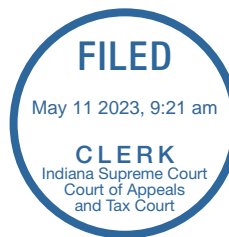


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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:

N.G. and M.B. (Minor
Children),

And

A.B. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 11, 2023

Court of Appeals Case No.
22A-JT-2939

Appeal from the Fayette Circuit
Court

The Honorable Hubert Branstetter,
Jr., Judge

Trial Court Cause No.
21C01-2204-JT-59 & 21C01-2204-
JT-58

Memorandum Decision by Judge Riley.
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, A.B. (Mother), appeals the trial court’s termination of her parental rights to her minor children.

[2] We affirm.

ISSUE

[3] Mother presents this court with one issue on appeal, 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] Mother and S.B. (Father)¹ are the biological parents of N.G., born on April 27, 2014, and M.B., born on September 22, 2015 (collectively, Children). Mother has cognitive disabilities that impact her day-to-day living, including an increased difficulty in maintaining a suitable living environment and personal hygiene, increased difficulty with problem-solving, low empathy, and lack of

¹ The trial court also terminated Father’s parental rights to Children, but he does not participate in this appeal. Facts pertaining to Father will be included insofar as they are relevant to Mother’s appeal.

good judgment. Her full-scale IQ is 58, which places her in the extremely low range of intellectual functioning, below a third-grade equivalence.

[5] In 2012, Mother participated in the Connections program, a specialized program that supports individuals with intellectual and developmental disabilities, when she moved out and began to live independently. Connections helped Mother with trauma coping skills, personal hygiene, self-care, grocery shopping, budgeting, and home care. Although Mother benefitted from the assistance, her home conditions deteriorated after she gave birth to N.G. The family left the state in the spring of 2014 but returned over a year later.

[6] DCS first became involved with the family in 2016, when it removed Children from Mother's care in July of that year and initiated a CHINS proceeding due to filthy and unsafe living conditions and Mother's failure to care for Children. DCS provided support and services to the family until the trial home visit in January 2018; DCS's wardship was terminated in April 2018. In May 2019, DCS substantiated new allegations of neglect and placed the family on an informal adjustment program with services to help Mother meet her parental obligations. DCS even arranged for services to continue after closing the case, which Mother did not maintain. By March 2020, DCS initiated another informal adjustment after receiving numerous reports of uninhabitable home conditions and Children's exposure to domestic violence. Again, DCS put services in place to prevent the need for Children's removal.

[7] Eventually, DCS removed Children from Mother's care on July 31, 2020, due to ongoing concerns for Mother's inability to maintain sanitary home conditions, inability to maintain minimal hygiene levels, domestic violence in the home, and Father's incarceration. On November 23, 2020, the trial court conducted a factfinding hearing on DCS's petition, at which the court adjudicated Children as Children in Need of Services (CHINS) based on Mother's admission to DCS's allegations and ordered her to complete reunification services. DCS offered Mother numerous services, including individual therapy, family therapy, medication management, domestic violence treatment, case management, and supervised visitation. DCS and its providers tailored the services provided to Mother to meet her intellectual and cognitive disabilities. Although Mother participated in only some of the services, providers consistently reported that Mother was unable to comprehend, use, and retain the information covered during services. As a result, Mother failed to make progress in the areas of concern. As one provider put it succinctly, "[s]he wants to do better, but cognitively, she can't get it together, she wants to do better. She just can't." (Transcript Vol. II, p. 146).

[8] During the proceedings, Mother has been unable to maintain a sanitary and safe home environment despite service providers making numerous attempts to support her. Mother's home has habitually been kept in an unsanitary condition with a strong urine odor, animal feces, and thrash throughout, and with infestations of roaches, fleas, bedbugs, and lice at various times. As recently as a couple of weeks prior to the termination hearing, DCS's Family

Case Manager (FCM) observed animal feces around the home and on at least one of the beds. Mother admitted that the feces were “caked into the carpet” in her current home. (Tr. Vol. II, p. 199). Mother was also unable to maintain basic hygiene for Children. Prior to their removal, Children often arrived at school in soiled clothes and diapers or underwear, unbathed, and with live bugs on them. The school often had to change and launder their clothes and wipe Children down when they arrived.

