

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: N.S. (Minor Child), and E.S. (Mother),
Appellant-Defendant,

v.

Indiana Department of Child Services,
Appellee-Plaintiff.

May 31, 2023

Court of Appeals Case No.
22A-JT-2977

Appeal from the Tipton Circuit Court

The Honorable Thomas R. Lett,
Judge

Trial Court Cause No.
80C01-2204-JT-49

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] E.S. (“Mother”) appeals the involuntary termination of her parental rights with respect to her child, N.S. We affirm.

Facts and Procedural History

- [2] On June 16, 2019, N.S. was born to Mother and C.J. (“Father,” and together with Mother, “Parents”).¹ On November 19, 2020, DCS filed a petition alleging N.S. was a child in need of services (“CHINS”). The petition alleged that, on November 13, 2020, DCS received a report that N.S. was the victim of neglect, there was significant domestic violence in the home, and “Mother chased Father around the home with a knife after an argument got out of control” and “Mother threatened to harm Father and threatened suicide.” Exhibits Volume III at 32. It also alleged that N.S.’s half-sibling, who was seven years old, intervened in the fight and was slightly injured.² It asserted that Mother admitted to relapsing, using methamphetamine, threatening suicide, and that she refused a drug screen after being arrested and placed in the county jail. On November 20, 2020, the trial court entered a Detention Hearing Order granting DCS’s request to remove N.S. from Parents and accepting

¹ Father does not appeal the termination of his parental rights.

² N.S.’s half-sibling was not included in the April 20, 2022 petition for termination of parental rights.

DCS's recommendations "regarding placement, services, and programs." *Id.* at 38.

- [3] On March 15, 2021, the court entered an order finding that N.S. was a CHINS, and that Mother had admitted to the allegations in the petition. On April 12, 2021, the court entered a dispositional order, which required Mother to work with the family case manager and take steps to participate in services. On May 25, 2021, the court entered an Order on Periodic Case Review, stating "Mother continues to have positive drug screens for methamphetamine" and the permanency plan was reunification with Mother and Father. *Id.* at 72. On January 11, 2022, the court approved a permanency plan of reunification with a concurrent plan of adoption because Parents had not complied with N.S.'s case plan and noted that N.S. had been in her relatives' care for approximately thirteen months.
- [4] On April 20, 2022, DCS filed a petition for termination. On September 13, 2022, Mother completed a mental health assessment. During the assessment, Mother indicated that she continued to experience depression and anxiety and that she used methamphetamine from 2020 until April 20, 2022.
- [5] On September 27, 2022, the court held a factfinding hearing on the petition for termination. Family Case Manager Emily Divine ("FCM Divine") testified she began work on N.S.'s case in December 2020 or January 2021; Mother was "partially compliant with services," did not refrain from using illegal substances such as methamphetamine, failed to complete a mental health clinical interview

and assessment, and failed to comply with a no-contact order between her and Father; and visitation with N.S. led to “a lot of complications with those visits,” including “arguing and parents being upset” and Mother wanting “the visits to go to her house which we were unable to do at the time due to continued methamphetamine use.” Transcript Volume II at 9, 13. FCM Divine stated she made several referrals for substance abuse assessments, and “[t]he major barriers were the domestic violence and the substance use which were not alleviated before the end of [her] stay on the case.” *Id.* at 14.

[6] Visitation Supervisor Terri Coomler testified she supervised visits between N.S. and Mother and later between N.S. and Parents. She stated that, during a visit in April 2022, Father seemed to be “off a little bit,” and Mother later told her that “she saw him shooting up in his ankle.” *Id.* at 30-31. She stated that after the visitation, she heard from Mother only a few times through text messages, and in the messages, “she was saying that she was going to go to jail and that she was regretful about that day, and then she texted saying that she had a warrant out for her arrest I believe in this county and then that she was going to go to rehab.” *Id.* at 31. She agreed Mother’s parenting underwent a regression when Father was added to visitations and the two would “bicker” and “focused on each other” rather than on N.S. *Id.* at 32.

