

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

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

J.B. (Minor Child)

and

J.B. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

July 28, 2022

Court of Appeals Case No.
22A-JT-367

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause No.
34C01-2110-JT-436

Mathias, Judge.

[1] The Howard Circuit Court terminated J.B.’s (“Mother’s”) parental rights to Ja.B. (“Child”), her nine-year-old son. Mother appeals and argues that DCS failed to present clear and convincing evidence to support the termination of her parental rights.

[2] We affirm.

Facts and Procedural History

[3] Mother gave birth to Child on September 8, 2012.¹ In February 2020, Mother and Child were living in Kokomo with Mother’s fiancé, F.S., Mother’s stepfather, J.R., and Mother’s two other children. On February 3, the Department of Child Services (“DCS”) received a report that Child “had multiple marks on his body and sticky residue on his lower back, and that [Child] had disclosed the marks and residue were a result of he being restrained by duct tape and handcuffs while at home.” Appellant’s App. Vol. 2 p. 86.

[4] Family case manager Elizabeth Johnson went to Child’s home and spoke with Mother, who denied that Child had ever been restrained by duct tape or handcuffs. Mother told Johnson that the sticky residue was from “‘ant trap’ tape” and that the marks “were from the pants [Child] wore.” *Id.* at 87. Mother would not allow Johnson to talk to Child outside of Mother’s presence, and Mother did not allow Johnson to photograph Child. But Johnson “was able to

¹ Child has no relationship with his biological father, who does not participate in this appeal.

observe horizontal marks, scratches, and tape residue on [Child's] back and a mark on his left wrist at that time.” *Id.*

[5] On February 10, Johnson went to Child's school and spoke with Child, who stated that “he had been repeatedly duct-taped and handcuffed while at his home by [Mother] and the other adults in the home because of being bad.” *Id.* Child reported that “he was punished for things such as stealing pillows and blankets at night and for getting into his grandfather's food and personal things.” *Id.* Johnson spoke to Mother later that day, and Mother again denied the accusations and called Child a “liar.” *Id.* Following a forensic interview with Child on February 12, and after getting corroborating statements from school officials, DCS removed Child from Mother's home and placed him in foster care. At some point, Child revealed that J.R. was the person who had duct-taped and handcuffed him as punishment, but Mother and F.S. had done nothing to stop J.R.

[6] DCS filed a petition alleging that Child was a Child In Need of Services (“CHINS”) on February 13. On March 6, the State filed criminal charges against Mother, F.S., and J.R. And in June, the trial court adjudicated Child to be a CHINS. The court ordered Mother to complete a mental health evaluation and follow all of the evaluator's recommendations, participate in therapy, participate in parenting classes, submit to drug screens, and maintain suitable housing. The court issued no-contact orders prohibiting Mother, F.S., and J.R. from having contact with Child. Mother continued to deny any wrongdoing

both to her therapist and to a homemaking service provider. While Mother did not make progress in her parenting skills, she passed each of her drug screens.

[7] Mother was eventually able to attend supervised visits with Child, and she was consistent with those visits and mostly appropriate with Child. However, Mother continued to deny wrongdoing, and she continued to live with F.S. and J.R. Mother declined assistance in finding independent housing and employment, and her parenting skills did not improve. Therefore, on October 18, 2021, DCS filed a petition to involuntarily terminate Mother's parental rights to Child.

[8] On January 3, 2022, the trial court held the fact-finding hearing on DCS's petition to terminate Mother's parental rights. Doris Wolfe, who provided homemaking services to Mother, testified that Mother consistently refused her offers to help find independent housing and employment. Wolfe also testified that Mother "never felt that there was anything wrong with her parenting so that was . . . something that she just wouldn't work toward." Tr. p. 18. And Wolfe stated that Mother has always believed that Child "lies . . . about everything and that . . . there's no substance to this case." *Id.* at 20. Finally, Wolfe testified that she did not think that Mother's parenting skills would improve over time.

[9] The family case manager, Mike Deardorff, testified that Mother has not shown a "willingness to make the long term changes required of her in order to reunify with" Child. *Id.* at 45. He testified that Mother is not "willing to put [Child's]

needs above her own self-interests” and that she has not made significant progress in remedying the reasons for Child’s removal from Mother’s home. *Id.* For instance, Mother continued to deny that Child had been duct-taped and handcuffed, and, at one point, during a visit, she told Child that he should recant his story. And Deardorff testified that Child’s therapist grew “concerned” about Child’s visits with Mother after Child began displaying “behavior issues that he hadn’t [displayed] for a while.” *Id.* at 41–42. Deardorff testified further that Mother refused help to obtain housing away from F.S. and J.R. despite the no-contact orders against each of them.

