

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jane A. Noblitt
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Robert J. Henke
Deputy Attorneys General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

K.W.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

October 13, 2021

Court of Appeals Case No.
21A-JT-947

Appeal from the Jennings Circuit
Court

The Honorable Murielle S. Bright,
Judge

Trial Court Cause No.
40C01-2010-JT-26

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, K.W. (Mother), appeals the trial court's termination of her parental rights to the minor child, C.G. (Child).

[2] We affirm.

ISSUE

[3] Mother raises one issue on appeal, which we restate as follows: 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] Child was born to Mother on May 11, 2014.¹ On December 14, 2018, DCS removed the Child on an emergency basis after determining that Mother was not providing any supervision or care for the Child and could not be located. It was alleged that Child—along with two younger brothers—was left at the maternal grandmother's home. When one of the younger brothers required immediate medical attention, Mother could not be found. On December 18, 2018, DCS filed a verified petition alleging Child to be a child in need of services (CHINS). Following a hearing, and based on Mother's admission that she struggled with substance abuse, the trial court adjudicated Child to be a

¹ Paternity to the Child has never been established.

CHINS² on January 9, 2019. On January 17, 2019, the trial court conducted a disposition hearing and ordered Mother to maintain suitable, safe, and stable housing, maintain a legal and stable source of income, and to not consume or use any illegal or controlled substances.

[5] Throughout the two and a half years of CHINS proceedings, Mother struggled with substance abuse. She exhibited a pattern of becoming sober and then relapsing, with the “longest period of sobriety” to be “about 8 months.” (Transcript p. 53). Until about November or December 2020, Mother refused residential treatment offers or left such placements early. When tested, Mother tested positive: she had positive tests for methamphetamine and amphetamine on December 2, 2020; for THC on December 11, 2020, and for butalbital, a barbiturate, on March 5, 2021, shortly before the termination hearing.

[6] During the proceedings, Mother did not maintain stable employment. While she claimed to have been employed in 2019 and been paid “under the table” in cash, she could not produce any records of payment. (Tr. p. 48). Mother asserted that she was in the process of applying for disability, but failed to submit any corroborating evidence she had applied for or actually suffered from a disability.

² Mother’s two younger children were also subjects of the CHINS proceeding, but their cases closed after the trial court changed custody to the younger children’s biological father.

[7] After Child was detained, Mother decided to leave maternal grandmother's residence, where she and Child had been living, and "do whatever [she] wanted" as she no longer had to worry where she lived. (Tr. p. 44). As a result, Mother did not acquire adequate and safe housing, not even during periods of sobriety. She was either homeless or lived in a cabin for the duration of the CHINS case. The cabin had no separate bedrooms, no running water, and was heated by propane gas. Mother characterized the cabin as "liv[ing] off the grid." (Tr. p. 43).

[8] At no point during the proceedings did Mother "move[] beyond the initial visitation level" of once a week for two hours. (Tr. p. 100). Due to her relapses Mother visited Child only sporadically. Even though the Child was not always well-behaved during the visit, the visitation supervisor indicated the visits went "great" because Mother appropriately used time out or had the Child walk beside her as consequences. (Tr. p. 117). The only issue during visitation was Mother discussing with Child inappropriate topics such as when he might come home and live with her. When she was corrected by the visitation supervisor, Mother responded that he was her Child and she should be able to "tell [him] what she wants to." (Tr. p. 119).

[9] Child's therapist advised that Child exhibited aggression and anger issues, as well as impulse control issues. The biggest concern was Child's trauma from a lack of permanency. The therapist also believed that Child was starting to show signs of oppositional defiant disorder and post-traumatic stress disorder because of his long period in foster care and the feeling of uncertainty and instability it

was causing him. Child began to harm himself by either picking at himself until he bled or by banging his head against hard objects such as the wall or his desk at school.

[10] On January 4, 2021, through a DCS referral, Mother entered Providence House, a transition house that helps with mental health needs, parenting classes, employment, and stable housing. Providence House does not provide substance abuse help. All residents enter the Providence House program with the goal of reunification with their children while they are there. Mother began participating in Providence House’s services in early February 2021 and showed “significant motivation to learn things from the program.” (Tr. p. 197). While at Providence House, Mother continued to participate in an IOP class through Centerstone. The class taught Mother to cope with certain things, what “triggers” are, and how to identify her own “triggers.” (Tr. pp. 74-75).

