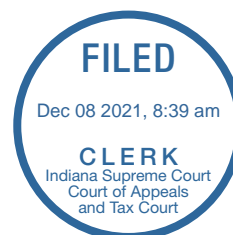


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

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

E.W. and Ev.W (Minor
Children),

And

L.W. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 8, 2021

Court of Appeals Case No.
21A-JT-1358

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

The Honorable Lindsey Holden-
Kay, Magistrate

Trial Court Cause No.
03C01-2011-JT-5420 & 03C01-
2011-JT-5419

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, L.W. (Mother), appeals the trial court’s termination of her parental rights to the minor children, E.W. and Ev.W. (Children).
- [2] We affirm.

ISSUE

- [3] Mother presents this court with one issue, which we restate as: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

FACTS AND PROCEDURAL HISTORY

- [4] Mother¹ is the biological parent to E.W., born on August 17, 2016, and Ev.W., born on March 26, 2019.² On March 27, 2019, DCS received an allegation that Ev.W. was born having been exposed to illegal substances. Following up on the allegation, DCS confirmed that Children’s basic needs were being met at Maternal Grandmother’s home. Mother submitted to a drug screen on March 28, 2019, which returned positive for oxycodone. DCS’s family case manager (FCM) made several attempts to contact Mother between April and June 2019, without any success. Meanwhile, on May 15, 2019, it was confirmed that

¹ Father is not part of these proceedings.

² Mother is also the biological parent to two older children, step-siblings to Children. The step-siblings were placed with their father and Mother’s parental rights were not terminated as to the step-siblings.

Ev.W.'s cord blood had tested positive for marijuana metabolite. In June 2019, FCM spoke with Maternal Grandmother who voiced concerns about Mother's mental health and with Children's doctor who informed FCM that Children had missed their scheduled appointments.

[5] On August 7, 2019, DCS received a second report alleging that Mother and Father were using illegal drugs while Children were in the home, that Parents engaged in acts of domestic violence, and that the condition of the home was "dangerous for the children." (Exh. Vol. III, Exh. 6). FCM and law enforcement visited the home the same day. When they arrived, Mother had a "gash" on her forehead, which she claimed to have incurred from falling down. (Exh. Vol. III, Exh. 8). Parents refused to submit to a drug screen. Once inside the home, FCM observed "abundant toys, batteries, clothes hangers, paint, CDs, cords, laundry basket, water, and paint" on the floor of the home. Children's sleeping arrangements were "ripped mattresses, and beds standing on end." (Appellant's App. Vol. II, p. 132). The home was "cluttered," the AC units were missing covers and Children could get their fingers stuck in them, there were holes in the wall, and the outlets did not have child protective covers. (Transcript p. 54). DCS did a "change of household," which allowed Parents to improve the condition of the home and temporarily placed Children with Paternal Grandmother. (Appellant's App. Vol. II, p. 132) Within five days, Mother had sufficiently improved the condition of the home and Children returned to her care.

- [6] On August 15, 2019, DCS filed its petition alleging Children were Children in Need of Services (CHINS) because Ev.W. was born drug-positive, Mother's mental health, Mother's failure to provide Children with medical care, Parents' drug use and domestic violence, and the condition of the home. The trial court conducted a hearing on August 22 and August 29, 2019, at which Mother failed to appear.
- [7] On September 16, 2019, the trial court granted DCS's request to remove Children from the home after Mother had failed to maintain contact with DCS and DCS had received a report that Mother was using methamphetamine while Children were asleep, that Mother was physically and verbally abusing Children, and that Mother had failed to seek medical treatment for Ev. W. after he had fallen off his bed. On September 17, 2019, during a detention hearing, the trial court authorized Children's continued removal from Mother's care. On November 18, 2019, the trial court adjudicated Children to be CHINS during a hearing at which Mother failed to appear.
- [8] On January 15, 2020, the trial court issued its dispositional decree, in which it ordered Mother, in part, to complete a substance abuse evaluation and follow all recommended treatment, participate in homebased case management, complete a psychological evaluation and follow the recommended treatment, participate in supervised visitation, submit to random drug screens, refrain from using illegal substances, and maintain safe and suitable housing. Mother did not participate in any of the services and her referral for the substance abuse assessment was closed due to Mother's non-engagement. Likewise, Mother's

referral for homebased case management was closed because she did not participate. Mother's referrals for random drug screens were closed because Mother never submitted to any tests. Mother was also non-compliant with visitation. DCS referred Mother for supervised visitation three times but Mother did not attend a single visit and her referrals were closed. The last time Mother saw Children was September 2019, when they were removed from her care. Mother lost her housing in February 2020, and considered the jail to be "basically" her home in 2020 and 2021. (Tr. p. 22).

[9] On April 28, 2020, Mother was arrested for residential entry. FCM met Mother in jail and discussed the services in which she needed to participate. Mother indicated "she was ready to maintain sobriety, she was ready to do all of her services and she wanted to be involved in her [C]hildren's lives." (Tr. p. 84). On July 13 and August 24, 2020, the trial court issued an order of participation, finding that Mother had been incarcerated since April 2020, she had failed to maintain contact with DCS, she had not completed any of her treatment recommendations, and had not participated in visitation. Also, on July 13, 2020, the trial court changed Children's permanency plan to a concurrent plan that included adoption.

[10] Mother was released from jail on September 2, 2020. After her release, she did not contact DCS, she continued using methamphetamine, and she did not participate in probation. Mother was arrested again on October 10, 2020, for possession of a syringe and was incarcerated for two days. On December 4, 2020, Mother was arrested for failing to appear for a court hearing. FCM

visited Mother in jail and explained that the permanency plan had changed to adoption. Mother pled guilty to Level 6 felony possession of a syringe on April 22, 2021 and the trial court sentenced her to 730 days suspended to probation. Mother was transferred to community corrections to complete the WRAP program, which is a six-month program that includes counseling, working on recovery, and is essentially geared “to better yourself[.]” (Tr. p. 32).