[10] On February 4, 2022, the trial court issued its order terminating Mother’s parental rights to Child. Perhaps the most significant finding states as follows:

It is well established that the Child has suffered through abuse and neglect in his [Mother’s] care and while the full effects of that trauma are impossible to determine at this time, it is clear that the Child has already experienced significant harm in light of the dysregulation he has displayed emotionally, behaviorally, physiologically, developmentally, mentally, and socially. In light of [Mother’s] complete refusal to acknowledge or address the deficits that led to the Child’s abuse and neglect in her care and the continued harm her actions caused him during visitations, the Court finds that there would be a substantial probability of future neglect or deprivation if the Child were to be returned to [Mother’s] care.

Appellant’s App. Vol. 2 at 96. Mother now appeals.

Standard of Review

- [11] 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.*
- [12] 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; 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.” *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*. Finally, 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).

Discussion and Decision

- [13] 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*. For that reason, Indiana law 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) (2021). Only two of those elements are at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied, and (2) whether termination of parental rights was in the child's best interests.² *I.C. § 31-35-2-4(b)(2)(B)(i), (C)*.
- [14] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the 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)*.
- [15] Mother first argues that the trial court's conclusion that there is a reasonable probability that the reasons for Child's removal from her care and/or the

² DCS must only prove one of the elements listed in *Indiana Code* subsection 31-35-2-4(b)(2)(B); therefore, it is not necessary for our court to consider whether DCS presented clear and convincing evidence that continuation of the parent-child relationship poses a threat to the child's well-being. *See I.C. § 31-35-2-4(b)(2)(B)*.

reasons for continued placement outside her home had not been remedied is not supported by clear and convincing evidence. In determining whether there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside Mother’s 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.* Here, Mother’s failure to protect Child from abuse at the hands of J.R. led to his removal from her home.

[16] 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 this step, we observe that 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 or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). In addition, a trial court may consider services offered by DCS and the parent’s response to those services as evidence of whether conditions will be remedied. *A.D.S.*, 987 N.E.2d at 1157. “Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). DCS “is not required to provide evidence ruling out all possibilities of change; rather, it need only establish ‘that there is a

reasonable probability that the parent’s behavior will not change.’” *A.D.S.*, 987 N.E.2d at 1157 (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)).

[17] Mother asserts that she has demonstrated that the reasons for Child’s removal have been remedied. She points out that she has exercised regular visitation with Child, she has passed every drug screen, and she has appropriate housing. Mother acknowledges that she did not complete individual therapy, but she notes that “a parent’s mental illness or disability cannot, standing alone support the termination of parental rights.” Appellant’s Br. p. 19 (citing *In re V.A.*, 51 N.E.2d 1140, 1147 (Ind. 2016)).

[18] But Mother’s contentions amount to a request that we reweigh the evidence, which we cannot and will not do. DCS presented evidence that Mother continues to live with F.S. and J.R. despite the active no-contact orders against them, and she has no plans to move. Mother continues to deny that Child had ever been restrained with duct tape or handcuffs, and she has consistently stated that Child is a liar. Mother has made no progress in her parenting skills despite consistent meetings with Wolfe, and she did not complete individual therapy despite her self-proclaimed anxiety and depression. Due to Mother’s denial of the reasons for Child’s removal and her continued unwillingness to put Child’s needs above her own, we conclude that DCS presented clear and convincing evidence that there is a reasonable probability that the reasons for Child’s removal from Mother’s care and/or the reasons for continued placement outside her home will not be remedied.

[19] We now turn to Mother’s claim that DCS did not prove that termination of her parental rights was in Child’s best interests. A court’s consideration of whether termination of parental rights is in a child’s best interests is “[p]erhaps the most difficult determination” a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *In re A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child’s need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648.

[20] Moreover, our court has often observed that “[a] parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” *See, e.g., In re A.K.*, 924 N.E.2d 212, 221 (quoting *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006)), *trans. denied*. “In other words, ‘although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meeting their responsibility as parents.’” *Castro*, 842 N.E.2d at 221 (quoting *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004)).

[21] After receiving services from DCS for two years, Mother is still unable to independently care for herself or Child, and she does not have a safe, suitable

home for Child. In addition to the evidence discussed above supporting the trial court's conclusion that the reasons that Child was removed from Mother's care will not be remedied, DCS presented evidence that Child suffers from a hyperactivity disorder and emotional disabilities and it is unlikely that Mother is capable of adequately addressing those needs. Child has lived with the same foster parent consistently throughout most of these proceedings and requires stability. Deardorff testified that he has "blossomed" in foster care and is doing well in school. Tr. p. 43.

[22] For these reasons, we conclude that DCS presented clear and convincing evidence that termination of Mother's parental rights is in Child's best interests.

Conclusion

[23] Clear and convincing evidence supports the trial court's order terminating Mother's parental rights to Child.

[24] Affirmed.

Brown, J., and Molter, J., concur.