

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Amy P. Payne
Monroe County Public Defender
Bloomington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General for Indiana
Katherine E. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

Mi.L., Ma.L. and J.L. (Minor
Children),

and

A.C. (Mother)

Appellants-Respondents,

v.

June 29, 2022

Court of Appeals Case No.
22A-JT-293

Appeal from the Monroe Circuit
Court

The Honorable Stephen R.
Galvin, Judge

Trial Court Cause No.
53C07-2107-JT-343
53C07-2107-JT-344
53C07-2107-JT-345

Indiana Department of Child
Services,
Appellee-Petitioner.

Bailey, Judge

Case Summary

- [1] A.C. (“Mother”) appeals the termination of her parental rights to Mi.L. (born in 2009), Ma.L. (born in 2012), and J.L. (born in 2015) (collectively, “Children”), upon the petition of the Monroe County Department of Child Services (“DCS”).¹ Mother presents the sole issue of whether the judgment is clearly erroneous because DCS failed to present clear and convincing evidence to establish the requisite statutory elements. We affirm.

Facts and Procedural History

- [2] DCS became involved with Mother and Children in 2018 after Mother was convicted of Possession of Methamphetamine. On March 7, 2018, Mother became a party to a DCS informal adjustment agreement and was court-ordered to work with a DCS family case manager (“FCM”) and obtain a

¹ The parental rights of each of the three biological fathers have been terminated; no father participates as an active party in this appeal.

substance abuse assessment. Mother was initially cooperative but subsequently failed to enroll in recommended services and was incarcerated for a probation violation. In January of 2019, Mother was unsuccessfully discharged from the informal adjustment program. On August 20, 2019, Mother was charged with Operating a Vehicle While Intoxicated – allegedly under the influence of methamphetamine and alcohol – with Children as passengers in the vehicle. Children remained in Mother’s care until August 28, 2019, when DCS removed Children and placed them in relative care.

[3] On December 2, 2019, Children were adjudicated Children in Need of Services (“CHINS”). Among the findings of the CHINS court were: Mother failed to timely participate in a substance abuse evaluation; Mother was not participating in the recommended inpatient treatment because she was incarcerated; Mother had admitted to daily use of methamphetamine and to driving with Children while under the influence of methamphetamine; Mother had a significant drug history; and Mother lacked stable housing.

[4] At the dispositional hearing conducted on January 6, 2020, Mother was ordered to: maintain weekly contact with her FCM; permit home visits by service providers; submit to random drug screens; follow recommendations related to a substance abuse evaluation; meet with a parenting aide weekly; and participate in scheduled visits with Children.

[5] In December of 2019 and January of 2020, Mother received inpatient drug treatment. Thereafter, she participated in recovery coaching. However,

Mother continued to provide drug screens that were positive for the presence of methamphetamine. In July of 2020, Mother again began inpatient drug treatment; she left the treatment center without authorization and never returned. Mother failed to regularly visit Children and she failed to maintain contact with her FCM, attend team meetings, or work with home-based service providers.

[6] In August of 2020, DCS filed a petition to terminate Mother's parental rights. Mother consented to the adoption of Children by their aunt and uncle; however, that placement was disrupted in April of 2021. Mother last visited Children in June of 2021. On July 1, 2021, DCS filed a second petition to terminate Mother's parental rights.

[7] On July 19, 2021, Mother completed a substance abuse and mental health intake evaluation at Centerstone. Mother reported that she injected methamphetamine daily. Mother was diagnosed with severe stimulant dependence and post-traumatic stress disorder. Mother reported that she depended upon her wife to provide housing and financial resources, but she considered her wife to be mentally abusive.

[8] At a factfinding hearing conducted on November 29, 2021, Mother appeared telephonically and reported that she had experienced difficulty communicating with her attorney. An additional hearing was scheduled for December 17, 2021, to permit Mother time to consult with her attorney.

- [9] In December of 2021, Mother sent a text message to her FCM. Mother explicitly refused inpatient treatment because, in her opinion, the program verified drug abuse. Mother explained that her last drug screen was positive because she is an addict. In a final meeting with her FCM, Mother admitted that she was not sober and that she could not care for Children; she expressed interest in a post-adoption visitation agreement.
- [10] Mother did not appear at the December factfinding hearing, but she was represented by counsel. The trial court heard testimony from Children’s therapist, a court-appointed special advocate (“CASA”), an FCM, and a therapist who had conducted Mother’s substance abuse and mental health evaluation. The CASA, FCM, and child therapist each testified that termination of parental rights was in Children’s best interests.
- [11] On January 10, 2022, the trial court entered its findings of fact, conclusions thereon, and order terminating Mother’s parental rights. In relevant part, the trial court found that Mother did not follow through with recommended services, “effectively abandoned Children,” and had failed to maintain sobriety “for even one month.” Appealed Order at 4-5. Mother now appeals.

Discussion and Decision

- [12] In conducting our review, we acknowledge that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution.” *Bailey v. Tippecanoe*

Div. of Fam. & Child., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[13] Before an involuntary termination of parental rights can occur in Indiana, 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. . . .

(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’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dep’t of Child Servs.*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[14] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[15] Where, as here, a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *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 and, 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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

[16] Mother does not challenge any of the factual findings made by the trial court. Rather, she argues that the trial court committed clear error in concluding that

there is a reasonable probability that conditions that resulted in Children's removal will not be remedied, and that continuation of the parent-child relationship poses a threat to the well-being of Children.

[17] With respect to a trial court's conclusion that there exists a reasonable probability that conditions leading to removal will not be remedied, the reviewing court engages in a "two-step analysis." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we must identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* (citing *Bester*, 839 N.E.2d at 152). The trial court is entrusted with balancing a parent's recent improvements against habitual patterns of conduct. *Id.* The trial court 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 parents' past behavior is the best predictor of their future behavior." *Id.*

[18] Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

[19] Children were initially removed from Mother’s care primarily due to her substance abuse and secondarily due to her inability to provide a safe and stable residence. Mother has participated in some treatment services but has not been able to achieve sobriety. She failed to participate in the majority of the services recommended to her and has been unable, in over two years, to provide custodial care for Children. She did not establish regular visitation with Children. Mother contends that the trial court ignored “her willingness to engage with DCS.” Appellant’s Brief at 10. This is simply a request to reweigh the evidence. The trial court’s determination of a reasonable probability that the conditions leading to removal and continued placement outside the parental home are unlikely to be remedied is not clearly erroneous.

[20] Mother also argues that evidence she endangered Children in a vehicle several years ago is not probative of a current threat to Children’s wellbeing. We need not address this argument, because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, the court is required to find that only one prong of subsection (2)(B) has been established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209.

Conclusion

[21] DCS presented sufficient evidence to establish the requisite statutory elements to terminate Mother’s parental rights to Children. The termination order is not clearly erroneous.

[22] Affirmed.

Najam, J., and Bradford C.J., concur.