

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: J.C. (Minor Child),

D.C. (Mother) and J.C.D.
(Father),

Appellants,

v.

Indiana Department of Child
Services,

Appellee.

October 27, 2022

Court of Appeals Case No.
22A-JT-1072

Appeal from the Montgomery
Superior Court

The Honorable Heather L. Barajas,
Judge

Trial Court Cause No.
54D01-2108-JT-175

Brown, Judge.

- [1] D.C. (“Mother”) and J.C.D. (“Father,” and together with Mother, “Parents”) appeal the involuntary termination of their parental rights with respect to their child, J.C. (“Child”). We affirm.

Facts and Procedural History

- [2] Child was born in April 2016. The Indiana Department of Child Services (“DCS”) became involved on August 16, 2020, when it investigated a report that Parents were using heroin and Child was left outside while under their care. Child was removed on September 4, 2020, when Parents overdosed on heroin and had to be revived. DCS alleged Child was a child in need of services (“CHINS”) on September 8, 2020, and Child was placed with his great-grandmother. The court found Child was a CHINS and, on December 22, 2020, issued a dispositional order. Among other requirements, the dispositional order required Parents to complete substance abuse assessments and follow all recommendations, submit to drug screens, and not consume controlled substances. DCS referred Parents to services including drug screens, substance abuse assessments and treatment, home-based therapy, supervised visits with Child, and services related to domestic violence.
- [3] On August 19, 2021, DCS filed a petition to terminate Parents’ parental rights with respect to Child. The court held factfinding hearings on January 13 and 14, 2022. Mother testified that Father was incarcerated three or four months earlier, and when asked how she supported herself when he went to jail, she stated that House of Hope was taking care of her until she could find a job.

When asked how she obtained the facility's name, Mother testified "I got out of rehab, and my mom . . . had just got out of rehab also and she told me that there was a good, private sober living place in Fowler" and "she took me along with her." Transcript Volume II at 151.

[4] On February 10, 2022, DCS filed a Motion to Reopen Evidence Based on Newly Discovered Evidence. DCS argued that, since the January 14, 2022 hearing, new events had come to the attention of DCS which were relevant to the termination petition and requested all just and proper relief. Parents filed objections. On February 23, 2022, the court held a hearing. Counsel for DCS argued that, on the day after the January 14, 2022 hearing, an incident occurred involving Mother and allegations of drug use, DCS had no communication with Mother, the information regarding the incident was important to the court's determination regarding the termination of Mother's parental rights, and Mother had testified at the factfinding hearing that she had been residing at a sober living facility. Mother's counsel argued "the statute requires these cases to be done in 180 days." *Id.* at 242. The court took the matter under advisement and scheduled a hearing for March 3, 2022, in the event it was needed. On February 24, 2022, the court issued an order granting DCS's motion. The order stated the court appointed special advocate ("CASA") had joined DCS's request and found that the evidence DCS wished to introduce was clearly relevant to the proceedings and could not have been produced at the factfinding hearing. It also stated DCS filed its motion 176 days after the filing of the termination petition and the court held a hearing at the earliest

opportunity. It found good cause to reopen the evidence and extend the deadline for the submission of the additional evidence.

[5] On March 3, 2022, the court held a hearing. Benton County Sheriff's Deputy Ethan Deno testified that he responded to a dispatch on January 15, 2022, found Mother on her back and not breathing, observed multiple bruises along the inner portions of her arms consistent with the use of a hypodermic needle, and concluded there had been a possible overdose. Fowler Police Officer Landon Happ testified that he administered two doses of Narcan. The officers testified that Mother first indicated that she had a fainting spell but later stated she had found heroin in her purse and consumed it. Deputy Deno indicated he observed methamphetamine in the bedroom where Mother was found and arrested Mother's mother for possession of methamphetamine. He testified that Mother's symptoms, including distressed breathing, were inconsistent with a fainting spell and that Narcan is not used to revive a person from a methamphetamine overdose. Officer Happ indicated that his observations of Mother and the administration of Narcan were consistent with an opioid overdose.

