MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

In re the Involuntary Termination of the Parent-Child Relationship of O.H. and E.R. (Minor Children)

and

S.R. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

April 26, 2024

Court of Appeals Case No.
23A-JT-1983

Appeal from the Starke Circuit Court

The Honorable Kim Hall, Judge

Trial Court Cause No.
75C01-2212-JT-11
75C01-2212-JT-12

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

[1] S.R. ("Mother") appeals the termination of her parental rights to O.H. and E.R. (collectively, "Children") upon the petition of the Starke County Department of Child Services ("DCS"). She argues DCS did not present clear and convincing evidence to support termination. We affirm.

Facts and Procedural History

[2] Mother and D.H. ("Father") (collectively, "Parents") are the parents of O.H., born January 17, 2020, and E.R., born August 21, 2021.[1] After Mother gave birth to E.R. at home, they were transported to the local hospital. Mother tested positive for opiates and admitted to struggling with opioid addiction. E.R. suffered significant withdrawal symptoms and was transferred to a bigger hospital. DCS removed O.H. from Mother's care and initially placed him with Father. But DCS removed O.H. again after illegal drugs were found in Father's home and Father failed a drug screen. DCS placed Children with a relative.

[1] Father does not appeal the involuntary termination of his parental rights to O.H. He voluntarily relinquished his parental rights to E.R. prior to the fact-finding hearing in this case.

[3] On August 25, 2021, DCS filed petitions alleging Children were Children in Need of Services ("CHINS") because of Parents' drug use. Children were adjudicated CHINS after Parents admitted to the allegations. The trial court entered a dispositional decree, ordering Mother to, among other things: keep all appointments with service providers; engage in home-based casework services; refrain from illegal drug use; complete a substance abuse assessment and successfully complete all treatment recommendations; submit to random drug screens; attend all scheduled visitations with Children; and complete a parenting assessment and successfully complete all recommended services. Under the order, visitation would not start until Mother provided three consecutive negative drug screens.

[4] At first, Mother was partially compliant with home-based casework, substance abuse treatment, and therapy. But she never stopped using illegal drugs. By the June 2022 periodic review hearing, she was noncompliant with the trial court's order and services. She tested positive for illicit drugs (mostly fentanyl, THC, and methamphetamine) forty times from October 2021 to July 2022. She had no visits with Children during those months.

[5] In August 2022, Parents executed a voluntary relinquishment of their parental rights as to E.R. They moved to Florida to enter a drug treatment center but returned to Indiana about a week later. Mother partially re-engaged with services and withdrew her consent to voluntary termination of her parental rights to E.R. Mother had seven negative drug screens from September 9 to October 5, 2022. During that time, she had three visits with O.H. After the

visits, O.H. began exhibiting behaviors including "nightmares, self-harming, and aggression at school." *Ex. Vol. 3* at 193. As a result, Children's Court Appointed Special Advocate recommended suspending visitations. Mother relapsed in late October and tested positive for methamphetamine three times. Visits never resumed.

[6] On December 22, DCS petitioned to terminate Mother's parental rights to Children. Mother did not appear at the initial hearing. At that time, she was noncompliant with services and random drug screens. She was arrested on January 24, 2023, on charges of possession of a narcotic drug. To comply with her pre-trial conditions, she entered Lighthouse Recovery Home. However, she was expelled from the program after a month and returned to jail. She later admitted she entered the program to get out of jail and not to achieve and maintain sobriety.

[7] The trial court held a fact-finding hearing on May 30.[2] At that time, Mother was incarcerated in the Starke County Jail and had three pending criminal cases. She was sober and participating in MRT (moral reconation therapy), parenting, and anger management programs. Mother had negotiated a plea agreement under which she would serve eighteen months on two of the three charges, allowing her to finish a drug treatment program in jail. If she finished the program, the State would not object to sentence modification. However,

[2] The transcript of the fact-finding hearing erroneously states the hearing date was September 9, 2023.

the criminal court had not yet accepted the plea, and there was no plea agreement in her third case.

[8] On July 24, the trial court terminated Mother's parental rights to Children.

Standard of Review

[9] In a proceeding to terminate parental rights, the trial court must enter findings of fact that support its conclusions. Ind. Code § 31-35-2-8(c) (2012). "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." *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016) (quoting *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014)). We must accept as true trial court findings not challenged on appeal. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[10] Out of deference to the trial court's unique position to assess the evidence, we will affirm the termination of parental rights unless the trial court's judgment is clearly erroneous. *In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019), *cert. denied*. A termination decision is clearly erroneous "when the court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision." *Id.* We neither reweigh evidence nor judge witness credibility. *Id.* And we consider only the evidence and reasonable inferences that support the trial court's judgment. *Id.*

Statutory Requirements for Termination of the Parent-Child Relationship

[11] Parents have a fundamental right to raise their children. *Id*. This right, however, is not absolute and may be terminated when parents are unwilling to meet their parental responsibilities. *Id*. at 45–46. "The purpose of terminating parental rights is not to punish parents, but to protect the children." *In re I.B.*, 933 N.E.2d 1264, 1270 (Ind. 2010) (quoting *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)).

[12] Because parental rights are "an important interest warranting deference and protection, and a termination of that interest is a 'unique kind of deprivation,'" Indiana law sets a high bar to sever the parent-child relationship. *In re C.G.*, 954 N.E.2d 910, 916–17 (Ind. 2011) (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981)). To do so, DCS must prove four elements by clear and convincing evidence. *See* I.C. § 31-35-2-4(b)(2) (2019); I.C. § 31-37-14-2 (1997). Mother does not challenge that DCS proved the first and fourth statutory elements.[3] Under the second element, DCS is required to prove one of the following is true:

---

[3] First, DCS must prove one of the following is true:

> (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
>
> (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

> (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[.]