[9] Mother struggled to adhere to her medication schedule even after service providers arranged for her to receive her medication on a weekly basis in individual pouches that only dispensed her daily medication. Providers expressed a concern that because Mother was unable to manage her own medication even with assistance, she would also be unable to ensure Children’s compliance with their new ADHD medication schedules. Likewise, Mother was not able to comply with her own appointments without constant provider reminders, and providers were concerned she would not be able to ensure that Children would attend all their medical and educational appointments in addition to her own.

[10] Mother has been involved in several unhealthy and violent relationships that have resulted in Children being exposed to multiple instances of domestic violence, including with Father and with Mother’s current husband (Husband). Husband has control over the family finances and has made some questionable decisions about the money. For example, the family got rid of their washer and dryer to afford Husband’s gaming equipment despite concerns for the family’s

hygiene. Husband also did not allow Mother to use her food stamps to purchase food for Children during visits. Children's therapist recommended that Husband should not be present at visits until he participated in family therapy services due to Children's behaviors declining and Children expressing fear of him after visits. However, Husband refused to participate in services and refused to leave the house so Children could have visits. Mother disregarded Children's concerns and reported that DCS could not make Husband participate in services or make him leave his own home. While Mother frequently appeared to be afraid and nervous when Husband would attend meetings or when he was present, when concerns were addressed with Mother, she would dismiss them. Although DCS referred Mother for additional domestic violence services, Mother refused to participate.

[11] Despite extensive assistance provided to Mother during these proceedings, Mother was unable to understand safety issues affecting Children. During visitation, Mother struggled to monitor, supervise, and intervene when necessary to keep Children safe, requiring the visitation supervisor to intervene instead. Mother was unable to handle Children's behaviors appropriately and effectively discipline them. Mother's ability to appropriately communicate with and discipline Children improved very little despite services designed to develop those skills. As a result, parenting time did not progress beyond supervised visitation.

[12] Prior to their removal, Children had several negative behaviors and were hard to control. One of Children's behavioral therapists indicated she was afraid to

take them out in the community because of their unpredictable and uncontrollable behavior. Since being removed from parents' care, Children have made notable improvements in many facets of their lives. Children's school attendance and performance has improved. Their overall behavior has also improved within the structured environment of the foster home and with the addition of medications.

[13] Mother completed a parenting assessment with Dr. Robin Cruz (Dr. Cruz), who concluded that Mother did not appear to understand Children's needs or the necessity of prioritizing their needs over her own. Dr. Cruz rated the likelihood of Children's needs being met in Mother's care as a three out of ten, with ten being Children receiving the care they need. Mother's testing also reflected a low level of parental empathy and inappropriate expectations of Children's behaviors. Dr. Cruz noted that Mother's mental health profile negatively impacted her ability to fulfill her parental obligations, particularly in her capacity to understand and satisfy Children's needs. She cautioned that Mother would need ongoing support services to be able to parent Children safely. Similarly, Mother's behavioral clinician who had worked with Mother since July 2020, clarified that Children could only move home with

[s]omebody else being in the home, being able to observe and being able to ensure that she's able to take care of herself, [C]hildren in the home, ensure [C]hildren got their medication, got to school[.] But she would have to have somebody else who was there with a higher cognitive level who would be able to provide that support, the reminders, the encouragement.

(Tr. Vol. II, pp. 125-26). Children’s CASA supported the termination of Mother’s parental rights, believing adoption to be in Children’s best interests because Mother was largely non-compliant and had not made progress throughout this case. FCM opined that despite having been offered every service available, Mother is still unable to meet Children’s medical, mental health, educational, and daily needs. She concluded that it is in Children’s best interests to be adopted based on the detrimental effect their negative childhood experiences had on their development.

[14] On February 16, 2022, the trial court approved a permanency plan of reunification with a concurrent plan of adoption. On March 28, 2022, DCS filed a petition to terminate Mother’s parental rights to Children. The trial court conducted the factfinding hearing on June 12, August 23, and September 27, 2022, and issued its Order, terminating Mother’s rights on November 9, 2022. In its Order, the trial court found, in pertinent part, that Mother’s

unwillingness to maintain constant services and supports without DCS’s supervision, combined with [her] deficits in adaptive functioning, render [her] incapable of safely or effectively parenting the Children on a long-term basis without seriously impacting the Children’s wellbeing and without continued and ongoing intervention by [DCS].