[6] On April 24, 2022, the trial court entered an order terminating Parents' parental rights. The court found that Mother was referred for services when Child was removed in September 2020 but failed to participate, the court entered a participation order in May 2021 due to Parents' failure to participate in any services, and after that neither parent participated in any programs recommended by DCS or ordered by the court. It found that Father's lack of

participation continued throughout the CHINS case, he was referred to therapy but never participated, and was allowed supervised visits but had none since December 2020. The court found Father submitted to one drug screen during the CHINS case which was positive for amphetamine, methamphetamine, heroin, and fentanyl, and attempts to drug screen Father after December 2020 were futile.

[7] The court found that Mother admitted to using drugs continuously during 2021, detailed her numerous positive drug screens between February 2020 and August 2021, including for amphetamine, methamphetamine, fentanyl, and buprenorphine, and found that she had refused requests for drug screens after August 2021. The court found that Mother texted a family case manager in late December 2021 that she was in a sober living facility in Fowler, a case manager learned there was no such facility, and as of January 13, 2022, Mother was not involved in any legitimate inpatient drug treatment program, halfway house, or drug treatment facility. It found Mother pled guilty to unlawful possession of a syringe and had pending drug-related charges, that Mother had not seen Child in over a year and made no attempts to inquire about his well-being, Mother overdosed on heroin on January 15, 2022, and law enforcement observed marks on her arm indicating drug use.

[8] In addition, the court found that Father was in and out of jail in 2021, was incarcerated in November 2021, and remained incarcerated. It found Father had not attempted to contact Child or inquire into Child's well-being, and that Father had pending charges for possession of methamphetamine, possession of

cocaine, possession of a controlled substance, possession of paraphernalia, unlawful possession of syringe, and invasion of privacy. It also found Father had an extensive criminal history related to violent behavior including mischief to property and battery and domestic battery where Mother was the victim. It found that both Parents were engaged in criminal drug-related activity during the CHINS case while DCS was attempting to contact them and engage them in services. The court also found that Child's great-grandparents were appointed as guardians in 2018, the guardianship was dissolved in January 2020, afterwards Parents never picked up Child from the great-grandparents, and before DCS removed Child, Parents intermittently visited with him but always returned him to the great-grandparents and did not provide financial assistance. It found Child had remained out of Parents' care since the initial removal, is very bonded to his great-grandmother, and has spent almost his entire life in the care of his great-grandparents.

[9] The court concluded that DCS has shown by clear and convincing evidence that there is a reasonable probability the conditions that resulted in Child's removal will not be remedied, there is a reasonable probability that continuation of the parent-child relationship poses a threat to Child's well-being, termination is in Child's best interest, and there is a satisfactory plan of adoption following termination.

Discussion

[10] Father argues that DCS did not prove by clear and convincing evidence that his parental relationship with Child should be terminated. He contends that he

remained self-aware of the issues which could potentially harm Child and fully recognizes that he had substance abuse issues in the past but was working while incarcerated to address those issues. He also challenges the court's best interest finding. Mother argues the trial court, in hearing evidence on March 3, 2022, violated Ind. Code § 31-35-2-6. She asserts that DCS moved to reopen the evidence and Ind. Trial Rule 53.5 is not applicable. DCS argues Parents do not challenge any of the court's findings of fact and the court did not abuse its discretion in hearing evidence on March 3, 2022.

[11] Ind. Code § 31-35-2-6 sets forth the timeline for commencing and completing factfinding hearings in parental rights termination proceedings. *Matter of N.C.*, 83 N.E.3d 1265, 1266 (Ind. Ct. App. 2017). Specifically, the statute provides:

- (a) Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition shall request the court to set the petition for a hearing. Whenever a hearing is requested under this chapter, the court shall:
 - (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
 - (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.
- (b) If a hearing is not held within the time set forth in subsection (a), upon filing a motion with the court by a party, the court shall dismiss the petition to terminate the parent-child relationship without prejudice.

