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 M.M., L.R., Ga.R., Gi.R., and K.R. (Minor Children);

K.M. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

and

November 19, 2021

Court of Appeals Case No. 21A-JT-1039

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither, Judge

The Honorable Scott B. Stowers, Magistrate

Trial Court Cause Nos.
49D09-2006-JT-424
49D09-2006-JT-425
49D09-2006-JT-426
49D09-2006-JT-427
49D09-2006-JT-428

Kids' Voice of Indiana,
Appellee-Guardian ad Litem.

Najam, Judge.

[1] K.M. ("Mother") appeals the trial court's termination of her parental rights over her minor children, M.M., L.R., Ga.R., Gi.R., and K.R. ("Children"). Mother presents a single issue for our review, namely, whether the Indiana Department of Child Services ("DCS") presented sufficient evidence to support the termination of her parental rights.

[2] We affirm.

Facts and Procedural History

[3] Mother and C.R. ("Father") (collectively "Parents") have five children together, M.M., born January 6, 2011; L.R., born February 26, 2016; Ga.R. and Gi.R., born March 4, 2017; and K.R., born April 29, 2018. On December 31, 2018, "following allegations that [Parents] failed to provide [Children] with a safe, stable, and appropriate living environment free from substance abuse and with necessary supervision[,]" the Indiana Department of Child Services ("DCS") removed the Children from Parents' care. Appellant's App. Vol. 2 at 55. On January 3, 2019, DCS filed petitions alleging that the Children were children in need of services ("CHINS").

[4] The day of the ensuing factfinding hearing on the CHINS petitions in April, Mother tested positive for methamphetamine and amphetamine. During the hearing, Mother appeared and admitted that the Children were CHINS and that she would benefit from services to obtain stable housing and sobriety. The trial court found that the Children were CHINS. At the conclusion of a disposition hearing, the trial court ordered Mother to participate in home based therapy and case management, complete a substance abuse assessment, and submit to random drug screens.

[5] Mother's compliance with the dispositional order was inconsistent. While Mother completed a substance abuse assessment, she did not complete the recommended intensive outpatient treatment or home based case management services, and she did not regularly submit to the ordered drug screens. In December 2019, Mother tested positive for methamphetamine. And in February 2020, Mother tested positive for methamphetamine and fentanyl. Mother stopped submitting to drug screens after August 2020. Mother was unable to maintain stable housing. During the winter months of 2020-21, Mother lived in her car. Mother participated in supervised visits with the Children, but she was unable to progress to unsupervised visits because of her noncompliance with submitting to regular drug screens and her continuing substance abuse.

[6] On June 22, 2020, DCS filed petitions to terminate Mother's and Father's parental rights over the Children, who had been living with their maternal grandparents in their pre-adoptive home since their removal from Parents' care.

Following a factfinding hearing on March 31 and April 20, 2021, the trial court entered an order terminating both Mother's and Father's parental rights over the Children. This appeal ensued.[1]

Discussion and Decision

[7] Mother contends that the trial court erred when it terminated her parental rights. We begin our review of this issue by acknowledging 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.

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

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[1] Father does not participate in this appeal.

(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) (2021). 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).

[9] When reviewing a termination of parental rights, 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.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous.

Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.), 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[10] Here, in terminating Mother's parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply 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.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[11] Mother does not challenge any of the trial court's findings. Rather, Mother challenges the trial court's conclusions that (1) the conditions that resulted in the Children's removal and the reasons for their placement outside of Mother's home will not be remedied, (2) that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of the Children, and (3) that termination is in the Children's best interests. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only address on appeal the sufficiency of the evidence to support one prong of that subsection of the statute. Accordingly, we address whether DCS presented sufficient evidence to prove that the conditions that resulted in the Children's removal and the reasons for the Children's placement outside of

Mother's home will not be remedied. We also address Mother's contentions that termination of Mother's parental rights is not in the Children's best interests.

