

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of Mi.S. (Minor Child);

M.S. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

October 7, 2021

Court of Appeals Case No.
21A-JT-756

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause No.
18C02-2007-JT-50

Najam, Judge.

Statement of the Case

- [1] M.S. (“Mother”) appeals the trial court’s termination of her parental rights over her minor child, Mi.S. (“Child”).¹ Mother raises a single issue for our review, which we restate as whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of Mother’s parental rights.² We affirm.

Facts and Procedural History

- [2] Mother gave birth to Child in May of 2017. The next day, DCS became involved in Child’s welfare, as Child had been “born drug-exposed” and there were “allegations of domestic violence in Mother’s household.” Appellant’s App. Vol. II at 169. In an initial assessment with DCS, Mother admitted to daily use of “THC,” and she admitted that she was “not prepared” to have Child “in her home.” *Id.* DCS did not take custody of Child.
- [3] In August, Mother exposed Child to three separate instances of domestic violence between her and her boyfriend. Mother also continued using illicit substances, including cocaine. In September, DCS filed a petition alleging Child to be a Child in Need of Services (“CHINS”), and the next day Mother admitted to the three instances of domestic violence and to using cocaine. The

¹ Child’s father, who also had his parental rights terminated, does not participate in this appeal.

² Mother frames her issue on appeal around various purported constitutional violations. However, the substance of her argument on appeal is plainly a sufficiency argument, and we limit our review accordingly.

court adjudicated Child to be a CHINS and ordered Mother to participate in various services.

- [4] At a review hearing in May of 2018, the court found that “Mother had not participated in any services as ordered.” *Id.* at 170. The court further found that Mother “was not visiting [C]hild regularly.” *Id.* At a permanency hearing in September, the court again found that “Mother had not engaged in court-ordered services or visitation” with Child. *Id.* at 171. The court concluded that a permanency plan of adoption for Child was in Child’s best interests.
- [5] At a review hearing in March of 2019, the court found that “Mother was not compliant in services.” *Id.* At a permanency hearing in June, the court found that Mother “continued to struggle with maintaining stable housing and an appropriate relationship with her significant other.” *Id.* At a subsequent permanency hearing in September, the court found that, although Mother “had complied with some services, she had not enhanced her ability to parent” Child. *Id.*
- [6] In March of 2020, DCS moved to suspend Mother’s visitation as she had “stopped visiting with [C]hild.” *Id.* The court granted the motion. At a review hearing in May, the court again found that Mother had not been participating in or compliant with services. In September, the court found that Mother had stopped communicating with service providers and with DCS.
- [7] In July, DCS moved to terminate Mother’s parental rights. The court held an evidentiary hearing on DCS’s petition in December of 2020 and January of

2021. Thereafter, the trial court found that Mother had repeatedly been offered services, yet she had repeatedly failed to participate in or benefit from them. The court further found that, in November of 2020, “Mother admitted that her infant daughter,” not Child, “was in the home when domestic violence occurred” that resulted in “a broken window and injuries to [Mother’s] boyfriend.” *Id.* at 173. The officer who had been dispatched to that incident informed the court that “he is very familiar with Mother and her boyfriend and estimated that there have been more than twenty (20) calls regarding domestic violence to Mother’s house in the past eighteen (18) months.” *Id.*

[8] The court then concluded as follows:

53. There is a reasonable probability that the conditions that resulted in [C]hild’s removal and/or continued placement outside of the home will not be remedied. Throughout the duration of the CHINS case, Mother either failed to participate in or benefit from the services ordered Mother did not avail herself of services that could have assisted her. Mother did not maintain consistent communication with DCS and has not demonstrated that she has addressed the conditions that resulted in [C]hild’s removal and continued placement outside of the home. Moreover, Mother has not visited with [C]hild since at least August of 2019.

54. One of the primary reasons for . . . Child’s removal was Mother’s substance abuse; Mother has not demonstrated that she has remedied her substance abuse problem. Another primary reason for [C]hild’s continued placement outside of the home was Mother’s lack of stable housing; Mother has not demonstrated that she could obtain or maintain stable, safe[,] and suitable housing for [C]hild.