I.C. § 31-35-2-4(b)(2)(B). Third, DCS must prove "that termination is in the best interests of the child." I.C. § 31-35-2-4(b)(2)(C).

Clear and convincing evidence supports the trial court's conclusion there is a reasonable probability the conditions resulting in Children's removal or the reasons for placement outside the home will not be remedied.

[13] Mother first argues DCS failed to meet its burden under the second element. The trial court found there is a reasonable probability the conditions that resulted in Children's removal or the reasons for placement outside Mother's home will not be remedied. *See* I.C. § 31-35-2-4(b)(2)(B)(i). To make this determination, trial courts engage in a two-step analysis. *In re K.T.K.*, 989

> (iii) The child has been removed from the parent and has been under the supervision of a local office or probation department 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 child in need of services or a delinquent child.

I.C. § 31-35-2-4(b)(2)(A). Fourth, DCS must prove "there is a satisfactory plan for the care and treatment of the child." I.C. § 31-35-2-4(b)(2)(D).

N.E.2d 1225, 1231 (Ind. 2013). First, the trial court ascertains what conditions led to Children's placement outside the home, then it determines whether there is a reasonable probability those conditions will not be remedied. *Id.* When making these decisions, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *E.M.*, 4 N.E.3d at 643. However, the trial court must balance any recent improvements against a parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* "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.* The evidence presented by DCS need not rule out all possibilities of change; DCS need only establish there is a reasonable probability that the parent's behavior will not change. *In re C.C.*, 153 N.E.3d 340, 348 (Ind. Ct. App. 2020), *trans. denied*.

[14] DCS removed Children from Mother's care and custody after Mother tested positive for opioids and admitted to regular illicit drug use while pregnant with E.R. From E.R.'s birth in August 2021 until Mother's incarceration in January 2023, Mother largely failed to avail herself of services offered to help treat her substance use disorder. She had over forty positive drug screens and accrued four criminal charges in three cases. Her attempt at sobriety lasted only a few weeks. At the time of the fact-finding hearing, Mother was incarcerated in the Starke County Jail on pending criminal matters. Although Mother had completed approximately six weeks of MRT in jail, she had several weeks of

treatment ahead. The criminal court had not yet accepted her plea agreement, and her release date was uncertain.

[15] On appeal, Mother points to her recent sobriety and pending release from incarceration. She argues "[t]here is nothing in the record to show that Mother would not have been able to maintain her sobriety or engage in services once being released from incarceration." *Appellant's Br.* at 8. We disagree. Mother has an extensive, well-documented history of drug use. For nearly a year after Children's removal, she was unable to pass three consecutive drug screens; consequently, Mother never saw E.R. and visited O.H. only three times. Mother suggests "her past behavior should not be used as a predictor of her future behavior[.]" *Id*. at 8–9. However, it was within the trial court's purview to give more weight to Mother's habitual patterns of drug use than her sobriety while in jail. *See E.M.*, 4 N.E.3d at 643. Mother essentially asks us to reweigh the evidence, which we cannot do. *Id*. at 642. Clear and convincing evidence supports the trial court's conclusion there is a reasonable probability the conditions that resulted in Children's removal or the reasons for placement outside Mother's home will not be remedied.

Clear and convincing evidence supports the trial court's conclusion termination is in Children's best interests.

[16] Mother next contends DCS failed to show termination is in Children's best interests. When deciding whether termination is in the child's best interest, trial courts "must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *Ma.H.*, 134 N.E.3d at 49.

Children's need for permanency is a central concern. *Id.* "Indeed, 'children cannot wait indefinitely for their parents to work toward preservation or reunification.'" *Id.* (quoting *E.M.*, 4 N.E.3d at 648). And trial courts "need not wait until the child is irreversibly harmed such that the child's physical, mental and social development is permanently impaired before terminating the parent-child relationship." *E.M.*, 4 N.E.3d at 648 (quoting *K.T.K.*, 989 N.E.2d at 1235).

[17] During the CHINS proceeding, Mother had many opportunities to avail herself of treatment and services to help her achieve sobriety and provide a suitable environment for Children. But ultimately, she did not. As this Court has previously observed, "the time for parents to rehabilitate themselves is during the CHINS process, *prior* to the filing of the petition for termination. The termination statutes do not require the court to give a parent additional time to meet his or her obligations[.]" *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Due to her drug use, criminal conduct, refusal to engage meaningfully in services, and extended absence from Children's lives, the trial court found Mother "made herself a veritable stranger in the life of" Children. *Appellant's App. Vol. 2* at 21, 38. As a result, reunification "would entail literally introducing" E.R. to Mother, and "re-introducing" her to O.H. *Id.* Children are not required to wait indefinitely for stability and permanency. *See Ma.H.*, 134 N.E.3d at 49. And a parent's historical and current inability to provide a suitable environment supports finding termination of parental rights is in a child's best interests. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013).

Clear and convincing evidence supports the trial court's conclusion termination of the parent-child relationship is in Children's best interests.

Conclusion

[18] The trial court did not clearly err in terminating Mother's parental rights to Children.

[19] Affirmed.

May, J., and Vaidik, J., concur.

ATTORNEY FOR APPELLANT

Timothy J. Lemon
Knox, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Indiana Attorney General

Marjorie Lawyer-Smith
Indianapolis, Indiana