[7] Family Case Manager Teresa Setty (“FCM Setty”) testified she had supervised N.S.’s case since its inception, N.S. “was originally removed from [Mother] who was arrested and then . . . later we detained [N.S.] from [Father] as he came back positive for methamphetamine,” “there was an altercation in which

[Mother] was holding a knife to her throat and . . . law enforcement was called and . . . there was also methamphetamine use by the parents and some located as well at the time of the incident,” and N.S. has been removed from Parents’ care since November 2021 and had been out of the home for six hundred seventy-six days. *Id.* at 53. She stated that Mother was unsuccessfully discharged for lack of compliance from “the Rose Project which focuses on domestic violence,” discharged from another referral for noncompliance, discontinued for noncompliance after being “ordered to do IOP recovery coaching and random drug screens,” and “discharged from her case management” in March 2022 for noncompliance, that “visitations were closed due to her arrest and then the canceling of the visits as well as her going into her rehabilitation center in-patient,” she did not complete “an in-patient stint in February of 2022,” she “did an intake with Adult & Child . . . again for drug assessment and did not follow through on the services for that,” and “then a new referral was again done and she was arrested on the 13th of April and so she didn’t get to finish that as well so she was discharged.”³ *Id.* at 55-56. She agreed that “it really wasn’t until the TPR was filed that [Mother] really stepped up to bat,” Mother had “not fully addressed her addiction,” and was “not able to take ownership for her own addiction,” “domestic violence continues to be

³ The court admitted Mother’s criminal records from cause number 80C01-2101-CM-62, in which she was charged with Count I, violating a no contact order, and Count II, using a computer network to communicate with intent to harass, annoy, or alarm another person; cause number 29D03-2106-CM-3540, in which she pled guilty to invasion of privacy as a class A misdemeanor; and cause number 29D02-2204-F6-2544, in which on April 13, 2022, she was charged with possession of methamphetamine.

an issue,” and Parents “cannot have contact with one another without there being some sort of aggression or disagreement or tenseness” but “[t]hey struggle with staying apart, too.” *Id.* at 62, 69, 71-72. She testified about Parents’ visit with N.S. in April 2022, Father “did use illegal substance in the bathroom that day according to the police report,” “[t]hey did find a needle or a syringe within the bathroom,” “[t]here were drugs in the vehicle,” Parents “had ridden to the visit together so they likely were using together,” and Mother “was later arrested the next morning because of drugs being located in the hotel.” *Id.* at 71.

[8] On October 25, 2022, the factfinding hearing continued, during which Court Appointed Special Advocate Tracy Zachary (“CASA Zachary”) testified that her biggest concerns were Mother not “putting [N.S.’s] needs always in front of hers,” and her drug use. *Id.* at 85. When asked what was best for N.S. “right now,” she answered:

I don’t believe a move right now is appropriate. Is it termination? I don’t know. But I don’t feel we’ve had enough time for longevity to show that we’ve been able to stay clean and stay focused on what we need to do. [N.S.] needs to stay in the placement he is and continue to thrive and allow [Mother] to continue to work on making sure the foundation is strong for herself.

Id. at 88.

[9] Mother testified that she made changes during the six months prior to the hearing, including going “to rehab April 21st of 2022” and successfully

completing the program, from there she “completed Sober Living,” tested negative in drug tests taken approximately every two weeks while in Sober Living, obtained employment after leaving rehab, and found housing since leaving Sober Living. *Id.* at 89. She stated: “Did I go to treatment instead of turning myself in on my Tipton County warrant? Yes. But I needed to get help. Did I deal with my Tipton County warrant outside, after treatment? Yes.” *Id.* at 105.

[10] On November 29, 2022, the court terminated Mother’s parental rights. In its order, the court found that N.S. had been removed “because of domestic violence, Mother’s mental health, parental incarceration, and parent’s substance use,” “under Cause No. 29D02-2204-F6-002544 [(“Cause No. 2544”)], Mother was charged with possession of methamphetamine,” “[i]n April 2022, Mother went to in-patient substance abuse treatment to avoid incarceration,” Mother did not comply with N.S.’s case plan, began to disengage after September 2021, did not demonstrate she could hold a job long term, and failed to complete services, homebased case work, and domestic violence assessment recommendations. Appellant’s Appendix Volume II at 26. It found there was a reasonable probability the conditions that resulted in N.S.’s removal or continued placement outside the home will not be remedied, continuation of the parent-child relationship posed a threat to the well-being of N.S., termination of Parents’ parental rights was in N.S.’s best interests, and adoption was a satisfactory plan for the care and treatment of N.S.