(Appellant’s App. Vol. II, p. 27). The trial court concluded that there is a reasonable probability that the conditions that resulted in Children’s removal and continued placements outside the home will not be remedied, and that the continuation of the parent-child relationship posed a threat to Children’s

wellbeing. The trial court found termination of parental rights to be in the best interests of Children and noted the existence of a satisfactory plan for the care and treatment of Children, that being adoption.

[15] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[16] 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)).

[17] 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.*

II. Termination

[18] 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.*

[19] 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.

A. Sufficiency of Findings

[20] Mother specifically challenges the evidence supporting two findings. Mother first focuses on finding 2(e), which states that:

Mother and Father have struggled to adhere to their personal medication regimen despite DCS and parents’ service provider making reasonable efforts to support parents, making it unlikely that parents would be able to do so without DCS supervision and unlikely they would be able to ensure that the children adhere to their medication regimen if they were returned to parents’ care.

(Appellant’s App. Vol. II, p. 24). Claiming that she was taking her medication regularly, Mother argues that the finding is unsupported by the evidence.

During the factfinding hearing, DCS presented evidence that Mother struggled to comply with her medication regimen, such that service providers helped her arrange her daily medication in individual packages. Service providers testified that on several occasions Mother refused to take her medication, while on

another occasion she ingested a whole day's worth of medicines at one time. Out of the three or four times FCM performed a pill check, Mother was in compliance a single time. FCM expressed the doubt that if Mother could not manage her own prescribed medication accurately, she would not be able to manage Children's. Accordingly, evidence in the record supports the trial court's finding.

[21] Next, Mother challenges the trial court's finding that Mother has "given no indication that [she] will continue to accept and participate in ongoing services and support without DCS's supervision." (Appellant's App. Vol. II, p. 24). In support of her challenge, Mother points to the paperwork she completed and faxed to apply for services with the Bureau of Developmental Disabilities Services (BDDS), a service to help people with developmental disabilities live independently, and her attendance at the domestic violence counseling services she received from her behavioral clinician. Although Mother points to two instances in which she appeared to accept services, there is a wealth of evidence in the record to the contrary. Mother acknowledged during the termination hearing that she needs the services provided by DCS to safely take care of Children; yet, she has given no indication that she would continue to accept and participate in those services without the trial court's and DCS's oversight. Historically, Mother ceased the services when DCS closed the case despite DCS's arrangement for services to continue. Mother also indicated that she no longer needed individual therapy and domestic violence services despite ongoing concerns because she had already "learned everything that she needs to

learn from services” and was confident she could maintain Children’s safety and well-being in the home by herself. (Tr. Vol. II, p. 187). While we agree with Mother that she applied for services at BDDS, the evidence also reflects that during a child family team meeting the week prior to the termination hearing, Mother announced that she did not need or want BDDS’s services. Therefore, the challenged finding is supported by the evidence.

B. *Reasonable Probability*

[22] In adjudicating Children as CHINS, the trial court determined that Children’s removal from Parents’ care was necessary due to unsanitary living conditions in Mother’s home, poor personal hygiene, and domestic violence.

[23] Throughout these proceedings, service providers, CASA, and FCM testified that Mother’s low intellect and lack of ability to demonstrate learned skills and techniques interfered with her ability to parent Children. The trial court found that Mother’s cognitive disabilities impacted all aspects of her daily life. The evidence reflects that Mother is in the extremely low range of intellectual functioning and has been engaged in community support services to some degree since 2012. While mental or cognitive disabilities, standing alone, are not a proper basis for termination of parental rights, a court may consider these issues where parents are incapable of or unwilling to fulfill their legal obligations in caring for their children. *Egly v. Blackford Cty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Here, DCS recognized that services to Mother needed to be tailored to meet her cognitive disabilities and

repeatedly addressed ways to accommodate her individualized needs with service providers. Even so, service providers consistently reported Mother was unable to comprehend, use, and retain the information covered during services.

[24] DCS has been involved with the family since 2016 when it filed the first CHINS petition due to filthy and unsanitary living conditions and Mother's inability to safely parent Children. DCS has provided support and services to the family during multiple interventions since then. In the instant case, DCS offered Mother individualized therapy, family therapy, medication management, domestic violence treatment, case management, and supervised visitation. Despite all these customized services, Mother has been unable to maintain a sanitary and safe home environment. Even as recent as a couple of weeks prior to the termination hearing, FCM reported animal feces around the home and on at least one of the beds, and Mother admitted that the feces were "caked into the carpet" in her current home. (Tr. Vol. II, p. 199).