55. Domestic violence continues to be a significant reason for . . . Child’s continued placement outside of Mother’s home and [a] significant barrier to Mother’s ability to safely care for [C]hild. Mother consistently engages in domestically violent relationships as both the perpetrator and the victim. Mother has fled to local shelters, only to leave and return to the domestic violence. Mother has been arrested and charged with domestic violence in the presence of a child. Mother has not demonstrated that [C]hild would not endure future neglect and/or abuse if returned to her care. There is a reasonable probability that the continuation of the parent[-]child relationship between Mother and [C]hild poses a threat to the well-being of [C]hild due to Mother’s pattern of conduct relating to domestic violence.

Id. at 174-75. The court further concluded that termination of Mother’s parental rights was in Child’s best interests, and the court terminated her rights accordingly. This appeal ensued.

Discussion and Decision

[9] Mother appeals the trial court’s termination of her parental rights over Child. We initially acknowledge that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.* Although the right to raise one’s

own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[10] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove:

(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.

* * *

(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) (2020). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R. Y. v. Ind. Dep’t of Child Servs. (In re G. Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[11] Here, in terminating Mother’s parental rights, the trial court entered specific findings of fact and conclusions thereon. We review such judgments using a

two-tiered standard of review. *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.* We will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[12] The essence of the trial court’s decision to terminate Mother’s parental rights was the court’s conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal from Mother’s care will not be remedied.³ In determining whether the evidence supports the trial court’s conclusion that Mother is unlikely to remedy the reasons for Child’s removal, we engage in a two-step analysis. *E.M. v. Ind. Dep’t of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (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.* (quotations and citations omitted). In the second step, the trial court must judge a parent’s fitness to care for her child at the time of the termination hearing, taking into consideration

³ As Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive and we affirm on this basis, we need not consider the trial court’s additional conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Child.

evidence of changed conditions. *Id.* However, the court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Id.*

[13] Mother does not challenge any of the trial court’s findings of fact in support of its conclusion. Rather, Mother asserts that she only had “limited supervised visits” with Child early in Child’s life, which visits were later “reduced” and then “suspended.” Appellant’s Br. at 22. She asserts that her “[i]nconsistency” with services “can not only be alleged against [her]” but also against DCS. *Id.* at 23. She then concludes:

It is clear that [Mother] was struggling during this time where she needed to have help [Mother] lacked any sort of insight or acknowledgement of her socio-economic or mental health situations. The burden should not be on her to request exact services/programs or [to] have the knowledge of what services/programs are available. All of the individuals testifying at the Fact-Finding Hearings have the education and expertise to issue spot an individual’s struggles[and] mental health issues, but none of them extended out to discuss and empower [Mother] with their insights on her struggles, making her aware, and acknowledge [sic] what she had done incorrectly and how she

could make it better, essentially remedying the conditions that led to the removal of [Child] from her care. What happened in this instance with [Mother] was that the services/programs were all for naught.

Id. at 25.

[14] Mother's argument is, at best, simply a request for this Court to reweigh the evidence, which we will not do. Mother does not dispute the trial court's finding that one basis for the removal of Child from her care was her exposure of Child to domestic violence. Mother does not dispute the trial court's finding that Mother continued to engage in domestic violence with her significant other throughout Child's nearly three-year-long CHINS proceeding before DCS sought termination of her parental rights. Mother does not dispute the trial court's finding that, in the eighteen months prior to the evidentiary hearing on DCS's petition to terminate her rights, local police had responded to some twenty instances of domestic violence at Mother's residence. Mother does not dispute that her history of domestic violence included criminal charges against her and an incident about one month before that evidentiary hearing.

[15] We hold that the trial court's judgment that there is a reasonable probability that the conditions that resulted in Child's removal from Mother's care will not be remedied is supported by the evidence. Therefore, we affirm the trial court's termination of Mother's parental rights over Child.

[16] Affirmed.

Riley, J., and Brown, J., concur.