.F.*, 743 N.E.2d at 772 (finding lack of case plan did not amount to a due-process violation where “the record is replete with evidence that the [parents] were provided with notice of what conduct could lead to a termination of their parental rights”); *In re C.A.*, 15 N.E.3d 85, 93 (Ind. Ct. App. 2014) (finding DCS’s failure to provide the mother with a case plan did not violate due process where the mother “had regular team meetings, the purpose of which was to set goals and make a plan to reach those goals”), *trans. denied*.

[19] Finally, Mother similarly contends that DCS violated due process by failing to provide reports every three months on her progress as ordered by the trial court in the dispositional order. But Mother does not tell us how this deprived her of due process. Furthermore, while the record indicates that DCS did not file reports every three months, it did file a report before every periodic-review hearing, approximately every six months. *See Appellant’s App. Vol. II pp. 40-64*. We cannot say DCS’s failure to file more frequent progress reports amounts to fundamental error.

[20] Mother has not demonstrated that she was denied her right to due process.

II. Sufficiency of Evidence

[21] Mother next argues the evidence presented at the termination hearing does not prove the statutory requirements for termination.³ When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court’s findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[22] A petition to terminate parental rights must allege, 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.

³ Mother also asserts she “takes issues [sic] with many of the findings in fact [sic] that they are based on orders that were presented in the underlying child in need of services action.” Appellant’s Br. p. 17. To the extent Mother is attempting to challenge whether the evidence supports the findings, she does not point to any specific findings. As such, she has waived this claim for failure to make a cogent argument. *See Ind. Appellate Rule 46(A)(8)(a)* (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.”)

(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 the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. 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).

A. Conditions Remedied

[23] Mother first challenges the trial court’s conclusion that there is a reasonable probability the conditions resulting in Child’s removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child’s removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must determine what conditions led to the child’s placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must

consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[24] Here, Child was removed from the home due to filthy and unsafe housing conditions. And in the three years that followed, Mother failed to show she could provide Child with a safe and stable home. She was evicted four times throughout the proceedings and had another eviction filed against her as recently as a few months before the termination hearing. When DCS offered services to help Mother budget her finances to maintain her home, she declined to fully participate. Nor did the conditions of the home improve, despite Mother's participation in home-based services to address that issue. Each time Mother moved to a new residence, within a few months the conditions deteriorated with animal feces, fleas, mice, spoiled food, and other unsanitary conditions. At the time of the termination hearing, CASA Gull and FCM Day had not been to the home in months, and supervised visitation had to be relocated due to the presence of water damage and mold in Mother's home. These unsanitary conditions are a safety concern, especially for a five-year-old. Ultimately, Mother has not shown an ability to provide safe and stable housing for Child, despite being given three years and various services.

[25] The trial court did not err when it concluded there is a reasonable probability the conditions leading to Child’s removal will not be remedied.⁴

B. Best Interests

[26] Mother also challenges the trial court’s conclusion that termination is in Child’s best interests. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.* We have held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that

⁴ Mother also challenges the trial court’s conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child’s well-being. But because we affirm the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find that only one of the three requirements of subsection (B) has been established by clear and convincing evidence), *trans. denied.*

termination is in the child's best interests. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*.

[27] Here, both FCM Day and CASA Allen recommended termination, believing it to be in Child's best interests. And as noted above, Mother has not shown an ability to provide a safe and stable environment for Child. While this evidence alone is sufficient, permanency is also a central consideration. Child, now five, has been removed from Mother's care for three years, and in that time Mother has not shown enough progress to advance beyond supervised visitation. In contrast, for three years Child has been with the same foster family, to whom she is bonded and who wish to adopt her.

[28] For these reasons, we conclude that the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in Child's best interests.

[29] Affirmed.

Tavitas, J., and Foley, J., concur.