MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child Relationship of Z.S. (Minor Child) and R.S. (Mother)

R.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

July 21, 2021

Court of Appeals Case No. 21A-JT-346

Appeal from the St. Joseph Probate Court

The Honorable Jason Cichowicz, Judge

The Honorable Ashley Mills Colborn, Magistrate

Trial Court Cause No. 71J01-1909-JT-126

Tavitas, Judge.

Case Summary

[1] R.S. ("Mother") appeals the termination of her parental rights to Z.S. ("Child"). We affirm.

Issue

[2] Mother raises one issue: whether the St. Joseph Department of Child Services ("DCS") presented sufficient evidence to support the termination of her parental rights.

Facts

[3] Mother is the biological mother of Z.S., born in May 2016. Z.S.'s biological father is unknown. In October 2016, DCS received a report that Mother was neglecting Child. DCS substantiated this report and removed Child from Mother and placed him with his maternal grandmother. In March 2017, pursuant to Mother's admission, the trial court adjudicated Child a child in need of services (CHINS) under Cause No. 71J01-1610-JC-000740. Child was returned to Mother's care in November 2017, and the CHINS case was closed in December.

[4] Three months later, in March 2018, DCS received a report that Mother had been admitted to a local hospital due to a "psychotic breakdown" and had told the medical providers that she was unable to care for Child. Appellant's App. Vol. II p. 76. A DCS assessment worker arrived at the hospital and interviewed

Mother. Mother had been previously diagnosed with bipolar disorder, anxiety, and schizophrenia but reported that she had not been taking her medications. Mother appeared "manic and irrational." Ex. C, p. 145. DCS removed Child from Mother and placed him in foster care, where he has since remained.

[5] On March 26, 2018, DCS filed a petition alleging child was a CHINS under Cause No. 71J01-1803-JC-000170. After Mother failed to attend three hearings—in March, April, and May—Child was adjudicated a CHINS by default. A dispositional hearing was held in July, and Mother was ordered to, among other things, 1) maintain weekly contact with her family case manager; 2) maintain suitable and safe housing; 3) secure a source of income; 4) refrain from using illegal substances; 5) participate in DCS-recommended services; 6) meet with medical personnel and take prescribed medications; and 7) attend scheduled visits with Child.

[6] Mother did not participate in the CHINS matter for eighteen months after Child's removal. During that time, she did not visit Child, nor did she participate in any DCS services. In October 2019, Mother began attending supervised visits with Child, but still did not fully comply with the case plan. The next month, Mother underwent a psychological parenting evaluation with Dr. Rachael Garcia, who diagnosed Mother with complex trauma and schizoaffective disorder. Dr. Garcia recommended Mother attend parenting classes and individual therapy, and DCS referred her to both services, but Mother failed to comply.

[7] In February 2020, DCS filed a petition to terminate Mother's parental rights. That same month, Mother's visits with Child were terminated after she missed 43% of the scheduled visits in a five-month period. Twice-weekly visits resumed in May after Mother began participating in parenting classes. Mother completed the parenting course, but her attendance at visits remained "inconsistent." Tr. Vol. II p. 51. In July, at Mother's request, visits were reduced to once a week. Thereafter, she continued to miss visits or leave early. Mother also attended two individual therapy appointments—one in June and one in October of 2020—but was only "minimally engaged." *Id.* at 28.

[8] Also in October, the trial court conducted a fact-finding hearing. Dr. Garcia testified as to the results of Mother's psychological parenting evaluation, including that Mother scored "in the high and medium range on most of the constructs which [] have been associated with higher risk for abuse for children," "low in the nurturing parenting program," low in "knowledge for basic parenting," and that she "didn't seem to have a clear concept of herself as a parent." *Id.* at 14-15. Mother's family case manager (FCM), Renaldo Wilmoth, testified Mother does not understand "what needs to be done on a day-to-day basis to maintain her own mental health needs" or "what's necessary to take care of [Child]." *Id.* at 40. Kelly Straub, Mother's parenting-class teacher and visitation supervisor, testified Mother "struggle[s] with the application" of parenting skills. *Id.* at 52. Finally, Mother testified she could not visit Child "when the case first began" because she was "trying to have [her]

medication wear off" and that she recently switched to new medication so now her "situation [is] under control." *Id.* at 73, 82.