[25] The evidence further reflects that Mother has shown an inability to identify, appreciate, and avoid unsafe and unhealthy interpersonal relationships and seems to lack an understanding of the impact of these relationships on Children despite DCS's effort to educate her. Father has been convicted of neglect of a dependent and domestic battery after a physical altercation occurred between him and Mother in the presence of Children. Husband displayed controlling behaviors that negatively impacted Children due to Mother's inability to recognize those behaviors, stand up to them, and protect Children.

[26] Throughout the proceedings, Mother demonstrated an inability to correct the safety issues in parenting Children. During visits, Mother struggled to supervise and engage when necessary to keep Children safe, requiring the visitation supervisor to intervene instead. She struggled to effectively discipline and communicate with Children. DCS service providers reported that Mother would not be able to safely care for Children without ongoing and full-time support services and intervention. Despite this recommendation and DCS's arrangements to continue services after closing an intervention, Mother, historically and in the instant proceeding, has stopped or resisted services. Here, Mother has been vocal about her intent to stop services as she has already "learned everything" and no longer required further services. (Tr. Vol. II, p. 187).

[27] Overall, despite DCS's efforts, Mother has failed to make any progress in the areas of concern. As one provider stated, "She wants to do better, but cognitively, she can't get it together." (Tr. Vol. II, p. 146). Ultimately, despite being offered a plethora of services over several years to help her manage her cognitive and functional limitations, Mother failed to meaningfully progress in her ability to care for Children.

[28] Mother contends that the testimony of service providers, FCM and CASA that Mother's low cognitive abilities interfered with her ability to parent Children amounted to speculation about parenting issues that may or may not materialize in the future. In support of her argument, Mother relies on *Matter of L.N.*, 118 N.E.3d 43 (Ind. Ct. App. 2019). In *L.N.*, the child was adjudicated a

CHINS based primarily on the mother's mental health issues and father's low intellectual functioning. *Id.* at 48. We reversed because DCS had not provided evidence that child was endangered based on those factors and there existed no other conditions under which child could be adjudicated a CHINS. *Id.* at 50. We concluded that "a cause for concern is not the touchstone of a CHINS determination, and an unspecified concern about what might happen in the future is insufficient in itself to carry the State's burden of proof. Indeed, future concerns rather than present facts are not enough to support a CHINS determination." *Id.* at 49.

[29] However, whereas *L.N.* was a CHINS proceeding, the instant case is a termination of rights action which includes an abundance of current and historical factual evidence, rather than unspecified concerns, indicating that Mother has continuously failed to make progress in her ability to provide a safe and appropriate environment for herself and Children despite numerous interventions by various agencies.

[30] Mother's failure to engage in services during these proceedings 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). Our supreme court has previously concluded that "parents' past behavior is the best predictor of their future behavior." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Mother's historical and current unwillingness to maintain consistent services and support without DCS's supervision, combined with her deficits in adaptive functioning, render her incapable of safely or effectively parenting

Children without seriously impacting Children’s wellbeing. Mother has shown an inability to provide routine and structure that has allowed Children to make progress. Mother continues to be unable to maintain sanitary living conditions, coordinate her medication and appointments, manage her finances, avoid manipulating and abusive relationships, and appropriately communicate with and discipline Children, even with intensive, tailored support services. This has been a pattern for years, requiring several DCS interventions. 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. *See K.T.K.*, 989 N.E.2d at 1234. As such, we affirm the trial court’s decision.²

CONCLUSION

[31] Based on the foregoing, we hold that the trial court did not abuse its discretion by terminating Mother’s parental rights to Children.

[32] Affirmed.

² Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS needs to prove only one of the disjunctive elements. As we conclude that DCS presented sufficient evidence to establish that a reasonable probability exists that the conditions that resulted in Children’s removal will not be remedied, we do not need to address Mother’s argument that there is no reasonable probability that the continuation of a parental relationship posed a threat to Children’s well-being.

Mother does not argue that termination is not in Children’s best interest. *See* I.C. § 31-35-2-4(b)(2)(C).

[33] Altice, C. J. and Pyle, J. concur