Discussion

[11] Mother argues the trial court erred in terminating her parental rights with respect to N.S., claiming DCS did not prove by clear and convincing evidence that she failed to remedy the conditions that led to removal or continuation of the relationship or posed a threat to N.S.'s well-being. She further claims that DCS did not prove termination was in N.S.'s best interests.

[12] 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).

[13] 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 636, 642 (Ind. 2014). 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.

[14] In determining whether the conditions that resulted in a child’s removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. 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.* at 643. In the second step, 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 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.* Requiring trial courts to give

due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug 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. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[15] “Clear and convincing evidence need not reveal that ‘the continued custody of the parents is wholly inadequate for the child’s very survival.’” *In re G.Y.*, 904 N.E.2d 1257, 1261 (Ind. 2009) (quoting *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 148 (Ind. 2005) (quoting *Egly v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1233 (Ind. 1992))), *reh’g denied*. “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.” *Id.* (quoting *Bester*, 839 N.E.2d at 148 (quoting *Egly*, 592 N.E.2d at 1234)).

[16] To the extent Mother does 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*.

[17] The record reveals that N.S. was removed from Mother's care "because of domestic violence, Mother's mental health, parental incarceration, and parent's substance use." Appellant's Appendix Volume II at 26. The court found that, on April 13, 2022, "under Cause No. [2544], Mother was charged with possession of methamphetamine," Mother began in-patient substance abuse treatment "to avoid incarceration," after September 2021 she disengaged from N.S.'s case plan "and no services were ever fully completed," she was partially compliant with homebased case work but did not complete the service, did not complete domestic violence services, had not demonstrated "an ability to hold a job long term" or secure stable housing, had not "completed a mental health intake" addressing her prescription needs, had "never provided placement [for N.S.] with food, clothing, or support," and "revoked all releases in the middle to [sic] the termination proceeding, preventing DCS from verifying any alleged progress [she] was making in services." *Id.* at 26-29. The court found that, on April 12, 2022, during a visitation with N.S. which included Father, Mother "was going to bring the Child into the bathroom to check on Father despite telling the visit supervisor that [she] believed Father was doing illegal drugs," and after confirming for the supervisor that Father was doing drugs, "later told the visit supervisor that she regretted telling [her] that Father was doing illegal drugs during visitation." *Id.* at 28.

[18] We conclude that clear and convincing evidence supports the trial court's determinations that there is a reasonable probability that continuation of the parent-child relationship poses a threat to N.S.'s well-being and that there is a reasonable probability that the conditions resulting in N.S.'s removal will not be remedied.

[19] In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by DCS and to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the children. *Id.* Children have a paramount need for permanency, which the Indiana Supreme Court has called a central consideration in determining the child's best interests, and the Court has stated that children cannot wait indefinitely for their parents to work toward preservation or reunification and 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. *In re E.M.*, 4 N.E.3d at 647-648. However, focusing on permanency, standing alone, would impermissibly invert the best-interests inquiry. *Id.* at 648. Recommendations by both the 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] When asked what was best for N.S., CASA Zachary testified she did not believe moving N.S. was appropriate and that N.S. should remain in his current placement. FCM Setty agreed when asked if it was in N.S.'s best interests for parental rights to be terminated, his grandparents were the only people with whom he had stability, and the plan after termination would be for N.S. to be adopted by his grandparents. Based on the testimony, as well as the totality of the evidence in the record and set forth in the trial court's termination order, we conclude that the court's determination that termination is in the best interests of N.S. is supported by clear and convincing evidence.

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

[22] Affirmed.

Bailey, J., and Weissmann, J., concur.