Reasons for the Children's Placement Outside of Mother's Home

[12] This Court has clarified that, given the wording of the statute, it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also any basis resulting in the continued placement outside of a parent's home. *Inkenhaus v. Vanderburgh Cnty. Off. of Fam. & Child. (In re A.I.)*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court properly considered both the reasons for the Children's removal from Mother's home and the conditions that prevented the Children from being returned to Mother's care. As the court's findings show, the Children were removed from Mother's care due to her substance abuse and lack of a stable home, and those conditions have not changed. After two years, Mother has not demonstrated a willingness or ability to provide a stable home for the Children.

[13] We hold that the evidence supports the trial court's findings and conclusion on this issue. To determine whether there is a reasonable probability that the reasons for the Children's continued placement outside of Mother's home will not be remedied, the trial court should judge Mother's fitness to care for the Children at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). 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[ren]." *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.*

[14] The trial court found in relevant part that Mother had used heroin *one month* prior to the final hearing; Mother has not gone more than two months without relapsing during the CHINS proceedings; Mother has not submitted to a drug screen since August 2020; Mother has not progressed beyond supervised visitation with the Children despite the only obstacle being four consecutive clean drug screens; Mother left an inpatient substance abuse treatment program before she had completed it; Mother has been unemployed for the duration of the CHINS proceedings; and Mother has not successfully completed home based care management. And the evidence supports those findings. In addition, the Guardian ad litem ("GAL") testified that Mother was "[d]efinitely not truthful" with him about her substance abuse. Tr. at 193.

[15] On appeal, Mother asserts that she had to leave the inpatient substance abuse treatment program early because her insurance would not cover a longer stay. And Mother maintains that "she had difficulties finding an IOP (Intensive

Outpatient Program) because of COVID-19 closures and backlogs for services[.]" Appellant's Br. at 35. Mother asks that she be given more time to comply with the ordered services. But Mother's argument on appeal is simply an invitation for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Based on the totality of the circumstances, especially Mother's ongoing substance abuse, we hold that the trial court's findings support its conclusion that there is a reasonable probability the conditions that resulted in the Children's removal and the reasons for their continued placement outside of Mother's home will not be remedied.

Best Interests

[16] In determining what is in a child's best interests, a juvenile court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id*.

[17] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id*. Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental

rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id*.

[18] In her brief on appeal, Mother asserts that the court

> relies on the circular reasoning that the permanency of termination and adoption is in the children's best interest even though the evidence demonstrated that nothing would change from the children's perspective: they lived with their grandparents before the proceedings, during the proceedings, and would live with them after termination and adoption. There is absolutely no evidence that making it harder for the children to see their parents who they loved and who cared for them would be in their best interests.

Appellant's Br. at 40. And Mother contends that the trial court gave too much weight to the "stability and permanency" offered in grandparents' home. *Id.* at 41.

[19] Once again, Mother asks that we reweigh the evidence. At the time of the final hearing, the Children had been living with their grandparents for two years. The DCS case manager testified that termination is in the Children's best interests. And the Children's GAL testified in relevant part that Mother and Father had provided

> no form of stability in any area of the case. Substance, no stability. Housing, no stability. If depression played a part, mental health, no stability. Employment, no stability. None of the things that they need to provide for these children to provide them a life of promise. We don't have stability right now. They

> have stability where they're at, they're doing very good where they're at, they have the support where they're at and then if even terminate – you know, termination goes through mom and dad – they're with family, it's not saying that they won't be able to see them, it's just for the best interest of them and on an everyday basis this is the best interest for them.

Tr. at 199-200.

[20] In sum, as the trial court's findings demonstrate, Mother has not shown that she is capable of parenting the Children. The Children are thriving in their pre-adoptive home. The case manager and GAL both testified that termination of Mother's parental rights is in the Children's best interests. Given the totality of the evidence, Mother cannot show that the trial court erred when it concluded that termination of her rights is in the Children's best interests.

Conclusion

[21] DCS has shown by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal or the reasons for placement outside of Mother's home will not be remedied and that termination is in the best interests of the Children. DCS has also shown by clear and convincing evidence that termination of Mother's parental rights is in the Children's best interests. We hold that the trial court did not err when it terminated Mother's parental rights.

[22] Affirmed.

Vaidik, J., and Weissmann, J., concur.