[9] The trial court terminated Mother's parental rights and found in part that "[t]here is a reasonable probability that the conditions that resulted in the removal of [Child] and his continued placement outside of the home will not be remedied" and "[Child] has on two (2) separate occasions been adjudicated a child in need of services." Appellant's App. Vol. II pp. 22, 25.

[10] Mother now appeals.

Analysis

[11] Mother appeals the termination of her parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. U.S. Const. amend. XIV; *see also In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). A "parent's interest in the upbringing of their child is 'perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].'" *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). We recognize, however, that parental interests are not absolute and must be subordinated to the child's best interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Thus, parental rights "may be terminated when the parents are unable or unwilling to meet their parental responsibilities by failing to provide for the child's immediate and long-term needs." *Id.* (quotation omitted).

[12] When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *Id.* at 1229. Rather, we consider only the evidence and reasonable inferences that are 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).

[13] Indiana Code section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." A petition to terminate the parent-child relationship involving a child in need of services must allege, in part:

> (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 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 establish these allegations by clear and convincing evidence. *V.A.*, 51 N.E.3d at 1144.

[14] Mother argues the trial court's findings do not support its conclusion that the reasons for Child's removal from Mother's care would not be remedied. Mother, however, does not challenge whether the trial court's findings support its other conclusion that Child had, on two separate occasions, been adjudicated a CHINS. DCS is not required to prove both that the child had twice been adjudicated a CHINS and a reasonable probability exists that the conditions which resulted in removal will not be remedied, because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. *See* Ind. Code § 31-35-2-4(b)(2)(B) (listing three options and noting DCS has to prove "one"). Because Mother does not present an argument challenging the trial court's conclusion that Child had, on two separate occasions, been adjudicated a CHINS, we may affirm under that portion of the statute and, thus, need not address Mother's argument that the findings do not support the trial court's conclusion that the conditions under which Child was removed would not be remedied.

[15] Nonetheless, we prefer to resolve cases on the merits, especially when there is an "important parental interest at stake." *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017). As such, we will review Mother's claim that DCS did not provide sufficient evidence that there is a reasonable probability that the conditions that resulted in Child's removal will not be remedied. In determining whether the conditions that resulted in Child's removal will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). "First, we identify the conditions that led to removal; and second, we 'determine whether there is a reasonable probability that those conditions will not be remedied.'" *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). In analyzing this second step, the trial court judges the parent's fitness "as of the time of the termination proceeding, taking into consideration evidence of changed conditions." *Id.* (quoting *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 152 (Ind. 2005)). "We entrust that delicate balance to the trial court, which 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.*

[16] Here, Child was removed due to Mother's "psychotic breakdown" and inability to care for Child. While mental illness cannot justify the 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 Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Here,

Mother's mental "breakdown" not only led to Child's removal, but it kept her from exercising consistent visitation. Mother showed little interest in participating in DCS services to address her mental-health issues. She did not engage in any services until November 2019, when she underwent a psychological parenting evaluation. She then did not follow up on the recommended treatment—individual therapy—until shortly before the termination hearing and was "minimally engaged."

[17] Mother has also shown little if any improvement in her ability to care for Child. Mother did not visit Child from March 2018 to October 2019. Once she did begin visiting, her attendance was inconsistent—often leaving the visits early or not attending. And just months before the termination hearing, Mother requested her visits be reduced. This failure to exercise visitation with Child shows 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). Moreover, her sporadic attendance and eventual request to reduce visitation evidences a lack of interest in or ability to provide consistent parenting.

[18] Furthermore, Mother's psychological parenting evaluation revealed concerning scores regarding her ability to parent, including that she exhibits a high risk for child abuse and lacks basic parenting knowledge. Parenting classes were recommended, and although Mother completed the course, she did not apply these teachings during her visitation. Because of this, Mother's visits remained fully supervised. FCM Wilmoth testified Mother did not understand how to

take care of her own daily needs, let alone Child's. While in the months leading up to the termination hearing Mother showed some improvement—attending some visitation and therapy sessions—a trial court may disregard such efforts made only shortly before termination and weigh more heavily Mother's conduct before those efforts. *See K.T.K.*, 989 N.E.2d. at 1234.

[19] The trial court did not err when it concluded there is a reasonable probability the conditions resulting in Child's removal and continued placement outside Mother's home will not be remedied.

[20] Affirmed.

Bradford, C.J., and Brown, J., concur.