[11] On October 4, 2020, DCS filed its verified petition for involuntary termination of the parent-child relationship. On March 29, 2021 and April 1, 2021, the trial court conducted a hearing on DCS’s petition. On April 22, 2021, the trial court issued its Order terminating Mother’s parental rights to Child, concluding, in pertinent part:

c) There is reasonable probability that the conditions that resulted in the [Child’s] removal and the reasons for placement outside the home of the parent[] namely, the Mother’s failure to secure and maintain stable and suitable housing; the Mother’s failure to secure and maintain legal and stable source of income; [and] the Mother’s substance abuse issues [] will not be remedied;

d) Termination of the parent-child relationship is in the best interest of the [C]hild; and

e) The proposal made by DCS for the [C]hild to be adopted by the present foster placement is a satisfactory plan for the care and treatment of the [C]hild.

(Appellant's App. Vol. II, p. 14).

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

DISCUSSION AND DECISION

[13] Mother challenges the trial court's termination of her parental rights to her Child. 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. Off. 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. Off. of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[14] 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.*

[15] 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.*

[16] 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 Co. 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 Co. 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 [his] deficient lifestyle such that [his] 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.

[17] Mother focuses her challenge solely on the trial court’s conclusion that there was a reasonable probability that Mother would not remedy the conditions that resulted in the Child’s removal and continued the placement outside the home namely, Mother’s failure to secure and maintain stable and suitable housing; Mother’s failure to secure and maintain a legal and stable source of income; and Mother’s substance abuse issues. While Mother admits that she initially struggled during the pendency of the CHINS proceeding, she now maintains that she is “finally in a place of stability, able and willing and actually engaging in services designed to address each of the areas the court had ordered her to address.” (Appellant’s Br. p. 14).

[18] Looking at the evidence before us, we agree with the trial court’s uncontested finding that although “Mother has made some slight improvements regarding her substance abuse and parenting skills in the past few months, [it was] not[] significant enough to overcome her lack of progress.” (Appellant’s App. Vol. II, p. 11). Mother’s rehabilitation efforts to remain drug-free “fluctuated.” (Tr.

p. 95). She tested positive for methamphetamine and amphetamine on December 11, 2020, for THC on December 11, 2020, and for butalbital on March 5, 2021—approximately three weeks before the termination hearing. While she had a “tendency to remain sober for a few months at the time,” she “usually relapse[d]” at some point. (Tr. p. 97). Even during the eight months of sobriety, she “did not make progress toward the other goals set by the court.” (Tr. p. 97).

[19] Despite the visitation supervisor’s assessment that Mother did “great” handling Child’s behavior during visits, at no point did Mother move “beyond the initial visitation level.” (Tr. pp. 117, 100). Towards the end of the current proceedings, the visitation supervisor became very concerned about the impact of these visits and Mother’s conversations about his return to her care on Child, as Child began to experience trauma and started to harm himself. The Child also started to show signs of oppositional defiant disorder and post-traumatic stress disorder because of his long period in foster care and the feeling of uncertainty and instability this was creating.

[20] Even though Mother claims to have been employed in 2019, she never submitted any proof of employment to DCS or the trial court. After Child was detained by DCS, Mother left maternal grandmother’s residence and did not have a stable and suitable home until she entered Providence House in January 2021, after DCS filed its termination petition and three months before the trial court conducted a hearing on DCS’s petition. She began participating in activities at Providence House in early February 2021 and showed “significant

motivation to learn things from the program.” (Tr. p. 197). While at Providence House, Mother continued to participate in an IOP class through Centerstone, and became familiar with the identification of her own “triggers.” (Tr. p. 75).

[21] It is clear that Mother did not avail herself of the opportunities and services offered by DCS to reunite with the Child until DCS had filed the petition to terminate her parental rights and after she had entered Providence House. The responsibility to make positive changes is on the parent. *Prince v. Dep’t of Child Services*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007). “[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the petition for termination.” *Id.* at 1230. To that end, the trial court is within its discretion to “disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother’s history of conduct.” *K.T.K.*, 989 N.E.2d at 1234. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014). Even though “the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child’s interest to maintain this relationship.” *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Mother’s inability to maintain sobriety and her frequent relapses throughout these proceedings, her inability to maintain employment, and her failure to provide a safe and stable home, support the trial court’s conclusion that a reasonable probability exists that the conditions that resulted in the child’s removal will not be remedied despite the minor improvements Mother has

shown after DCS filed its termination petition.³ *See K.T.K.*, 989 N.E.2d at 1234. Accordingly, we affirm the trial court's decision.

CONCLUSION

[22] Based on the foregoing, we conclude that DCS presented sufficient evidence to support the trial court's Order terminating Mother's parental rights to the Child.

[23] Affirmed.

[24] Najam, J. and Brown, J. concur

³ Mother does not challenge the trial court's conclusion that termination of her parental rights is in the Child's best interests.