[11] Children have been in Foster Parents’ home since January 16, 2020, where they are “growing and they are thriving.” (Tr. p. 74). Children refer to Foster Parents as “Mommy” and “Daddy” and they have sibling visits with their step-siblings twice a month. (Tr. p. 74).

[12] On November 5, 2020, DCS filed its petition to terminate Mother’s parental rights to Children. On June 1, 2021, after conducting a fact-finding hearing on DCS’s petition, the trial court issued its Order, terminating Mother’s parental rights and concluding, in pertinent part,

In terminating parental rights, the [c]ourt must find that either there is reasonable probability that the conditions that resulted in the [C]hildren’s removal will not be remedied, or that there is reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the [C]hildren. In this instance, the [c]ourt finds that both apply.

Of the numerous conditions that led to the [C]hildren’s removal, Mother has only made an effort to address her substance use. Mother made no effort toward reunification during times that she was living in the community. Mother only pursued treatment during periods of incarceration. Mother completed one

substance use program approximately one week before the present hearing. Mother is still enrolled in another program that will last for months. Substance use is not the only underlying cause of the [C]hildren's removal. Mother has not taken any steps to address her mental health needs, to learn effective parenting, to learn how to maintain home safely for [C]hildren, or to avoid domestic violence. Mother was ordered to attend services to address her lack of housing, her unemployment, and her parenting. Mother made no effort towards addressing these vital areas. Even if Mother remains substance free, Mother has not addressed the conditions that led to her [C]hildren's removal.

Mother's parent-child relationship with her [C]hildren poses a threat to their well-being. Mother continues to minimize the harm done to her [C]hildren while they were in her care. Mother has shown that she is unable to be a stable parent. Mother has not maintained any bond with her [C]hildren. Continuing or attempting to resume the parental relationship would be traumatic to the [C]hildren.

(Appellant's App. Vol. II, p. 142).

[13] Mother now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[14] Mother challenges the trial court's termination of her parental rights to her Children. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" *Id.*

(quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If “parents are unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[15] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment, and we accord deference to the trial court’s “opportunity to judge the credibility of the witnesses firsthand.” *Id.*

[16] In order to terminate a parent’s rights to his or her child, DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6)

months under a dispositional decree.

* * * *

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a [CHINS] . . . ;

(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 [CHINS];

(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 each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[17] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of

changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

[18] Mother’s sole challenge is to the trial court’s conclusion that there is a reasonable probability that she will not remedy the conditions that resulted in Children’s removal and continued placement outside her care and that continuation of the parent-child relationship poses a threat to Children’s wellbeing. In adjudicating Children as CHINS, the trial court determined that Children were removed from Mother’s care because of the dangerous condition

of the home, Mother's continued drug use, allegations of abuse, and Mother's failure to seek medical help for Ev.W.

[19] Throughout the proceedings, Mother failed to participate in services designed to reunify her with Children, she did not attend visitation, and she engaged in criminal conduct that resulted in her being in and out of jail. DCS offered Mother counseling, homebased case management, parenting assessment, substance abuse assessment, and drug screens. Due to Mother's non-participation in the services designed to help her address her mental health, parenting issues, addiction, and housing difficulties, each of these services was closed-out early in the proceedings and Mother never contacted DCS to commence participation. Mother continued to abuse methamphetamine and was homeless during the times she was not incarcerated. At no point during these proceedings did Mother visit with Children. In fact, the last time she saw Children was when they were removed from her care by DCS in September 2019. Mother's failure to visit with Children demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002).

[20] Mother now contends that she has shown a desire to reunify with Children through her participation in substance abuse treatment while in jail and in community corrections. At the time of the termination proceeding, Mother had just begun a six-month inpatient drug treatment program, WRAP. Mother anticipated to work through her criminal mindset, to address her mental health and to learn skills that would help manage addictions and requested the trial

court to grant her another six months so that she could complete the WRAP program and comply substantially with DCS's case plan.

[21] “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.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Mindful of this guideline, we note that the evidence presented shows clearly and convincingly that a reasonable probability exists that the conditions that led to the Children’s removal from Mother’s care will not be remedied. At no point during the proceedings did Mother exhibit a turnaround in her behavior or commence participation in DCS’s services. While we applaud Mother for now making a commitment to successfully finish the WRAP program, in the totality of the evidence, this effort is too little and comes too late. “[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the petition for termination.” *Id.* at 1230. To that end, the trial court is within its discretion to “disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother’s history of conduct.” *K.T.K.*, 989 N.E.2d at 1234. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d at 648. Accordingly, the trial court was entitled to weigh the evidence as it found appropriate in the context of this case, and we affirm the trial court’s conclusion that a reasonable probability exists that the conditions that resulted in Children’s removal will not be remedied despite the minor improvement

Mother has shown since DCS filed its termination petition.³ *See K.T.K.*, 989 N.E.2d at 1234. As such, we affirm the trial court's decision.

CONCLUSION

[22] Based on the foregoing, we hold that the trial court properly terminated Mother's parental rights to Children.

[23] Affirmed.

[24] Robb, J. and Molter, J. concur

³ Because [Indiana Code section 31-35-2-4\(b\)\(2\)\(B\)](#) is written in the disjunctive, we need not decide whether DCS also presented sufficient evidence to support whether there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Children. Furthermore, Mother does not challenge the trial court's conclusion that termination of her parental rights is in the Children's best interest.