[12] Mother asserts the March 3, 2022 hearing was held after the expiration of the 180-day period and requests this Court dismiss DCS’s termination petition. The interpretation of a statute presents a question of law, which this Court reviews de novo. *Matter of N.C.*, 83 N.E.3d at 1267. Our primary goal is to determine and effectuate the legislative intent. *Id.*

[13] The Indiana Supreme Court has held that, despite a similar timeline in the CHINS statute, Ind. Trial Rule 53.5 allows a court for good cause shown to continue a hearing beyond those deadlines. *See Matter of M.S.*, 140 N.E.3d 279, 284 (Ind. 2020) (“Because our trial rules trump statutes on matters of procedure, Rule 53.5 allows extension of the 120-day deadline in Indiana Code section 31-34-11-1(b) provided a party can show ‘good cause.’ Where . . . the circumstances dictate good cause for a continuance, Trial Rule 53.5 controls and a trial court has discretion to grant a continuance without the risk of mandatory dismissal for failure to complete the factfinding hearing” within the statutory period). Ind. Trial Rule 53.5 provides, “[u]pon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.” There are no mechanical tests for determining whether a request for a continuance was made for good cause. *Matter of M.S.*, 140 N.E.3d at 285. Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case. *Id.* Further, “[e]vidence must be offered during the course of a trial and it is a matter of discretion whether a trial court will permit a party to present additional evidence or testimony once the party has rested, once both

parties have rested, or after the close of all of the evidence.” *In re D.Q.*, 745 N.E.2d 904, 908 (Ind. Ct. App. 2001). A trial court’s decision in this regard will be disturbed only if there is a clear abuse of discretion. *Id.*

[14] Here, DCS alleged there was an incident on the day after the January 14, 2022 factfinding hearing which involved Mother and drug use. The court found there was good cause to extend the deadline for the submission of the additional evidence. That evidence would show that Mother overdosed on heroin and was revived by the administration of Narcan on January 15, 2022. In determining whether there is a reasonable probability that the conditions which led to a child’s removal will not be remedied, a court is required to judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against habitual patterns 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). The court may consider a parent’s drug use in this determination. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). Mother’s use of heroin after the January 2022 factfinding hearing was highly relevant to this inquiry. Based upon the record, we cannot conclude the court abused its discretion in hearing this evidence.

[15] In order to terminate a parent-child relationship, 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.

(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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[16] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d at 642. We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the

evidence.” *Id.* at 640. In addressing the conditions resulting in a child’s removal, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent’s recent improvements against habitual patterns of conduct. *Id.* at 643. A court may consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent’s response to those services. *In re N.Q.*, 996 N.E.2d at 392. Where improvements are merely temporary, the court may reasonably find under the circumstances that the problematic situation will not improve. *Id.*

[17] To the extent Parents do not challenge the court’s findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[18] The court found Parents have been offered every service available to DCS to help them overcome their addictions and address the domestic violence but have chosen to follow a different path. We conclude that clear and convincing evidence supports the trial court’s determinations that there is a reasonable probability that the conditions which resulted in Child’s placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to Child’s well-being.

[19] In determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[20] The court found that Child has remained out of Parents' care since the initial removal and continues in placement with his great-grandmother. It found that Child was referred to therapy upon his initial removal to process trauma he had experienced, his behaviors included acting inappropriately at school and poor impulse control, when he returned from visits with Parents, he would be angry, and since the visits stopped in December 2020, Child has done well in school and his behaviors have improved. It further found that Child is very bonded to his great-grandmother, Child has spent almost his entire life in the care of his great-grandparents due to Parents' drug addictions and domestic violence, and Child's great-grandparents wish to adopt him. Further, Family Case Manager Hannah Smith and the CASA testified that they believe termination of Parents' parental rights is in Child's best interest. Based on the totality of the evidence,

we conclude the trial court's determination that termination is in Child's best interest is supported by clear and convincing evidence.

[21] For the foregoing reasons, we affirm the trial court.

[22] Affirmed.

Altice, J., and Tavitas, J., concur.